CENTRE FOR MONITORING AND RESEARCH

ANNUAL REPORT

ON THE MONITORING OF JUDICIAL PROCEEDINGS IN MONTENEGRO

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INTRODUCTION

The Annual Report on Monitoring Judicial Proceedings before you is the result of the continuous efforts of the Centre for Monitoring and Research (CeMI) to advance the rule of law in Montenegro. Through comprehensive analyses and direct observation of court proceedings, CeMI has, for over two decades, been committed to promoting the respect for fundamental human rights of both defendants and victims in criminal proceedings.

The report published in October 2023 focused on an in-depth analysis of the respect for the right to a fair trial. This year's report brings to the forefront one of the most sensitive aspects of criminal procedure – detention. While the application of detention is at times necessary to ensure the unobstructed conduct of judicial proceedings, its use demands exceptional caution and strict adherence to legal procedures and the international standards they are based on, in order to preserve the balance between public interest and fundamental human rights and freedoms.

CeMI first addressed the issue of detention in 2012 through a joint judicial monitoring project conducted between 2007 and 2014 in cooperation with the OSCE Mission to Montenegro. That same year, Montenegro officially began accession negotiations with the European Union, laying the groundwork for reforms in the field of the rule of law. Today, more than a decade later, following the receipt of closing benchmarks for Chapters 23 and 24 in mid - 2023, Montenegro stands on the threshold of EU membership, yet still faces significant challenges in meeting the highest standards of legal certainty, human rights protection, and judicial efficiency.

For this reason, CeMI has once again decided to conduct a detailed analysis of the practice of ordering detention, aware of the critical role it plays within the criminal justice system. Although the legal framework in this area is harmonised with international standards, a fundamental question remains – are these standards being consistently and properly applied in day-to-day court practice, and are judicial institutions using detention as an exceptional measure, as prescribed by law, or does it continue to function as a routine instrument of prosecution and de facto punishment?

By analysing available data and judicial practice, this report aims to provide a clear insight into current challenges, while also offering recommendations for improving the system with the goal of enhancing fairness, transparency, and the protection of human rights.

This report was produced within the framework of the project "Supporting EU Integration of Montenegro – For Independent and Professional Judiciary as a Key Precondition!", implemented by CeMI in partnership with the Centre for Investigative Journalism of Montenegro (CIN-CG) and the Centre for Civic Freedoms (CEGAS). The project is supported by the European Commission (EIDHR) and co-financed by the Ministry of Public Administration of Montenegro.

The report is structured into five chapters. The first two provide a concise overview of international standards and the national legal framework regulating detention and other procedural measures ensuring the presence of the defendant and the unobstructed course of proceedings. Following this, before presenting the key findings of the monitoring team, the methodology used in the research is outlined. The fourth chapter offers an analysis of the efficiency of criminal proceedings, with a particular focus on cases in which detention measures were ordered. The fifth chapter is entirely dedicated to the judicial practice of ordering detention, with special attention given to the analysis of measures of supervision and bail. The report concludes with a set of conclusions and recommendations that offer concrete guidelines for improving the legal framework and current practices, aiming to achieve greater efficiency and fairness in criminal proceedings, particularly those involving detention.

1. INTERNATIONAL STANDARDS

Imposing detention, as a measure for ensuring the presence of the accused and the unobstructed conduct of the proceedings, represents one of the most sensitive aspects of criminal proceedings, requiring strict adherence to international standards and human rights principles. In this section, we will present the most important international standards governing the use of detention.

The International Covenant on Civil and Political Rights, prescribes the right to liberty in **Article 9(1).** Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.[1]

In the **United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules),** it is stated that detention should be used as a measure of last resort in criminal proceedings, and that alternatives to detention should be applied at the earliest possible stage of the process.[2]

Recommendation R (2006/13) of the Committee of Ministers of the Council of Europe[3], upholding the presumption of innocence and the right to liberty, calls on states to impose strict limitations on the use of detention measures. The Recommendation emphasises the necessity of applying alternative measures whenever possible, and requires that decisions regarding detention, its extension, or the application of substitute measures fall exclusively within the competence of the judiciary. It underlines that detention is an exception, not the norm, and represents a measure of last resort, which must not be ordered for the purpose of punishment. In line with the core principles set out in the Recommendation, ***there is no legal obligation requiring individuals suspected of an offence (or specific categories thereof) be subject to detention.***

Detention is defined as any period of deprivation of liberty of a suspect, ordered by a court prior to the pronouncement of a judgment (excluding the initial deprivation of liberty by the police), as well as any other form of detention prescribed under the rules of international judicial cooperation and extradition procedures. According to the Recommendation, detention may be applied only if the following conditions are met: 1) there is a reasonable suspicion that a criminal offence has been committed; 2) there are substantial grounds to believe that the release of the suspect may result in flight, the commission of a serious criminal offence, obstruction of the proceeding, or a threat to public order; 3) it is not possible to apply alternative measures that would effectively eliminate the aforementioned risks; and 4) detention is an unavoidable step within the criminal procedure.

1 Official Gazette of the SFRY, No. 7/1971, Decree on the Proclamation of the Law on the Ratification of the International Covenant on Civil and Political Rights.
2 Resolution UN 45/110 from 14.12.1990
3 Recommendation No. R (2006)13 of the Committee of Ministers to member states on remand in custody, the conditions in which it takes place and the provision of safeguard against abuse, adopted on 27 September 2006

The Recommendation elaborates in detail on the concept of alternative measures to detention and emphasises that the competent authorities must **carefully consider the specific circumstances of each case** and, where feasible, apply less restrictive measures that minimise the limitation of liberty.

Of great importance in this area is the **European Convention on Human Rights and Fundamental Freedoms (ECHR),** specifically Article 5 of the Convention, as well as the extensive case law of the European Court of Human Rights (ECtHR), which defined more precisely when detention is justified and when it constitutes a violation of the right to liberty. Through its judgments, the ECtHR has developed a nuanced system of criteria requiring that detention be ordered solely in cases where there are clearly identifiable and specific circumstances.

Article 5 of the European Convention on Human Rights guarantees everyone the right to liberty and security of person. The ECtHR does not specify the reasons for which detention may be ordered but lists six exceptions to the right to liberty in a closed manner, as emphasised in the first paragraph of this Article – every individual is presumed free and innocent until proven otherwise. Accordingly, **the burden of proving the justification and necessity of deprivation of liberty lies with those who apply this measure.**[4] When making decisions on detention, the court must bear in mind the presumption of innocence. Deprivation of liberty can only be carried out on the basis of the law, under precisely defined circumstances, such as the detention of a suspect for the commission of a criminal offence, prevention of flight, ensuring presence during the trial, or protection of public order. Decisions on deprivation of liberty must be made in accordance with the principles of necessity and proportionality. Every decision to deprive liberty must be thoroughly reasoned and grounded in law, as well as in the specific facts of each case.[5] Detention is regarded as a measure of last resort, and accordingly, wherever possible, less severe measures that minimally restrict an individual's freedom while still satisfying the legitimate interests of the state in conducting judicial proceedings should be applied. Formal compliance with national laws is not sufficient – it must be proven that the deprivation of liberty was genuinely necessary. This standard will not be met if detention orders are unreasoned, inadequately reasoned, or fail to reflect careful consideration of all the concrete circumstances. Moreover, Article 5 requires that deprivation of liberty be subject to legal protection through effective mechanisms of appeal.

One of the fundamental conditions for ordering detention, in the sense of Article 5 of the European Convention, is the existence of a "reasonable suspicion" that a person has committed a criminal offence. The European Court of Human Rights emphasises that the reasonableness of the suspicion on which an arrest must be based constitutes a fundamental safeguard against arbitrary arrest and deprivation of liberty.[6] What will satisfy that threshold in a specific case, i.e., **what can be considered "reasonable," depends on all the circumstances of the case**[7], but they must be clearly and thoroughly reasoned; the mere fact that the accused has been previously convicted of a similar or the same offence

4 *Ilijkov v. Bulgaria,* Application no. 33977/96, judgment of 26 July 2001
5 *Vitold Litva v. Poland,* Application no. 26629/95, judgment of 4 April 2000
6 Fox, Campbell and Hartley v. the United Kingdom, applications nos. 12244/86; 12245/86 and 12383/86, para. 32, judgment of 26 June 1990
7 Ibidem

is not sufficient.[8] Detention can only be justified if there are clear indications of a genuine public interest which, despite the presumption of innocence, outweigh the principle of respect for individual liberty guaranteed by Article 5 of the Convention.[9]

Through the practice of the ECtHR, four such grounds have emerged, which are also recognised by our legislation: risk of flight, obstruction of the proceedings (collusion risk), risk of reoffending or completion of the criminal offence (iteration), and the need to maintain public order. However, if the same purpose achieved by detention can be accomplished by another, less severe measure, detention loses its legitimate basis and must be revoked.[10]

8 *Jablonski v. Poland,* application no. 33492/96, judgment of 21 December 2000
9 Ibidem
10 Ibidem

2. NATIONAL LEGISLATION

In Montenegrin legislation, detention is conceived as a measure to ensure the presence of the accused and the unobstructed conduct of criminal proceedings, and it is an exceptional measure applied only when the same purpose cannot be achieved by a less restrictive measure. The legal norms regulating the measure of detention are primarily found in the Constitution of Montenegro[11], the Criminal Procedure Code[12] and the Rulebook on the Detailed Method of Executing Detention[13].

The Constitution of Montenegro stipulates that a person for whom there is reasonable suspicion that they have committed a criminal offence may be temporarily deprived of liberty but, exclusively based on a decision of the competent court and only if it is necessary for conducting the criminal proceeding. The decision on detention is made in the form of a ruling, which must be clearly justified and delivered to the detained person at the moment of detention or, at the latest, within 24 hours. The detained person has the right to appeal against this ruling, and the court is obliged to decide on the appeal within 48 hours (Article 30). Furthermore, detention has to last as briefly as possible. The first-instance court may determine detention for a maximum of three months, but the high court has the authority to extend the detention for another three months if there is a justified reason. If an indictment is not filed within that period, the detained person must be released. The Constitution additionally guarantees respect for the dignity and personal rights of all persons deprived of liberty or whose liberty is in any way restricted (Article 31).

The Constitution entrusts the Constitutional Court with the jurisdiction to decide on constitutional complaints, including those concerning violations of human rights and freedoms guaranteed by the highest legal act (Article 149). Among these rights is the right to personal liberty (Articles 29 and 30), whose possible restriction may be subject to review before this court. When deciding on such constitutional complaints, the Constitutional Court is guided by international standards and the practice established by the ECtHR judgments.

The Criminal Procedure Code dedicates a special chapter to measures ensuring the presence of the accused and the unobstructed conduct of the proceedings. These measures include: summons, compulsory appearance, measures of supervision, bail, and, as the last and strictest, the measure of detention (Article 163). The very order in which these measures are listed suggests that detention is used exclusively as a last resort, when less restrictive measures are insufficient, which the CPC concretises by prescribing that detention is an exceptional measure, and that all bodies participating in the criminal proceedings and those providing them legal assistance have the obligation to act with particular urgency if the accused is in detention (Article 174).

The law provides that the presence of the accused in the criminal proceeding is primarily ensured

11 "Official Gazette of Montenegro", nos. 1/2007 and 38/2013 – Amendments I–XVI
12 "Official Gazette of Montenegro", nos. 57/2009, 49/2010, 47/2014 – CC, 2/2015 – CC, 35/2015 (Articles 88–91 not included in the consolidated text), 58/2015 – another law, 28/2018 – CC, 116/2020 – CC, and 145/2021. See also: CC – 87/2023
13 "Official Gazette of Montenegro", no. 042/12 of 31 July 2012

by summons, which is issued by the body conducting the criminal proceedings (Article 164). Besides summons, there is also the possibility of issuing an order to apprehend the accused, which is carried out through the Police Directorate, competent to bring the accused by force if they refuse to respond to the summons (Article 165).

As already emphasised, detention represents **the ultimate measure** that the court may order if other, less restrictive measures cannot ensure the presence of the accused and/or guarantee that they will not interfere with the unobstructed conduct of the criminal proceedings. Our CPC recognises two types of such measures: measures of supervision and bail.

If there is a justified fear that the accused might flee, hide, leave their known address, or go to another state, as well as if they might obstruct the course of criminal proceedings, the court has the authority, *ex officio,* upon the prosecutor's proposal or the injured party's request, to order one or more **measures of supervision.** These measures are determined by a justified ruling in which the court details the reasons for their imposition. The measures of supervision prescribed by our CPC are: **1)** prohibition of leaving the apartment; **2)** prohibition of leaving the residence; **3)** prohibition of visiting a certain place or area; **4)** obligation of periodic reporting to a designated state authority; **5)** prohibition of access to or meeting with certain persons; **6)** temporary seizure of a travel document; **7)** temporary seizure of a driver's license.

Besides measures of supervision, ensuring the presence of the accused and the unobstructed conduct of criminal proceedings can also be ensured through bail (Article 170). This measure can be ordered on an accused who is to be placed in detention and on an accused already detained solely due to circumstances indicating that they might flee or if duly summoned but avoiding attendance at the main hearing, provided that the accused or another person personally offers bail that the accused will not flee until the end of the criminal proceedings and that the accused promises not to hide or leave their residence without permission. Bail always refers to a monetary amount, although it may, besides money, consist of depositing securities, valuables, or other movable items of greater value that can be easily monetised and safeguarded or establishing a mortgage on real estate of the person providing bail. The amount of bail is determined considering the severity of the criminal offence, the personal and family circumstances of the accused, and the property status of the person providing the bail (Article 171).

Regarding the "regular" criminal procedure, the CPC foresees several grounds for ordering **detention** (Article 175), which are aligned with international standards.

First and foremost, there must be reasonable suspicion that the person committed a criminal offence, but to order detention on that person, at least one of the following conditions must also be met: **1)** the person is hiding or their identity cannot be established or other circumstances indicate a risk of flight; **2)** circumstances indicate that the person will destroy, hide, alter, or falsify evidence or traces of the criminal offence or obstruct the proceedings by influencing witnesses, accomplices, or concealers; **3)** circumstances indicate that the person will repeat the criminal offence or complete an attempted criminal offence or commit a criminal offence they threaten with; **4)** detention is necessary for the unobstructed conduct of proceedings, and the criminal offence carries a risk of a penalty of ten years of imprisonment or more and is particularly serious due to the manner of commission or consequences; **5)** the duly summoned accused avoids attending the main hearing.

Detention, to ensure unobstructed conduct of criminal proceedings, may also be ordered in a summary procedure against a person for whom there is reasonable suspicion that they committed a criminal offence (Article 448).[14] In this case, as in the regular procedure, besides reasonable suspicion, at least one of the following conditions must be met: **1)** the person is hiding or their identity cannot be established or other circumstances clearly indicate a risk of flight; **2)** special circumstances indicate that the accused will complete an attempted criminal offence or commit a criminal offence they threaten with or repeat a criminal offence; **3)** circumstances indicate that the accused will destroy, hide, alter, or falsify evidence or traces of the criminal offence or obstruct the proceedings by influencing witnesses, accomplices, or concealers; **4)** the duly summoned accused avoids attending the main hearing.

The CPC regulates in detail the procedure for ordering detention, the content of the ruling, and legal remedies, while the manner of executing detention, from reception to placement of detainees, accommodation, nutrition, healthcare, and other aspects of daily stay in the Detention Centre, is regulated by the **Rulebook on the Detailed Method of Executing Detention.**[15]

Detention is ordered by a justified ruling of the competent court, after hearing the accused, and upon the proposal of the authorised state prosecutor. Against the ruling ordering detention, the state prosecutor, the detained person, and their attorney may file an appeal within 24 hours of receiving the ruling (Article 176). When deciding on detention, every legally prescribed reason must be clearly justified with the citation of specific facts that justify it. However, the reasons for which detention is ordered are not immutable and must be periodically reassessed, depending on the circumstances, to either terminate or extend detention.

Regarding the summary procedure, the provisions of Article 179 of the CPC, which relate to the ordering and control of detention after indictment submission, apply to ordering, extending, and terminating detention from the submission of the indictment to the issuance of the first-instance verdict, whereby the panel is obliged to examine every month whether grounds for detention exist (Article 448).

14 Article 446 of the Criminal Procedure Code prescribes that summary proceedings shall be conducted for criminal offences for which the principal penalty prescribed is a fine or imprisonment of up to five years.
15 "Official Gazette of Montenegro," no. 042/12 from 31 July 2012

3. METHODOLOGY

3.1. OBJECTIVES AND FUNDAMENTAL PRINCIPLES OF TRIAL MONITORING

Trial monitoring programs are designed to support fairness, transparency, and efficiency in the judiciary. Their goals and core principles were first methodologically consolidated in the OSCE's *"Trial Monitoring: A Reference Manual for Practitioners"*[16], which highlights several objectives and fundamental principles of trial monitoring, such as:

Trial monitoring – a multifaceted tool: Trial monitoring programs can serve as a multifaceted tool in the process of improving the efficiency and transparency of the judiciary. To enhance the effectiveness of trial monitoring, organisations conducting these programs must be familiar with various monitoring possibilities and design programs suited to the national context in which monitoring is implemented.

Ensuring the right to a public hearing: The presence of monitors in the courtroom represents an expression of the right to a public trial and increases the transparency of proceedings. In individual cases, monitoring can contribute to a fairer conduct of the trial or highlight serious shortcomings. Over the long term, trial monitoring programs raise awareness within the judiciary system and among other legal actors about the importance of public trials, opening the door for broader acceptance of international human rights standards and fair trial guarantees.

Trial monitoring as a diagnostic tool in the justice reform process: A monitoring program functions as a diagnostic mechanism for collecting data on the administration of justice in individual cases and drawing conclusions about the broader functioning of the system. The findings and recommendations are made available to all relevant actors: judicial, executive, and legislative authorities, civil society, and the international community. In this way, monitoring can encourage courts to improve practices, the executive to provide resources, the legislation to harmonise laws with human rights standards, and civil society to identify areas for engagement.

Trial monitoring as a capacity-building tool: Advocacy and education make trial monitoring a powerful mechanism for training local legal professionals on international standards and domestic law. By identifying discrepancies, monitoring helps judges, prosecutors, defence attorneys, and other participants to deepen their understanding of procedural rights and their application, and to become familiar with good practices. Involving domestic lawyers as monitors and analysts offers them an opportunity to engage in reform processes. Cooperation with local organisations strengthens their capacity for independent monitoring and ensures the sustainability of such mechanisms beyond the lifespan of international projects. The experience gained in monitoring programs can later be transferred to state institutions for the benefit of the entire justice system.

16 Trial Monitoring: *A Reference Manual for Practitioners, Revised edition 2012,* available at: https://www.osce.org/odihr/94216

3.2. CORE PRINCIPLES OF CEMI'S TRIAL MONITORING PROGRAMS

The principles that CeMI consistently applies are based on standards developed during the trial monitoring program implemented in partnership with the OSCE Mission to Montenegro, carried out from 2007 to 2014. In accordance with methodologies used in various European countries, CeMI's trial monitors adhere to the following key principles of trial monitoring:

Non-interference in court proceedings: This principle implies complete restraint from any actions or communication that could influence the course or outcome of a particular case. While it excludes any attempt at undue pressure, it does not limit public, evidence-based criticism of the work of judicial bodies. Criticism grounded in the analysis of facts and supported by recommendations constitutes a legitimate contribution to institutional reform.

Objectivity: Monitoring must provide accurate and verifiable information, using clearly defined standards and methodology, without favouritism toward any party. Objectivity is reflected in the balanced selection of cases for observation and in the precise formulation of findings, conclusions, and recommendations.

Consent and cooperation: Successful implementation of monitoring is based on formal agreements and professional relationships with judicial institutions. Transparent presentation of objectives, methods, and expected outcomes, along with ongoing information exchange, allows CeMI to contribute to the development of judicial policy and its more effective implementation through its recommendations.

3.3. METHODOLOGY OF TRIAL MONITORING

For the purposes of this project, trial monitors were engaged to review court files in 14 basic courts[17], as well as in the High Court in Bijelo Polje and the High Court in Podgorica. In addition to the analysis of final judgments, direct observation of trials through attendance at hearings was also conducted. The research focused on the respect for fundamental human rights of parties in criminal proceedings, with an emphasis on the right to liberty, and in that context, the application of provisions of the Criminal Procedure Code and relevant international treaties, particularly the European Convention on Human Rights. All activities were documented in standardised forms, based on which quantitative and qualitative data were collected for the preparation of final conclusions and recommendations. The names of judges and trial participants were not disclosed in order to protect privacy and personal data.

