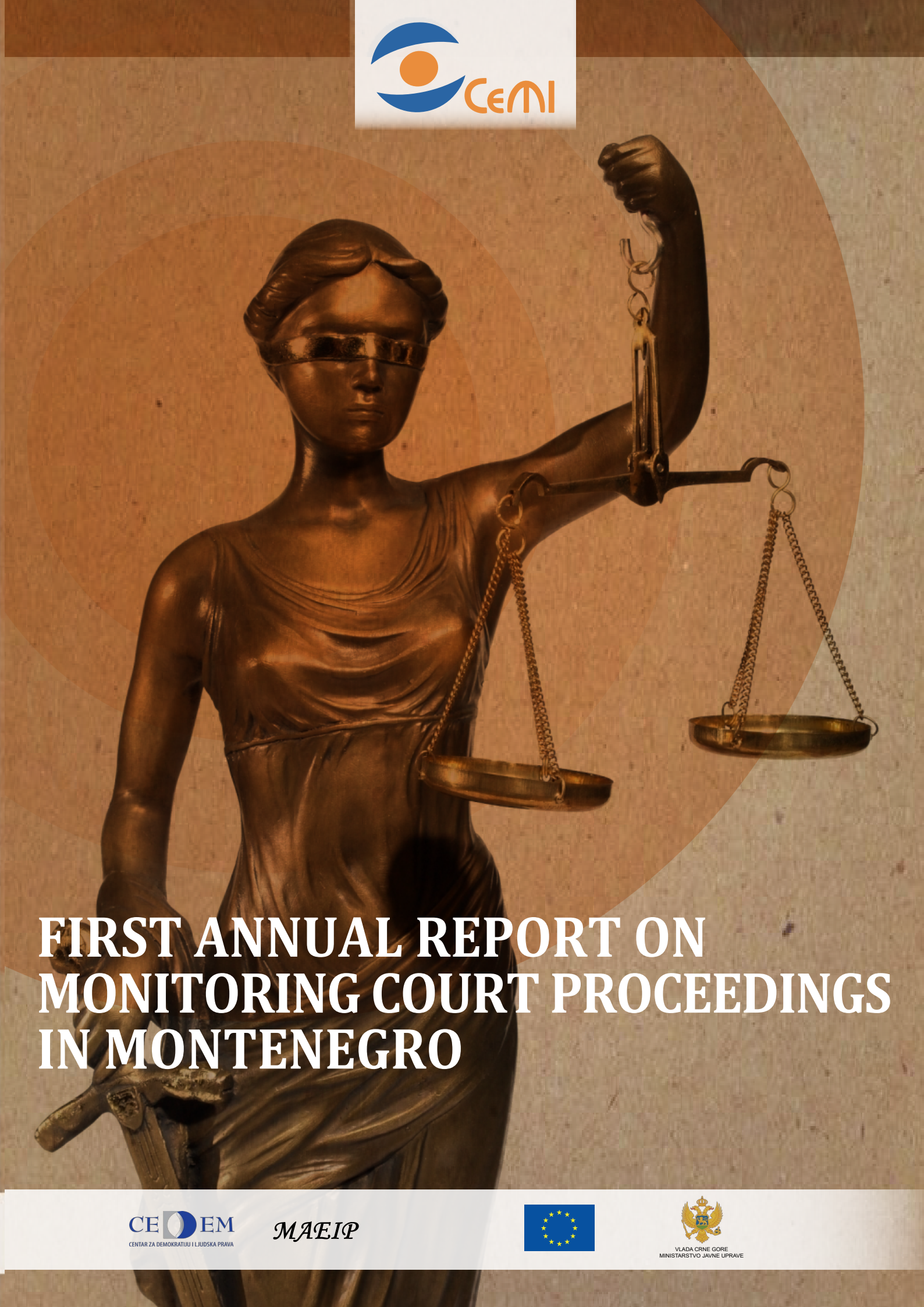

FIRST ANNUAL REPORT ON MONITORING COURT PROCEEDINGS IN MONTENEGRO

CEMI

CEDEM
CENTAR ZA DEMOKRATIJU I LJUDSKA PRAVA

MAEIP

VLADA CRNE GORE
MINISTARSTVO JAVNE UPRAVE

CENTRE FOR MONITORING AND RESEARCH

FIRST ANNUAL REPORT ON MONITORING COURT PROCEEDINGS IN MONTENEGRO

February 2018 - December 2018

FIRST ANNUAL REPORT ON MONITORING COURT PROCEEDINGS IN MONTENEGRO

Centre for Monitoring and Research (CeMI)
Bul. Josipa Broza 23A
e-mail: info@cemi.org.me
www.cemi.org.me

For Publisher:
Zlatko Vujović

Project team:
Zlatko Vujovic, PhD
Bojan Božović, MSc
Ivan Vukčević, MSc
Ana Soć
Miljana Rakočević

CENTRE FOR MONITORING AND RESEARCH

CENTAR ZA DEMOKRATIJU I LJUDSKA PRAVA

MAEIP

This report was published within the project: "Judicial Reform: Upgrading CSO's capacities to contribute to the integrity of judiciary", which is being implementing by Centre for Monitoring and Research (CeMI) in cooperation with Centre for Democracy and Human Rights (CEDEM) and Network for Affirmation of European Integration Process (MAEIP), financed by the European Union and co-financed by the Ministry of Public Administration of Montenegro.

VLADA CRNE GORE
MINISTARSTVO JAVNE UPRAVE

THE CONTENT

I. INTRODUCTION

Centre for Monitoring and Research (CeMI) in cooperation with Centre for Democracy and Human Rights (CEDEM) and the Network for the Affirmation of European Integration Processes (MAEIP), with the support of the European Union and the Ministry of Public Administration, is implementing the project entitled "Judicial Reform: Upgrading CSO's capacities to contribute to the integrity of judiciary" (*hereinafter: the Project*).

The Project will aim to contribute to a greater degree of rule of law in Montenegro, which will be reflected in the evaluation and enhancement of the professionalism, accountability, efficiency and integrity of the judiciary through the establishment of closer cooperation and more efficient mechanisms between civil society organizations and judicial institutions. The goal of this project is reflected in the improvement of the capacities of local organizations and greater involvement of the civil society in the reform of the judicial system in Montenegro and negotiations related to Chapter 23 (Judiciary and Fundamental Rights).

One of the most significant project activities is focused on the monitoring of court proceedings in the courts of Montenegro. Trial monitoring activities are conducted in accordance with the OSCE's methodology for court proceeding monitoring, developed by CeMI and the OSCE Mission to Montenegro, as part of the trial monitoring program implemented in the period between 2007-2014.

During the reporting period, which generally coincides with the first year of project implementation, CeMI and CEDEM observers monitored 150 criminal cases and 263 main hearings in five basic courts (Basic Court in Podgorica, Basic Court in Nikšić, Basic Court in Danilovgrad, Basic Court in Bar and Basic Court in Cetinje) and the High Court in Podgorica. The monitoring of court proceedings is conducted in accordance with the principles defined in the Memorandum of Cooperation signed by the Supreme Court of Montenegro, CeMI and CEDEM, at the very beginning of the project implementation.

This report is a preliminary set of results within the first year of the monitoring of court proceedings (February 2018 - December 2018). The main objective of the report was to evaluate the state of court practice in Montenegro, concerning the application of national legislation, as well as the international standards of fair trail, based on direct observations made by observers during trial monitoring. Also, the conclusions and preliminary recommendations, that form the integral part of the report, suggest to the relevant institutions implementation of appropriate measures based on the identified shortcomings, aimed at achieving fair and efficient judicial system in Montenegro.

The report consists of an introductory section that outlines the methodology of trial monitoring and provides general guidance on the purpose and scope of the trial monitoring program. The central part of the report covers the results of court proceedings monitoring with preliminary conclusions and recommendations on how to improve the practice of adherence to the standards of fair trial by all participants in court proceedings in Montenegro. It should be noted that in relation to reporting on monitored criminal proceedings, the fact that the investigation phase and the pre-trial procedure were not the subject of observation – except in situations where certain issues related to these stages of the proceedings were mentioned during the main trial – represents a limiting factor. It should also be emphasised that CeMI and CEDEM observers did not focus on the merits of the cases observed, but only on whether the proceedings were conducted in accordance with international fair trial standards and relevant national legislation. In order to protect

the right to privacy and respect for the independence of the court, the Report does not specify the names of the judges and parties to the proceedings. This must be emphasized in particular because the report contains the information on cases in which the procedure has not been completed.

The preliminary observations from the court proceedings in this report, represent the results of the work under the first phase of the project activities. The Final Report will be prepared and published in 2020 and will include an analysis of the follow-up trials for 2018 and 2019.

Finally, in the introductory part of the report, we must thank all the representatives of the judiciary, prosecutors, attorneys and other colleagues who enabled CeMI and CEDEM observers to carry out the first phase of trial monitoring project activities in accordance with the planned dynamics and methodology. We expect that quality cooperation with all participants in court proceedings will continue in the next phase of project implementation.

II. LEGAL FRAMEWORK

2.1. General legal framework

2.1.1. International standards

The standards of the right to a fair trial are enshrined in the most significant acts of international legal character, which were promulgated after World War II. Article 10 of *The Universal Declaration of Human Rights,* adopted by the United Nations General Assembly, specifies that: *Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.* Article 14.1 *of the International Covenant on Civil and Political Rights states that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

An important international legal standard of a fair trial contained in Article 6 *of the European Convention on Human Rights and Fundamental Freedoms* (hereinafter: European Convention), which, among other things, guarantees to any person that during the court decision of his civil rights and obligations or of any criminal charge made against him, shall have the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal established by law. Therefore, it can be concluded that Article 6 of the European Convention guarantees respect for the procedural rights of the parties in both civil proceedings (governed by Article 6.1) and guarantees of respect for the rights of defendants in criminal proceedings (governed by Article 6.1, 6.2 and 6.3).

