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ANNUAL REPORT

ON THE MONITORING OF JUDICIAL PROCEEDINGS IN MONTENEGRO



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INTRODUCTION

Trials in cases of organised crime and high-level corruption represent one of the most critical indicators of the true strength of the judiciary. It is precisely in these proceedings which are, as a rule, complex, extensive, and lengthy that the ability of institutions to respond to the most severe forms of crime, maintain a balance between efficiency and fairness, and ensure that court proceedings are conducted in accordance with the law, without unnecessary delays and with full respect for procedural guarantees, is most clearly demonstrated. The manner in which these cases are handled and concluded carries significance that extends beyond individual cases, directly impacting public trust in the judiciary and in the state's capability to consistently uphold the rule of law.

In Montenegro, this topic carries particular weight. The fight against organised crime and corruption has been at the very centre of judicial reform and the European integration process for years. In such a context, it is not sufficient to merely observe the number of initiated investigations, issued indictments, or formally concluded proceedings. It is equally essential to examine how judicial processes actually unfold in practice: how long they take, what causes delays, to what extent the available procedural mechanisms are used, how successful courts are in managing complex cases, and whether proceedings are conducted in a manner that simultaneously protects the public interest and the rights of all participants.

In this light, trial monitoring serves as a valuable tool for understanding the practical operation of the criminal justice system. Through direct observation of the course of proceedings and inspection of court case files, it becomes possible to identify patterns that are not always visible in statistical overviews or formal reports: the frequency of adjournments, the underlying reasons for them, the manner in which hearings are planned and scheduled, the attitude toward procedural discipline, as well as broader organisational and institutional obstacles affecting trial efficiency. The special value of trial monitoring lies in its ability to view individual cases as part of a larger picture drawing conclusions from specific judicial practice regarding the overall condition of the system.

This report was created with the aim of providing precisely such insight. Its purpose is not to evaluate the outcomes of individual cases, but rather, based on the analysis of court proceedings, to point out key tendencies, challenges, and open issues in prosecuting organised crime and high-level corruption. The report focuses on the progression and dynamics of proceedings, procedural efficiency, trial management, and the broader legal and institutional framework in which these cases are tried.

Specifically, complex criminal cases demand thorough planning, continuity in proceedings, the ability to respond promptly to procedural obstacles, and a high degree of professional responsibility from all actors. When these elements are missing, the consequences are not limited to longer proceedings; they also include the erosion of trust in institutions, an additional burden on the judicial system, and the impression that the state fails to deliver a timely and effective response to the most severe forms of crime.

Building on these premises, the report presented before you seeks to contribute to improving the quality of the most complex segment of criminal justice in Montenegro. Through an overview of the relevant legal and institutional framework and an analysis of findings from monitored proceedings, the goal is to offer a clearer picture of the current state of affairs and to pave the way for recommendations that can contribute to a more efficient, consistent, and fair prosecution of organised crime and high-level corruption cases.

This report was produced within the framework of the project *"Open Trials Project: Monitoring Trials for Organised Crime and High-Level Corruption in Montenegro,"* supported by the Embassy of the Kingdom of the Netherlands.

1. INTERNATIONAL STANDARDS

The right to a fair trial is among the fundamental procedural rights in international law. The universal baseline for the right to a fair trial is contained in Article 10 of the Universal Declaration of Human Rights, which guarantees everyone the right to a fair and public hearing by an independent and impartial tribunal in the determination of their rights and obligations or of any criminal charge against them. Article 14, Paragraph 1, of the International Covenant on Civil and Political Rights follows the same direction, prescribing equality before the courts and tribunals, as well as the right to a fair and public trial by a competent, independent, and impartial tribunal established by law.

Within the European legal sphere, the primary source is the European Convention on Human Rights (ECHR), above all Article 6 of the Convention, which guarantees the right to a fair and public trial within a reasonable time by an independent and impartial tribunal. In criminal matters, Article 6 encompasses additional guarantees, including the presumption of innocence and minimum defence rights. In the case law of the European Court of Human Rights (ECtHR), this article has been further elaborated through several interconnected requirements: access to court, equality of arms, adversarial proceedings, public nature of proceedings, reasoned judgments, the right to defence, and determination within a reasonable time.