17 Monitors did not review case files at the Basic Court in Zabljak, as there were no judges assigned to that court during the period covered by the analysis. Additionally, although monitors reviewed case files at the Basic Court in Rozaje, they did not encounter any detention-related cases, as such cases had been delegated to other courts due to the fact that only one judge handles the criminal caseload in this court, and that judge serves as the investigative judge in such proceedings.

3.3.1. TRIAL MONITORING TEAM

Trial monitors were tasked with observing the course of criminal proceedings, including hearings for the confirmation of indictment, and reviewing the files of legally finalised criminal cases, with a focus on cases where detention measures were ordered. The aim was to collect and analyse all necessary data required for this report. Monitors collected relevant documents such as final judgments, decisions on ordering, extending, and revoking detention, decisions on granting bail and imposing measures of supervision, and similar.

3.3.2. SAMPLE OF MONITORED TRIALS

For the purposes of this report, CeMI's monitoring team reviewed a total of **466 legally finalised cases**, while monitors attended a total of **157 hearings.** We note that, although the Criminal Procedure Code (CPC) uses the term 'hearing' exclusively to refer to the hearing for confirmation of the indictment, in this text the term is used more broadly, for practical and statistical reasons, and also encompasses the main trial.

Out of the 466 finalised cases, monitors examined **188 cases in which detention was ordered**, in 13 basic courts[18], and both high courts in Montenegro.

In addition to detention cases, the sample included 19 proceedings in which measures of supervision were applied, three cases where bail was granted instead of detention, and four cases where bail was denied. However, these alternative measures were not the primary subject of the analysis; CeMI will address them in detail in a separate research study focused on bail and measures of supervision.

Only case files finalised between June 1, 2023, and December 31, 2024, were analysed, to avoid overlapping with files reviewed during CeMI's previous trial monitoring project.

Cases conducted before the Special Department of the High Court in Podgorica (case designation: Ks) were not subject to monitoring. These proceedings will be analysed in a separate study, which will also require a different methodological approach.

Monitors applied the method of direct file review, using standardised forms with predefined questions regarding detention, hearings postponements, reasons for delays, procedural discipline measures, etc. All collected data was stored in an internal application developed for CeMI's trial monitoring projects, which enabled rapid processing and minimised errors in the analysis of large volumes of quantitative and qualitative data.

As a supplement to fieldwork, desk research was conducted: relevant legislative and bylaw provisions, court statistics, publicly available decision databases, and reports from domestic and international bodies were reviewed. In addition, data was collected from relevant institutions through free access to information requests, providing a broader context for the findings obtained through case file analysis.

18 Although monitors reviewed case files at the Basic Court in Rozaje, they did not encounter any cases in which detention had been ordered, as such cases had been delegated to other courts due to the fact that only one judge handles the criminal caseload in this court, and that judge acts as the investigative judge in those proceedings.

Table 1: Overview of the number of cases that the monitors inspected

Court	Number of analysed cases			
	Number of cases that the monitors inspected	Detention	Measures of supervision	Bail
BC Bar	31	15	1	0
BC Berane	31	4	4	0
BC Bijelo Polje	30	10	3	0
BC Cetinje	31	15	1	0
BC Danilovgrad	33	11	2	0
BC Herceg Novi	29	9	1	0
BC Kolasin	29	4	2	0
BC Kotor	33	17	3	1
BC Niksic	30	13	0	0
BC Plav	27	5	1	0
BC Pljevlja	29	4	0	0
BC Podgorica	30	29	0	0
BC Rozaje	30	0	0	1
BC Ulcinj	31	11	0	0
HC Bijelo Polje	16	14	1	1
HC Podgorica	26	26	0	0
BASIC COURTS	**424**	**148**	**18**	**2**
HIGH COURTS	**42**	**40**	**1**	**1**
ALL COURTS	**466**	**188**	**19**	**3**

It should be noted that the proceedings before the Special Department of the High Court in Podgorica were not subject to this monitoring. These proceedings will be the focus of a separate study that has already commenced, but which requires a distinct methodological approach, including the creation of specific forms for data recording and analysis, as well as a different approach to interpreting the findings.

4. ANALYSIS OF THE EFFICIENCY OF CRIMINAL PROCEEDINGS

The efficiency of criminal proceedings is reflected in the ability of the judicial system to process cases swiftly and effectively while respecting the rights of all parties involved. This efficiency entails both the speed of resolving proceedings and the safeguarding of the rights of the accused and the injured party or victims.

When assessing the efficiency of proceedings, it is important to determine the precise moments when a criminal proceeding begins and ends. According to the jurisprudence of the ECtHR, a "reasonable time", and thus the protection of the right to a trial within a reasonable time, starts from the moment a person is charged. This does not necessarily coincide with the moment a case reaches the court. A charge may be defined as an official notification given by the competent authority to an individual, informing them of the suspicion that they have committed a criminal offence, i.e., from the moment when the situation of the suspect is substantially affected.[19]

According to Article 19a of the CPC, there are several moments that may be considered the beginning of criminal proceedings. Theoretical interpretations on this issue are divided into two groups: one group of authors believes that the proceedings begin with the court's expression of its stance on the indictment, while the other group considers that the proceedings begin with the submission of the indictment, in line with the accusatory principle. In its previous court monitoring projects, CeMI's monitors have followed the latter interpretation, considering the moment of filing the indictment as the beginning of the proceedings.

The data presented in this report, relating to respect for the right to a fair trial, were derived from the analysis of available case files to which monitors had access. However, it is important to note that not all files are equally tidy, and certain documents are sometimes missing, such as orders for scheduling the main hearing sessions, records of hearings held, appeals, etc. The absence of certain documents does not necessarily mean that the actions were not taken, but rather that monitors did not find evidence of their execution in the case files, or that, in some instances, it was not possible to determine when those actions were undertaken—such as when the date of issuance is not recorded in orders for scheduling hearings. Nonetheless, case files represent the formal-legal record of proceedings, beyond which it is not possible to confirm the validity of such actions.

19 *Eckle v. Germany,* Application no. 8130/78, judgment of 15 July 1982, p. 73

4.1. FIRST-INSTANCE PROCEEDINGS

Ordinary criminal proceedings include first-instance proceedings and appellate proceedings. The first-instance criminal proceedings are divided into two stages: preliminary and main proceedings. The preliminary stage consists of two phases: the investigation and the filing of the indictment. Once the indictment enters into legal force, the preliminary stage ends, and the main criminal proceedings begin, in which the trial is conducted. The main proceedings comprise three parts: preparation for the main hearing, the main hearing itself, and the pronouncement of the judgment.

Within the scope of the first-instance proceedings, CeMI's monitors reviewed case files and filled out standardised forms covering various aspects of the procedure, including the review of indictment, scheduling of the main hearing sessions, the number of held and postponed hearings, reasons for postponements, procedural discipline measures, the right to public pronouncement of the verdict, and the average duration of first-instance proceedings.

The findings presented in this report are aligned with the structure of these forms, and for that reason, this section of the report is divided into several subsections. This structure allows for a detailed presentation of relevant information and provides insight into the processes that take place during first-instance criminal proceedings.

4.1.1. INDICTMENT REVIEW

By reviewing the case files of finally adjudicated cases, monitors analysed **71** cases in which an indictment was filed, out of a total of **466** reviewed cases. Of those, **64** were cases where detention had been ordered. The largest number of analysed cases with an indictment were found at the High Court in Podgorica (25) and the High Court in Bijelo Polje **(15).** A smaller number of indicted cases were found in the Basic Courts in Bar **(2),** Berane **(3),** Bijelo Polje **(2),** Cetinje **(3),** Danilovgrad **(1),** Herceg Novi **(3),** Kotor **(5),** Niksic **(2),** Pljevlja **(1),** Podgorica **(3),** Rozaje **(1),** and Ulcinj **(5).**

According to Article 293 of the CPC, the deadline for scheduling the indictment review hearing is **15 days** from the date of receipt of the indictment.

This deadline was met in **32** cases **(45.07%)** and not met in **39** cases **(54.92%),** which generally corresponds to the results of the analysis presented in the 2023 report. The most significant delays in meeting this deadline were observed in basic courts in the southern region, specifically: **107** and **76** days in the Basic Court in Herceg Novi, **81** days in the Basic Court in Kotor, and **60** days in the Basic Court in Ulcinj (all involving cases where detention had been ordered). At the level of the high courts, the greatest deviation from the legal deadline occurred in a case before the High Court in Bijelo Polje **(70 days).**

The average time to schedule an indictment review hearing in basic courts was **28** days—or **32** days in cases involving pre-trial detention—while in high courts the average was **20** days, or **21** days in detention-related cases.

Table 2: Overview of cases monitored by reviewing the files according to the number of indictments and the deadline within which the indictment review hearing was scheduled

Court	Number of indictments	Average number of days from the date of receipt of the indictment to the date of the hearing for indictment review
BC Bar	2	13
BC Berane	3	9
BC Bijelo Polje	2	12
BC Cetinje	3	28
BC Danilovgrad	1	36
BC Herceg Novi	3	77
BC Kolasin	0	_
BC Kotor	5	35
BC Niksic	2	26
BC Plav	0	-
BC Pljevlja	1	16
BC Podgorica	3	11
BC Rozaje	1	35
BC Ulcinj	5	33
HC Bijelo Polje	15	17
HC Podgorica	25	23
BASIC COURTS	**31**	**28**
HIGH COURTS	**40**	**20**
ALL COURTS	**71**	**24**

The deadline for confirming the indictment is eight days, and in complex cases, fifteen days from the date of the indictment review hearing (Article 296, Paragraph 1, of the CPC).

In the majority of cases (36), the indictment was confirmed on the same day the indictment review hearing was held. The legal deadline was exceeded in only one case before the High Court in Podgorica, where the indictment was confirmed 37 days after the indictment review hearing.

These findings do not substantially differ from those of the previous study, which covered the period from 2021 to 2023. Although this period coincides with the COVID-19 pandemic, which significantly burdened the judiciary, the findings suggest that the pandemic did not have a negative impact on the efficiency of proceedings during the indictment confirmation phase. The courts appear to have developed a relatively stable mechanism for timely action in this

phase, even under conditions of increased institutional pressure.

Table 3: Overview of cases monitored by reviewing the files according to the number of indictments and the deadline within which the decision on indictment confirmation was made

Court	Number of indictments	Average deadline for scheduling the indictment review (in days)
BC Bar	2	7
BC Berane	3	3
BC Bijelo Polje	2	Same day
BC Cetinje	3	Same day
BC Danilovgrad	1	Same day
BC Herceg Novi	3	Same day
BC Kolasin	0	-
BC Kotor	5	Same day
BC Niksic	2	3
BC Plav	0	-
BC Pljevlja	1	Same day
BC Podgorica	3	Same day
BC Rozaje	1	Same day
BC Ulcinj	5	Same day
HC Bijelo Polje	15	1
HC Podgorica	25	4
BASIC COURTS	**31**	**1 day**
HIGH COURTS	**40**	**2 days**
ALL COURTS	**71**	**2 days**

In **13** cases **(18.3%),** all summoned parties attended the indictment review hearing, i.e., the prosecutor, the accused, and their defence attorney. The prosecutor was absent in **42** cases **(59.15%)** of the analysed cases, while the accused and their defence attorney were absent in **11** cases **(15.49%).**

4.2. MAIN HEARING

A. ANALYSIS OF CASES WITH INDICTMENTS

The date of the main trial hearing must be set no later than two months after the indictment is confirmed (Article 304, Paragraph 2, of the Criminal Procedure Code). If the hearing date is not set within that period, the presiding judge must inform the president of the court about the reasons for such a delay. Subsequently, the president of the court shall, if necessary, take appropriate measures to ensure that the date of the main hearing sessions is set. This deadline was met in all analysed cases.

Table 4: Overview of cases with an indictment, monitored through file review, according to the deadline (in days) in which the main trial was scheduled

Court	Average timeframe (in days) for scheduling the main trial following indictment confirmation		
	All cases	Non-detention cases	Detention cases
BC Bar	19	0	19
BC Berane	44	44	0
BC Bijelo Polje	14	0	14
BC Cetinje	29	0	29
BC Danilovgrad	3	0	3
BC Herceg Novi	7	6	8
BC Kolašin	0	0	0
BC Kotor	15	0	15
BC Niksic	23	0	23
BC Plav	0	0	0
BC Pljevlja	20	20	0
BC Podgorica	6	0	6
BC Rozaje	21	21	0
BC Ulcinj	18	0	18
HC Bijelo Polje	18	6	19
HC Podgorica	17	0	17
BASIC COURTS	**18**	**23**	**15**
HIGH COURTS	**17**	**6**	**18**
ALL COURTS	**18**	**14**	**16**

In general, this year's findings are significantly more favourable compared to those of the previous study, when the average timeframe for scheduling the main trial following indictment confirmation was 38 days for basic courts and 55 days for high courts, with nine cases recorded in which this period exceeded 100 days.

B. ANALYSIS OF CASES WITH A BILL OF INDICTMENT

The deadline for scheduling the main hearing session is shorter in cases involving a bill of indictment. Namely, according to Article 451, Paragraph 4, of the Criminal Procedure Code (CPC), if the main hearing session is not scheduled within 30 days from the day the bill of indictment or private complaint has been received, the judge is obliged to inform the president of the court of the reasons for the delay, and the president of the court shall take measures to ensure the main hearing session is held as soon as possible.

Monitors reviewed a total of **388** cases with a bill of indictment[20], specifically: Basic Court Bar (29), Basic Court Berane (28), Basic Court Bijelo Polje (27), Basic Court Cetinje (26), Basic Court Danilovgrad (31), Basic Court Herceg Novi (25), Basic Court Kolasin (29), Basic Court Kotor (28), Basic Court Niksic (28), Basic Court Plav (27), Basic Court Pljevlja (28), Basic Court Podgorica (26), Basic Court Rozaje (29), Basic Court Ulcinj (26), and High Court Podgorica (1).

Out of 388 cases with a bill of indictment, **122** involved a detention measure.

Only at the Basic Court in Bar the monitors did not record any cases in which the deadline of 30 days was exceeded. In other courts, exceeding the deadline did occur; however, it in cases involving defendants in detention, the number of such cases was relatively small.

20 In addition to cases with indictments and bills of indictments, the cases reviewed by the monitors also included one private lawsuit and six motions by the prosecution for the imposition of security measures.

Table 5: Overview of cases with a bill of indictment monitored through file review, according to the deadline (in days) within which the main hearing session was scheduled.

Court	Number of cases in which the timeframe for scheduling the main hearing exceeded 30 days		
	All cases	Non-detention cases	Detention cases
BC Bar	0	0	0
BC Berane	11	11	0
BC Bijelo Polje	15	14	1
BC Cetinje	6	6	0
BC Danilovgrad	13	0	4
BC Herceg Novi	5	1	4
BC Kolasin	22	20	2
BC Kotor	5	5	0
BC Niksic	11	10	1
BC Plav	9	8	1
BC Pljevlja	14	11	3
BC Podgorica	2	0	2
BC Rozaje	17	17	0
BC Ulcinj	3	3	0
HC Bijelo Polje	0	0	0
HC Podgorica	1	0	0
BASIC COURTS	**133**	**115**	**18**
HIGH COURTS	**1**	**0**	**1**
ALL COURTS	**134**	**115**	**19**

Table 6: Analysed cases with a bill of indictment, by timeframe (in days) for scheduling the main hearing session

Court	Average timeframe (in days) for scheduling the main hearing session in cases with a bill of indictment		
	All cases	Non-detention cases	Detention cases
BC Bar	19	11	14
BC Berane	47	53	8
BC Bijelo Polje	50	66	17
BC Cetinje	90	129	18
BC Danilovgrad	55	68	30
BC Herceg Novi	21	9	45
BC Kolasin	70	75	40
BC Kotor	20	22	19
BC Niksic	52	75	22
BC Plav	31	31	36
BC Pljevlja	43	33	41
BC Podgorica	13	11	13
BC Rozaje	49	49	0
BC Ulcinj	22	19	29
HC Bijelo Polje	49	124	39
HC Podgorica	45	0	45
BASIC COURTS	**42**	**47**	**25**
HIGH COURTS	**47**	**124**	**42**
ALL COURTS[21]	**44**	**86**	**34**

The longest delay occurred at the Basic Court in Kotor (134 days), but this case had been transferred from the Basic Court in Herceg Novi. In another case before the Basic Court in Herceg Novi, the timeframe was 121 days. In both instances, the cases involved defendants for whom detention was ordered.

21 The total is less than 388 because in 17 cases with an indictment proposal, there was no order for the main hearing session, or the order did not include the date it was issued.

Table 7: Number and percentage of cases in which the deadline for scheduling the main hearing session was met or not met, relative to the total number of cases with a bill of indictment

Court	Number and percentage of cases in which the timeframe for scheduling the main hearing session was up to 30 days		Number and percentage of cases in which the timeframe for scheduling the main hearing session exceeded 30 days	
BC Bar	26	6.70%	0	0.00%
BC Berane	16	4.12%	11	2.84%
BC Bijelo Polje	12	3.09%	15	3.87%
BC Cetinje	14	3.61%	6	1.55%
BC Danilovgrad	18	4.64%	13	3.35%
BC Herceg Novi	19	4.90%	5	1.29%
BC Kolasin	7	1.80%	22	5.67%
BC Kotor	22	5.67%	5	1.29%
BC Niksic	16	4.12%	11	2.84%
BC Plav	14	3.61%	9	2.32%
BC Pljevlja	14	3.61%	14	3.61%
BC Podgorica	24	6.19%	2	0.52%
BC Rozaje	12	3.09%	17	4.38%
BC Ulcinj	23	5.93%	3	0.77%
HC Bijelo Polje	0	0.00%	0	0.00%
HC Podgorica	0	0.00%	1	0.26%
BASIC COURTS	**237**	**61.24%**	**133**	**34.28%**
HIGH COURTS	**0**	**0.00%**	**1**	**0.26%**
ALL COURTS	**237**	**61.08%**	**134**	**34.54%**

Out of 14 basic courts where monitors analysed case files, 13 did not meet the 30-day deadline.

Regarding cases in which detention was ordered, the situation is as follows:

Table 8: Number and percentage of detention cases in which the deadline for scheduling the main hearing was met or not met, in relation to the total number of cases with a bill of indictment

Court	Number and percentage of detention cases in which the timeframe for scheduling the main hearing session was up to 30 days		Number and percentage of detention cases in which the timeframe for scheduling the main hearing session exceeded 30 days	
BC Bar	10	8.20%	0	0.00%
BC Berane	4	3.28%	0	0.00%
BC Bijelo Polje	7	5.74%	1	0.82%
BC Cetinje	7	5.74%	0	0.00%
BC Danilovgrad	5	4.10%	4	3.28%
BC Herceg Novi	3	2.46%	4	3.28%
BC Kolasin	2	1.64%	2	1.64%
BC Kotor	11	9.02%	0	0.00%
BC Nikšić	10	8.20%	1	0.82%
BC Plav	3	2.46%	1	0.82%
BC Pljevlja	1	0.82%	3	2.46%
BC Podgorica	23	18.85%	2	1.64%
BC Rožaje	0	0.00%	0	0.00%
BC Ulcinj	6	4.92%	0	0.00%
HC Bijelo Polje	0	0.00%	0	0.00%
HC Podgorica	0	0.00%	1	0.82%
BASIC COURTS	**92**	**76.03%**	**18**	**14.75%**
HIGH COURTS	**0**	**0.00%**	**1**	**0.82%**
ALL COURTS	**92**	**75.41%**	**19**	**15.57%**

When it comes to cases where pre-trial detention was ordered, six basic courts complied with this timeframe, while in eight basic courts and the High Court in Podgorica, this deadline was not always met.

Out of a total of 134 cases in which the statutory timeframe of 30 days for scheduling the main hearing was exceeded, only 19 were cases where pre-trial detention had been ordered. This represents **15.57%** of the total number of cases with pre-trial detention where the deadline for scheduling the main hearing was exceeded, or **14.2%** of the total number of

cases in which the deadline was exceeded.