The case law of the European Court of Human Rights (hereinafter: ECHR) led to creation of new guarantees that aren't mentioned in the text of Article 6 but that arose as a result of the development of jurisprudence. Thus, for example, the application of Art. 6 of the European Convention on the protection of the rights of parties to civil proceedings and their civil rights and obligations, in accordance with the case law of the European Court, links the cumulative presence of the following components: there must be a "trial" over a "right" or "obligation"[1]; that the right or obligation must have a basis in domestic law[2]; and - the right or obligation

[1] Benthem v The Netherlands
[2] Roche v. The United Kingdom

must be "civil" in nature.[3] On the other hand, for Article 6 of the European Convention to be applicable in criminal cases, any one of the following components must be present: the offence must be recognized as a criminal offence in the national law (first criterium from Engel case), the nature of the offence (the second criterium from Engel), the nature and degree of seriousness of the possible sentence (third criterium from the Engel case).[4]

The question of the application of the European Convention in Montenegro was raised in the first judgment of the European Court of Justice against Serbia and Montenegro.[5] The judgment is important, because it establishes beyond a doubt that this court has jurisdiction to hear complaints relating to human rights violations by the state authorities of Montenegro since 3 March 2004, when Serbia and Montenegro informed the Council of Europe of the ratification of the European Convention of Human Rights, and not since 6 June 2006, when the Council of Europe determined that Montenegro is bound by the Convention as an independent state. This is particularly significant because the ECHR has explicitly affirmed the continuity of human rights and the Committee on Human Rights' understanding that *"from the moment when people in a given territory acquire the right to protection of fundamental rights under international treaties, that protection continues to belong to them, regardless of the change of government in a Contracting State, the division of that State or the succession of States."*[6]

Fair trial guarantees can also be found in documents that are directly legally non-binding and that indicate the direction in which the right to a fair trial is evolving. Particular attention should be paid to the recommendations of the Council of Europe as well as the non-binding UN documents, which are listed as document in this report.

2.1.2. National criminal legislation

The beginning of activities for full implementation of the international and European standards of the right to a fair trial can be associated with the beginning of criminal justice reform in Montenegro at the end of 1998. In the meantime, on several occasions, texts of the Criminal Procedure Code (hereinafter CPC) and the Criminal Code of Montenegro were improved through further harmonization with European standards, since they eliminated the disadvantages of the old legislation in relation to the right to a fair trial. Many provisions of the CPC relate to the standards of the right to a fair trial, and we will single out the most important ones.

The presumption of innocence and the *in dubio* **pro reo principle** (Article 3 of the CPC) guarantees that everyone is presumed innocent until their guilt has been established by a final decision of the court, and that the state authorities, the media, citizen associations, public figures and other persons are obliged to comply with the rules of this Article and that their public statements on ongoing criminal proceedings cannot break other rules of procedure, or other rights of the defendant and the damaged party nor the principle of judicial independence. The paragraph 3 of this CPC article elaborates on the principle *in dubio pro reo* so that if, after obtaining all the available evidence and presenting it in the criminal proceedings, there is only doubt as to the existence of any significant feature of the crime or regarding the fact on which the application of a provision of the Criminal Code or this Code depends, the court will make a decision that is more favourable to the defendant.

Articles 4 and 5 of the CPC guarantee the **rights of suspects / defendants and the rights of persons deprived of their liberty.** Article 4 stipulates that the suspect must be informed at the first hearing about the criminal offence he is charged with and the grounds for suspicion against him. The defendant must also be granted an opportunity to plead all the facts and

[3]Ringeisen v. Austria
[4]Engel v. The Netherlands
[5]Bijelic v. Serbia-Montenegro
[6]See more: Human Rights Campaign of the ORA: https://www.hraction.org/2009/04/30/obavjestenje-za-javnost-povodom-presude-evropskog-suda-za-ljudska-prava-u-predmetu-bijelic-protiv-crne-gore-i-srbije/

evidence that are against him and to present all the facts and evidence in his favour. The suspect or defendant must be made aware at the first hearing that they don't have to make any statements or answer any questions, and that whatever statements they make could be used as evidence.

The right to an interpreter is established in the Article 8 of the CPC. The basic principle defined in the CPC is that the criminal proceedings are conducted in the Montenegrin language. The CPC stipulates, however, that parties, witnesses and other persons participating in the proceedings have the right to use their own language or the language that they understand. If the proceedings are not conducted in the language of any of these persons, translation of testimonies, documents and other written evidence will be provided. Parties, witnesses and other persons taking part in the proceedings may waive their right to translation if they know the language of the proceedings. The record will note that the instruction and statement of the participants in the procedure has been given. Translation under the provisions of the CPC is entrusted to an interpreter.

The right to defence is governed by Articles 12 and 66 of the CPC. Article 12 stipulates that the defendant has the right to defend himself or with the professional assistance of an attorney of his own choosing from among the attorneys. Also, the defendant has the right to have his counsel present at the hearing, as well as to be informed of the right to take counsel before the first hearing, to agree with the defence counsel on the manner of defence, and that the defence attorney can attend his hearing. The CPC stipulates that the defendant will be appointed an ex officio counsel, if he does not hire the defence attorney, and that he must be given an opportunity and enough time to prepare his defence. Article 66 states that the defendant is entitled to a defence counsel. Defence counsel may also be hired by the defendant's legal representative, spouse, blood relative in a straight line, adopter, adoptee, brother, sister or foster parent, as well as by the person with whom the defendant lives in an extramarital union. Only a lawyer can be taken as a defence attorney under this article of the CPC. The defence attorney is obliged to submit the written authority to the body before which the proceedings are conducted. The defendant may also give the defence attorney an oral authority on the record before the body where the proceedings are being conducted.

The impartiality of judges in accordance with the provisions of the CPC shall be governed by prescribing the grounds for the exclusion of judges in Article 38. According to the provisions of this Article, a judge may not exercise judicial office if:

- he was aggrieved by the criminal offence;
- the defendant, his defence attorney, the prosecutor, the injured party, their legal representative or proxy are a spouse, ex-spouse or extramarital cohabitant of the judge or a primary blood relative in a straight line to any degree, secondary relative to the fourth degree, and second-degree in-laws;
- is with the defendant, his defence counsel, the prosecutor or the injured party in the relationship of a guardian, protégé, adoptive parent, adoptee, foster parent or fosteree;
- participated in the same criminal case as an investigating judge, prosecutor, defence attorney, legal representative or proxy of the injured party or prosecutor, or was a witness or an expert witness;
- participated in the same case in a lower court decision or a decision referred to in the Article 302, paragraph 10 of the CPC, or if he participated in a decision contested by an appeal in the same court;
- there are circumstances which cast doubt on his impartiality.

Impartiality, as the basic principle, is explained in more detail the **Code of Ethics of Judges**, in the Article 4, which states that judicial impartiality is an essential concept and prerequisite for ensuring a fair trial. According to ethical principles, he must be free from any connection, affection or bias that affects, or that might be considered to have an effect on his ability to make his own decisions. The judge is bound by the provisions of the Code to perform

the judicial function without favouritism, bias or prejudice based on race, colour, religion, nationality, age, marital status, sexual preference, social and property situation, political commitment or any other differences. By acting both in and out of court, the judge will seek to maintain and strengthen public confidence in personal and institutional impartiality. He is also obliged to avoid situations that could reasonably cast doubt on his impartiality in the exercise of his judicial function, his conduct in and out of court, in his professional and personal relations with members of the legal profession and other persons. In accordance with the provisions of the Code, a judge is obliged to refrain from making public statements or commentary on pending cases which may give the public the impression of bias. When it comes to the participation of judges in the activities of a political nature, they are obliged to refrain from any political activity or participation in political rallies and events organized by political parties, which could jeopardize the impression of their impartiality. It is stipulated that the judge will not support the work of political parties by providing financial contributions. Finally, the Code stipulates that a judge will not be a member or participate in the activities of secret associations or associations that do not provide full transparency of their work.[7]

The right to a trial without delay is governed by Article 15 of the CPC. According to the provisions of this Article, the defendant has the right to be brought to court as soon as possible and to be tried without delay. The court is obliged to conduct the proceedings without delay and to prevent any abuse of the rights of the persons participating in the proceedings. This article stipulates that the duration of detention or other restrictions on freedom must be kept to a minimum.

Finally, as one of the key general principles that form an integral part of the right to a fair trial – the **principle of truth and fairness** is governed by Article 16 of the CPC. According to this principle, the court, the public prosecutor and other state authorities involved in criminal proceedings are obliged to truthfully and completely establish the facts that are important for making a lawful and fair decision, as well as to examine and establish the facts for and against the defendant with equal care. The court is also obliged to provide the parties and defence counsel with equal conditions regarding the admission of evidence and the access to, as well as the presentation of evidence.

The CPC principles and provisions are not the only ones that provide guarantees of the right to a fair trial. These guarantees are also found in the provisions governing pre-criminal proceedings, up to the very transitional and final provisions. In the course of the Report, the aforementioned provisions will be presented in detail, primarily from the aspect of their compliance with international standards and from the point of view of their implementation in practice.

In this section, it should be emphasized that in the process of reforming the criminal legislation, new criminal law institutes, such as the plea agreement and the delayed prosecution were introduced into the legal system of Montenegro. These institutes have been introduced into the legal system of Montenegro with the goal of improving the efficiency of judicial institutions through the possibility of a faster and easier way to conclude criminal proceedings. The plea agreement institute is established by the CPC in 2009. The initial ruling stipulated that, when a criminal proceeding is conducted for one criminal offence or for criminal offences in bankruptcy, for which the prescribed penalty is imprisonment of up to 10 years, the defendant and his defence attorney may be asked to enter a plea agreement, or the defendant and his defence attorney may propose the agreement to the State Prosecutor. The amendments to the CPC that followed in 2015 stipulate that a plea agreement could be established for all offences that are prosecuted ex officio, except for terrorism and war crimes. In the period after 2015, the implementation of this institute experienced a real expansion in the practice of the State Prosecutor's Office.

[7]The Code of Ethics was published in the Official Gazette of Montenegro no. 16/2014 and 24/2015

On the other hand, the institute of deferred prosecution was introduced into the legal system, which aims to unburden the criminal proceedings of offences that fall into the category of light or medium crimes, by providing more efficient handling of these cases in order to provide more capacities and resources to deal with "serious" crimes. According to the Article 272 of the CPC, The State Prosecutor officer may postpone the prosecution of criminal offences for which a fine or imprisonment has been prescribed for up to five years when he/she finds it unnecessary to prosecute given the nature of the crime and the circumstances in which it was committed, earlier life of the offender and his personal characteristics. According to the CPC, the suspect in this case is required to agree to fulfil one or more of the following obligations: to remove the harmful consequence caused by the criminal offense or to compensate for the damage that was caused; to pay the financial support obligation or other obligations established by a final court decision; to pay a certain amount of money in favour of a humanitarian organization, fund or public institution; to carry out a particular socially beneficial or humanitarian work.