In criminal cases, the applicability of Article 6 of the European Convention on Human Rights is determined based on multiple criteria developed in the case law of the European Court of Human Rights. Key among these are whether the offense is classified as criminal under domestic law (the first criterion from the Engel case), the nature of the offense (the second criterion from the Engel case), and the severity of the penalty that may be imposed (the third criterion from the Engel case).[1] Therefore, to properly comprehend the scope of Article 6 ECHR, it is necessary to consider these very standards gradually established by the ECtHR through its jurisprudence.

Based on systematic categorization from commentary and doctrinal interpretations, the fundamental elements of the right to a fair trial include: 1) The right of access to court; 2) The right to defence and legal assistance; 3) The right to equality of arms; 4)The right to a public and adversarial trial; 5)The right to a hearing; 6) The right to present evidence; 7) The right to public pronouncement of judgment; 8) The right to a tribunal established by law; 9) The right to independence and impartiality in adjudication; 10) The right to trial within a reasonable time; and 11) The prohibition of arbitrary conduct.[2]

In addition to the above, within the guarantees of a fair trial, the following are particularly highlighted: 1) the right of a person to be informed of the reasons for their arrest and of the charges against them; 2) the right to be tried in one's presence; 3) the presumption of innocence; 4) the right to an interpreter and translation; 5) immunity from self-incrimination; 6) the right to a reasoned judgment; 7) the right to a legal remedy against a judgment; 8) the

1 *Engel and Others v. the Netherlands,* Application nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, 8 June 1976
2 Uzelac, Alan, *The Right to a Fair Trial: General and Civil Law Aspects of Art. 6 Para. 1 of the European Convention on Human Rights,* 2010, p. 3

right to compensation for a judicial error; and 9) the right not to be tried or punished twice for the same cause of action.[3]

One of the integral elements of a fair trial is adopting decisions within a reasonable time. The European Court does not interpret this standard abstractly, but by taking into account the complexity of the case, the conduct of the parties, the manner in which domestic authorities acted, and the importance of the case for the person concerned. The practice of the Court has also developed the requirement that states provide effective domestic legal remedies against excessive length of proceedings, which must be capable of either accelerating the proceedings or providing adequate redress for their excessive duration.

For Montenegro, the issue of the temporal application of the European Convention is of particular importance. In the case of *Bijelić v. Montenegro and Serbia*,[4] the European Court established that the Convention applies to Montenegro as of March 3, 2004, namely from the date when Serbia and Montenegro notified the Council of Europe of the ratification of the Convention. This position is important because it determines the point from which the Court examines the compliance of the actions of Montenegrin authorities with the standards of the Convention.

The case law against Montenegro demonstrates how these standards are applied in practice. In the case of *Brajović and Others v. Montenegro,*[5] the Court found a violation of Article 6, Paragraph 1, because the Court of Appeal failed to rule on the applicants' appeal against a decision on legal costs in criminal proceedings, thereby raising the issue of access to court. In the judgment in the case of *Mugoša v. Montenegro,*[6] the Court considered the lawfulness of detention (Article 5 stance 1 of the ECHR) and the presumption of innocence (Article 6, Paragraph 2, of the ECHR) in relation to the reasoning of domestic court decisions.

The effectiveness of legal remedies was also the subject of European Court judgments. Namely, according to the ECtHR, for a legal remedy to be effective, it must be capable of operating preventively and affording redress if delays in proceedings have occurred. The effectiveness of the legal remedies prescribed in the Law on Protection of the Right to a Trial within a Reasonable Time was recognized in the case of *Vukelić v. Montenegro,*[7] where the European Court accepted that a review request constitutes an effective legal remedy against excessive length of proceedings, whereas in the case of *Vučeljić v. Montenegro,*[8] it accepted the effectiveness of an action for fair satisfaction. In the case of Siništaj and Others v. Montenegro,[9] the Court also accepted a constitutional appeal as an effective legal remedy within the domestic system.