Although it would be desirable for statutory deadlines never to be exceeded, the relatively small number of such cases indicates that courts demonstrate a high level of diligence in cases where the defendant is deprived of liberty, which is in line with the principle of urgency in these proceedings.

4.2.1. MAIN HEARING SESSIONS

The total number of hearings within the **466 c**ases monitored through the review of final court decisions in high and basic courts was **1,357,** with **1,075** in basic courts and 282 in high courts. The total number of hearings held was **836 (61.61%),** while postponed hearings[22] numbered **521 (38.39%).**

Compared to the findings of the previous report, the current situation shows significant progress. We recall that the previous analysis covered 1,940 hearings from a sample of 470 cases, with the percentage of postponed hearings amounting to 54.18%.

However, it is important to note that the 2023 report covered a period marked by the COVID-19 pandemic and the suspension of work by attorneys, which significantly contributed to the increase in the number of postponed hearings. Therefore, the comparative data can be viewed as an indicator of the impact of these two factors on the efficiency of criminal proceedings.

When it comes exclusively to hearings in cases where pre-trial detention was ordered, the total number of hearings in **188** cases was **653,** with **402** in basic courts and **251** in high courts. The total number of hearings held was **415 (63.55%),** while postponed hearings numbered **238 (36.45%).**

4.2.1.1. POSTPONEMENT OF HEARINGS

In percentage terms, the highest number of postponed hearings in the cases reviewed by the monitors was recorded in the Basic Courts in Kotor, Plav, and Danilovgrad, as well as in the High Court in Podgorica. However, on average, the number of postponed hearings did not exceed the number of held hearings in any of the courts.

22 By postponed hearings, in the context of this report, we mean those hearings during which no procedural actions were taken, i.e., hearings where the court issued a decision to postpone after determining that the procedural pre-requisites for holding the hearing were not met. Hearings classified as "postponed-held," where certain procedural actions were taken, are not included in the postponed hearings.

Table 9: Overview of cases reviewed through file inspection according to the number and percentage of held and postponed hearings.

Court	Number and percentage of hearings held		Number and percentage of postponed hearings	
BC Bar	38	61.29%	24	38.71%
BC Berane	52	64.20%	29	35.80%
BC Bijelo Polje	39	73.58%	14	26.42%
BC Cetinje	50	60.98%	32	39.02%
BC Danilovgrad	64	56.64%	49	43.36%
BC Herceg Novi	41	61.19%	26	38.81%
BC Kolasin	30	88.24%	4	11.76%
BC Kotor	66	50.77%	64	49.23%
BC Niksic	67	63.81%	38	36.19%
BC Plav	29	54.72%	24	45.28%
BC Pljevlja	39	79.59%	10	20.41%
BC Podgorica	72	63.72%	41	36.28%
BC Rozaje	41	65.08%	22	34.92%
BC Ulcinj	46	65.71%	24	34.29%
HC Bijelo Polje	70	70.00%	30	30.00%
HC Podgorica	92	50.55%	90	49.45%
BASIC COURTS	**674**	**62.70%**	**401**	**37.30%**
HIGH COURTS	**162**	**57.45%**	**120**	**42.55%**
ALL COURTS	**836**	**61.61%**	**521**	**38.39%**

When observing only the cases in which detention was ordered, the situation is as follows:

Table 10: Overview of cases monitored through file review in which a detention measure was ordered, according to the number and percentage of held and postponed hearings.

Court	Number and percentage of hearings held in detention cases		Number and percentage of postponed hearings in detention cases	
BC Bar	22	61.11%	14	38.89%
BC Berane	8	88.89%	1	11.11%
BC Bijelo Polje	14	93.33%	1	6.67%
BC Cetinje	31	70.45%	13	29.55%
BC Danilovgrad	27	58.70%	19	41.30%
BC Herceg Novi	10	71.43%	4	28.57%
BC Kolasin	4	100.00%	0	0.00%
BC Kotor	29	67.44%	14	32.56%
BC Niksic	25	71.43%	10	28.57%
BC Plav	5	71.43%	2	28.57%
BC Pljevlja	7	63.64%	4	36.36%
BC Podgorica	69	63.30%	40	36.70%
BC Rozaje	0	/	-	/
BC Ulcinj	22	73.33%	8	26.67%
HC Bijelo Polje	51	73.91%	18	26.09%
HC Podgorica	92	50.55%	90	49.45%
BASIC COURTS	**273**	**67.74%**	**130**	**32.26%**
HIGH COURTS	**143**	**56.97%**	**108**	**43.03%**
ALL COURTS	**416**	**63.61%**	**238**	**36.39%**

Based on the sample and data obtained through the review of case files available to the monitors, concerning postponements in all cases reviewed by the monitors, our analysis determined the average number of days between the postponed hearing and the first subsequent hearing.

Table 11: Overview of cases reviewed through file examination according to the average duration of postponements in days, by courts

Court	Average duration of postponement (in days)	
	All cases	Detention cases
BC Bar	39	24
BC Berane	42	0
BC Bijelo Polje	17	2
BC Cetinje	41	16
BC Danilovgrad	77	35
BC Herceg Novi	64	19
BC Kolasin	5	0
BC Kotor	72	24
BC Niksic	42	8
BC Plav	30	16
BC Pljevlja	17	59
BC Podgorica	49	48
BC Rozaje	48	-
BC Ulcinj	31	11
HC Bijelo Polje	61	35
HC Podgorica	131	131
BASIC COURTS	**41**	**20**
HIGH COURTS	**96**	**83**
ALL COURTS	**68**	**52**

Regarding the basic courts, the average duration between a postponed hearing and the next scheduled hearing was the shortest in the Basic Court in Kolasin and the longest in the Basic Court in Danilovgrad.

Postponements generally lasted shorter in cases where detention was ordered, due to the urgent nature of such proceedings, **with the exception of the Basic Court in Pljevlja,** where the gap between the postponed and the next scheduled hearing in detention cases lasted nearly two months. However, it is important to note that **this figure resulted from one specific case in which detention had been ordered but was lifted on the same day the first main hearing was properly held.** In that case, the hearings were postponed due to the absence of a witness who had not been properly served a summons, and this occurred during a period after the detention had already been lifted.

In the High Court in Podgorica, the average duration of hearing postponements was **131 days,** which is particularly concerning given that all analysed cases from this court involved pre-trial detention.

4.2.1.2. REASONS FOR POSTPONEMENT

According to the Criminal Procedure Code (Articles 323–328), the reasons for postponement are:

1. Failure of the prosecutor to appear at the main hearing
2. Failure of the defendant to appear at the main hearing
3. Failure of the defence attorney to appear
4. Failure of a witness to appear
5. Failure of an expert witness to appear
6. To obtain new evidence
7. If it is established during the main hearing that the defendant has developed a temporary mental disorder after committing the criminal offence
8. The existence of other obstacles preventing the successful conduct of the main hearing.

The most common reason for the postponement of hearings in the observed cases was the absence of the defendant, recorded in 170 (32.62%) of the postponed hearings. Of that number, in 86 instances (50.58%), the summons had been improperly delivered to the defendant.

In cases where pre-trial detention had been ordered, the most common reason for postponement was the existence of other obstacles (Article 328, paragraph 1), accounting for **118 (49.57%)** of the postponed hearings. Among these, particular attention should be drawn to **19** hearings that were postponed because the case files were with the high court for decisions on extending detention, and **13** hearings that were postponed due to the defendant not being brought from the Administration for Execution of Criminal Sanctions (UIKS), most often due to a heavy workload and lack of transport vehicles. However, monitors also recorded instances in which the UIKS failed to provide any explanation for not acting.

Table 12: Reasons for hearing postponements in the analysed cases

Reason for postponement	Number and percentage of postponed hearings by reason for postponement			
	All cases		Detention cases	
Absence of the defendant[23]	170	32.62%	47	19.74%
Absence of the prosecutor	17	3.26%	12	5.04%
Absence of the witness	55	10.55%	30	12.60%
Absence of the expert witness	28	5.37%	10	4.20%
Absence of the defence attorney	17	3.26%	9	3.78%
Absence of the judge	87	16.69%	36	15.12%
Lack of technical conditions	5	0.95%	5	2.10%
Findings were not submitted within the prescribed timeframe by other state authorities	1	0.19%	0	0%
Request by the attorney	23	4.41%	11	4.62%
Other issues	118	22.64%	78	32.77%
TOTAL	**521**	**100%**	**238**	**100%**

4.2.1.3. MEASURES OF PROCEDURAL DISCIPLINE

The measures of procedural discipline (Articles 324, 325 and 327 of the CPC) include: compulsory appearance, monetary fine, and the issuance of a warrant.

The court shall order the compulsory appearance of the accused if the accused was duly summoned but failed to appear at the main hearing and does not justify the absence. If a witness or expert fails to justify their absence despite being duly summoned, the CPC prescribes that the court may order compulsory appearance.

In the analysed cases, a total of 101 orders for compulsory appearances were issued, relating to 47 cases. Out of that number, 34 orders for compulsory appearances were issued in 14 cases in which detention measures were simultaneously ordered.

23 When it comes to detention cases, hearings postponed due to the defendant not being brought by the Administration for Execution of Criminal Sanctions (UIKS) were not included. Instead, this refers to cases where detention was lifted before the conclusion of the main trial, as well as cases involving multiple defendants who were not in detention and did not appear at the hearing.

Table 13: Number of issued orders for compulsory appearance by court

Court	Number of cases in which an order for compulsory appearance was issued	Number of issued orders for compulsory appearance
BC Bar	2	3
BC Berane	4	6
BC Bijelo Polje	1	2
BC Cetinje	3	6
BC Danilovgrad	5	19
BC Herceg Novi	2	4
BC Kolasin	1	1
BC Kotor	3	6
BC Niksic	5	8
BC Plav	2	5
BC Pljevlja	2	2
BC Podgorica	4	14
BC Rozaje	4	4
BC Ulcinj	2	2
HC Bijelo Polje	3	9
HC Podgorica	4	10
BASIC COURTS	**40**	**82**
HIGH COURTS	**7**	**19**
ALL COURTS	**47**	**101**

Table 14: Number of issued orders for compulsory appearance in detention cases

Court	Number of detention cases in which an order for compulsory appearance was issued	Number of issued orders for compulsory appearance in detention cases
BC Bar	0	0
BC Berane	0	0
BC Bijelo Polje	0	0
BC Cetinje	1	4
BC Danilovgrad	1	1
BC Herceg Novi	1	1
BC Kolasin	0	0
BC Kotor	1	3
BC Niksic	1	1
BC Plav	0	0
BC Pljevlja	0	0
BC Podgorica	3	12
BC Rozaje	0	0
BC Ulcinj	1	1
HC Bijelo Polje	1	1
HC Podgorica	4	10
BASIC COURTS	**9**	**23**
HIGH COURTS	**5**	**11**
ALL COURTS	**14**	**34**

Monitors in the previous project observed that the Police Administration does not always act upon orders for compulsory appearance, and that in some cases it fails to inform the court of the reasons for non-compliance. Therefore, for the purposes of this analysis, this issue was included in the form completed by the monitors, in order to obtain accurate data on the frequency of this occurrence.

Table 15: Number of cases in which the Police Directorate did not comply with an order for compulsory appearance

Court	Number of cases in which the Police Directorate did not comply with an order for compulsory appearance	Number of cases in which the police did not inform the court of the reasons for non-compliance
BC Bar	0	0
BC Berane	2	1
BC Bijelo Polje	0	0
BC Cetinje	0	0
BC Danilovgrad	4	0
BC Herceg Novi	2	0
BC Kolasin	1	0
BC Kotor	1	1
BC Niksic	1	0
BC Plav	1	1
BC Pljevlja	0	0
BC Podgorica	6	6
BC Rozaje	0	0
BC Ulcinj	0	0
HC Bijelo Polje	5	2
HC Podgorica	0	0
BASIC COURTS	**18**	**9**
HIGH COURTS	**5**	**2**
ALL COURTS	**23**	**11**

In **23** cases **(22.77%),** the police did not comply with the order for compulsory appearance, and in nearly half of those cases **(10.89%),** they also failed to inform the court of the reasons for non-execution of the order. A similar situation was recorded by monitors during the previous study covering the period from 2021 to 2023. That period was notably marked by the COVID-19 pandemic, which objectively affected the functioning of the judicial and police systems, including movement restrictions, staff shortages, and other organisational obstacles. However, since the period analysed in this report refers to a time without extraordinary circumstances, the continuation of the same practice of non-compliance and failure to inform the court indicates that problems still exist in the functioning of the Police Administration in fulfilling its obligations towards the court.

Table 16: Number of cases in detention matters in which the Police Directorate did not comply with an order for compulsory appearance

Court	Number of detention cases in which the Police Administration did not comply with an order for compulsory appearance	Number of detention cases in which the police did not inform the court of the reasons for non-compliance
BC Bar	0	0
BC Berane	0	0
BC Bijelo Polje	0	0
BC Cetinje	0	0
BC Danilovgrad	0	0
BC Herceg Novi	0	0
BC Kolasin	0	0
BC Kotor	0	0
BC Niksic	1	0
BC Plav	0	0
BC Pljevlja	0	0
BC Podgorica	6	6
BC Rozaje	0	0
BC Ulcinj	0	
HC Bijelo Polje	5	2
HC Podgorica	0	0
BASIC COURTS	**7**	**6**
HIGH COURTS	**5**	**2**
ALL COURTS	**12**	**8**

When observed by the participant in the proceedings whose compulsory appearance was ordered by the court, the situation is as follows:

Table 17: Number of orders for compulsory appearance by participant in the proceedings

Court	Number of orders for compulsory appearance		
	Accused	Witness	Expert witness
BC Bar	3	0	0
BC Berane	6	0	0
BC Bijelo Polje	2	0	0
BC Cetinje	2	4	0
BC Danilovgrad	7	7	5
BC Herceg Novi	4	0	0
BC Kolasin	1	0	0
BC Kotor	6	0	0
BC Niksic	7	1	0
BC Plav	4	1	0
BC Pljevlja	1	1	0
BC Podgorica	6	8	0
BC Rozaje	3	1	0
BC Ulcinj	1	1	0
HC Bijelo Polje	1	6	0
HC Podgorica	4	8	0
BASIC COURTS	**5**	**14**	**0**
HIGH COURTS	**58**	**38**	**5**

This section should also consider cases where detention measures were ordered, due to the possibility that an accused, whose detention is later revoked by the court, may contribute to delaying the proceedings by failing to appear at the main hearing.

Table 18: Number of orders for compulsory appearance by participant in the proceedings in detention cases

Court	Number of orders for compulsory appearance in detention cases		
	Accused	Witness	Expert witness
BC Bar	0	0	0
BC Berane	0	0	0
BC Bijelo Polje	0	0	0
BC Cetinje	0	4	0
BC Danilovgrad	1	0	0
BC Herceg Novi	1	0	0
BC Kolasin	0	0	0
BC Kotor	3	0	0
BC Niksic	0	1	0
BC Plav	0	0	0
BC Pljevlja	0	0	0
BC Podgorica	5	7	0
BC Rozaje	0	0	0
BC Ulcinj	0	1	0
HC Bijelo Polje	1	6	0
HC Podgorica	4	0	0
BASIC COURTS	**10**	**13**	**0**
HIGH COURTS	**5**	**6**	**0**
ALL COURTS	**15**	**19**	**0**

Monitors recorded only seven cases in which detention measures were ordered and in which the court issued orders for compulsory appearance of the accused.

- In one case, an order for compulsory appearance was issued, and subsequently the court ordered detention due to the accused avoiding attendance at the main hearing.
- In one case where detention was revoked during the investigation phase because the risk of flight was inadequately justified, the court issued two orders for compulsory appearance of the accused, whose absence caused four hearings to be postponed.
- In four cases, orders for compulsory appearance were issued against accomplices who were not in detention.
- In one case, the court issued an order for compulsory appearance of the accused because it was not informed that the accused had died in the meantime.

Regarding **monetary fines** as a measure of procedural discipline, monitors recorded only one case in which the court imposed a monetary fine, and that was against a defence attorney, in the amount of 300 euros. During visits to the courts, monitors spoke with court presidents, who noted that monetary fines imposed on defence attorneys were ineffective, i.e., they lack a deterrent effect, both because of the low amount of the fine, the frequent overturning of such decisions upon appeal, and other difficulties related to their enforcement.

A **warrant** was issued four times in three of the analysed cases: once in a case before the Basic Court in Kotor, once in a case before the High Court in Bijelo Polje, and two warrants were issued in one case before the High Court in Podgorica — first a national, and subsequently an international warrant.

In these cases, by their very nature, there were a higher number of postponements. In the case before the Basic Court in Kotor, four out of six postponed hearings were postponed due to the absence of the accused, and two due to the absence of the presiding judge. In the proceedings before the High Court in Bijelo Polje, all four postponed hearings were postponed due to the absence of the accused, while in the proceedings before the High Court in Podgorica, 14 hearings were postponed: 11 due to the absence of the accused, two due to the absence of the prosecutor, and one due to the decision to hold the trial in the absence of the accused who is in flight.

4.2.1.4. RIGHT TO PUBLIC PRONOUNCEMENT OF THE VERDICT

According to Article 375, Paragraph 2, of the Criminal Procedure Code, if the court is unable to pronounce the verdict immediately after the conclusion of the main hearing, it shall postpone the pronouncement of the verdict for no longer than three days. The court will also determine the time and place for the pronouncement of the verdict. In the event that the verdict is not pronounced within three days after the conclusion of the main hearing, the presiding judge is obliged to immediately notify the court president upon expiration of that deadline and provide reasons for the postponement of the verdict pronouncement.

This deadline has generally been respected[24]. The only exception was the Basic Court in Kotor, where an average time of 10 days was recorded (or 16 days when considering only cases where detention measures were ordered) from the day of the conclusion of the main hearing to the day of the verdict pronouncement. However, it is important to note that this does not represent a systemic deficiency in the functioning of this court. This average is influenced by only one case analysed by monitors at this court, in which due to the termination of the presiding judge's function, 245 days elapsed from the conclusion of the main hearing to the verdict pronouncement. This is yet another consequence of the shortage of judicial staff and the slow filling of judicial vacancies.

24 For the purposes of this report, monitors calculated the time required for delivering the written judgement to the accused, i.e., the convicted person.

Table 19: Average number of days required for verdict pronouncement after the conclusion of the main hearing

Court	Average number of days from the conclusion of the main hearing to the date of verdict pronouncement	
	All cases	Detention cases
BC Bar	1	2
BC Berane	3	1
BC Bijelo Polje	Same day	1
BC Cetinje	1	1
BC Danilovgrad	2	2
BC Herceg Novi	1	1
BC Kolasin	Same day	Same day
BC Kotor	10	16
BC Niksic	3	2
BC Plav	2	Same day
BC Pljevlja	Same day	Same day
BC Podgorica	2	3
BC Rozaje	Same day	-
BC Ulcinj	1	2
HC Bijelo Polje	3	3
HC Podgorica	4	4
BASIC COURTS	**2**	**2**
HIGH COURTS	**3**	**3**
ALL COURTS	**3**	**3**

The delivery of the verdict must also be carried out within the legally prescribed deadline established by Article 378 of the Criminal Procedure Code. According to this article, the verdict must be drafted in writing and delivered to the parties in the proceedings within one month from its announcement. Exceptionally, in complex cases, the legislator has provided for the possibility of extending this deadline to a maximum of two months. If the verdict is not drafted within the prescribed deadlines, the presiding judge is obliged to inform the court president in writing of the reasons for the delay, who should then take appropriate measures to ensure that the verdict is drafted as soon as possible.

However, due to methodological limitations in the analysis, especially regarding the determination of the actual complexity of individual cases, the data presented in this report primarily focus on cases where the basic statutory deadline of one month was exceeded

by more than one month but does not exceed the extended deadline of two months. The analysis also includes cases where the deadline was exceeded by more than two months, which is considered the maximum period for handling complex cases.