The implementation of these institutes has so far produced some practical results, especially in the part of the implementation of the plea agreement in the recent period after the establishment of the Special State Prosecutor's Office. However, the implementation of these institutes will be the subject of special analysis within this project.

2.2. Trial monitoring: Objectives and basic principles

The goals and basic principles of the program aimed at monitoring the conduct of court proceedings are manifold. For the first time, they have been methodologically formulated and presented to the expert public through the publication *"Trial Monitoring - A Practitioners Handbook"* developed by the OSCE. In this document, several objectives and basic principles of trial monitoring are identified, among which the following should be emphasized:

- ***Trial monitoring – multilateral judiciary.*** Through this objective, it is particularly emphasized that programs for monitoring trials may serve as a versatile tool in the process of improving the effectiveness and the transparency of the judicial system. In order to maximize the effectiveness of this tool, organizations should be aware of the different possibilities of trial monitoring and should design a program that best suits the needs of a specific national context.
- ***Trial monitoring as a diagnostic tool in the judicial reform process.*** One of the key principles, based on the OSCE's experience in conducting a trial monitoring program, is recognizing the collection and dissemination of objective information about court proceedings in individual cases, as well as defining conclusions regarding the wider functioning of the justice system. As part of the trial monitoring programs, organizations that implement these programs, collect the information on the practice and the conditions in which they carry out court procedures and they develop judicial systems, providing objective findings and conclusions addressed to all participants of the court proceedings. Defining recommendations and advocacy for their full implementation, through communication with the judiciary and all the stakeholders in the judicial reform process, was recognized as the most important segment of the trial monitoring program.
- ***Exercising the right to a fair trial.*** Conducting of the monitoring of the court proceedings is an essential expression of the right to a public trial and it enhances the transparency of the judicial system. It is also one of the most important segments of the right to a fair trial. Respecting it, the judicial systems is sending a message to all citizens that courts and courtrooms are open to them and that trials are conducted on their behalf. The presence of court observers in courtrooms is of public interest. This is a basic starting point of all the trial monitoring programs. Over time, the trial monitoring program has increased the awareness of the right to a public trial among judicial and other legal actors, opening the door to greater awareness and acceptance of international standards of human rights and the right to a fair trial.

[8] Trial Monitoring : Practitioner Handbook, Revised Version 2012, available at: https://www.osce.org/odihr/94216

- ***Capacity building tool.*** Trial monitoring can also be seen as a mean of capacity building and training of local NGOs and civil society organizations on international standards and national law. By hiring local attorneys as observers and legal advisers, the programs provide interested attorneys with an opportunity to become indirectly involved in the legal reform process. The Partnership and Support Program for National Monitoring groups also increases the capacity of interested local organizations and networks to become involved in monitoring, independently or as partners in trial monitoring programs. In this way, programs can facilitate the creation of local trial monitoring capacities that will persist even after a specific organization program is completed.

2.3. Basic principles of CeMI's trial monitoring programs

The principles of trial monitoring applied by CeMI in its projects and activities are based on the principles jointly developed in the trial monitoring program implemented in the period of 2007-2014, in cooperation between CeMI and the OSCE Mission to Montenegro. In accordance with the methodology and principles of trial monitoring conducted in many European countries, CeMI and CEDEM observers have consistently applied the following principles of trial monitoring within this project: the principle of non-interference with court proceedings, the principle of objectivity, the principle of agreement, with certain limitations that trial monitoring programs bring with them, which will also be presented.

The principle of non-interference with court proceedings is one of the basic principles underpinning trial monitoring programs. It arises from the fundamental rule that an independent judiciary is the ultimate authority responsible for maintaining the rule of law. Through this principle, the importance of respecting the independence of the judiciary by the observers of the trial is particularly emphasized, as well as the importance of avoiding any kind of interaction with the holders of judicial functions, given the fact that such interactions can easily undermine the authority of the court as the sole decision-maker. It is not always easy to apply the principle of non-interference to all trial monitoring activities. However, there is a general agreement that non-interference means the absence of involvement or interaction with the court regarding the merits of a case or attempting to indirectly influence the outcome through informal channels. That is why these CeMI programs prohibit such activities. It is very important to emphasize that adherence to this principle should not serve to limit public criticism of judicial authorities in the conduct of judicial proceedings. On the contrary, this principle, in essence, supports a critical approach that is based on criticism by providing conclusions and recommendations aimed at promoting institutional reforms.[9]

The principle of objectivity implies that the trial monitoring program provide accurate information, using clearly defined and accepted standards without bias toward parties or court cases. According to this principle, when creating a report with conclusions and recommendations, findings must be based on knowledge of national law and international standards. Objectivity also implies a balanced approach to criminal justice and the recognition that the rule of law requires an efficient and fair system. To that end, trial monitoring is neither a surveillance nor a defence activity, but an activity that must show equal respect for all the rules and values governing criminal proceedings. While the monitoring of a trial may sometimes be more focused on specific rules or standards, it should not do so in a manner that gives the impression that it is taking a side of one of the parties on the merits of the prosecution or the defence of certain offences or a court case. Therefore, the principle of objectivity requires a balanced approach to the program selection of trials, as well as the formulation of findings, conclusions and recommendations.[10]

[9]See: Trial Monitoring: A Reference Manual for Practitioners, Revised Edition 2012 , available at: https://www.osce.org/odihr/94216
[10]*Ibidem*

The principle of consent. OSCE, the Council of Europe and European Union Member States have committed themselves to adhere to a set of rules and basic principles in the administration of justice. Most prominent among the obligations is to ensure the right to a fair and public trial within a reasonable time before an independent and impartial tribunal. In order to realize these and other fair trial obligations, OSCE member states had to agree to allow the trial monitoring, including Montenegro. In this context, at the operational level, trial monitoring programs are based on a common position with national judicial authorities as the primary actors in the judicial reform process. In practice, the most significant challenge is to develop an understanding of trial monitoring activities by judicial officials and to achieve a level of mutual understanding with judicial authorities regarding the purpose and role of judicial review. Achieving this principle requires: concluding an agreement; creating professional relationships; exchange of information; explaining program goals and methods; making recommendations for improving judicial policies and cooperating with judicial institutions in order to more effectively implement those policies.[11]

Trial monitoring programs certainly have their limitations. Primarily, the purpose of a trial monitoring program is to analyse the fairness of justice in judicial proceedings through the collection of information. If trial monitoring moves away from this focus on observational procedure and seeks to collect only statistics or other types of case data, the role of trial monitoring will not be realized. In seeking to provide reliable and high-quality information from court proceedings, trial observers should never lose focus on respect for procedural safeguards with strict adherence to the principle of non-interference with court proceedings. There are numerous challenges, and organizations implementing these programs need to be aware that persons hired as trial observers must have high professional qualifications as well as a moral code based on the principles of reliability, integrity and conscientiousness.

2.4. Methodology

2.4.1. The trial monitoring team

In the first phase of the implementation of trial monitoring activities, CeMI and CEDEM engaged five legal advisors who directly conducted trial monitoring activities. The members of the trial monitoring team are trained in the initial phase of the program to monitor court proceedings following the methodology of the OSCE trial monitoring programs.

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

[11] Ibidem

2.4.2. Sample of monitored trials

The subject of the monitoring were criminal proceedings. Random case selection was the basic method of monitoring, while the target sample was also closely followed in cases of high public interest, especially in relation to organized crime, corruption, terrorism, offences of electoral rights, criminal offences against the freedoms and rights of peoples and citizens, human trafficking and war crimes.

CeMI and CEDEM monitors monitored 150 criminal cases and 263 main hearings in five Basics courts and the High Court in Podgorica during the reporting period. The majority of the monitored cases were in the High Court in Podgorica and the Basic Court in Podgorica, but monitors followed a smaller number of hearings in the Basic Court in Cetinje, Bar, Nikšić, Danilovgrad and Žabljak.

Table 1: Total number of monitored cases and main hearings, by selected courts, for the period 22 February 2018 - 31 December 2018.

THE COURT	NUMBER OF CRIMINAL CASES	NUMBER OF MAIN HEARINGS
High Court in Podgorica	71	174
Basic Court in Podgorica	67	73
Basic Court in Cetinje	8	12
Basic court in Danilovgrad	1	1
Basic court in Nikšić	2	2
Basic Court in Bar	1	1
IN TOTAL	150	263

Tabela 2: Struktura praćenih krivičnih postupaka prema vrsti krivičnog djela za period februar decembar 2018 godine.

TYPE OF CRIME	NUMBER OF MONITORED CASES
Giving false statement (Art.389)	1
Assault on an official in the course of duty (Art. 376)	1
Serious acts against the safety of public transport (Art. 348)	1
Illicit Trade (Art. 284)	2
Illicit possession of weapons and explosive materials (Art. 403)	12
Serious bodily harm (Art. 151)	3
Illegal fishing (Art. 326)	1
Domestic or family violence (Art. 220)	3
Minor bodily harm (Art. 152)	5
Bullying (Article 399)	6
Theft (Art. 239)	5
Endangering public traffic (Art. 339)	10

Unscrupulous work in the service (Art. 417)	1
Destruction and damage to another's property (Art. 253)	1
Failure to support (Art. 221)	6
Fraud (Art. 244)	2
Aggravated Theft (Art. 240)	3
Security threats (Art. 168)	1
Presentation of personal and family opportunities (Art. 197)	1
Deforestation (Art. 323)	1
Petty theft, evasion and fraud (Art. 246)	1
Preventing an official from performing his official duty (Art. 375)	1
Forgery of documents (Art.412)	1
Theft (Art. 239)	1
Abuse of office (Article 416)	8
False Reporting (Article 388)	1
Unauthorized production, possession and placing on the market of narcotic drugs (Art. 300)	17
Murder (Art. 143)	10
Creation of a criminal organization (Article 401a)	10
Aggravated murder (Art. 144)	11
Crossing the State Border and Smuggling of Persons (Article 405)	1
Rape (Art. 204)	1
Moss Murder (Art. 145)	1
Aggravated offense against electoral rights (Art. 194)	2
Prevention of voting (Art. 189)	2
Criminal Association (Art. 401)	1
Account fraud (Art. 352)	1
Extortion (Art. 250)	1
Robbery (Art. 242)	2
Terrorism (Art. 447)	1
Preparation of acts against the constitutional regulation of the security of Montenegro (Art. 373)	1
Failure to report a crime and perpetrator (Art. 386)	1
Assistance to the perpetrator after the commission of the criminal offense (Article 387)	1
War crime against civilians (Art. 428)	1
Money laundering (Art. 268)	1
Production and marketing of harmful products (Art. 297)	2
Abuse of office position in business (Art. 272)	1
Fraud (Art. 244)	1
Participation in a brawl (Art. 153)	1

The jurisprudence of the European Court of Justice has been used to present the views of this Court in relation to particular issues or standards of fair trial, and therefore, extracts from individual judgments are presented in the Report. However, an analogy should not be made between the examples presented above and the court's position on similar issues.