Tightly linked to the right to a fair trial is the right to liberty and security of a person. Under Article 9(1) of the International Covenant on Civil and Political Rights, everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such

3 Drašković, Dragoljub, *Right to a Fair Trial,* Matica crnogorska no. 71, 2017, pp. 18–19
4 *Bijelić v. Montenegro,* application no. 11890/05, 28 April 2009
5 *Brajović and Others v. Montenegro,* application no. 52529/12, 30 January 2018
6 *Mugoša v. Montenegro,* application no. 76522/12, 21 September 2016
7 *Vukelić v. Montenegro,* application no. 58258/09, 4 June 2013
8 *Vučeljić v. Montenegro,* application no. 59129/12, 18 October 2016
9 *Siništaj and Others v. Montenegro,* nos. 1451/10, 7260/10 and 7382/10, 24 November 2015

procedure as are established by law.[10]

The United Nations Standard Minimum Rules for Non-Custodial Measures, known as The Tokyo Rules, follow the same direction, emphasizing that pre-trial detention should be a measure of last resort and that alternatives to detention must be considered as early as possible. [11]

Recommendation Rec(2006)13 of the Committee of Ministers of the Council of Europe[12] is based on the same premises; proceeding from the presumption of innocence and the right to liberty, it requires a restrictive application of detention and giving priority to milder measures whenever possible. In the Recommendation, detention is established as an exception, namely as a measure that must not have a punitive character. At the same time, it is emphasized that there is no general obligation to automatically detain persons suspected of a certain type of criminal offense solely due to the nature of the charge. The Recommendation ties detention to several conditions that must be cumulatively satisfied: 1) the existence of reasonable suspicion that a criminal offense has been committed, 2) the existence of substantial reasons to believe that releasing the suspect would lead to flight, commission of a serious offense, interference with the course of justice, or disruption of public order, 3) the impossibility of applying a milder measure that could eliminate these risks, and 4) the necessity of detention in the specific proceedings. The Recommendation emphasizes that there is no legal obligation under which persons suspected of an offense (or specific categories of such persons) must be detained.

Article 5 of the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR) hold particular significance for the issue of detention. Article 5 guarantees everyone the right to liberty and security of person, and permits deprivation of liberty only in exhaustively enumerated cases. The Convention proceeds from liberty as the rule and deprivation of liberty as an exception; therefore, the burden of justifying the necessity of detention falls on the authorities that order and extend it.[13] In the jurisprudence of the European Court, this means that every decision on detention must be based on law, individualized, sufficiently reasoned, and grounded in the specific circumstances of the case.[14] A mere formal reference to the legal basis is not sufficient; it must be demonstrated that detention was genuinely necessary and that the same purpose could not have been achieved through milder measures. In addition, Article 5 requires effective judicial review of the lawfulness of detention.

One of the fundamental conditions for lawful detention within the meaning of Article 5 of the Convention is the existence of reasonable suspicion that a specific person has committed a criminal offense. The European Court emphasizes that reasonable suspicion constitutes the key safeguard against arbitrary arrest and deprivation of liberty.[15] Whether this criterion is met

10 "Official Gazette of the SFRY", No. 7/1971, Decree on the Promulgation of the Law on the Ratification of the International Covenant on Civil and Political Rights
11 UN Resolution 45/110 of 14 December 1990
12 Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse (Adopted on 27 September 2006)
13 *Ilijkov v. Bulgaria*, application no. 33977/96, Judgment of 26 July 2001
14 *Witold Litwa v. Poland,* application no. 26629/95, judgment of 4 April 2000
15 *Fox, Campbell and Hartley v. the United Kingdom,* nos. 12244/86, 12245/86 and 12383/86, § 32, Judgment of 26 June 1990

depends on all the circumstances of the specific case, but the grounds for such suspicion must be real, concrete, and clearly reasoned. A prior conviction alone, general operational knowledge, or abstract suspicion are not sufficient. Detention can be justified exclusively if there are clear indicators of a genuine need in the public interest which, notwithstanding the presumption of innocence, outweigh the principle of respect for individual liberty guaranteed by Article 5 of the Convention.[16]