Table 20: Deadline for delivery of the verdict from the date of pronouncement

Court	Number of cases in which the time elapsed from the date of verdict pronouncement, i.e., announcement, to the date of delivery was					
	up to one month		from one to two months		more than two months	
BC Bar	16	51.61%	9	29.03%	6	19.35%
BC Berane	12	38.71%	16	51.61%	3	9.68%
BC Bijelo Polje	10	33.33%	17	56.67%	3	10.00%
BC Cetinje	15	48.39%	16	51.61%	0	0.00%
BC Danilovgrad	30	90.91%	3	9.09%	0	0.00%
BC Herceg Novi	15	51.72%	8	27.59%	6	20.69%
BC Kolasin	28	96.55%	1	3.45%	0	0.00%
BC Kotor	12	36.36%	12	36.36%	9	27.27%
BC Niksic	11	36.67%	17	56.67%	2	6.67%
BC Plav	1	3.70%	5	18.52%	21	77.78%
BC Pljevlja	22	75.86%	7	24.14%	0	0,00%
BC Podgorica	16	53.33%	14	46.67%	0	0.00%
BC Rozaje	17	56.67%	11	36.67%	2	6.67%
BC Ulcinj	12	38.71%	12	38.71%	7	22.58%
HC Bijelo Polje	7	43.75%	1	6.25%	8	50.00%
HC Podgorica	19	73.08%	5	19.23%	2	7.69%
BASIC COURTS	**217**	**51.18%**	**148**	**34.91%**	**59**	**13.92%**
HIGH COURTS	**26**	**61.90%**	**6**	**14.29%**	**10**	**23.81%**
ALL COURTS	**243**	**52.15%**	**154**	**33.05%**	**69**	**14.81%**

Table 21: Average number of days from judgement announcement to delivery to the parties in the proceedings

Court	Average number of days from the date of verdict pronouncement, i.e., announcement, to the date of delivery of the verdict to the parties
BC Bar	46
BC Berane	42
BC Bijelo Polje	35
BC Cetinje	25
BC Danilovgrad	14
BC Herceg Novi	53
BC Kolasin	11
BC Kotor	52
BC Niksic	45
BC Plav	118
BC Pljevlja	20
BC Podgorica	27
BC Rozaje	41
BC Ulcinj	42
HC Bijelo Polje	54
HC Podgorica	20
BASIC COURTS	**41**
HIGH COURTS	**37**
ALL COURTS	**39**

The analysis shows that slightly more than half of all analysed verdicts **(52.15%)** were delivered within the legally prescribed deadline of one month. However, in the significant portion of cases **(33.05%)** the verdicts were delivered within a period between one and two months. At the same time, it is of concern that almost **15%** of verdicts were delivered with a substantial delay, exceeding the legal deadline of two months.

Among the basic courts, the most efficient are the courts in Kolasin **(96.55%)** and Danilovgrad **(90.91%),** where almost all verdicts are delivered within the legally defined deadline.

The Basic Court in Pljevlja **(75.86%)** also demonstrates good practice, as does the High Court in Podgorica **(73.08%).** In both courts, the average time—i.e., number of days from verdict announcement to delivery—is 20 days.

On the other hand, the Basic Court in Plav shows the poorest practice, with as much as **77.78%** of verdicts delivered with delays longer than 60 days, and an average of **118 days.** The situation is also worrying in the High Court in Bijelo Polje, where in half of the cases analysed **(50%)** verdicts were delivered to the parties after more than 60 days.

These results clearly highlight the need for serious reconsideration of organisational practices and measures that could improve the timely drafting and delivery of court decisions, especially in courts that significantly deviate from the legally prescribed deadlines.

This deadline is of particular importance when the accused is in detention, i.e., **if detention was ordered or extended after the verdict was pronounced.**

Based on all analysed cases, which will be further discussed in Chapter Five, it can be concluded that detention, if extended after the verdict pronouncement, in the vast majority of cases, lasts until the decision is final. Therefore, delivery of the verdict is particularly important for the accused so that they can exercise the right to appeal and obtain a final decision as soon as possible, since pursuant to Article 381, Paragraph 1, of the CPC, an appeal against a first-instance verdict may be filed **within 15 days from the date of delivery of the written verdict.**

Table 22: Deadline for delivery of the verdict from the date of pronouncement in detention cases where detention was ordered or extended after the verdict is pronounced

Court	Number of detention cases	Number of detention cases in which the time elapsed from the date of verdict pronouncement, i.e., announcement, to the date of delivery was					
		up to one month		from one to two months		more than two months	
BC Bar	11	3	27.27%	4	36.36%	4	36.36%
BC Berane	0	0	0.00%	0	0.00%	0	0.00%
BC Bijelo Polje	3	1	33.33%	2	66.67%	0	0.00%
BC Cetinje	10	4	40.00%	6	60.00%	0	0.00%
BC Danilovgrad	8	7	87.50%	1	12.50%	0	0.00%
BC Herceg Novi	4	2	50.00%	2	50.00%	0	0.00%
BC Kolasin	1	0	0.00%	1	100.00%	0	0.00%
BC Kotor	9	5	55.56%	4	44.44%	0	0.00%
BC Niksic	11	4	36.36%	6	54.55%	1	9.09%
BC Plav	0	0	0.00%	0	0.00%	0	0.00%
BC Pljevlja	0	0	0.00%	0	0.00%	0	0.00%
BC Podgorica	25	12	48.00%	13	52.00%	0	0.00%
BC Rozaje	0	0	0.00%	0	0.00%	0	0.00%
BC Ulcinj	6	1	16.67%	4	66.67%	1	16.67%

Court	Number of detention cases	Number of detention cases in which the time elapsed from the date of verdict pronouncement, i.e., announcement, to the date of delivery was					
		up to one month		from one to two months		more than two months	
HC Bijelo Polje	2	0	0.00%	0	0.00%	2	100.00%
HC Podgorica	14	7	50.00%	5	35.71%	2	14.29%
BASIC COURTS	**88**	**39**	**44.32%**	**43**	**48.86%**	**6**	**6.82%**
HIGH COURTS	**16**	**7**	**43.75%**	**5**	**31.25%**	**4**	**25.00%**
ALL COURTS	**104**	**46**	**44.23%**	**48**	**46.15%**	**10**	**9.62%**

Table 23: Average number of days from verdict pronouncement to delivery to the parties in detention cases

Court	Average number of days from the date of verdict pronouncement, i.e., announcement, to the date of delivery of the verdict to the parties in cases where detention was ordered/extended after the verdict pronouncement
BC Bar	76
BC Berane	-
BC Bijelo Polje	31
BC Cetinje	27
BC Danilovgrad	14
BC Herceg Novi	31
BC Kolašin	35
BC Kotor	33
BC Nikšić	31
BC Plav	-
BC Pljevlja	-
BC Podgorica	29
BC Rozaje	-
BC Ulcinj	40
HC Bijelo Polje	88
HC Podgorica	35
BASIC COURTS	**35**
HIGH COURTS	**61**
ALL COURTS	**48**

Overall, less than half of the verdicts **(44.23%)** in cases where detention was ordered were delivered within the legally prescribed deadline of up to one month. Almost half of the verdicts in these cases **(46.15%)** were delivered within a period between one and two months, while nearly one in ten cases **(9.62%)** were delivered after the deadline of two months had passed.

The greatest issues were observed at the High Court in Bijelo Polje, where both analysed cases were delivered after more than two months; however, the sample size is too small to draw a definitive conclusion about a systemic problem.

Significant delays were also noted at the Basic Court in Bar, where more than one-third of verdicts in these cases **(36.36%)** were delivered after more than two months.

In contrast, the Basic Court in Danilovgrad demonstrates high efficiency regarding the delivery of verdicts in this type of case **(87.5%).**

4.3. SECOND-INSTANCE PROCEEDINGS

A verdict may be challenged on the grounds of:

1. Significant violation of criminal procedure provisions;
2. Violation of the Criminal Code;
3. Inaccurately or incompletely established factual circumstances;
4. Decisions regarding criminal sanctions, seizure of unlawful gains, costs of criminal proceedings, and property claims.

The hearing before the second-instance court is regulated by Article 395, Paragraph 1 of the Criminal Procedure Code (CPC). In the second-instance procedure, decisions can be made either during a council session or a hearing. Holding a hearing is necessary only if there is a need to present new evidence or to repeat previously presented evidence due to inaccurately or incompletely established facts. There must be justified reasons for not returning the case to the first-instance court for a retrial.

The total number of cases reviewed through file inspection, in which decisions were made at the second instance, is **144 (30.90%).** The highest numbers were recorded in the Basic Courts in Berane (19), Danilovgrad (16), and Podgorica (21).

Considering only cases where detention was ordered or extended after the verdict, appeals were filed in **56** cases **(38.88%),** with the largest number in the Basic Court in Podgorica (18) and the High Court in Podgorica (11).

Table 24: Overview of cases monitored through file inspection by number of second-instance proceedings, by courts

Court	Number of second-instance proceedings in the analysed cases	
	All cases	Detention cases
BC Bar	2	1
BC Berane	19	0
BC Bijelo Polje	10	3
BC Cetinje	4	2
BC Danilovgrad	16	7
BC Herceg Novi	10	3
BC Kolašin	6	0
BC Kotor	5	2
BC Nikšić	8	5
BC Plav	9	0
BC Pljevlja	4	0
BC Podgorica	21	18
BC Rozaje	5	0
BC Ulcinj	2	2
HC Bijelo Polje	11	2
HC Podgorica	12	11
BASIC COURTS	**121**	**43**
HIGH COURTS	**23**	**13**
ALL COURTS	**144**	**56**

The second-instance procedure based on appeals against decisions of basic courts lasted on average **102 days,** while appeals against decisions of high courts lasted on average **100 days.**

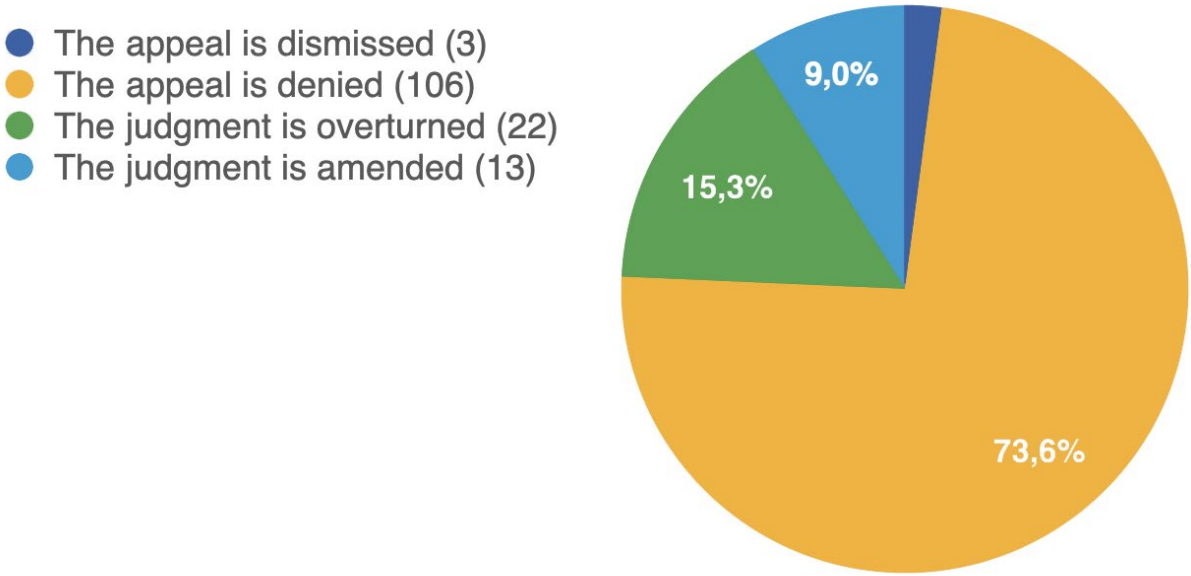
In cases where detention was ordered or extended after the verdict, the second-instance procedure based on appeals against decisions of basic courts lasted on average **89 days,** and based on appeals against decisions of high courts, **101 days.**

Table 25: Average duration of the second-instance procedure, in days

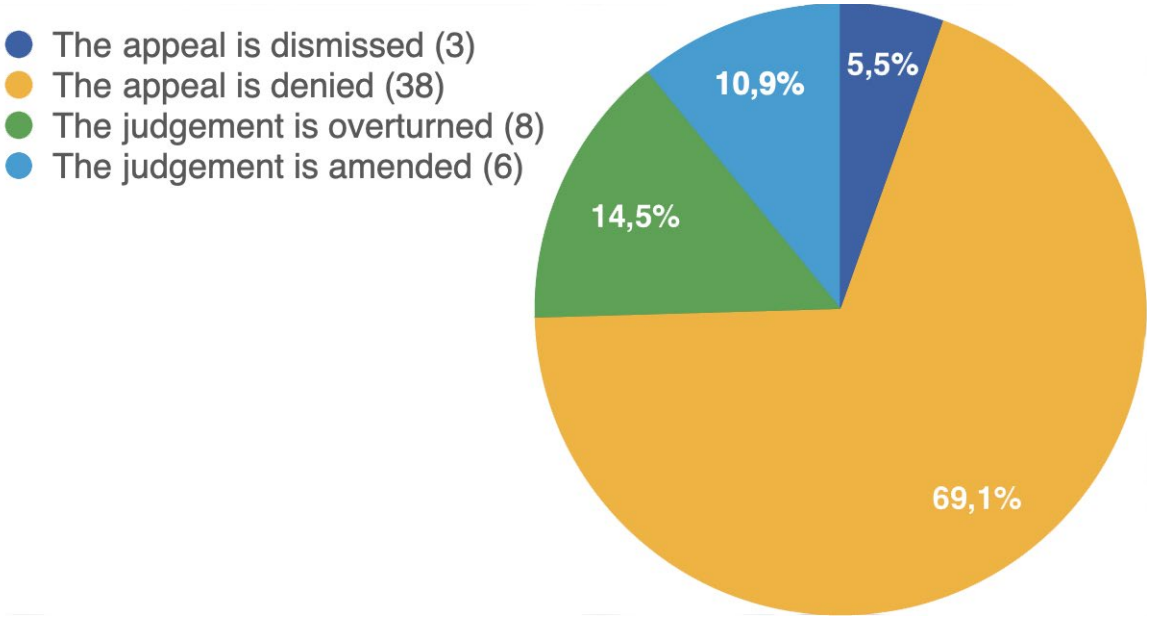
Court	Average duration of the second-instance procedure (days)	
	All cases	Detention cases
BC Bar	108	-
BC Berane	109	-
BC Bijelo Polje	107	77
BC Cetinje	96	76
BC Danilovgrad	197	121
BC Herceg Novi	60	125
BC Kolasin	70	-
BC Kotor	78	81
BC Niksic	62	31
BC Plav	86	-
BC Pljevlja	133	-
BC Podgorica	150	148
BC Rozaje	117	-
BC Ulcinj	54	54
HC Bijelo Polje	101	101
HC Podgorica	99	101
BASIC COURTS	**102**	**89**
HIGH COURTS	**100**	**101**
ALL COURTS	**101**	**95**

From the obtained sample, it was established that in the second-instance procedure, the majority of judgments were those denying the appeal (106). Considering only the cases in which detention was still ongoing after the first-instance judgment, 38 appeals were denied.

Graph 1: Types of decisions issued in second-instance procedures in the analysed cases



Graph 2: Types of decisions issued in second-instance procedures in the analysed cases in which detention was ordered/extended after the pronouncement of the judgment



In cases where detention had been ordered, the amended judgment was more favourable to the convicted person in two out of six analysed cases, and in these cases, the detention lasted for a significant part, and sometimes even the majority, of the final sentence ordered.

Table 26: Overview of amended verdicts in cases where detention was ordered after the pronouncement of the verdict

Sentence in the First-instance verdict	Sentence in the amended verdict	Duration of detention
Prison sentence: nine months	Prison sentence: one year	97 days
Prison sentence: six months	Prison sentence: one year	87 days
Prison sentence: six months	Prison sentence: nine months	108 days
Prison sentence: one year and two months	Prison sentence: six months	85 days
Prison sentence: one year	Prison sentence: one year and a month	207 days
Prison sentence: three months	Prison sentence to be served in a residential setting: four months	87 days

4.4. AVERAGE DURATION OF THE PROCEEDINGS

The length of a reasonable time is not predetermined by international standards through a strictly defined timeframe within which judicial proceedings must be concluded. Instead, the approach of international practice, particularly that of the European Court of Human Rights (ECtHR), is based on assessing the reasonableness of the duration of proceedings considering the specific circumstances of each individual case.

In this context, the reasonableness of the length of proceedings is to be assessed on the basis of the circumstances of the case and having regard to the criteria laid down by the Court's case-law, in particular the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities... The König judgment of 28 June 1978 added a further criterion, namely what is at stake for the applicant.[25]

The guidelines relating to the length of proceedings, according to the analysis of ECtHR case law by the European Commission for the Efficiency of Justice,[26] are as follows:

- The total duration of up to two years per level of jurisdiction in ordinary (non-complex) cases has generally been regarded as reasonable. When proceedings have lasted more than two years, the Court examines the case closely to determine whether there are any objective reasons, such as the complexity of the case, and whether the national authorities have shown due diligence in the process;
- In complex cases, the Court may allow longer time, but pays special attention to periods of inactivity which are clearly excessive. The longer time allowed is however rarely more than five years and almost never more than eight years of total duration;

25 Length of Court Proceedings in the Member States of the Council of Europe, based on the case-law of the European Court of Human Rights, CEPEJ (2006)15, Strasbourg, 8 December 2006, p. 13
26 Calvez, Françoise and Regis, Nicolas, *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights*, third edition – CEPEJ Studies no. 27, str. 5

- In the so-called priority cases in which a particular issue is at stake, the court may depart from the general approach, and find a violation even if the case lasted less than two years by level of jurisdiction. This will be the case, for example, where the applicant's state of health is a critical issue or where the delay could have irreparable consequences for the applicant;
- The only cases in which the Court did not find a violation in spite of manifestly excessive length of proceedings were cases in which the applicant's behaviour had been a major factor.

Based on the analysis of cases reviewed by monitors, it can be concluded that proceedings on average lasted the longest before high courts, specifically 523 days at the High Court in Bijelo Polje and 434 days at the High Court in Podgorica, while at the basic courts, the longest durations were recorded at the Basic Court in Danilovgrad (342 days) and Herceg Novi (304 days). However, it is important to consider that both basic courts experienced a shortage of judges in the criminal department during part of the analysed period, which contributed to the prolonged duration of proceedings in these courts.

Table 27: Average duration of proceedings in the analysed cases (in days), from the date of filing the indictment to the date of final judgment

Court	All cases	Non-detention cases	Detention cases
BC Bar	177	173	181
BC Berane	285	308	169
BC Bijelo Polje	194	214	154
BC Cetinje	236	316	150
BC Danilovgrad	342	379	267
BC Herceg Novi	304	331	243
BC Kolasin	162	167	128
BC Kotor	267	343	195
BC Niksic	225	301	131
BC Plav	281	274	314
BC Pljevlja	158	141	267
BC Podgorica	275	543	266
BC Rozaje	242	242	-
BC Ulcinj	155	176	119
HC Bijelo Polje	523	1.139	428
HC Podgorica	434	-	434
BASIC COURTS	**236**	**279**	**199**
HIGH COURTS	**478**	**1.139**	**431**
ALL COURTS	**357**	**709**	**315**

On average, cases in basic courts where detention was ordered last about seven months, approximately two months shorter than cases where detention was not ordered.

Regarding high courts, the analysis is methodologically more complex due to the limited and specific structure of the sample. However, what is concerning is that cases in which detention was ordered, which constituted the majority of analysed cases, lasted on average more than one year. It is important to reiterate that these do not involve cases under the jurisdiction of the Special Department of the High Court in Podgorica, known for their complexity, but rather proceedings against one to three defendants who were in detention, charged with one or two criminal offences.

5. ANALYSIS OF THE RIGHT TO PERSONAL LIBERTY – THE PRACTICE OF ORDERING MEASURES TO ENSURE THE PRESENCE OF THE DEFENDANT AND THE UNOBSTRUCTED CONDUCT OF CRIMINAL PROCEEDINGS

5.1. FREQUENCY OF DETERMINATION OF MEASURES TO ENSURE THE PRESENCE OF THE ACCUSED AND THE UNOBSTRUCTED CONDUCT OF THE PROCEEDING

Referring to the Law on Free Access to Information, CeMI researchers submitted requests to all basic and high courts, seeking data on the total number of cases in which pre-trial detention was ordered, as well as the number of measures of supervision and bail ordered in cases handled from 1 June 2023, to 31 December 2024. The data collected in this way contributes to creating a clearer picture of the extent to which courts practically applied these procedural measures during the monitored period.