2.4.3. Trial monitoring techniques

Observers are not focused on the merits of the monitored case, but only on the implementation of the procedure in compliance with international fair trial standards and relevant national legislation. In addition to attendance at hearings in criminal proceedings, observers were, when required, allowed access to case files. In order to create a more complete picture of the case, the observers, when possible and of importance, interviewed relevant entities, in particular judges, prosecutors, attorneys and other participants in the proceedings.

In order to monitor the respect of the presumption of innocence by the print media, a press clipping technique was used with a comprehensive analysis of the respect of the presumption of innocence by the media in Montenegro. From February 15 to September 15, 2018, newspaper articles in the press and portals were analysed, and from February 16 to December 16, 2018, TV content containing the keywords: presumption of innocence, defendant, convict, trial, hearing, arrest, detention, killer, murder, investigation was also analysed. A total of 5,257 newspaper articles and TV contents were analysed.

Following the completion of the hearing monitoring, observers filled out a standardized questionnaire form and prepared individual case reports. Forms and individual reports form the basis of this Report, which is a systematic set of observations along with conclusions and recommendations.

III. ANALYSIS OF RESPECT FOR INTERNATIONAL AND NATIONAL STANDARDS OF THE RIGHT TO A FAIR TRIAL IN CRIMINAL PROCEEDINGS

3.1. The presumption of innocence

Respecting the presumption of innocence is a fundamental principle of the right to a fair trial as guaranteed by Article 11 of *the Universal Declaration of Human Rights* and Article 14 of the *International Covenant on Civil and Political Rights*. The provisions of these international legal instruments stipulate that anyone charged with a crime has the right to be presumed innocent until proven guilty according to law. The presumption of innocence is also guaranteed by Article 6 § 2 of the European Convention, in such a way that anyone accused of a crime is considered innocent until proven guilty according to law. This right, like any right guaranteed by the European Convention, *must be interpreted in such a way as to guarantee rights that are practical and work-based rather than theoretical and illusory.* For the sake of understanding, the principle of the presumption of innocence assumes the innocence of every person subjected to criminal prosecution until guilt or liability of the person for the committed crime is determined by a final court decision.

The case law of ECHR is well known for many examples relating to the protection of an accused's right to be presumed innocent. The presumption of innocence, according to the case-law of the ECHR, must be respected, primarily by judges, who must not, in criminal proceedings, start with the preconceived notion that the defendant committed the crime he/she was charged with, but that the burden of proving the criminal responsibility lies with the prosecution and that in the case of doubt, the decision should favour the defendant.[12]

In addition to judges, the presumption of innocence must be respected by other government officials.[13] Often, in the public discourse we can hear government officials or politicians, while describing the degree of responsibility of persons suspected of or charged with committing a crime say that "the person will have the opportunity to prove his innocence in court." Such and similar statements arising out of misunderstanding, ignorance or maliciousness, violate the presumption of innocence, which is an umbrella principle of the criminal law, without which a fair trial, essentially, cannot exist.

The presumption of innocence must also be respected by the media, since freedom of the media cannot affect the court's right to protect the integrity of its proceedings. The principle no. 2 of the Council of Europe Recommendation "on the Media Distribution of Information related to criminal proceedings", stipulates that the respect for the presumption of innocence is an integral part of the right to a fair trial and, accordingly, opinions and information relating to current criminal proceedings may be published in the media only if this does not jeopardize the presumption of innocence of the suspect or the accused. The ECHR also dealt with the writing of the media and their influence on the presumption of innocence, in one of its cases. In one of its cases, the Court stipulated that in pending criminal proceedings, the boundaries of permissible comments of journalists should not be extended to statements that would most likely to influence, intentionally or unintentionally, a person's chance of having a fair trial or that could jeopardize public confidence in the role of the courts and the administration of justice.[15]

[12]Barbera et al. v. Spain, judgment of 6 December 1988
[13]Allenet de Ribemont v. France, Judgment of 10 March, February 1995
[14]Preporuka Savjeta Evrope Rec (2003)13 o medijskoj distribuciji informacija u vezi sa krivičnim postupcima, jul 2003. godine
[15] Worm v. Austria, Judgment of 29 August 1997

In recent years, public policy in the field of the European Union's judiciary has increasingly given importance to respecting the procedural guarantees of a fair trial in EU Member States. Thus, the EU Charter of Fundamental Rights stipulates that *any accused should be presumed innocent until proven guilty according to law.*[16] In addition, during 2016, the Directive (EU) 2016/343 was adopted on strengthening certain aspects of the presumption of innocence and the right of the accused to be present at trial.[17] It is especially emphasized that this Directive and the principles contained therein apply only to criminal proceedings in accordance with the interpretation of the Court of Justice of the European Union (Court of Justice), without questioning the case-law of the ECHR. This Directive is part of a package of six legal acts adopted in recent years by the EU, which defines a minimum of common standards for the respect of procedural rights of suspects or the accused in criminal proceedings.

The provision of Article 35, paragraph 1 of the Constitution of Montenegro establishes the presumption of innocence in criminal proceedings as a constitutional principle, by prescribing that everyone is considered innocent until their guilt is proved by a final decision of the court. Article 3 of the CPC guarantees that everyone is presumed innocent until proven guilty by a final court decision. This Article further stipulates that state authorities, the media, citizens' associations, public figures and other persons are obliged to comply with the rules of this Article and that their public statements on criminal proceedings cannot violate other rules of proceeding, the rights of the defendant and the injured party and the principle of judicial independence.

In accordance with the Montenegrin Code of Ethics for Journalists, journalists are required to respect the principle of the presumption of innocence when reporting on court cases.

The presumption of innocence is also mentioned in the Law on Media, which in Article 25 stipulates that the media and journalists are obliged to report fairly and accurately on court proceedings. If the media has announced that criminal proceedings have commenced against a certain person, that person shall have the right, when the proceedings end, to request the publication of information on the final suspension of the proceedings, the dismissal of criminal charges or the acquittal.

In assessing compliance with the presumption of innocence in practice, the following criteria have been taken into account:

- Whether the principle was respected by the court during the main hearing;
- Whether it was respected by the media during the main hearing, and
- Whether it was respected by other state authorities and public figures when addressing the public during the main hearing.

Perceived practice

As part of a comprehensive analysis of respect for the presumption of innocence, it has been noted that there have been cases of violation of the presumption of innocence by the media. The presumption of innocence was violated by print media the most (16%), followed by television with 13.8% and portals with 6%. A higher percentage of violations of the presumption of innocence in the title may indicate that the media, in order to attract a readership, choose sensationalist headlines. Examples of such newspaper headlines include: *"Stole jewellery, telephones, home theatre", "Drug dealer in custody", "Fired a rain of bullets in a van", "A boy smashed taxi driver's skull", "Wounded his stepson with a rifle", "Citizens of Nikšić stole from markets,"* etc... When the media publishes such headlines, it can influence the formation of public opinion during criminal trials.

[16] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT
[17] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32016L0343

Preliminary conclusions:

- During the main hearings, the courts respected the presumption of innocence, both through their conduct at the hearing and in their official public statements;
- In all observed cases, both in basic and higher courts, it was not observed that the accused's hands were handcuffed during the main hearing;
- On the other hand, this is not the conclusion when it comes to the media. Specifically, it was noted that when publishing newspaper articles, the media did not fully respect the presumption of innocence. As in the previous period, there was a frequent occurrence that the headlines of newspaper articles violated the presumption of innocence, while their content was in compliance with the presumption of innocence. When the media publishes such headlines, it may influence the public opinion during criminal trials;
- Although, it has been stated on several occasions that the proclamation of the presumption of innocence only is not enough, because there are no sanctions for its violation, there are still no mechanisms to protect the rights of defendants in cases of violation of the presumption of innocence.

Preliminary recommendations:

- Courts should continue the good practice of respecting the presumption of innocence and ensure that this presumption is respected by all participants during the trial, as well as warn the parties that violate the presumption of innocence;
- Journalists and editors, when reporting on judicial and investigative proceedings, should respect the Code of Journalists of Montenegro and the laws that govern it. Additional training should be provided for journalists, especially editors, on the respect of the presumption of innocence by the media while reporting on court proceedings;
- It is necessary to consider adopting the CPC amendments by prescribing the possibility of sanctioning the occurrence of violations of the presumption of innocence.

3.2. The right to an independent and impartial tribunal

The right to an independent and impartial tribunal is prescribed by virtually all major international legal acts. The International Covenant on Civil and Political Rights, more specifically Article 14, paragraph 1, stipulates that every person has the right to have his or her case heard fairly and publicly before a competent, independent and impartial tribunal established by law, which decides on the merits of each charge brought against him in criminal proceedings or of his civil rights and obligations. Also, Article 6 of the European Convention stipulates that everyone, during the determination of his civil rights and obligations or criminal charge brought against him, has the right to a fair and public hearing within a reasonable time, before an independent and impartial tribunal established by law.

The Council of Europe, as a leading regional organization for the protection of the rule of law and respect for human rights has developed, in addition to the binding acts, consultative acts, which further strengthen the respect for the rights guaranteed by the European Convention. Thus, the Recommendation of the Committee of Ministers of the Council of Europe to the Member States on judges – independence, efficiency and accountability[18], points out that the independence of the judiciary provides every person with the right to a fair trial and it is not a privilege of the judge, but a guarantee of respect of human rights and fundamental freedoms, which enables every person to have confidence in the justice system. Also, this Recommendation of the Committee of Ministers of

[18] Recommendation CM / Rec (2010) 12 of 17 November 2010

the Council of Europe states that the purpose of independence, as defined in Article 6 of the European Convention, is to guarantee the right of every person to have their case decided in a fair trial, based solely on legal grounds and without improper influence. According to the Recommendation, the independence of individual judges is a fundamental principle of the rule of law and it is protected by the independence of the judiciary as a whole. Judges should have complete freedom to make impartial decisions, in accordance with the law and their interpretation of the facts.