Table 28: Frequency of ordering detention measures in proceedings before Basic and High Courts in Montenegro from June 1 2023, to December 31, 2024

Court	Number of criminal cases received during the period from 1 June 2023 – 31 December 2024	Cases in which detention was ordered		Cases in which supervisory measures were ordered		Cases in which bail was ordered	
BC Bar	403	55	13.65%	7	1.74%	1	0.25%
BC Berane	404	72	17.82%	15	3.71%	0	0.00%
BC Bijelo Polje	354	58	16.38%	19	5.37%	0	0.00%
BC Cetinje	251	28	11.16%	3	1.20%	0	0.00%
BC Danilovgrad	53	15	28.30%	10	18.87%	0	0.00%
BC Herceg Novi	158	33	20.89%	29	18.35%	3	1.90%
BC Kolasin	188	21	11.17%	12	6.38%	1	0.53%
BS Kotor[27]	-	-	-	-	-	-	-
BC Niksic	389	30	7.71%	7	1.80%	0	0.00%
BC Plav	165	14	8.48%		2.42%	2	1.21%
BC Pljevlja	250	16	6.40%	74	2.80%	0	0.00%
BC Podgorica	1,337	291	21.77%	27	2.02%	12	0.90%

27 In response to the SPI, the Basic Court in Kotor stated that they do not maintain a separate record of these measures in PRIS.

Court	Number of criminal cases received during the periodfrom 1 June 2023 – 31 December 2024	Cases in which detention was ordered		Cases in which supervisory measures were ordered		Cases in which bail was ordered	
BC Rozaje	193	21	10.88%	3	1.55%	2	1.04%
BC Ulcinj	194	19	9.79%	8	4.12%	1	0.52%
HC Bijelo Polje[28]	71	46	64.79%	16	22.54%	1	1.41%
HC Podgorica[29]	-	-	-	-	-	-	-
TOTAL	**4,410**	**719**	**16.30%**	**167**	**3.79%**	**23**	**0.52%**

Cumulative data from all available courts clearly show a pronounced tendency to order detention. A detention-to-supervisory-measures ratio of roughly 4:1 indicates that, on average, courts opt for detention four times more often than for any less restrictive measure. Particularly striking are the figures on bail, which is applied in an almost negligible share of cases. The overall pattern suggests that detention is still understood as the primary procedural measure.

5.2. ANALYSIS OF LEGAL GROUNDS FOR ORDERING DETENTION

The focus of this research is directed toward analysing the reasoning provided in court decisions on ordering detention—specifically, whether the courts offered adequate, clear, and concrete justifications in accordance with the requirements stemming from the case law of the European Court of Human Rights in Strasbourg. In other words, the goal is to determine whether courts stated sufficiently convincing reasons in their rulings to justify the application of detention, in line with international standards.

28 **Note from the High Court in Bijelo Polje in response to the FOIA request:**
In certain criminal cases, the defendant was initially subjected to one measure to ensure their presence, which was later revoked and replaced with a more lenient or stricter measure, depending on the behaviour of the offender and the needs of the proceedings. Therefore, this report presents aggregate data on all measures imposed to ensure the defendant's presence during the course of the proceedings, even though in several cases multiple measures were imposed on the same person within a single case. Additionally, there are cases involving multiple defendants, where different measures were imposed depending on the circumstances of the case and the personal characteristics of the offender.

29 The High Court in Podgorica did not provide the requested data on the number of pending cases but instead submitted data on cases that were finally resolved within the requested period, along with the number of detentions ordered in those cases. The response did not include information on measures of super or bail.

With regard to the cases reviewed by the monitors, the structure of cases by grounds for detention is as follows:

Table 29: Structure of analysed cases by grounds for detention

Court	Number of analysed detention cases	Ground for detention					
		Risk off flight	Risk of reoffending	Risk of collusion	Particularly serious case circumstances and threat to public order and peace	Failure to appear at the main hearing	Multiple grounds for detention
BC Bar	15	3	8	0	0	0	4
BC Berane	5	1	4	0	0	0	0
BC Bijelo Polje	10	0	6	0	0	0	4
BC Cetinje	15	1	11	0	0	0	3
BC Danilovgrad	11	2	7	0	0	0	2
BC Herceg Novi	9	4	4	1	0	0	0
BC Kolasin	4	1	1	0	0	0	2
BC Kotor	17	5	3	0	0	0	9
BC Niksic	13	2	8	0	0	0	3
BC Plav	5	0	1	0	0	0	4
BC Pljevlja	4	0	3	0	0	0	1
BC Podgorica	29	2	23	1	0	0	3
BC Ulcinj	11	4	4	0	0	0	3
HC Bijelo Polje	14	5	1	1	1	1	5
HC Podgorica	26	8	8	0	0	0	10
TOTAL	**188**	**38**	**92**	**3**	**1**	**1**	**53**
PERCENTAGE OVERVIEW		**20.21%**	**48.93%**	**1.59%**	**0.53%**	**0.53%**	**28.19%**

When detention is ordered based on multiple grounds, the risk of flight appears 39 times as a ground in these cases, the risk of reoffending 50 times, the risk of collusion 18 times, and particularly serious case circumstances and the need to preserve public order and peace five times. The combinations occur in the following order and frequency:

Table 30: Structure and frequency of ordering detention on multiple grounds

Grounds for detention	Number of decisions
Risk of flight + Risk of reoffending	31
Risk of reoffending + Risk of collusion	12
Risk of flight + Risk of reoffending + Risk of collusion	4
Risk of flight + Risk of collusion + Particularly serious case circumstances and threat to public order and peace	2
Risk of reoffending + Particularly serious case circumstances and threat to public order and peace	1
Risk of flight + Risk of reoffending + Particularly serious case circumstances and threat to public order and peace	2
Risk of flight + Particularly serious case circumstances and threat to public order and peace	1
TOTAL	**53**

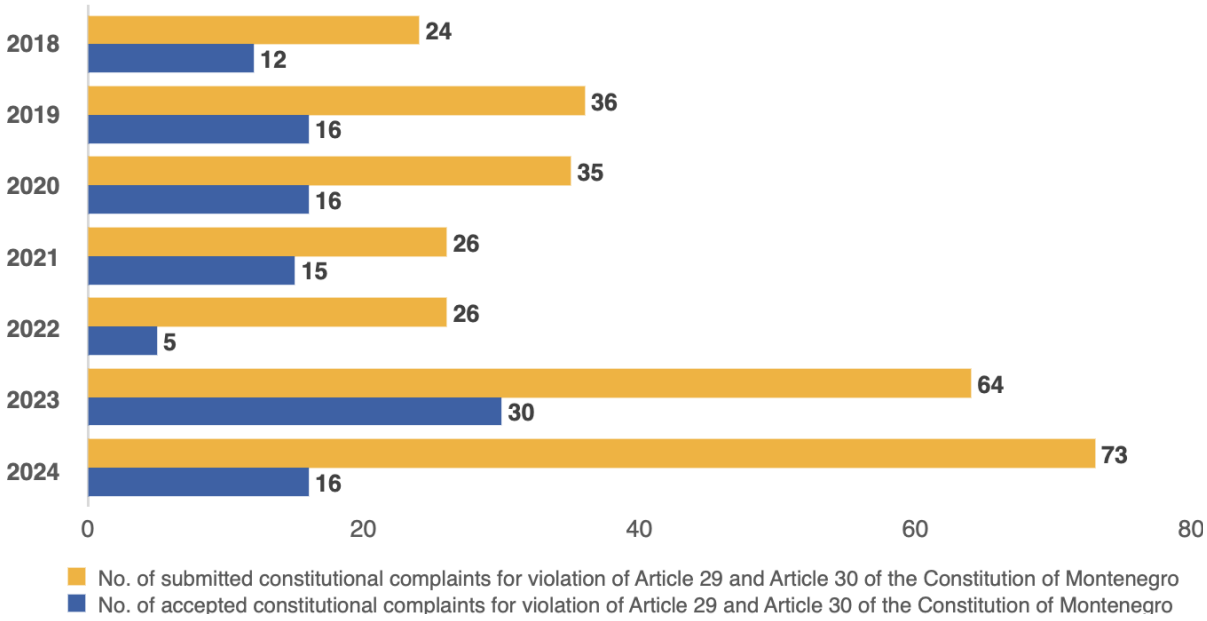
Monitors identified three types of decisions on ordering detention during their analysis. The first group consists of decisions justified in accordance with ECtHR practice: these are decisions that contain all relevant elements that unequivocally show why the court concluded that detention is necessary, or the same can be derived from the circumstances of the case, which can be established by a detailed reading of the detention order. The second group consists of partially justified decisions, in which the court stated formal reasons for detention, often citing specific international standards that justify detention in the given circumstances, but did not explain why the same goal could not be achieved by imposing some measures of supervision, nor is it possible to determine whether this is based on the circumstances of the case, in the way these circumstances are presented in the case files. The third category consists of unjustified decisions, i.e., decisions that are contrary to international standards, which consist merely of citing legal grounds without any specification of facts or consideration of less restrictive measures, etc. It should be emphasised that partially justified decisions, just like unjustified ones, do not meet ECtHR standards, because they lack key concretisation of reasons for ordering or extending detention. However, it is important to distinguish decisions that are obviously inconsistent with international standards for the protection of the right to liberty from those that could potentially meet these conditions, but the court, for some reason, did not provide adequate reasoning for all the reasons that led it to order detention.

Table 31: Decision on ordering detention, according to the level of justification

Court	Well-justified decisions	Partially justified decisions	Unjustified decisions
Basic courts	79	43	26
High courts	4	23	13
TOTAL	**83**	**66**	**33**

The necessity of analysing this issue is illustrated by data on accepted constitutional appeals due to violations of the right to personal liberty.

Chart 3: Statistical overview of submitted and accepted constitutional appeals for violations of the right to personal liberty in the past seven years[30]:



Expressed as a percentage, on average, the Constitutional Court has accepted more than one-third, i.e., **38.7%** of constitutional appeals for violations of the right to liberty over the past seven years. In the last two years, this percentage is **33.57%.**

It is also important to emphasise that judges bear no responsibility for violations of the right to liberty: the current rules for evaluating their work do not provide for lowering their rating, disciplinary proceedings, or any other sanctions in cases where illegal detention has been established.

5.2.1. RISK OF FLIGHT

According to the interpretation of the European Court of Human Rights, when detention is based on the flight risk, national courts must provide a concrete and detailed justification explaining why less severe measures cannot be applied in the specific case[31]. This reasoning cannot rely solely on the fact that the accused faces a severe penalty but must also consider other factors such as the existence of strong ties abroad, potential plans to leave the country, or the absence of any residence or social connections in the country where the proceedings are taking place. A similar position is held by the UN Human Rights Committee, emphasising that foreign citizenship alone should not be considered sufficient grounds for ordering detention.

30 Statistical data of the Constitutional Court, available at:https://www.ustavnisud.me/ustavnisud/objava/blog/2/objava/27-statistika

31 *Yagci and Sargin v. Turkey,* application no. 16419/90 and 16426/90, judgment of 8 June 1995

The Constitutional Court of Montenegro, referring to the practice of the European Court of Human Rights, holds that the court's conviction regarding the existence of a risk of flight must arise from specific circumstances related to the particular case and the specific person against whom the detention measure is being ordered or extended. All relevant facts must be assessed both individually and in their interconnection. For example, the mere fact that a person faces a heavy prison sentence, which "cannot leave them indifferent regarding accessibility to the prosecution and court," cannot alone justify the extension of detention. Thus, despite the fact that the risk of flight is a concerning circumstance for the competent authorities, especially if the initial deprivation of liberty of the suspect was not straightforward, it is **not sufficient to "superficially and stereotypically" state circumstances indicating a risk of flight, but instead, the concrete circumstances must be established and clearly and thoroughly explained**. Even more so since the risk of flight diminishes over time[32], and the reasons for holding someone in detention weaken as detention is counted toward the sentence[33]. According to the Constitutional Court's position, the risk *must also be assessed in light of factors related to the suspect's character, morals, home, occupation, property, family ties, and all other specific connections in the country where the proceedings are being conducted (Panchenko v. Russia, no. 45100/98 of February 8, 2005, and Becciev v. Moldova, no. 9190/03 of October 4, 2005).*[34]

When it comes to the latter point, it is worth highlighting that Montenegrin courts, as a rule, fail to provide a concrete and individualised explanation as to why the purpose of the detention ground could not be achieved by one of the alternative measures provided in Article 166 of the Criminal Procedure Code.

However, through the analysis of detention orders, the monitors did come across instances where the reasoning clearly demonstrated why the court, in that particular case, decided to order or extend detention.

For detention justified by the risk of flight of the suspect or accused to be lawful and justified, the decision imposing and/or extending detention must meet a set of standards established by the European Court of Human Rights (ECtHR) through its case law.

In order to determine whether, and to what extent, Montenegrin courts comply with ECtHR standards, monitors, when analysing detention decisions based on the risk of flight, relied on the following criteria:

1. The risk of absconding cannot be assessed on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial;[35]
2. The risk of absconding has to be assessed in light of the factors relating to the person's character, his morals, home, occupation, assets, family ties and all kinds of links with the country in which he is prosecuted. The expectation of heavy sentence and the weight of evidence may be relevant but is not as such decisive and the possibility of obtaining

32 Ibidem
33 Neumeister v. Austria, application no. 1936/63, judgment of 7 May 1974
34 Constitutional Court decision U-III no. 266/23 of 14 June 2023
35 Panchenko v. Russia, application no. 45100/98, judgment of 8 February 2005, p. 106

guarantees may have to be used to offset any risk;[36]
3. The mere absence of a fixed residence does not give rise to a danger of flight;[37]
4. The danger of flight necessarily decreases as the time spent in detention passes by for the probability that the length of detention on remand will be deducted from the period of imprisonment which the person concerned may expect if convicted, is likely to make the prospect seem less awesome to him and reduce his temptation to flee.[38]
5. The monitors' analysis found that the existence of a risk of flight was justified in accordance with the ECtHR in 16 of the cases analysed, partially justified in 10 cases, while in 11 cases it was not justified at all.

Monitors found that the existence of the risk of flight was justified in accordance with ECtHR standards in 16 of the analysed cases, partially justified in 10, while in 11 cases, it was not justified at all.

In the following section, we will reflect on some notable examples encountered by monitors during the review of detention case files.

In a case before the Basic Court in Kotor, the court dismissed the defence counsel's appeal against the detention order based on the risk of flight, citing the abstract possibility that the accused might decide to flee to another country, arguing that a passport is not necessary to achieve that.

> Since there is reasonable suspicion that the accused committed the criminal offence he is charged with, this represents the initial premise for the court's further proceedings, the panel further finds that the investigating judge correctly assessed that there is a ground for detention against the accused under Article 175, Paragraph 1, Item 1, of the Criminal Procedure Code, namely that there is a danger of flight. According to the court's assessment, the danger of flight, from the cited provision of the Criminal Procedure Code, exists because in a situation where the accused is prosecuted for a criminal offence punishable by imprisonment of 2 to 10 years, he can easily decide to flee to a place where the authorities of Montenegro have no jurisdiction or authority, all with the aim of avoiding the procedure. Namely, this is a person without employment, so he is not tied to this area by a work relationship; on the contrary, he only has occasional earnings from fishing. He lives alone, his minor children are with their mother in Podgorica and visit him only occasionally, so he has no obligation for their daily upbringing and care, and that circumstance does not bind him to this area. The fact that the accused has not left Montenegro for many years cannot be a sufficient reason for the court not to order detention, considering that he can enter Serbia without a passport, that is, only with an identification document, i.e., an ID card, so it follows that it depends solely on his will and assessment of the situation whether he will be available to the court and participate in the procedure, or will flee hoping that the passage of time will mitigate or eliminate his criminal liability...

36 *Becciev v. Moldova,* application no. 9190/03, judgment of 4 October 2005, p. 58
37 *Sulaoja v. Estonia,* application no. 55939, judgment of 15 February 2005, p. 64
38 *Neumeister v. Austria, op.cit.*, p. 10

Further in the ruling, the court failed to explain why in the specific case it was not possible to impose any of the supervisory measures prescribed by the Criminal Procedure Code.

> ... This panel, when deciding on the further duration of detention of the accused, particularly took into account that detention is the most severe measure of procedural coercion, representing a deviation from the rule of respecting individual liberty, as well as the fact that the accused has been in detention since ...., and therefore, considering all the above, found that the mentioned measure, both in its duration and severity, is proportional to the goal it aims to achieve, and that this purpose, in the opinion of this panel, could not be accomplished by any other, less restrictive measure of procedural coercion, so detention in this specific case is considered necessary and purposeful.

Although the panel acknowledges that detention is the most severe measure, deviating from the principle of respecting individual liberty, it essentially reduces its reasoning to the assertion that no other, less restrictive measure would achieve the purpose of detention. In doing so, the court ignores the possibility provided by Article 22 of the Law on Identity Cards[39], which allows the court to request that the competent ministry prohibit the use of the identity card for crossing the state border. If the court truly considered that such a measure would be ineffective in the given case, the question arises as to why this was not explained in detail.

CeMI's monitoring team requested data from the Ministry of Internal Affairs on whether courts, during the observed period (from 1 June 2023, to 31 December 2024), had submitted any requests for a ban on using identity cards to cross the state border. In the Ministry's response, it was specified that no such requests were received during that period.

A similar approach to the one described above was recorded in almost all cases (and in almost all courts) that the monitors had access to, i.e., from the decisions on ordering/extending detention, it was often not possible to determine on what basis the court concluded that the risk of flight could not be prevented by less restrictive measures, i.e., by one of the measures of supervision.

For example, in proceedings before the High Court in Bijelo Polje for a criminal offence under Article 300 of the Criminal Code of Montenegro, in which detention was also ordered due to the risk of flight, the court referred to the fact that the accused is a citizen of the Republic of Serbia who "frequently stays with relatives in Germany," ignoring the fact that the accused has permanent residence and family in Podgorica.

> Namely, the case file shows that the suspect is a foreign national, unemployed, and frequently stays with relatives in Germany, where he occasionally works. Furthermore, it was established that he does not have a permanent job in his country of residence, and given the potential sentence for this offence, there is a reasonable fear that he may leave his place of residence and flee, thereby obstructing and complicating the criminal proceedings.

39 "Official Gazette of Montenegro," Nos. 12/2007, 73/2010, 28/2011, 50/2012, 10/2014 and 18/2019.

This justifies the existence of a ground for detention under Article 175, Paragraph 1, Item 1 of the Criminal Procedure Code.

According to the investigating judge, the purpose for which the detention was ordered cannot, at this stage of the proceedings, be achieved by a less restrictive measure prescribed by Article 163 of the CPC.

It is important to note that when an accused has no ties to Montenegro, courts always emphasise this; however, when there are strong ties, such as residence in Montenegro and family, these facts are sometimes overlooked, or their significance is underestimated in favour of strengthening arguments for detention.

The defence attorney, in the appeal (which was rejected by the court), proposed a range of measures of supervision the court could have applied (such as seizure of travel documents, a ban on leaving the place of residence, and mandatory reporting to the police), but even though the High Court's extrajudicial panel in Bijelo Polje cited ECtHR case law, it failed to explain why none of these measures could replace detention.

Among the relevant factors to be considered when assessing the risk of flight – explicitly recognised as a legitimate ground for detention by the European Convention on Human Rights – are: the nature and seriousness of the potential sentence (case of *De Jong, Baljet and Van der Brink v. Netherlands,* appl. no. 8805/79, 8806/79, 9242/81, May 22, 1984), existence of business connections abroad that could facilitate flight (Punzelt v. Czech Republic, appl. no. 31315/96, April 25, 2002), and prior instances of flight.

The panel of this court found that there were no circumstances that would justify the lifting of detention. In its view, considering the stage of the proceedings, the purpose of the detention could not be achieved by another, alternative legal measure from Article 163 CPC, in conjunction with Articles 166 and 167 CPC, as proposed by the defence, and the request was rejected as unfounded. Furthermore, the detention, considering its duration, was not disproportionate to the gravity and nature of the alleged offence.

This formalistic approach suggests that courts too readily opt for the most severe procedural measure in such cases, where references to international standards often amount to mere citations rather than genuine alignment with their substance.

Even more concerning is that the courts sometimes invoke ECtHR case law to avoid the duty of reasoning their decisions. For example, in the decision rejecting the appeal of the defence attorney against the High Court in Bijelo Polje's ruling to extend detention, the Appellate Court cited the *Van de Hurk v. Netherlands case*[40], stating that courts are not required to give detailed answers to every question, only to those crucial for the outcome of the case.

40 Application no. 16034/90, judgement of 19 April 1994, p. 61

This is a potentially alarming practice, as it creates room to obscure why less restrictive measures were not considered, all under the guise of respecting international standards. Such misuse of ECtHR jurisprudence allows detention and its extension to become virtually unchallengeable, even when substantive reasoning for rejecting alternative measures is lacking.

It is also noteworthy that monitors found only two cases in which the court attempted to mitigate the risk of flight by seizing travel documents during the proceedings.

In a case before the Basic Court in Plav for the offence of assaulting an official in the performance of duty, the accused was detained due to the risk of flight, which lasted until the pronouncement of the verdict, after which it was lifted and replaced with a measure of supervision – the seizure of the passport.

In this case, detention was initially ordered based on three grounds: risk of flight, risk of reoffending, and risk of influencing witnesses, but here we focus solely on the risk of flight. Despite the court's claim that it had considered the application of less restrictive measures, the circumstances of the case suggest otherwise. Specifically, the accused's passport expired in 2021, and this fact became relevant only after the first-instance verdict was issued in 2023, at which point detention was lifted and replaced with the seizure of the passport and a requirement for daily reporting to the police. The decision stated:

> "...Detention of the accused S. is lifted because, based on the certificate, it was established that his travel document – passport – expired on 2 June 2021, and for that reason, the grounds for which detention was ordered and extended have ceased to exist, and the conditions for release are met."

This explanation clearly shows that the court did not seriously consider all relevant circumstances when deciding on detention in the initial phase. The passport could have been seized from the very beginning, as the defence pointed out in an appeal that was rejected by the Appellate Court. In this case, the court did not explain the other two grounds for detention either.

When it comes to prosecutorial motions for ordering or extending detention, regardless of the statutory ground invoked, they are typically very brief compared to the court's decisions.

Specifically, when it comes to the risk of flight, they mostly repeat standard phrases about the severity of the potential sentence or the mere possibility of flight, presence of family and/or business ties abroad, or lack of "stable social connections," but rarely cite specific facts that individualise that risk.

While courts generally provide more detailed reasoning, monitors also found cases where this was not the case, i.e., where courts did not question the prosecutor's claims and failed to genuinely analyse the circumstances for ordering detention. This was precisely the case in the previously described proceeding before the Basic Court in Plav.

Namely, the prosecutor's motion stated:

> "There are grounds for ordering detention under Article 448, Paragraph 1, Items 1, 2, and 3 of the Criminal Procedure Code of Montenegro. During the proceedings, there is a risk of flight as the suspect's entire family lives in the United States, where he could flee, and he reportedly possesses a 'green card,' i.e., the ability to leave the country and enter the U.S. without needing to go through the usual visa process. There are also special circumstances indicating that the suspect may repeat the crime, based on previous convictions, and that he may influence witnesses as additional witness statements are required. Therefore, I find that ordering detention is justified, lawful, and necessary, as the purpose cannot be achieved by any other measure to secure the presence of the accused and the unobstructed conduct of criminal proceedings."

And in the decision on detention:

> "The investigating judge finds the motion grounded, referring to detention grounds under Article 448, Paragraph 1, Items 1, 2, and 3, of the CPC, primarily because the suspect has no connection to his declared residence in village K., municipality G.—he has no family there, does not work there, and is unemployed, and his entire family lives in the USA. Therefore, the court concludes there is a risk of absconding, and the conditions for detention under Article 448, Paragraph 1, Items 1, 2, and 3, of the CPC are met, because there is nothing tying the suspect to Montenegro or the village of K., he plans to leave the country, he possesses a green card and does not require a visa to go to the USA, and there is a risk he will complete the attempted crime or repeat the offence, as well as influence witnesses."

There are also examples of good practice, where courts state all relevant circumstances from which one can conclude why, in a specific case, detention is the only effective measure.

In a case before the Basic Court in Herceg Novi, against a foreign national charged with endangering security, the investigating judge stated in the detention order:

> "The court finds there are grounds for detention under Article 448, Paragraph 1, Item 1, of the CPC, i.e., circumstances indicating a risk of flight. The accused is a foreign national—from R.S.—permanently residing in R., S., and based on the case file, he does not have a registered permanent or temporary residence in Montenegro or a close address. According to his own statement, he is unemployed, earns money through occasional jobs, and is unmarried. Moreover, according to a certificate from the Ministry of Interior – Regional Security Centre South OB Tivat..., the accused reported the loss of personal documents, including a passport issued in R.S. All this indicates that the accused has no family, personal, or permanent business ties to Montenegro, and thus there is a risk of flight if released. The court did not accept the accused's claim that he would stay at Hotel L. in B., especially since he failed to name the friend working there

or provide the source of funds to pay for the hotel stay, especially since he stated he has no money because the victim owes him, and he spent two nights on the street."

This represents a rare example of a detention order in which the court lists all relevant circumstances from which specific, case-dependent reasons for detention are drawn, explaining why the purpose cannot be achieved by a less severe measure.[41]

In a case before the Basic Court in Podgorica for attempted theft, the prosecutor requested detention for flight risk, citing that the accused is a foreign national with no registered residence, property, or permanent employment in Montenegro, indicating he may leave the country if released. The investigating judge accepted this and ordered detention. However, following the defence's appeal, the detention was lifted, with the following reasoning:

> However, besides the substantive legal basis, to order detention, there must simultaneously exist one of the grounds under Article 448, Paragraph 1 of the Criminal Procedure Code, justifying the application of detention as the most repressive procedural measure. According to Article 448, Paragraph 1, Item 1 of the CPC, detention may be ordered, among other reasons, if there are circumstances clearly indicating a risk of flight. This legal provision presumes that, besides the possibility of flight, there is a concrete and evident danger that the suspect will flee, assessed on the basis of individual circumstances of the suspect. The panel agrees with the defence that these conditions are not met in this situation. It is undisputed that the suspect is a foreign national holding a R.K. passport. Contrary to the appeal's claims, the suspect crossed the border with K. twice in the past year, which was verified with the Border Police Department of the Ministry of Interior, as evidenced in the file.
>
> The above also indicates that, contrary to the defence attorney's claims, there is a possibility that the suspect has certain ties with K., even though he himself denies this. However, in the absence of information about the nature of these ties, considering the fact that the suspect has effectively established more permanent residence here, given that he has continuously resided in the territory of Montenegro for the past five years, and that one of the two instances of his departure from Montenegro lasted only two days, which supports the credibility of the suspect's claim that he has built a life here with his wife and three minor children, i.e., that he is tied to this territory through his family, the mere fact that he is formally unemployed, or a person who occasionally works for daily wages, is not sufficient to establish a strong enough presumption that the suspect, when faced with the criminal proceeding, would flee and thereby obstruct its conduct. Under these circumstances, in the opinion of the panel, there are no indications that any of the measures of supervision under Article 166 of the Criminal Procedure Code should be imposed on the suspect. Ultimately, even if, contrary to the panel's position, there existed a risk of the suspect fleeing, the claims raised in the appeal are well-founded and that detention, in such a case, considering the fact that the suspect has no prior convictions, would be disproportionate to the gravity of the criminal offence for which he is reasonably suspected.

41 Monitors most often encountered such and similar rulings in courts of the coastal municipalities, where the highest number of detention cases involved persons with foreign citizenship who lacked accommodation or means for living.

Such reasoning reveals a clear inconsistency in judicial practice when it comes to ordering detention. Particularly concerning is the practice of the High Court in Podgorica.

An analysis of cases to which the monitors had access shows that prosecutors and judges generally do not consider the application of less restrictive measures. Namely, in some cases, the reason cited for ordering detention due to risk of flight is the fact that the suspect has extended family in another country, which, in the opinion of the court and prosecution, indicates the "existence of well-developed social ties from which he may expect and receive assistance in fleeing and hiding," without specifying whether the suspect has ever visited those relatives or what their actual relationship is. Meanwhile, in other cases, when the suspect does not have relatives abroad, the reason given is the fact that the national border can be crossed even without travel documents.

When it comes to the risk of flight arising from the inability to establish the suspect's identity, the monitors encountered only one such case—concerning the criminal offence of document forgery—where the subject of the criminal offence was also part of the reasoning for the justification of detention, as the suspect, i.e., the accused, was found in possession only of forged identification documents.

5.2.2. RISK OF COLLUSION

Risk of collusion, or the risk arising from circumstances indicating that the suspect may destroy, conceal, alter or falsify evidence or traces of the criminal offence, or that they may obstruct the proceedings by influencing witnesses, accomplices or accessories after the fact, is prescribed in Article 175, Paragraph 1, Item 2, of the Criminal Procedure Code (CPC). International standards, namely the case law of the European Court of Human Rights (ECtHR), also set clear requirements which were followed by the monitors in their analysis of the reasoning based on this ground for detention:

1. The danger of the accused's hindering the proper conduct of the proceedings cannot be relied upon *in abstracto*, it has to be supported by factual evidence;[42]
2. A generally formulated risk flowing from the nature of the offences with which the applicant had been charged may possibly be accepted as the basis for his detention at the initial stages of the proceedings. Nevertheless, in the absence of any other factor capable of showing that the risk relied on actually existed, the Court cannot accept those grounds as a justification for holding the applicant in custody for the entire relevant period.[43]
3. In the long term, the requirements of the investigation do not suffice to justify the detention of a suspect: in the normal course of events the risks alleged diminish with the passing of time as the inquiries are effected, statements taken and verifications carried out.[44]

According to the position of the Constitutional Court, the danger that a person will destroy, conceal, alter or falsify evidence or traces of a criminal offence, or obstruct the proceedings

42 *Becciev v Moldova, op.cit.*, p. 59
43 *Jarzynski v. Poland,* application no. 15479/02, judgment of 4 October 2006, p. 43
44 *Clooth v. Belgium,* application no. 12718/87, judgment of 12 December 1991, p. 43

by influencing witnesses, accomplices, or accessories after the fact, must stem from the accused; however, it may also involve a risk that the accused, while at liberty, could obstruct evidence through third parties[45].

Criminal proceedings related to organised crime may present additional challenges, both during the investigation phase and at the main trial. In such cases, controlling communication between the accused and other individuals can be of key importance in preventing witness interference, and a longer duration of detention may be justified[46].

In one particular case, the Supreme Court extended the detention of the accused on the grounds of risk of collusion, justifying this by the need to examine witnesses who had knowledge of the event, as well as by the existence of a well-founded suspicion that the accused committed the offence as a member of a criminal organisation. However, the Constitutional Court took an opposing view. It held that the reasons cited in the detention extension order were overly general and vague, as they were not specified in relation to the personality of the accused. Thus, according to the Constitutional Court, the principle of individualisation was violated. The Constitutional Court emphasised that courts cannot rely solely on the general need to hear witnesses to extend detention based on the risk of collusion, but must instead determine specific circumstances concerning the accused that would justify the conclusion of a significant risk of collusion.[47] Otherwise, an irrefutable presumption on detention extension would be created in all cases where witness hearings or the presentation of other evidence are planned during the investigation, thereby jeopardising the rights of the accused guaranteed by Articles 29 and 30 of the Constitution of Montenegro, as well as Article 5 of the European Convention on Human Rights.

Monitors did not record a large number of cases in which detention was ordered exclusively due to the existence of collusion risk. As the sole reason for ordering detention, collusion risk was noted in only three out of a total of 188 "detention" cases, while in 18 cases it was combined with at least one additional basis for detention. The existence of collusion risk was justified in accordance with the ECtHR standards in two analysed cases, while in one case the existence of this circumstance was not justified in line with the ECtHR.

In all cases where detention was ordered solely due to the risk of influencing witnesses or destroying evidence, that risk ceased upon completion of the investigation, and detention was lifted in those cases. However, in proceedings where detention was initially ordered on multiple grounds, it was most often extended due to the continuous existence of the risk of reoffending or completion of the criminal act.

An illustrative case is before the High Court in Bijelo Polje for a criminal offence under Article 300 of the Montenegrin Criminal Code, where detention was justified by the fact that the suspect knows the witness and had recently been in contact with him. Both the prosecution and the court, however, remained on the general assertion that the suspect could influence the witness, without specifying how such influence would be exercised; yet from the circumstances themselves it follows that telephone or other electronic communication would remain open even with a restriction on movement or meetings, considering that the

45 Constitutional Court decision U-III no. 211/24 of 28 February 2024
46 *Lukovic v. Serbia,* application no. 43808/07, judgment of 26 March 2013
47 CC U-III no. 211/24 *op.cit.*

witness is a person who, according to case files, arranged the purchase of drugs from the suspect via telephone.

Also, in a case concerning domestic violence before the Basic Court in Bijelo Polje, the Court accepted the prosecutor's argument that it was necessary to hear the witness (the accused's mother and the victim's spouse), who lives in the same household as the accused:

> "...it is logical and possible that he could influence her as a witness, ... so that she adapts her testimony to what the suspect hopes for and expects from her..."

Court assessed that the short time lapse from the event (less than three days) additionally justifies preventive deprivation of liberty in the early phase of the proceedings. The appellate court confirmed this decision, emphasising that the witness must be heard "without the possibility of influence by the suspect."

The subsequent course of proceedings shows that the justification for temporary detention in these circumstances was well-founded. At the main hearing, the injured party did not pursue criminal prosecution, and the witness—who is also the mother of the accused—requested his release from detention and referral to treatment. In later phases, detention was extended only on an iterative basis, then revoked and replaced by a measure prohibiting approach and contact with the injured party, with mandatory two-month supervision.

All the above supports the view that, although the reasons given when ordering detention on both grounds may appear insufficiently detailed and formulaic, in this case the court found the right balance between depriving the accused of liberty and the need to protect the injured party and the witness, by gradually reducing the intensity of the measure as the risks diminished, taking into account the nature of the criminal offence and the fact that the injured parties lived in the same household as the accused.

However, such examples must not become an alibi for poor reasoning: in situations where the risk is not obvious, the court is obliged to specify in detail why less restrictive measures would not be effective, so as to meet the standards of individualisation and concretisation of the detention decision.

Namely, the case files do not always show a real threat that such influence will occur, giving the impression that prosecutors add this ground "just in case" to strengthen the request for detention, although the real need mostly does not exist, while courts that uncritically accept such generic proposals (albeit rarely) actually turn collusion allegations into a routine addition to every detention order, instead of verifying them through a real, individualised risk assessment.

Monitors recorded two cases in the Basic Court in Plav, where the court accepted the prosecutor's proposal for detention, citing as grounds for detention due to the risk of influence on witnesses only that witnesses still needed to be heard, without any explanation of how the accused might influence them; that is, the mere fact that there were witnesses to be heard was considered sufficient reason for detention on that ground.

In a case concerning a criminal offence under Article 403 of the Montenegrin Criminal Code, the prosecutor stated in the detention proposal:

> Against the suspect M.J., there are grounds for ordering detention under Article 448, Paragraph 1, Items 2 and 3 of the Criminal Procedure Code. Namely, based on the submitted documentation and collected evidence, I find that there are specific circumstances indicating that the suspect could reoffend, considering his prior convictions, as he is a repeatedly convicted person by verdicts of the Basic Court in Plav, case no.... for the criminal offence of minor bodily injury under Article 152, Paragraph 2, in connection with Paragraph 1 of the Criminal Code; case no.... for the criminal offence of endangering safety under Article 168, Paragraph 1, of the Criminal Code; case no.... for the criminal offence of endangering safety under Article 168, Paragraph 1, of the Criminal Code; and case no.... for the criminal offence of minor bodily injury under Article 152, Paragraph 2, in connection with Paragraph 1 of the Criminal Code, thus for criminal offences involving elements of violence, as well as the verdict of the same court, case no.... for the criminal offence of endangering public traffic under Article 339, Paragraph 3, of the Criminal Code, as well as the existence of a circumstance indicating that he will obstruct the proceedings by influencing witnesses because it is necessary to hear R.A., for which reason, ultimately, I find that ordering detention against the suspect under Article 448, Paragraph 1, Items 2 and 3, of the Criminal Procedure Code is justified, legally founded and necessary, because the purpose cannot be achieved by any other measure to ensure the presence of the accused and the unobstructed conduct of the proceedings.

Here it is important to emphasise the fact that, besides the prosecutor not explaining in the proposal how the suspect could influence the witness, the suspect admitted committing the criminal offence, which the defence highlighted in the appeal. The High Court in Bijelo Polje rejected the appeal as unfounded, with the reasoning:

> Since the witness R.A. has not yet been heard in the course of the proceedings, it is reasonable to expect that the accused, if free, would obstruct the proceedings by influencing the witness and thus hinder the conduct of the criminal proceedings, given that the accused, if free, can easily contact this witness and influence the content of their testimony, despite having admitted the commission of the criminal offence, because there is a possibility that during the further course of the proceedings the witness may change their testimony, thus constituting grounds under Article 448, Paragraph 1, Item 3, of the Criminal Procedure Code.

Such an interpretation, where the mere fact that the witness has not yet been heard is considered a sufficient reason for detention without further explanation, practically turns this basis into a universal tool for deprivation of liberty.

As mentioned in the previous subsection, the prosecutor's proposals are significantly less reasoned, regardless of the basis used. In the example of the Basic Court in Plav, we see

that neither the court nor the prosecution provided reasoning for the existence of either collusion or iteration risks.

However, in the context of collusion risk, it is worth highlighting an example of good practice in terms of restrictive detention orders as a way to affect the efficiency of the prosecution while protecting the accused from detention lasting too long merely due to inefficiency of the participating authorities.

In this regard, in a case before the Basic Court in Danilovgrad, the State Prosecutor proposed detention due to iteration and collusion risks, reasoning that the accused was a multiple recidivist and could influence witnesses. The Court rejected the detention on the grounds of possible influence on witnesses, explaining that the prosecution did not state in the proposal why it had not heard the witnesses and why it had not requested detention on this basis earlier.

5.2.3. RISK OF REOFFENDING

According to monitoring findings, courts most frequently order detention by referring to the risk of repetition (iterative risk), that is, the risk that the accused will repeat the criminal offence, complete the attempted criminal offence, or commit the threatened criminal offence.

In doing so, courts often cite previous convictions for the same or similar criminal offences as a specific circumstance indicating that risk. However, it is important to emphasise that previous convictions do not necessarily constitute a specific circumstance that points to a real risk of repetition; rather, such risk must arise from the concrete and individualised circumstances of the case. When it comes to ordering detention for individuals who have been previously convicted, *the Court is willing to consider such a reason consistent with Article 5 §3 of the Convention under the special circumstances of the specific case. The judge may reasonably take into account the seriousness of the consequences of the criminal offences when considering the risk of their repetition, in order to decide whether the individual in question may be released despite the potential existence of such a risk.*[48]

We remind that, according to the practice of the ECtHR, *prior convictions **could** constitute a basis for a justified fear that the accused might commit a new criminal offence.*[49] *In other words, a prior conviction **may, but does not necessarily,** serve as a basis for ordering detention – it depends on the context of the specific case. Moreover, in relation to the risk of repeating a criminal offence, reference to previous convictions cannot be a sufficient reason for denying release.*[50]

The practice of the Constitutional Court of Montenegro also confirms that courts cannot justify the extension of detention solely based on previous convictions without specific arguments, and that the reasons for extending detention must be concrete and convincingly reasoned. Automatic reference to prior convictions without broader contextual analysis constitutes a violation of the principle of individualisation, which may lead to arbitrariness

48 *Matznetter v. Austria,* application no. 2178/64, judgement of 10 November 1969, p. 9
49 *Selçuk v. Turkey,* application no. 21768/02, judgement of 10 January 2006, p. 34
50 *Muller v. France,* application. 21802/93, judgement of 17 March 1997, p. 44

in decision-making. The Court further holds that the fear that the accused will repeat the criminal offence cannot be based solely on prior convictions but must be supported by additional, individualised circumstances of the case. Relevant circumstances indicating a real risk of repetition include: membership in an organised criminal group or organising a group for the purpose of committing criminal offences; previous convictions in combination with continuity and determination in committing offences, especially if another criminal proceeding is simultaneously pending against the accused; prior convictions indicating disregard for the law and societal norms of behaviour; psychological instability, such as addiction to alcohol or drugs; and a pronounced degree of persistence and particular recklessness in the manner of committing criminal acts.[51]

Monitors found through analysis that the risk of repetition (iterative risk) was properly reasoned in accordance with ECtHR standards in 49 analysed cases, partially reasoned in 33, and not reasoned in 17 cases.