When it comes to the European Court of Human Rights, in assessing whether the court is independent and impartial, the Court analyses the following: methods of the election of judges; duration of judicial office; the existence of guarantees against outside pressure, and whether the court gives the impression of independence. Essentially, it can be said that the independence of the court, as a generally accepted principle, is related to the institutional independence of the judiciary with respect to the other two branches of government.[19] On the other hand, in accordance with the case-law of the Court, the impartiality of the court is most often linked to the personal, subjective or individual independence of the court vis-à-vis the parties to the proceedings. According to the case-law of the Court, the individual impartiality of a judge is presumed until proven otherwise. This is a very important assumption and in practice, it is very difficult to prove personal bias.[20] IImpartiality, as the Court states in one decision, is most easily recognized through the lack of any kind of prejudice by the judge in relation to the parties in the proceedings and as such, there may be subjective or objective impartiality.[21] Subjective impartiality is reflected in the personal relationship shown by the judge to the parties in the proceedings. For example, the principle of subjective impartiality would be violated if the judge publicly expressed his view of the defendant's defence or the possible outcome of criminal proceedings.[22] In this way, not only the principle of judicial impartiality but also the principle of the presumption of innocence is jeopardized. On the other hand, an objective approach focuses on facts and circumstances which, in addition to the judge's personal conduct during the proceedings, may question his impartiality. For example, the element of objective judicial impartiality would be violated if the judge was employed by one of the parties in the proceeding prior to his/her election for a judge[23], or if one person appears in a dual role within different stages of the same criminal proceeding (as a prosecutor and a judge).[24]

The Constitution of Montenegro and the organizational laws in this area have undergone some changes in order to further strengthen the independence of the judiciary in the process of negotiations for Montenegro's membership in the European Union. The Constitution of Montenegro proclaims the principle of independence and impartiality of courts, as well as the principle of separation of powers. The election and dismissal of judges is the responsibility of the Judicial Council, as an independent body. In addition, the independence of the judiciary was strengthened by the introduction of a unique system for the election of judges, more detailed elaboration of criteria for the advancement of judges and the establishment of a system of regular - a three-year evaluation of judges' performance.

In accordance with the Constitution of Montenegro, the Judicial Council, as the body that elects and dismisses judges, consists of the president and nine members. Five members of the Judicial Council are elected from among judges, while four members are elected from among distinguished attorneys. The President of the Supreme Court is a member of the Judicial Council ex officio. The Minister of Justice is also, ex officio, a member of the Judicial Council. This solution was criticized by GRECO (Group of Countries Against Corruption - Council of Europe), which in its report from the 4th round of evaluation for Montenegro made a recommendation calling for *"taking further measures to strengthen the - real and perceived - independence of the Judicial Council against improper political influence, including the abolition of the Minister of Justice's ex officio participation in the Council, ensuring that at least half of the Council's members are judges elected by their colleagues and ensuring that one of these judges is appointed to the presidency."* This GRECO recommendation has not been implemented.[25]

[19]Clarke v. The United Kingdom, judgment of 13 May 2008
[20]Hauschildt v. Denmark, Judgment of 24 May 1989
[21]Piersack v. Belgium, judgment of 1 October 1982
[22]Lavents v. Latvia, judgment of 28 November 2002
[23] Piersack v. Belgium, judgment of 1 October 1982
[24]De Cubber v. Belgium, judgment of 26 October 1984
[25]See more: https://www.antikorupcija.me/media/documents/Izvje%C5%A1taj.pdf

At this point, it is very important to emphasize that after the Amendments to the Constitution of Montenegro, the procedures for electing members of the Judicial Council coming from among judges and distinguished attorneys have changed. Thus, members coming from the ranks of judges are elected by the Conference of Judges, taking into account the equal representation of the courts and judges, and the President of the Supreme Court is a member of the Council. Four distinguished attorneys are elected and dismissed by the Parliament of Montenegro, upon the proposal of the competent working body of the Parliament following a public call. The Parliament elects these members of the Council by a two-thirds majority (in the first ballot) and a three-fifths majority of all deputies after one month at the earliest (in the second ballot). The Law on Judicial Council and Judges was amended in June 2018, stipulating that less then four members of the Judicial Council can be elected from among distinguished attorneys if all four proposed candidates do not obtain the required majority and that the term of office of the existing members is extended until the appointment of new members.

The term of the Judicial Council is four years.

In this section, it is important to note that a new convocation of the Judicial Council should have been elected in mid-2018, since the first convocation of the Judicial Council elected after the Amendments to Montenegro Constitution expired in July 2018. The Conference of judges, in accordance with the ordinary procedure, elected four members of the Judicial Council from among the judges. During May 2018, the Parliament of Montenegro announced a call for the election of four members of the Judicial Council from the ranks of distinguished attorneys, but the proposal of the competent Committee of the Parliament of Montenegro, which contained a list of four candidates for members of the Judicial Council did not pass in the Parliament since they did not have the required majority. In order to avoid blocking of the functioning of the Judicial Council, the Parliament adopted amendments to the Law on the Judicial Council at the end of June 2018, on the basis of a positive opinion received from the Venice Commission, which defines that *"the president and members of the Judicial Council elected from among distinguished attorneys, whose mandate shall terminate due to the expiration of their term of office, shall continue to hold office until the election and appointment of new members of the Judicial Council from among distinguished attorneys."* In this way, the legal foundation was provided for the members of, at the time, current convocation of the Judicial Council from among distinguished attorneys to continue to perform the functions of members of the Judicial Council along with the newly elected members from among the judges, the President of the Supreme Court and the Minister of Justice.

The constitutive session of the new convocation of the Judicial Council was held on 4 July 2018.

The competences of the Judicial Council are defined by Amendment IX to the Constitution of Montenegro, whereby the Judicial Council: elects and dismisses the President of the Supreme Court; elects and dismisses the President of the Judicial Council; submits annual work report of the Judicial Council and the overall state of the judiciary to the Parliament; elects and dismisses a judge, a court president, and a lay judge; reviews work report of the courts, petitions, and complaints about the work of the courts; determines termination of judicial function; determine the number of judges and lay judges; proposes the amount of funds for the work of the courts to the Government; performs other tasks prescribed by law. In addition, Article 27 of the Law on the Judicial Council and judges defines the competencies according to which the Judicial Council: decides on disciplinary responsibility of judges and court presidents; ensures the use, functionality, and uniformity of the judicial information system, in the part related to the courts; takes care of the education of judges and court presidents; keeps records of judges and presidents; considers complaints about the work of judges and court presidents; reviews complaints of judges and takes positions in conjunction with their independence; proposes indicative benchmarks on the number of judges and other civil servants and state employees required in the courts; gives an opinion on the incompatibility of performing certain tasks with the exercise of judicial function; establishes a Judges Evaluation Commission; elects a disciplinary prosecutor; adopts the Rules of Procedure of

the Judicial Council; establishes the methodology for drafting court reports and the annual court schedule; issues official identification of judges and presidents of courts and keeps records of official identifications and gives opinions on drafted regulations in judiciary matters.

The requirements and procedure for the election of judges are regulated in detail by the Law on Judicial Council and Judges (Articles 37-60). In addition to the general requirements (citizenship, law school and bar examination), the Law on Judicial Council and Judges defines special requirements for the election of judges, as follows:

- As a misdemeanour judge may be elected a person who has worked in legal affairs for four years, from which at least two years after passing the bar examination;
- As a judge of the Basic Court may be elected a person who, after passing the bar examination, has worked at least two years as an adviser in a court or public prosecutor's office, as a lawyer, a notary or a professor of law, or at least four years in other legal affairs;
- As a judge of the Commercial Court may be elected a person who, after passing the bar examination, has worked at least three years as an adviser in a court or public prosecutor's office, or at least three years as a lawyer, a notary or a professor of law, or at least four years in other legal affairs;
- As a judge of the Administrative Court may be elected a person who has worked at least eight years as a judge, state prosecutor, lawyer, notary, professor of law or in other legal affairs;
- As a judge of the High Misdemeanour Court may be elected a person who has worked at least four years as a judge or misdemeanour judge or state prosecutor;
- As a judge of a High Court may be elected a person who has worked at least eight years as a judge or state prosecutor;
- As a judge of the Court of Appeal may be elected a person who has worked at least ten years as a judge or state prosecutor;
- As a judge of the Supreme Court may be elected a person who worked at least 15 years as a judge or state prosecutor.

Impartiality is a guarantee that implies that a judge's opinion is based solely on objective facts and the evidence presented. The CPC, in order to safeguard the guarantee of impartiality provides the institution of exemption of judges or lay judges, state prosecutors and other participants in the proceedings.

The Judicial Council is the body that in a democratic society is the "guardian" of the proper balance between the judiciary and other branches of government and whose purpose is to protect the independence of the judiciary and judges, and thus promoting the efficient functioning of the judicial system. The Judicial Council of Montenegro, as a body that ensures the independence of judges and courts in Montenegro currently faces numerous challenges from exposure to external influences to functioning in a "mixed composition" with new members elected from among judges and former members elected from among distinguished attorneys, with the President of the Supreme Court and the Minister of Justice, who are members of this body ex officio. Both the professional and the general public expects that members of the Judicial Council from among distinguished attorneys will be elected by the Parliament as soon as possible, in order to ensure the full legitimacy of the functioning of the Judicial Council, in accordance with the Constitution of Montenegro. We expect that the election of the members of the Judicial Council from among distinguished attorneys will not be the subject of any political "trade" but rather a reflection of the need to elect members of this body with a high moral and professional qualities, who will act independently and impartially in every situation.

Perceived practice:

- During 2018, trial observers did not identify occurrences or behaviours that would indicate a violation of the principles of judicial independence and impartiality during court proceedings. During all attended hearings, the trial observers analysed issues relating to: respect for the procedural guarantees for the independence and impartiality of judges; aspects relating to the public's impression of the independence and impartiality of the court and whether the recommendations made in this area in previous OSCE and CeMI Mission reports have been taken into account;

- In a few cases, it has been observed that the judge, just before the initiation of a trial, sat in the courtroom and talked with one party in the proceeding (the representatives of the state prosecution), as was the case in one of the previous reporting period, that can negatively reflect on the guarantee of impartiality and independence and can result in a decrease in confidence in the judiciary.