The risk of reoffending can primarily be prevented through measures of supervision, such as a ban on leaving the residence (if the accused does not live in the same household as the injured party), prohibition of contact or meetings with certain individuals, etc.

However, in the practice of Montenegrin courts, previous convictions—not only for identical but also for similar criminal offences, or any criminal offence involving an element of violence—are almost automatically taken as grounds for ordering detention. Furthermore, as in cases where detention is ordered due to flight risk, reasoning is often lacking as to why, in the specific case, the application of less restrictive measures was not possible, which further raises the question of whether courts truly act in accordance with the principle that detention should be ordered solely as an ultimate, necessary, and proportionate measure.

Such a practice of easily resorting to detention leads to questionable situations, such as the one recorded by monitors in a case before the Basic Court in Danilovgrad, concerning the criminal offence of unlawful possession and carrying of weapons and explosive materials.

Namely, the accused in this case was finally convicted in 2012 for the same criminal offence, and during the ordering of detention on 22 July 2023, the court concluded that there was a "tendency to commit criminal offences" and that the purpose of detention could not be achieved by applying less restrictive measures. However, by 13 December 2023, statutory rehabilitation had occurred based on that same conviction, which created conditions for lifting the detention, and the accused was released to defend himself from liberty. This practice suggests that the institute of special recidivism is sometimes used as an automatic "trigger" for detention, without a real assessment of the concrete circumstances of the case.

On the other hand, monitors also recorded cases where prior conviction did in fact represent a specific circumstance. This is especially noticeable in cases of property-related criminal offences, where the accused had multiple prior convictions for identical or similar criminal offences, as such offences are their main source of income. In such cases, detention is indeed most often ordered as the only purposeful measure. Particularly illustrative in this

51 Constitional Court Decision U-III no. 545/19 of 20 March 201

respect is a case before the Basic Court in Bar, concerning the criminal offence of theft in continuation, against a person who had been convicted as many as 17 times for property-related criminal offences.

If we return to the case from the Basic Court in Plav mentioned in the previous section, we will see that detention due to the risk of reoffending was ordered against a person who had not previously been convicted for the same or similar criminal offence, which is contrary to ECtHR practice. This is also the position of the Supreme Court of Montenegro[52], which some courts correctly reference in detention decisions.

A particularly sensitive issue is the ordering of detention in cases concerning the criminal offence of domestic violence or violence in a family community, especially when the accused and the victim live in the same household, which is most often the case with this offence. It should be emphasised here that prior conviction is not always a necessary condition for ordering detention, if there are other, concrete circumstances indicating a risk of repeating the offence or completing the threatened act. This was indeed the case in the analysed cases concerning the criminal offence of domestic violence or violence in a family community. Specifically, in 11 out of 24 cases in which detention was ordered due to iterative risk despite the accused not having any prior convictions, monitors encountered decisions that included detailed reasoning for ordering detention based on the specific circumstances of the case.

As for prosecutorial proposals, a characteristic example is a case before the Basic Court in Kotor concerning the criminal offence under Article 327, which most clearly demonstrates how superficial prosecutorial argumentation can be: the prosecutor did not specify any factually relevant circumstances that would substantiate the risk of reoffending, but instead relied on a general formulation:

> "Considering the above, i.e., the fact that the person is reasonably suspected of having committed the stated criminal offence, and from the extract from the criminal record it has been established that the same person has previously been convicted multiple times for several criminal offences, all of which indicates that the imposed sentences have not sufficiently influenced the suspect to refrain from committing criminal offences in the future, which indicates the existence of circumstances suggesting a risk that, if released, he would repeat the commission of this or similar criminal offences, and it is therefore necessary, pursuant to Article 448, Paragraph 1, Item 2 of the Criminal Procedure Code, to order detention."

In doing so, the prosecution failed to specify which prior convictions were involved, how old they were, what their nature was, etc., all of which are details that the prosecution possesses.

52 Supreme Court of Montenegro, Criminal Case No. 70/13, dated December 9, 2023

5.2.4. PARTICULARLY SERIOUS CIRCUMSTANCES OF THE CASE AND THE NEED TO PRESERVE PUBLIC ORDER AND PEACE

In the practice of the ECtHR, it has been accepted that certain criminal offences may cause social anxiety due to their particular gravity and the public's reaction to them, which can justify detention, even if only temporarily. In exceptional circumstances, this factor may be taken into account, provided that domestic law recognises the concept of disturbance of public order caused by a criminal offence. However, this ground can be considered relevant and sufficient only if it is based on facts demonstrating that the release of the accused would genuinely disturb public order. Detention remains legitimate only as long as public order is actually endangered; its extension must not serve as a premature imposition of a prison sentence[53]. In its explanation on the application of pre-trial detention, the Committee of Ministers of the Council of Europe emphasises that public order may be used as justification for imposing detention only "concern about public order is probably only ever going to be justified where there is substantial evidence of a reaction to a grave crime such as murder", and that "furthermore it needs to be borne in mind that the ground relating to public order envisages a particularly grave situation and is not one which the release of most suspected offenders could be expected to engender."[54]

In a recent 2024 decision, the Constitutional Court pointed out that although reasons such as preventing public anxiety and preserving public order are not explicitly provided for in domestic legislation as grounds for detention, they are recognised in the practice of the ECtHR as legitimate, especially in cases that provoke strong moral condemnation from the general public (which was the case in question). However, the Constitutional Court emphasises that this ground can be considered relevant and sufficient only if it is based on facts indicating that releasing the accused would endanger public order. Its continuation cannot be used in a way that implies a prison sentence.[55]

In the specific case, which concerned a sexual assault on a minor by a school employee, in the presence of other students, the Constitutional Court found that the ground for detention based on the protection of public order "is particularly evident in relation to cases of this kind, which provoke strong moral condemnation from the general public."[56] In this regard, the Court observed that the ordinary courts extended the detention with an implicit reference to this ground, even though they did not explicitly name it. Such an interpretation aligns with the understanding of the ECtHR, according to which the assessment of risk to public order may fall under legitimate grounds for detention even when such a basis is not explicitly provided for in domestic law.

According to the Criminal Procedure Code, this ground exists when the offence is punishable by imprisonment of ten years or more and is particularly serious due to the manner of its commission or its consequences (Article 175, Paragraph 1, Item 4).

This ground was recorded in only six out of 188 detention cases reviewed by the monitors, and only once as the sole basis for detention. In all cases, it was applied in high courts: five times in the High Court in Bijelo Polje and once in the High Court in Podgorica.

53 *Letellier v France,* application No. 12369/86, judgement of 26 June 1991, p. 51
54 CM (2006)122 Addendum, 30 August 2006, available at: https://search.coe.int/cm?i=09000016805d7b91
55 Constitutional Court Decition U-III no. U-III no. 568/24 from 17 May 2024
56 Ibidem

An illustrative example of a decision not in accordance with ECtHR standards is the ruling of the High Court in Bijelo Polje, which ordered detention during the investigation of a suspect charged under Article 300 of the Criminal Code of Montenegro due to the risks of flight, risk of reoffending, and the need to preserve public order and peace. Each of these grounds was justified with only one, very general sentence: the risk of flight was inferred from the fact that the suspect is unemployed, divorced, previously lived in Bosnia and Herzegovina, and is allegedly not tied to the current address, while the threatening sentence "cannot leave him indifferent"; the risk of reoffending was explained by the statement that the suspect had been previously convicted of "similar and other criminal offences"; while the need to protect public order was completely left unreasoned. From the circumstances of the case itself, it is not clear why the prosecutor proposed, and the court accepted, this ground; it creates the impression that, as in other cases reviewed by the monitors, it was used merely "just in case."

Regarding the co-defendant, the detention based on the same grounds was overturned by the Appellate Court, which found that the first-instance court did not provide clear and sufficient reasons. The Appellate Court emphasized that, besides the existence of reasonable suspicion, two specific conditions must be cumulatively met: the offence must carry a statutory sentence of ten or more years of imprisonment and must be particularly serious in terms of the manner of commission or consequence. According to the court's opinion, the mere quantity of the seized narcotic does not make the offence particularly serious nor justify detention for the protection of public order and peace.

A similar pattern was observed in a case for attempted murder before the High Court in Bijelo Polje. The court noted that the prescribed sentence of five to fifteen years satisfies the first of the cumulative conditions, while the particularly serious circumstances of the offence, in the court's assessment, are reflected in the manner of execution, noting that the accused inflicted injuries on the victim. However, the ruling does not contain a concrete analysis of whether and how releasing the accused might jeopardize public order or hinder the conduct of the proceedings.

> There are also grounds for extending detention of the accused on the detention basis from Article 175, Paragraph 1, Item 4 of the Criminal Procedure Code. The accused is reasonably suspected of committing the crime of attempted murder under Article 143 in conjunction with Article 20 of the Criminal Code of Montenegro, punishable by imprisonment from 5 to 15 years, thus fulfilling the first cumulative (objective) condition for detention extension. Furthermore, the offence is particularly serious due to the manner of execution as the accused inflicted injuries on the victim and showed persistence in trying to deprive the victim of life. Taking this into account and considering that detention is necessary for the unhindered conduct of the proceedings, there are valid reasons for extending the detention of the accused under Article 175, paragraph 1, point 4 of the Criminal Procedure Code.

It should be emphasized that the detention ground of preserving public order can, in certain situations, also be interpreted as a means to protect the accused themselves. Namely, if there are real indications that releasing the accused could provoke retaliatory reactions from the

victim's family or an agitated community in cases of serious criminal offences, especially in small communities, detention assumes the function of a preventive measure aimed at preventing revenge or lynching, as well as the potential suicide of the accused. However, the existence of these circumstances must be properly justified.[56]

In the proceedings conducted for the criminal offence under Article 300 of the Criminal Code of Montenegro before the High Court in Bijelo Polje, detention was initially ordered solely on this ground, but was later revoked with the following reasoning:

> ...The manner of committing the criminal offence does not deviate from the standard way of committing such an offence, and the reasons given for justifying the extension of detention of the accused are unclear, considering that the amount of narcotic drugs attributed to the accused (2.8 g of cocaine and an as-yet-undetermined quantity of another narcotic) does not represent a larger quantity that would constitute a special circumstance, which by itself in this specific case would make the offence particularly serious due to the manner of execution or consequence within the meaning of Article 175, Paragraph 1, Point 4 of the Criminal Procedure Code.

The accused was eventually acquitted of the charge in this case, which further confirms the appropriateness of revoking the detention.

5.3. DURATION OF DETENTION

The Constitution of Montenegro in Article 30 mandates that the duration of detention must be limited to the shortest possible time. A similar – though essentially identical – provision is repeated in the Criminal Procedure Code in Article 15. The same standard is set by international agreements described in the second chapter, and our legislation in this regard is aligned with international standards.

Detention can be ordered at all stages of the proceedings, including after the verdict has been rendered, if the reasons that existed at the time of ordering detention still persist.

In the **investigation phase,** when the state prosecutor issues a decision on the detention of the suspect, if they consider that detention should continue, they submit a proposal to the investigating judge, who then questions the suspect and makes a decision within 24 hours from the moment the suspect was brought before them. If the state prosecutor does not submit an order to conduct the investigation during detention or fails to do so within 48 hours after the detention was ordered, the judge is obliged to release the suspect (Article 268 of the CPC).

The state prosecutor may, together with the order to conduct the investigation, propose to the judge the imposition of measures of supervision or detention if they believe the suspect's presence cannot be ensured otherwise. The investigating judge is then obliged to decide whether detention will be ordered within the duration of detention, and if the judge does not

57 Milan Skulic, *Commentary on the Criminal Procedure Code of Montenegro,* Podgorica, 2009, p. 582

issue a decision on time, the suspect is immediately released (Article 279 of the CPC).

In **148** analysed cases in basic courts, detention was ordered in **142** cases and lasted on average three days. In **39** analysed cases in high courts, detention was ordered in **37** cases and also lasted on average three days. There were no deviations from the legal deadlines.

Table 32: Number of cases by the stage of proceedings in which detention was first ordered

Court	Detention ordered at the investigation phase	Detention ordered after the indictment was filed	Detention ordered after the decision was rendered
BASIC COURTS	139	1	0
HIGH COURTS	39	9	0
ALL COURTS	**178**	**10**	**0**

Detention during the investigation phase can last a maximum of one month from the moment of deprivation of liberty. After this period expires, detention may only be extended by a special ruling. In cases where proceedings are conducted for a criminal offence punishable by imprisonment of more than five years, the Supreme Court panel may, upon the prosecutor's proposal and for important reasons, extend the detention for an additional three months. The investigating judge can revoke detention upon the proposal of the prosecutor or defence.

Regarding the ordering and duration of detention in the investigation phase, the data analysis yielded the following results:

Table 33: Duration of detention in the investigation phase

Court	Number of cases analysed in which detention was ordered at the investigation phase	Number of cases analysed in which detention was extended in the investigation phase	Number of cases analysed in which detention was revoked in the investigation phase	Average duration of detention in the investigation phase
BASIC COURTS	139	9	8	20 days
HIGH COURTS	39	31	3	72 days

Table 34: Duration of detention during the investigation phase

Court	Up to 30 days		From 30 to 60 days		Exceeded 60 days	
BASIC COURTS	131	94.24%	4	2.88%	4	2.88%
HIGH COURTS	6	15.38%	11	28.21%	22	56.41%
ALL COURTS	**137**	**76.97%**	**15**	**8.43%**	**26**	**14.61%**

Detention during the investigation phase in basic courts almost entirely remains within legal limits: in 131 out of 139 observed cases (94.24%), detention lasted up to 30 days from the moment of deprivation of liberty, while in only four cases (2.88% each) detention was extended to 30–60 days or over 60 days.

The situation is significantly different before the high courts. Out of 39 analysed cases, detention lasted up to 30 days in only six cases (15.38%), in eleven (28.21%) cases detention lasted between 30 and 60 days, and in the remaining 22 cases (56.41%), detention exceeded 60 days.

Overall, across all courts, detention during the investigation phase lasted up to 30 days in 137 out of 178 cases (76.97%), between 30 and 60 days in 15 cases (8.43%), and over 60 days in 26 cases (14.61%).

After the indictment is filed, detention can last up to three years, with its duration decided by the competent panel. Before the indictment becomes legally binding, detention is reviewed every 30 days, and after that, every two months. If the indictment contains a proposal for ordering detention of the accused, the decision is made by the panel responsible for controlling the indictment without delay, and no later than within 48 hours. If the accused is already in detention and the indictment does not include a proposal for their release, the panel is obliged, ex officio, to review the grounds for detention within three days of receiving the indictment and decide on its extension or termination.

Table 35: Duration of detention in the main hearing phase

Court	Up to 30 days	From 30 to 60 days	From 60 to 120 days	Exceeded 120 days
BASIC COURTS	29	49	32	20
HIGH COURTS	2	5	10	24
ALL COURTS	**31**	**54**	**42**	**44**

Table 36: Average duration of detention in the main hearing phase

Court	Number of analysed cases in which detention was ordered/ extended after indictment was filed	Number of analysed cases in which detention was lifted after indictment was filed (during the trial phase)	Average duration of detention after indictment was filed
BASIC COURTS	134	11	85 days
HIGH COURTS	37	0	232 days
ALL COURTS	**171**	**11**	**105 days**

Detention after indictment in basic courts lasted on average 85 days, and detention was revoked at this stage in only 11 cases. The situation is significantly more complex before high courts: in none of the analysed cases where detention was ordered or extended after the indictment was filed was it revoked at this stage, and the average duration was 239 days, with the High Court in Podgorica leading at an average of 308 days (noting again that KS cases were not included in the sample).

Finally, **after sentencing,** if the court issues a conviction for imprisonment under five years, detention may be ordered if there is a risk of flight or circumstances indicating that the accused may reoffend, complete an attempted crime, or commit a threatened crime. If a sentence of five or more years is imposed, detention may be ordered for other legally prescribed reasons. However, detention must be revoked if the accused is acquitted, sentenced to a non-custodial sentence, the charges are dismissed, or the sentence has already been served while in detention (Article 376 of the Criminal Procedure Code).

Table 37: Duration of detention after sentencing

Court	Number of analysed cases in which detention was extended after sentencing	Number of analysed cases in which detention lasted until the finality of the verdict
BASIC COURTS	88	52
HIGH COURTS	16	15
ALL COURTS	**104**	**67**

In practice, it has been shown that once detention is ordered, in more than **50%** of cases it lasts until the verdict is delivered. Specifically, in our sample, this is **55.31%.**

Regarding the total duration of detention, i.e., from the day of deprivation of liberty to the day of detention termination or referral to serve a prison sentence, the situation is as follows:

Table 38: Average duration of detention throughout the entire proceedings

Court	Average length of detention
BASIC COURTS	121 day
HIGH COURTS	337 days
ALL COURTS	**150 days**

The CeMI team recorded 23 cases (12.23%) in which the court, upon completion of the main trial, pronounced a prison sentence equal to the time the accused had already spent in detention. In this way, the provisional measure securing the accused's presence was effectively "converted" into the time already served. All these cases originate from basic courts, which is logical because proceedings before the basic courts are conducted for lesser criminal offences, for which the statutory penalties often do not exceed the length of time spent in pre-trial detention. In cases under the jurisdiction of high courts, where prescribed sanctions are significantly harsher and trials last longer, detention and the imposed sentence rarely coincide by nature.

5.4. FINANCIAL CONSEQUENCES OF UNLAWFUL DETENTION

The Constitution of Montenegro guarantees the right to compensation for persons who have been unlawfully or unjustifiably deprived of their liberty or unjustifiably convicted (Article 38). According to the Criminal Procedure Code (Article 502), the right to compensation for unjustified deprivation of liberty belongs to all those who were arrested, detained, or held in custody, and against whom criminal proceedings were not initiated, were terminated by a final decision, or ended with an acquittal or dismissal of charges. The same right applies to convicted persons who, after a repeated procedure or a request for protection of legality, was sentenced to a shorter sentence, a sanction without deprivation of liberty, or who, although found guilty, were left without a pronounced sentence. Compensation is also due to those who, due to errors or unlawful actions of state authorities, were unjustifiably deprived of liberty or detained longer than the legally permitted period, as well as persons who spent more time in custody than the duration of the final sentence imposed.

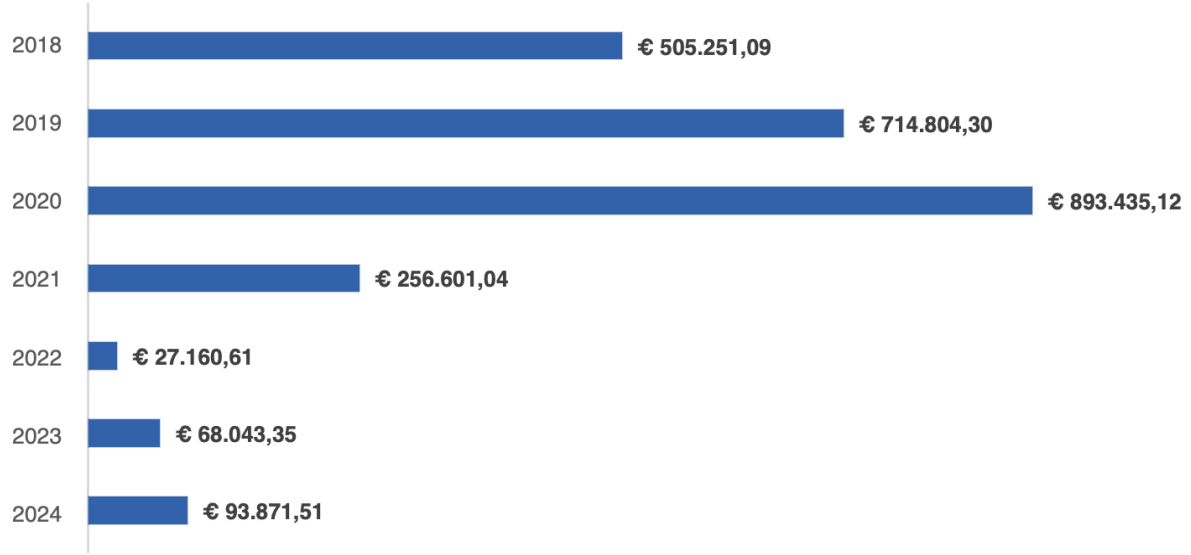
For persons deprived of liberty by the police, the right to compensation exists provided that detention was not ordered against them and that this time was not credited towards a later imposed sentence.