Preliminary recommendations:

- When hen the main hearing takes place in a courtroom or office, judges must respect the rule that parties must not be present in the courtroom or office before the formal commencement of the hearing;

- If the public entrance to the court buildings are used by state prosecutors, this possibility should also be left to lawyers, so that their right to equal treatment in court is not jeopardized.

3.3. Right to a public hearing

Article 6 of the European Convention guarantees everyone the right to a public hearing when deciding on a criminal charge against them. Also, the same article provides the possibility of restricting this right, which means that journalists and the public can be excluded from all or part of the trial if it is in the interests of morality, public order or national security in a democratic society when required by the interests of minors or protection of the privacy of the parties when it's strictly necessary for special circumstances where the public could harm the interests of justice. The European Court of Justice particularly emphasizes the right to a public hearing and the public character of court proceedings, which is a fundamental principle of any democratic society, and emphasizes that parties have the right to a public hearing at least one level of judicial jurisdiction.[26]

Public hearing is one of the key elements to a fair trial. The public not only implies the presence of persons involved in the proceedings before the court, but the publicity of the procedure refers to any interested person who expresses a desire to attend a particular trial, as well as the right to be informed about the manner in which justice is served, or about the judicial decision rendered. The presence of the accused is very significant in several respects. First and foremost, the physical presence of the accused allows the court to gather all relevant evidence related to the court case, as well as to give the judge the opportunity to assure himself of the individual personal characteristics and abilities of the accused.[27]

[26]Schlumpf v. Switzerland, before the court of 8 January 2009
[27]Kovalev v. Russia, judgment of 23 March 2006 and Stukaturov v. Russia, judgment of 27 March 2008

It should also be noted that the public character of court proceedings is one of the more effective ways of enhancing public confidence in the work of the judiciary. In this context, the courts are obliged to make the trials public, as well as to inform the public about the date and venue of the hearing. If the trial is not held in a courtroom, the judicial authorities must take additional measures to allow the public and the interested media to be present.[28]

Article 32 of the Constitution of Montenegro also guarantees the right to a fair and public hearing, before an independent, impartial and legally established court. In criminal proceedings, it is a general rule that the main trial is public and that all adult persons can attend it (Article 313 of the CPC). The CPC stipulates that the public can be excluded from the main hearing if necessary, to preserve secrecy, public order, morality, protection of the interests of minors or protection of the private or family life of the accused or injured party (Art. 314 of the CPC). It should be emphasized that the provisions of the CPC are narrower than those provided in the European Convention, since it does not regulate exclusion of the public for reasons of "interest of justice". Also, as a ground for exclusion of the public, the CPC, unlike the European Convention, does not contain "national security", but is narrowed down to "confidentiality".

In court cases relating to minors, the public is always excluded.

Article 92 of the Court Rules of Procedure stipulates that the list of scheduled trials should be indicated on the court's bulletin board, and there is an obligation to publish the list on the courts' websites. This obligation does not exist for those trials in which the public is excluded, and the list needs to be prepared weekly by the court clerk, with the exact number of cases, the date and time of the trial, as well as the number of the courtroom in which the trial will take place. In assessing the respect of standards of public hearing in practice, the following criteria are considered:

- Ability to obtain information about the location and time of the main hearing;
- Suitability of conditions for the main hearing;
- The ability of the public to be present during the main hearing, and
- Publication of the court decision

Perceived practice:

In assessing the respect of standards of the public hearing in practice, the following criteria are considered:

- The possibility of obtaining information on the location and timing of the main hearing;
- Suitability of conditions for the main hearing;
- The possibility for the public to be present during the main hearing;
- Publicizing the court decision and
- Whether the recommendations made in the previous Report have been taken into account regarding this issue.

At the very beginning of the trial monitoring activities, trial observers encountered minor resistance and misunderstanding of the presence of observers at the trials by individual judges, as well as seeking excuses that some of our observers do not attend the hearings, although there were no objective reasons for that. In the later course of the trial monitoring activities, CeMI and CEDEM observers had no problems attending the hearings.

[28] Axen v. Federal Republic of Germany, Judgment of 8 December 1983

All the courts announce trial schedules on their official websites. Progress has been made over previous reporting periods, when CeMI began trial monitoring activities, in the terms of providing information on scheduled hearings. Particular progress was noted in relation to the updating hearing list on a weekly basis on their websites. In this way, parties, as well as citizens as an interested public can access hearings. However, despite this good practice and the evident improvement of the availability of information on the maintenance of court proceedings, trial observers have repeatedly noted that information on particular cases or main hearings is missing, i.e., at the entrance of the courtroom they find out that a trial is taking place at the time for which was no notice on the website. In this regard, it is necessary to publish the information on all trials on the courts' websites.

As well as in previous reporting periods, the lack of space in the courts and the lack of adequate courtrooms remains one of the main issues that need to be addressed in order to remedy problems that substantially limit the realization of the principles of public trials. Due to the insufficient number of courtrooms in Basic and Higher courts, large number of trials are held in court offices. Most of the observed trials in criminal cases in Basic courts were held in court offices. Due to space limitations, judges have sometimes been forced to limit the number of people present in the courtroom, which calls into question the application of the principle of trial publicity in full capacity. Thus, for example, in one case before the High Court in Podgorica, observers were prevented from monitoring the course of the trial due to lack of space.

In accordance with the above, the conditions for holding court hearings are generally not satisfactory. It is true that there are courts where these conditions are better, and that there are courts where part of the offices and courtrooms meet the conditions that enable efficient work. However, the problem of capacity constraints is a problem that is so prevalent in courts with a large number of cases, judges and court staff – such as the Basic Court in Podgorica – that it jeopardizes and calls into question regular functioning of the court. In addition, observers noted the problem of lack of courtrooms in the High Court in Podgorica, which affects the efficiency of scheduling major hearings in criminal cases in this court. Finally, bad working conditions affect, not only the efficiency of the work but also the authority of the court. Therefore, we consider that one of the most important issues to be addressed in the coming period is the special capacity for work, as well as the technical equipment of the courts where this is a problem.

Further, security level for judges and court administration within court buildings, and in general of parties to court proceedings, is not satisfactory. Observers often noted a very high degree of control when entering the building of the High Court in Podgorica (as well as the Court of Appeal of Montenegro and the Supreme Court of Montenegro), while this control is much smaller in the basic courts we visited.

As a positive step in respecting the principle of trial publicity, the decision of the President of the Supreme Court of Montenegro can be cited, to broadcast the trial in a case that is publicly known as a "coup" in order to ensure the publicity of the proceedings due to increased public interest. The reasoning of this decision states: *„Considering that it is necessary for the main hearings, in this case, to be accompanied by audio-visual recording throughout the proceedings, bearing in mind that it is a criminal case relating to a criminal event proceedings against several persons, whose protective object is the most important social values, namely the constitutional system and security of Montenegro and goods protected by international law, which raised the highest level of public interest, and respecting the principle of the right to a fair trial and guarantee of public court proceedings, and in this respect the necessity of informing the public on criminal proceedings, as well as the needs of the media reporting on the work of the courts, through which it achieves an insight into*

the functioning of criminal justice and contributes to the fairness of judicial proceedings". On the other hand, in the case of the criminal offence of Money Laundering (Art. 268 of the CC) before the High Court in Podgorica, the demand of the accused and his defence attorneys to broadcast the hearing was not approved. The President of the Supreme Court decided not to allow the broadcast of this proceeding for reasoning that, among other things, the publicity of this trial will be made possible through the presence of journalists from the Montenegrin media at the trial, while the audio recording of closing arguments and the announcement of the judgment will be made available to the interested media, that need to submit the request to the High Court in Podgorica.

Example 1:

In the case of the criminal offence of Illicit Manufacturing, Holding and Trafficking of Narcotic Drugs (Article 300 of the CC) before the High Court in Podgorica, observers attended the main hearing discussing the plea agreement between the State Prosecutor's Office and the defendant. Information on scheduling the main hearing in this case was not on the website of the High Court in Podgorica prior to the day of the hearing. During the hearing, the judge objected to the presence of the observer at the main hearing, as he believed that "it was not good for the agreements to be made public". Following the adoption of the agreement, observers were asked to leave the courtroom.

Preliminary conclusions:

- Progress has been made regarding the provision of information on scheduled trials, in particular with regard to updating the trial list on a weekly basis and when it comes to higher courts, on their websites;
- Courts sometimes do not publish information about all the trials that take place within a court within one day and that information is not available to citizens;
- The lack of adequate premises (courtrooms) in which hearings can be held remains one of the main issues preventing the public from attending trials and jeopardizing the right to a public hearing.
- Due to space limitations, judges have sometimes been forced to limit the number of people present in the courtroom, which calls into question the application of the principle of the full publicity of the trial.
- Despite previous recommendations made in recent years, no progress has been noted with regard to the control measures implemented in the courts and this practice varies from court to court.
- The case in which the judge discussing the plea agreement between the State Prosecutor's Office and the defendant during the main hearing objected to the public presence is not an example of good practice.

Preliminary recommendations:

- The good practice of setting up and regularly updating the list of scheduled trials should continue. Courts should publish daily the information about all scheduled hearings and main hearings that are being held, including the main hearings that discuss plea agreements;
- It is necessary to seriously consider the possibility of constructing new court buildings, which would contribute to improving the working conditions of judges and court staff. Among other things, care should be taken to design courthouse buildings in such a way as to construct as many medium capacity courthouses that would allow the most efficient use of the court's spatial capacities, as well as to modernize equipment that will provide more efficient control at the entrances to court buildings;
- The Supreme Court should consider establishing objective criteria according to which it will consider requests for public transfer of court proceedings uniquely;
- It is necessary to implement a uniformed security practice for all courts in Montenegro. This can be done through the establishment of special police units that will exclusively care of the security of court personnel and administration within the court buildings;
- It is necessary for trial observers to have unhindered access to all main hearings, with the obligation to comply with all the provisions of the agreement concluded between the Supreme Court of Montenegro and CeMI;
- It is necessary to continue activities aimed at solving the problem of access of the persons with disabilities in the Basic Courts in Montenegro, and especially in the Basic Court in Herceg Novi.
- Improvements in the work of the prosecutor's offices regarding transparency have been announced. The state prosecutor in one of the Basic State Prosecutor's Offices announced that confirmed indictments will be published and plea agreements will be published on new websites of basic prosecutor's offices.

3.4. Right to public pronouncement of judgment

The right to a public pronouncement of judgment is an integral part of the right to a fair trial, guaranteed by Article 6 of the European Convention of Human Rights. In the case of Pretto and Others vs. Italy, the European Court of Human Rights declared that there was no obligation for the court to read the judgment publicly, but that it should be made public and thus accessible to the public.[29] The right of public pronouncement of judgment will be violated if the judgment is open only to certain groups of people or when only persons with special interests are allowed to view the judgment. However, if the judgment was not made public at the hearing, but the parties to the case received a copy of the judgment and the judgment was entered in the court register[30] and accessible to all who may have a legitimate interest, the Court does not think that there has been a violation of Article 6 of the Convention in this case.[31]

Article 375 of the CPC stipulates that a judgment will always be pronounced publicly, whether or not the public has been excluded at the main hearing, with the panel deciding whether the reasons for the judgment will be made public.

[29]Pretto et al. Against Italy, judgment of 8 December 1983
[30]Riepan v. Austria, judgment of 15 November 2000
[31]Sutter v. Switzerland, Judgment of 22 February 1984

Preliminary conclusions:

- In the reporting period, no cases of violation of the right to the public pronouncement of judgment were detected. The right to the publication of the judgment is respected by the courts.
- The positive practice of posting anonymized judgments on the websites of all courts in Montenegro continued.

3.5. The right to defence

Article 6 of the European Convention guarantees the right to defence as one of the most important procedural guarantees in the right to a fair trial. The right to defence in the context of the case-law of the European Court of Human Rights includes several procedural guarantees for the accused, such as being informed of the content of the charge against him; to receive a summons for the trial with the exact location and time of the trial; to have adequate time to prepare the defence; to be given access to the evidence available to the prosecution; to represent himself or have a qualified counsel; to be provided with access to the evidence and to suggest the evidence, etc. This right applies to all stages of criminal proceedings, as well as in those cases when the accused decided not to appear in person before the court.[32]

The defendant must be informed of the contents of the charge against him. This guarantee implies that the defendant must be provided with information as soon as possible in order to be able to prepare his defence. In *Mattocia v. Italy* case, the Court held that the basic information about the indictment must be delivered to the defendant at least before the first interview with the police. The guarantee that the accused has sufficient time and opportunity to prepare his defence implies that the court must take into account the balance of the trial within a reasonable time as well as these guarantees, in order to prevent the trials from taking place too quickly, thereby, almost certainly restricting the defendant's ability to defend himself in an adequate and valid manner.[34]

The right to defence includes four basic components that directly relate to the realization of the guarantee of the right to counsel. First and foremost, the fundamental right to defence in person appears as an important component ; then, the right of the person to choose a lawyer in certain circumstances . Furthermore, the right to free legal aid if they do not have sufficient resources and when in the interests of justice , and finally, the right to practical and effective legal assistance. If the defendant does not choose a lawyer, he may be assigned one ex officio.

The Constitution of Montenegro guarantees this right in Article 37, in such a way as to guarantee everyone the right to defence, and in particular to be familiar with the accusation against themselves in a language they understand; that he has sufficient time to prepare his defence and to defend himself in person or through a lawyer of his choice. The right to defence in the CPC is laid down in Article 12, in such a way that the defendant has the right to defend himself or with the expert assistance of an attorney of his own choice from among the lawyers; that the defendant has the right to have his attorney present at the hearing; that in certain cases the court appoints the defence attorney if the defendant does not have one; that the defendant must be given sufficient time and opportunity to prepare his defence. Chapter VI of the CPC (Articles 66-74) elaborates the right to an attorney, while defining cases in which the defendant must have a mandatory defence (Article 69 of the CPC).

[32]Poitrimol v. France, judgment of 23 November 1993
[33]Mattocia v. Italy, Judgment of 25 July 2000
[34]Ocalan v. Turkey, judgment of 12 May 2005
[35]Foucher v. France, judgment of 18 March 1997
[36]Campbell and Fell v. The United Kingdom, judgment of 28 June 1984[37]John Murray protiv Ujedinjenog kraljevstva, presuda od 8. februara 1996. godine
[37] John Murray v. The United Kingdom, judgment of 8 February 1996
[38]Bogumil v. Portugal, judgment of 7 October 2008

The Code of Conduct for the Professional Ethics of Lawyers stipulates that attorneys must perform their work independently, professionally, conscientiously, which should be one of the basic guarantees in the exercise and protection of human rights. The Code also stipulates that the lawyer is obliged to act professionally, with the knowledge for which he is qualified, and that the lawyer is responsible for the advice he has given and for the measures he has taken or failed to take.

In assessing the respect of the rights of defence in practice, the following criteria have been considered:

- Whether the defence performed its duty during proceedings, expertly, conscientiously and professionally;
- Whether the court upheld this right with its conduct and
- Whether there was a possibility of quality communication between the defence attorney and defendant during the main trial.

Perceived practice

Example 1:

In the case of the criminal offence of *Attempted terrorism* before the High Court in Podgorica, after one of the defendants cancelled the authority of his defence attorney during the trial, the court immediately assigned him a lawyer *ex officio*. The defence counsel did not request the adjournment of the main hearing in order to familiarize himself with the case so as not to delay the proceedings.

Example 2:

In case of the criminal offence *Unauthorized production, possession and placing on the market of narcotic drugs* before the Higher Court in Podgorica, counsel for the defendants at the trial said that for two years, the request to conduct a complete review of the file hasn't been granted. The judge replied to the defence counsel's objection that he would comply with the request but did not enter this remark on the record even after the defence counsel had insisted on doing so.

Preliminary conclusions:

- From a systematic point of view, no examples of under-engagement of ex officio lawyers have been observed in the reporting period, as was the case in previous reporting periods;
- The courts respect the defendant's rights of defence. An example observed in the High Court in Podgorica, in which the court did not allow the defence attorney access to case file for an extended period of time is an isolated case. The court, in this case, must allow access to case files in accordance with Art. 203, 203a and 203b of the CPC;
- Problems were noted regarding the courtroom space, since they do not allow the defendants and their defence attorneys to sit side by side, which would make increase the quality of their communication, all in accordance with the provision of Art. 345 of the CPC.

Recommendations:

- When planning the construction of new courtrooms, the arrangement and the location of the pending court proceedings should be taken into account in order to allow for the best possible communication necessary for the realization of fundamental human rights.

3.6. Trial within a reasonable time

Article 6 of the European Convention guarantees to every person that, in the determination of their civil rights and obligations or of any criminal charge against them, they are entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. In accordance with the case-law of the ECHR thus far, the criteria to be considered while assessing whether the right to a trial within a reasonable time is violated are:

- nature and complexity of the case,
- the applicant's conduct,
- conduct of the competent authorities,
- interest of the applicant.

The nature and complexity of the case is one of the fundamental criteria to consider when it comes to the guarantees of the trial within a reasonable time. The European Court considers cases that indicate the necessity of taking urgent procedural activities.[39] When it comes to the complexity of the case, the Court considers various elements that need to be determined on a case-by-case basis, which may relate to the number of proceedings that should be combined into one, or the number of defendants that should be tried in the same case, etc.[40]

The conduct of the parties before the ECHR (the applicant and state's authorities), is an important criterion for assessing whether the right to a trial within a reasonable time has been violated. Several factors can be taken into account when assessing whether the parties or their conduct contributed to the violation of the trial within a reasonable time. Thus, for example, delays or obstruction by the defendant caused intentionally or unintentionally, are not recognized as a cause of the violation of the right to a trial within a reasonable time. The ECHR considers that a defendant's rights cannot be harmed by taking every available mean for his own defence available under national law.[41] On the other hand, Member States of the Council of Europe, according to Article 1 of the Convention, are obliged to organize their judicial systems so that they can ensure compliance with Article 6 of the Convention, so the possible violation of the right to a trial within a reasonable time cannot be justified by financial or other problems that the country is facing.[42] Given that trial delays are also one of the reasons for the violation of the right to a trial within a reasonable time, according to the case-law of the ECHR they may be acceptable if they are caused by the general overload of the courts, if they're not lengthy and if the authorities took all necessary measures to prevent those delays.[43]

Article 32 of the Constitution of Montenegro stipulates that everyone has the right to a fair and public trial within a reasonable time before an independent, impartial and legally established tribunal. Likewise, Article 15 of the CPC stipulates, as a fundamental principle, the right of a defendant to be brought before the court as soon as possible and to be tried without delay. The court is obliged to conduct the proceedings without delays and to prevent any abuse of the rights belonging to the persons participating in the proceedings. In order to exercise the right to a trial within a reasonable time, the CPC also provides deadlines for taking certain actions during court proceedings (completion of the investigation, scheduling of the main hearing, as well as deadlines for publication, drafting and delivery of the

[39] Martins Moreira v. Portugal, judgment of 26 October 1988
[40] Vaivada v. Lithuania, judgment of 24 November 2005; Meilus v. Lithuania, judgment of 30 May 2002
[41] Kolomiyets v. Russia, judgment of 22 February 2007
[42] Salesi v. Italy, 26 February 1993
[43] Zimmermann and Steiner v. Switzerland, judgment of 13 July 1983

judgment) and the consequences of missing those deadlines. According to Article 304 of the CPC, the deadline for scheduling the main hearing is two months after the confirmation of the indictment. The CPC also provides the possibility of holding a preparatory hearing and, in accordance with Article 305, if the preparatory hearing is held, this two-month period begins to run after the preparatory hearing is completed.

The CPC also provides deadlines for publication, drafting and delivery of the judgment.

Article 375 of the CPC stipulates that after the court has pronounced the judgment, the president of the panel will immediately publish it. If the court is unable to deliver its judgment on the same day after the end of the main hearing, it will postpone publication of the judgment for a maximum of three days and determine the time and place of the publication of the judgment. If the judgment is not published within three days of the end of the main trial, the president of the panel is obliged to inform the president of the court immediately after the expiration of the time limit and inform him about the reasons. The judgment that has been published must be drafted and delivered in writing within one month after the publication, and in complex matters, exceptionally within two months. If the judgment is not made within these deadlines, the president of the panel is obliged to inform the president of the court about the reasons in writing. The president of the court will take steps to draft the judgment as soon as possible (Article 378 CPC).