Claims for compensation are submitted to the competent court according to general civil procedure rules and deadlines prescribed by the Criminal Procedure Code, with the burden of proving actual and non-material damage resting on the claimant. This ensures that each day of unlawful deprivation of liberty receives an appropriate legal and material resolution, with clearly defined limits on the state's liability.

In this regard, CeMI's research team requested data from the Ministry of Finance on the amounts the state paid in compensation to persons unjustifiably held in custody during the period 2018–2024 based on court rulings. According to the data provided, approximately

2.56 million euros were paid out during this period.

Graph 4: Amount of budget funds paid as compensation for unlawful deprivation of liberty:



Although this amount is significantly lower compared to the period 2009–2017, when annual payments for unjustified detention reached millions per year[57], the total of 2.56 million euros paid between 2018 and 2024 still represents a serious fiscal burden.

It should be emphasised here that one of the reasons cited for ordering pretrial detention is the lack of electronic monitoring devices for persons released pending trial. This issue was pointed out in 2024 by the President of the High Court in Podgorica[58]. CeMI researchers obtained information from the Ministry of Internal Affairs confirming that the Ministry indeed does not possess these devices. The absence of electronic monitoring devices in practice limits judges' options for ensuring the accused's presence, causing detention, which should be a last resort, to, in some cases, become the only reliable option[59]. This circumstance raises questions about responsibility for the multi-year failure to resolve this problem.

58 Tamara Milas, *Unjustified Deprivation of Liberty in Montenegro – Detention as a Rule Instead of an Exception,* Centre for Civic Education, Podgorica, 2018, p. 21
59 https://www.vijesti.me/vijesti/crna-hronika/717648/nema-nanogica-pa-salju-u-pritvor
60 The monitors took this circumstance into account when analysing the justification for ordering detention.

5.5. MEASURES OF SUPERVISION

The Constitution of Montenegro, although guaranteeing every citizen freedom of movement, residence, and the right to leave the country (Article 39), allows for restrictions on these freedoms in certain cases, i.e., when necessary for conducting criminal proceedings. One of the mildest mechanisms serving this purpose are measures of supervision, which as a rule the court must consider before deciding to order detention.

Our Criminal Procedure Code prescribes seven measures of supervision:

1. prohibition of leaving the apartment,
2. prohibition of leaving the place of residence,
3. prohibition of visiting a certain place or area,
4. obligation to periodically report to a certain state authority,
5. prohibition of access to or meetings with certain persons,
6. temporary seizure of a travel document, and
7. temporary seizure of a driver's license.

However, as already noted, an examination of court cases in the sample for this research clearly shows that measures of supervision are very rarely used as an alternative to ordering or extending detention.

Monitors found only 19 cases where a measure of supervision was imposed.

In the analysed cases, courts most often imposed multiple measures of supervision simultaneously. The prohibition of access to or meetings with certain persons was ordered in 15 out of 19 cases. The prohibition of visiting a certain place was imposed in four cases, as was the prohibition of leaving the apartment. The prohibition of leaving the place of residence appeared only once, as did the obligation to periodically report to a state authority. Temporary seizure of travel documents was ordered in two cases. In eight cases, the court combined two or more measures of supervision.

Risk of reoffending was the basis for imposing measures of supervision in 16 out of 19 cases, and, as with detention, this danger was perceived as the dominant reason for imposing measures to ensure the defendant's presence and the unobstructed conduct of criminal proceedings. The risk of flight was recorded as the basis for measures of supervision in two cases – through a combination of travel document seizure with other restrictions. Collusion risk was established in only one case.

It is particularly important to emphasise what was already noted: courts in the reasoning of decisions to order or extend detention most often only superficially state that they have considered the principle of subsidiarity and that detention is a necessary measure, without explaining which measures of supervision available under the law they considered and for what exact reason those measures were insufficient.

5.6. BAIL

According to the Criminal Procedure Code, Article 170, an accused who is to be placed in detention, or who has already been detained solely due to the existence of circumstances indicating a risk of flight, or in cases where a duly summoned defendant avoids attending the main hearing, may be released if they personally, or someone else on their behalf, provides bail to guarantee that they will not flee until the end of the criminal proceedings. The accused must also pledge not to hide and not to leave their residence without prior approval. Bail can also be imposed in combination with one of the measures of supervision listed in Article 166, Paragraph 2, in order to ensure compliance with such a measure.

Statistics on the number of accepted bail motions in Montenegrin courts show that this legal instrument is used very rarely. In the analysed sample, monitors encountered only seven cases in which bail was proposed, and in only three of them was it granted. In all three cases, the initiative for granting bail came from the accused or their defence attorney.

What is particularly significant are the implications of this pattern of practice. Namely, the high frequency of detention compared to the rare use of bail, always initiated by the accused or their defence, seriously calls into question whether courts and prosecutors are truly applying the legal obligation to consider less restrictive measures before proposing detention. If prosecutors were always weighing all alternatives, two typical scenarios would appear in the statistics: either they would propose bail themselves in cases where the risk of flight can be mitigated by such a measure, or, when bail is proposed by the defence, they would respond clearly and with argumentation, explaining why bail is not appropriate in the specific case. The complete absence of the first scenario, and the fact that some bail offers are accepted with the prosecutor's consent, suggests that bail is often not considered at all before proposing detention.

The first case with bail observed by the monitors originates from the Basic Court in Rozaje (later delegated to the Basic Court in Berane after the investigation). The accused, a Montenegrin national working abroad, was charged with the criminal offence of assaulting an official while performing official duties. The prosecution dropped its motion for detention during the investigation phase after the accused offered bail in the amount of €15,000.

In the second case, before the Basic Court in Kotor, involving the criminal offences of violent behaviour and serious bodily injury, the accused - a Serbian national residing in Belgrade - was initially detained due to flight risk and danger of reoffending. Detention was lifted during the main hearing phase after the accused's best man offered bail in the amount of €40,000. The court emphasised that the amount was proportionate to the gravity of the offence and that forfeiting the bail would cause significant and hardly reparable harm to the person posting it.

The third example comes from the High Court in Bijelo Polje, where the accused was under investigation for attempted murder in concurrence with illegal possession of weapons and explosives. Detention was lifted during the main hearing phase and replaced with bail of €7,000 posted by the accused's mother and brother. The prosecutor raised no objections, acknowledging that with the passage of time, the motivation to flee had diminished and that bail was sufficient for the continued course of the trial.

Regarding cases where the court did not grant the bail motion, one illustrative example comes from the Basic Court in Kolasin. In an appeal procedure against the decision of the High Court in Bijelo Polje to extend detention, the Appellate Court upheld the first-instance court's view that detention, "as the strictest procedural measure," was still necessary and proportionate to the severity of the offence. However, the proportionality is questionable, given that the accused was charged with stealing a television and a blanket from an apartment—as an alleged act of revenge due to accommodation conditions allegedly not matching the agreed standards. The value of the stolen items was initially estimated at €700, but the court ultimately accepted the injured party's property claim in the amount of only €270.

In this factual context, the rejection of the bail motion raises the issue of proportionality. It is important to highlight that, in this particular case, the accused was finally sentenced to 50 days in prison, which matched the time he had already spent in detention.

In addition to the above, there is also an example where bail was justifiably rejected, but on the other hand, the court did not sufficiently consider or explain the possibility of imposing any of the measures of supervision as an alternative.

Specifically, in a case involving the criminal offence of robbery in concurrence with illegal possession and carrying of weapons and explosives, in which the accused was detained due to flight risk, the defence attorney submitted a motion for lifting of detention and asked the court to consider the previously submitted bail motion. The court rejected the bail offer, reasoning that the offered real estate was co-owned by the accused along with two others, and the defence did not provide an official property valuation by a licensed appraiser or notarised statements from the other co-owners consenting to the mortgage being placed in favour of the court. The reasons cited for detention included the relatively high prison sentence the accused faced, lack of strong ties to the place of residence (unmarried and unemployed), and, by his own admission, possession of a permanent residence permit in Germany and a valid U.S. visa lasting another year, which the court interpreted as evidence of developed personal, familial, and social ties abroad that could facilitate his flee. However, even in this case, the court failed to explain why it did not impose any measure of supervision, primarily house arrest or temporary seizure of the passport, which was, among other things, proposed cumulatively with bail by the defence.

5.7. CONDITIONS OF DETENTION FOR DETAINEES IN REMAND PRISON

During the review of case files, monitors observed frequent requests from detainees to the presiding judges for the exercise of rights (ranging from receiving visits, approval of phone calls, to requests for transfer or referral to serve the sentence before the final judgment).

Table 39: Number of cases in which the detained person requested to be sent to serve the prison sentence before the final judgment.

Court	Number of cases
BC Bar	3
BC Berane	0
BC Bijelo Polje	0
BC Cetinje	4
BC Danilovgrad	3
BC Herceg Novi	2
BC Kolasin	0
BC Kotor	1
BC Niksic	5
BC Plav	0
BC Pljevlja	0
BC Podgorica	14
BC Ulcinj	0
HC Bijelo Polje	0
HC Podgorica	4
BASIC COURTS	**32**
HIGH COURTS	**4**
ALL COURTS	**36**

The most common reasons cited are poor conditions in detention, namely the inability to receive visits and make phone calls without prior court approval.

The fact that the conditions for detainees and convicted persons in the Administration for the Execution of Criminal Sanctions have been inadequate for many years is also evidenced by the numerous complaints submitted to the Protector of Human Rights and Freedoms of Montenegro.

According to the Report on the Work of the Protector of Human Rights and Freedoms

of Montenegro for 2024[60], there were 122 complaints in 2024, which is about 60% more compared to 2023. It is important to note that these complaints concern all persons in the UIKS i.e., not only those in detention but also persons serving prison sentences.

Regarding specifically persons in detention, respect for the personality and dignity of detainees, their accommodation, and the possibility of receiving visits and correspondence are among the aspects highlighted in the 2022 Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The report states that problems were recorded in the Detention Facility in Spuz such as overcrowding, poor ventilation, worn walls, as well as a lack of furniture, mattresses, and bedding. There is also an issue with irregular supply of basic hygiene products, which particularly affects persons without financial means, who consequently must rely on other detainees, thereby increasing the risk of potential exploitation[61]. Similar irregularities were observed in the prison in Bijelo Polje.[62]

The conditions described are also confirmed by case files reviewed by monitors. Vulnerable categories are especially noteworthy. In a report that CeMI published in 2024, we pointed out that insufficient accommodation capacity and equipment of detention units particularly affect the Roma and Egyptian (RE) population, considering their generally poor economic conditions and the inability of their families to visit them if transferred from the Detention Facility in Spuz to the prison in Bijelo Polje.[63]

Poor conditions in the detention facility also prompted a hunger strike by a portion of detainees. Namely, on April 9, 2025, 186 detainees in the Detention Facility in Spuz began a hunger strike due to overcrowding, limited access to medical care, and prolonged detention duration which, as they stated, undermines their physical and mental health. The strike lasted until April 14. [64]

Although the total capacity of UIKS is 1,393 places and has not been exceeded at the institutional level, the Detention Facility in Podgorica remains chronically overcrowded. At the end of 2023, the number of detainees was 505, while at the end of 2024 this figure rose to 647, i.e., 84% above the capacity of the detention facility. According to CeMI's latest inquiry dated February 10, 2025, the number of detainees was 686, indicating a problem that is constantly growing.[65]

61 Ombudsman for Human Rights and Freedoms, *2024 Annual Report,* Podgorica, 2025, p. 134
62 *Report to the Government of Montenegro on the ad hoc visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 13 June 2022, str. 26-27,* available at: https://rm.coe.int/1680abb132
63 Ibidem, str. 29
64 CeMI, *Court Practices toward Minorities in Criminal Proceedings – Monitoring Report,* Podgorica, 2024, str. 34
65 https://rtcg.me/vijesti/drustvo/695264/svi-pritvorenici-u-uiks-u-prekinuli-strajk.html
66 *Report to the Government of Montenegro on the Visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 16 October 2017, p. 26*

CONCLUSIONS AND RECOMMENDATIONS

EFFICIENCY OF CRIMINAL PROCEEDINGS

The data analysis shows several stable trends regarding the efficiency of criminal proceedings, but also persistent structural weaknesses that slow down certain stages of the process.

In the indictment review phase, courts have maintained, and even slightly improved, the pace of work compared to the period 2021–2023.

The rate of postponed hearings dropped from 54% to just under 39%, though this can partly be attributed to the absence of extraordinary circumstances that marked the 2021–2023 period.

Still, more than one-third of scheduled hearings do not take place, with the dominant reason being the absence of the accused and witnesses, often due to improperly served summons. As noted in the 2023 report, this problem can be attributed to the lack of diligence in courts' work and untimely verification of procedural prerequisites for holding the main hearing. Therefore, we must reiterate the 2023 recommendation that judges should timely verify the fulfilment of procedural requirements to reduce situations where hearings are postponed due to court errors that could have been avoided.

However, it is important to highlight that the effects of the lack of judicial staff and the workload of courts are still felt. The effects of the amendments to the Law on the Judicial Council and Judges from 2024 have yet to produce expected results. It is therefore necessary to work on motivating law graduates to pursue careers in the judiciary. To achieve this, they need competitive salaries, clear paths for professional advancement, quality mentoring and training programs, as well as a work environment that recognises and rewards expertise and dedication.

Regarding the rationalisation of the judicial network, concrete results are still not visible. We remind that rationalisation, or optimisation of the judicial network, is one of the operational goals of the Judicial Reform Strategy 2024–2027, and measurable results in this area (20%), must be achieved by the end of 2025. We emphasise once again that judicial network rationalisation should be treated as a priority reform issue, and the implementation of already adopted recommendations from the Analysis of Judicial Network Rationalisation should commence without delay, including the abolition of smaller courts, primarily the Basic Court in Zabljak, which has not had a single judge for two years.

While it is certainly commendable that reconstruction works at the Basic Courts in Berane and Kotor have been completed, equipping them with elevators and making them more accessible to persons with disabilities, the overall court infrastructure in Montenegro remains unsatisfactory. Most problems identified by monitors in the previous reporting

period remain unchanged: courtrooms are often inadequate for the number of parties and the public. Additionally, archive and office spaces are overcrowded. Spatial capacity remains the biggest infrastructure challenge, which cannot be resolved by partial repairs but requires a systemic modernisation plan.

Measures of procedural discipline remain a weak point. Every fourth order for compulsory attendance remains unexecuted, and in half of such cases, the police do not inform the court of the reasons. Sanctions for procedural abuses are imposed very rarely and lack deterrent effect, a longstanding problem that must be addressed through amendments to the Criminal Procedure Code. If monetary fines are not adequate to prevent procedural abuses, courts should be provided with additional repressive mechanisms.

DETENTION

Official statistical data, as well as case analysis conducted by CeMI, indicate that pre-trial detention in Montenegro is applied significantly more frequently than measures of and bail. The ratio is 4:1 in favour of detention, creating the impression that this measure, instead of being an exception, is ordered as the rule in practice. Detention is most often ordered due to iterative risk and flight risk. Also, high courts still lead in ordering detention, while basic courts order it in a relatively small number of cases.

The average duration of detention across all courts is about 150 days, or nearly five months. Although high courts constitute a smaller portion of the analysed sample, detention under their jurisdiction lasts more than twice as long as in basic courts. Particularly concerning is that in over half of the cases, detention remained in force until the verdict was delivered. Simultaneously, while the percentage of cases where the imposed prison sentence equals or is less than the time spent in detention is relatively low, it remains significant enough to indicate the need for clearer distinction between the preventive purpose of detention and repressive purpose of the punishment.

Monitors noted a significant number of cases where courts provided detailed reasoning why detention was deemed the only effective measure. However, numerous decisions were also observed that do not align with international standards, as well as decisions on ordering or extending detention without clear reasons why the court did not opt for less restrictive measures provided by the Criminal Procedure Code.

A first and relatively simple step towards improving practice would be to consistently explain in every decision on ordering or extending detention why alternative measures were insufficient to achieve procedural goals, i.e., why detention is necessary in the specific case.

Moreover, from the analysed cases, it appears that courts occasionally instrumentalise the standards of the Strasbourg Court to avoid comprehensive reasoning of detention decisions. This is especially evident in detention orders based on the risk of reoffending, where courts almost automatically refer to prior convictions without considering the specific circumstances of the individual case.

Similar problems appear in detention due to flight risk. It is particularly striking that the High Court in Podgorica often considers only the existence of relatives abroad as sufficient

grounds, without explaining how such connections would facilitate flight, or, lacking that reason, presumes that the accused could leave the country even without travel documents, which calls into question the very purpose of this measure of supervision. Courts also do not use the opportunity provided by the Personal ID Card Law to request from the competent ministry a ban on using ID cards for border crossing.

Regarding the prosecution, the reasoning for detention proposals is usually scarcer than court rulings and consists of stereotypical statements without convincing arguments substantiating the legal grounds for detention.

Given this, comprehensive guidelines for courts and prosecution should be considered, based on ECtHR practice, to facilitate decision-making and argumentation when proposing, ordering, extending, and revoking detention.

Further concern is raised by the fact that more than one-third of constitutional complaints for violation of the right to liberty have been upheld in the last two years, with similar trends in earlier periods, as well as the fact that the number of persons in investigative detention continues to grow steadily.

Although continuous education of judges and prosecutors is of utmost importance, the practice observed by monitors questions the effectiveness of past trainings on the standards of Article 5 of the European Convention. Therefore, it is necessary to review the quality and impact of existing training programs, as they clearly have not led to changes in established patterns. In fact, judges and prosecutors appear sufficiently familiar with international standards, which they often cite in their decisions, but do not apply them to the extent and manner necessary and are not held accountable for violations of the right to liberty.

Any attempt to reduce the use of detention must also consider the very concrete lack of electronic monitoring devices for measures of supervision, which certainly affects the unfavourable statistics and contributes to the problem of overcrowded remand prison. Therefore, relevant authorities must urgently secure budget funds and conduct public procurement of these devices so they can be put into use as soon as possible.

Conditions in investigative detention remain below acceptable standards, as warned for years by the Protector of Human Rights and Freedoms of Montenegro and the European Committee for the Prevention of Torture (CPT). These findings are confirmed by the recent hunger strike of detainees, as well as the paradoxical practice that a significant number of detainees themselves request transfer to serve a sentence before the final judgment, to obtain broader rights afforded to convicted persons than those available while being presumed innocent.

One such right is visitation, which is limited for detainees. According to ECtHR practice, the possibility for family members to visit a prisoner is of fundamental importance for preserving family life. Thus, a key part of detainees' right to respect for family life is that prison authorities assist them in maintaining contact with close family members.

Therefore, it is necessary to amend the Criminal Procedure Code provisions regulating visits and correspondence of detainees (Article 183), so that decisions limiting contact

are based on an individual risk assessment and become an integral part of the detention order. Detainees should generally be allowed visits and telephone calls without prior court approval; exceptions should exist only when detention is ordered due to collusion risk, i.e., the risk that the accused will influence witnesses. Even then, bans on visits or communication must be precisely justified and limited to persons whose contact could endanger the investigation.

While the primary goal is to reduce the number of detentions and detainees to the necessary minimum, the chronic problem of overcrowding must simultaneously be addressed. Therefore, alongside strengthening the use of measures of supervision and bail measures, wherever possible and proportional to procedural goals, strategic planning of a new investigative detention facility should be pursued. This would permanently relieve existing capacities.

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