The protection of the right to a trial within a reasonable time, as well as the just satisfaction for the violation of the right to a trial within a reasonable time shall be exercised in the manner and under the conditions prescribed by the P**rotection of the Right to a Trial Within a Reasonable Time Act**. National legal remedies for the right to a trial within a reasonable time are the request for expedited proceedings (a control request) and a claim for just satisfaction.

In the reporting period, there were 69 claims for just satisfaction, of which 63 were resolved. The number of submitted control requests during 2018 amounted to a total of 346, of which 336 were resolved, while the remaining 10 were unresolved. After the completion of proceedings initiated with the claim for just satisfaction, which determined a violation of the right to a trial within a reasonable time, in respect of non-pecuniary damage was adjudicated a total of € 41,500.00.

The fact that there are 541 pending cases initiated before 2009 is cause for concern. This problem needs to be addressed as soon as possible through the determination of responsibility for the settlement of the backlog of old cases.

During the reporting period, the trial observers monitored 263 main hearings. In this section, we must point out that the frequent delays of the main hearings remain a significant problem. Of the total of 263 main hearings observed, as many as 100 were delayed (38% percent).

Table: Overview of main hearings held and postponed during the reporting period

TOTAL NUMBER OF OBSERVED MAIN TRIALS	NUMBER OF MAIN TRIALS HELD	NUMBER OF DELAYED MAIN TRIALS
263	**163**	**100**
100%	**62%**	**38%**

Table: Overview of the reasons for the delays during the reporting period

REASONS FOR DELAY OF MAIN TRIAL	NUMBER OF DEFENSE MAIN TRIALS	%
Defendant's absence	18	18 %
Absence of witnesses	7	7 %
Absence of attorney	5	5 %
Absence of state prosecutor	3	3 %
Police failure to comply with court orders	5	5 %
Absence of expert witness	8	8 %
Incomplete composition of the panel / absence of an individual judge	18	18 %
Upon the request of one of the parties	8	8 %
For unknown reasons (communi-cated to observers in the lobby)	10	10 %
For process reasons	18	18 %
TOTAL NUMBER OF DELAYED MAIN TRIALS	**100**	**100 %**

Perceived practice

Example 1:

In the case before the High Court in Podgorica, the criminal offense of aggravated murder under Art. 144, the trial was postponed since the small courtroom where the trial was to be held was not available.

Example 2:

In the case before the High Court in Podgorica, for the criminal offence of murder under Art. 143, the trial was postponed because the expert witness failed to attend due to his university obligations. The last main hearing, in this case, was also postponed given the expert witness' request for a delay and the request for the hearing to be scheduled after 12:00 PM, which the judge took into consideration. Nevertheless, the expert witness did not appear at the next hearing which was adjourned.

Example 3:

In the case before the Basic Court in Podgorica, the trial was postponed since the expert witness informed the court prior to the main trial that he would not be able to come, as he was required to attend the main trial in the Cetinje Basic Court.

Example 4:

In the case before the High Court in Podgorica, for the criminal offence of murder under Art. 143, the hearing was delayed five minutes after the time scheduled for the commencement of the main hearing, after a letter arrived in the court informing that the state prosecutor would not be able to attend today's hearing without providing a replacement. The court adjourned the main hearing.

Preliminary conclusions:

- The delays of the main hearings remain a present phenomenon in the enforcement of criminal proceedings in Montenegro;
- Among the reasons for delaying the main hearings, the most common reasons during this reporting period were the absence of the defendant and the absence of an individual judge;
- Particular attention should be paid to the frequent adjournment of the main hearings due to absence of expert witnesses without legitimate reasons. It is also common to postpone a hearing at the request of an expert witness or because the case file is not returned to the court on time;
- The case where the trial was postponed due to the fact that the courtroom was not available is an example of poor organization and planning of the trial, using the available space of the court;
- The case where the trial was adjourned at the request of the state prosecutor five minutes after the time scheduled for the commencement of the main trial is not an example of good practice and the attitude of the state prosecutor towards the court, the defendant and his attorney.
- The failure of other authorities and the police to comply with the court's requests and orders is also one of the reasons for delaying the main hearings;
- The cases where the main hearings are postponed several times in a row are not examples of good practice in respecting the right to a trial within a reasonable time.

Preliminary recommendations:

- At the court level, greater attention should be dedicated to the planning and scheduling of the main hearings for a specified period, using the available capacities of the courts. Presidents and court clerks, along with the judges, should pay attention to this issue, so that the hearings are not delayed due to the overlapping of the scheduled hearings that are supposed to take place in the same courtrooms. Some courts that have good practice with regards to the organization and court proceedings within the prescribed time limits should share the same with other courts;
- Courts should consider whether the reasons for delaying the proceedings are justified and apply procedural penalties in each case of the irresponsible behaviour of certain participants in the proceedings;
- It is necessary to organize continuously trainings related to the application of the Law on the Protection of the Right to a Trial within a reasonable time in order to raise awareness of various actors of the judicial system on this matter, especially lawyers;

3.7. Conduct of court and other participants in criminal proceedings

Legal framework

The procedural discipline of both the court and other participants in criminal proceedings are one of the fundamental prerequisites for a fair trial. Art. 320 of the CPC provides that the court is obliged to protect its reputation, the reputation of the parties and other participants in the proceedings against insult, threat and any other attack. In addition, the CPC stipulates that it is the duty of the president of the panel to maintain order in the courtroom. Article 321 of the CPC prescribes measures of procedural discipline available to the court in the case that one of the parties violates the rules of conduct during the court proceedings. The measures of procedural discipline include reprimand, removal from court and a fine. If the state prosecutor disrupts the order, the president of the panel shall inform the competent state prosecutor thereof and request that the prosecution is represented by another state prosecutor during the further proceedings. When an attorney, who disrupts order in a courtroom, is fined, the Bar Association will be notified.

Perceived practice

Example 1:

In the case of the criminal offense of *an attempt of terrorism*, before the High Court in Podgorica, one of the defence attorneys in the case repeatedly interrupted the prosecutor during the main trial and spoke without the court's permission. After several reprimands for disrupting order and disrupting procedural discipline, the judge fined him EUR 500.

Primjer 2:

In the case of the criminal offense of an *attempt of terrorism*, before the High Court in Podgorica, accusations addressed to one of the attorneys for the words "don't make Serbian fair" after which he was reprimanded. The defence attorney then asked for a break, claiming that he had been offended by the Chief Special Prosecutor.

Example 3:

It is noted that a worrying high percentage of litigants do not respect the procedural discipline when it comes to banning the use of cell phones in the courtroom.

- The conduct of the attorney, who in several occasions during the trial, interrupted prosecutor and spoke without the court's permit is an example of misconduct, while the reaction of the court in the form of a reprimand and fines to the attorney, given that he did not comply with discipline, is a good procedural practice.
- The personal discussions and comments made to the defence by the prosecution representatives during the main trial are not examples of professional conduct. The court acted properly when it admonished the prosecution representative in the above example. We point out that all state prosecutors are obliged to act professionally and responsibly during the proceedings in accordance with the Code of Ethics for State Prosecutors.

Preliminary recommendations:

- All participants in the process should respect the rules of procedural discipline in the court, and the courts should always apply procedural penalties when participants in the proceedings violate the rules of discipline in the courtroom with unprofessional or irresponsible behaviour.

3.8. Victims and witnesses

Although Article 6 of the European Convention does not explicitly specify the rights of victims and witnesses, it implies that all those involved in criminal proceedings have a duty to respect the dignity of the defendants, but also to protect the victims and witnesses. In this context, the Court has established the practice that victims, witnesses and other participants in the proceedings do not have grounds to file a complaint under Article 6 of the Convention.[44]

On the other hand, the Council of Europe has established a number of standards that protect the rights of victims and witnesses in criminal proceedings. *Recommendation no. R (85) 11 on the position of the victim in criminal law and criminal proceedings*[45], the Committee of Ministers of the Council of Europe emphasized the need to protect victims of crime who may suffer physical, psychological, material and social consequences and whose needs must be taken more seriously into account throughout the course of criminal proceedings. The preamble to the Recommendation states that *„the primary function of criminal justice must be to recognize the needs and protect the interests of victims, to enhance their confidence in the justice system and to encourage co-operation to testify in the full capacity of witnesses".*

In addition, Committee of Ministers of the Council of Europe adopted the *Recommendation (2006) 8 on assistance to crime victims*[46] relating to the position of victims in criminal proceedings. Pursuant to this Recommendation, states are obliged to ensure the effective recognition and respect of the human rights of victims of crime. This would relate to the special respect for the safety, dignity, private and family life of victims of crime, as well as the recognition of the negative consequences of the crime on the victim. In addition, states should establish measures to support witnesses in order to eliminate the negative consequences of the crime, as well as to assist the victim in all aspects of their rehabilitation in society, in the family and in the workplace. To be effective, this support needs to include medical care, material assistance, psychotherapy services, as well as social care and counselling. These services should be free of charge.

[44] Mihova protiv Italije, presuda od 30. marta 2010. godine
[45] Preporuka Komiteta ministara, 28. jun 1985. godine
[46] Available at: https://rm.coe.int/16805afa5c

One of the very important mechanisms for the protection of victims' rights in criminal proceedings, adopted by the Council of Europe, is the Convention on the Suppression of Trafficking in Human Beings.[47] This document starts with the fundamental goal - the protection of human rights of victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses. It should be noted here that by ratifying this Convention in 2008, Montenegro undertook to comply with Art. 26 of the Convention, that provides the possibility that victims of trafficking in human beings are not punished for their involvement in illegal activities, to the extent that they have been coerced.

Article 64 of the CPC guarantees the right of the injured party to exercise his / her rights in the proceedings through a proxy. Procedures of the hearing of the protected witnesses, prescribed in Art. 121 and 122 of the Criminal Procedure Code, relating to the protection of witnesses from intimidation and prescribe specific methods of participation and hearing in the criminal proceedings. In addition, the Witness Protection Act regulates in detail the protection of witnesses outside the criminal proceedings.

Preliminary conclusions:

- During the reporting period, no cases of violations of the rights of victims and witnesses were noticed during the court proceedings.

[47] Dostupno na: https://rm.coe.int/168064899d