Through the case law of the European Court, several grounds have emerged that are, as a rule, accepted as a legitimate basis for detention: the risk of flight, interference with the course of justice (risk of collusion), the risk of repeating or completing the criminal offense (risk of recidivism), and the need to preserve public order. However, the existence of one of these grounds alone is not sufficient if the same purpose can be achieved through a different, milder measure. In that case, detention loses its legitimate foundation and must be terminated.[17]

16 *Jabłoński v. Poland,* application no. 33492/96, Judgment of 21 December 2000
17 Ibid

2. LEGAL AND INSTITUTIONAL FRAMEWORK

The fight against organised crime and high-level corruption in Montenegro is based on norms governing criminal offenses, criminal procedure, institutional jurisdiction, financial investigations, confiscation of proceeds of crime, prevention of corruption, and international legal assistance. In practice, this framework is implemented through the work of the police, the state prosecution service, and the courts, and is further guided by strategic documents defining reform priorities and obligations in the process of accession to the European Union.

It should be borne in mind that certain laws regulating these areas are addressed in the section pertaining to the institutional framework. The reason for this is not that they do not belong to the legal framework in a broader sense, but because in this report they are more relevant as the normative basis for the establishment, organisation, jurisdiction, and mutual relationship of authorities acting in cases of organised crime and high-level corruption. Conversely, the section on the legal framework addresses those regulations that primarily govern constitutional guarantees, crimes, the course of criminal proceedings, and specific legal mechanisms relevant to the prosecution of organised crime and high-level corruption.

2.1. Legal Framework

The starting point of the domestic legal framework is **the Constitution of Montenegro,**[18] which in Article 9 provides that ratified and published international treaties form an integral part of the internal legal order, take precedence over domestic legislation when they regulate the same matter differently, and are directly applicable. At the same time, the Constitution guarantees the right to a fair and public trial within a reasonable time before an independent, impartial tribunal established by law (Art. 32), the right to defence (Art. 37), the right to a legal remedy (Art. 20), the presumption of innocence (Art. 35), and the right to personal liberty (Art. 29 para. 1). These guarantees are also important for cases of organised crime and high-level corruption, as they establish the fundamental rules of criminal procedure and the limits of state authorities' actions.

The substantive legal framework is governed by the **Criminal Code of Montenegro.**[19] It prescribes, among other things, criminal offenses relevant to this area, such as: creation of a criminal organisation (Art. 401a), abuse of official position (Art. 416), money laundering (Art. 268), accepting a bribe (Art. 423), giving a bribe (Art. 424), etc. Through these provisions, domestic law recognizes and sanctions both the activities of criminal organisations and various forms of corrupt behaviour.

18 "Official Gazette of Montenegro", Nos. 1/2007 and 38/2013 - Amendments I-XVI
19 Official English translation of the statutory publication citation:
"Official Gazette of the Republic of Montenegro", Nos. 70/2003, 13/2004, 47/2006 and "Official Gazette of Montenegro", Nos. 40/2008, 25/2010, 32/2011, 64/2011 - other law, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015 - other law, 44/2017, 49/2018, 3/2020, 26/2021 - correction, 144/2021, 145/2021 and 110/2023

The procedural framework is governed by **the Criminal Procedure Code**[20] (CPC), which contains general rules on the course of criminal proceedings, rights of the accused, evidence, measures to ensure the presence of the accused and the unhindered conduct of proceedings, as well as rules on the main hearing and legal remedies. For cases of organised crime and high-level corruption, provisions on secret surveillance measures are particularly significant, including covert surveillance and recording of communications, secret tracking, and other special investigative methods, as well as provisions on cooperating witnesses and plea agreements. The CPC also regulates the duty of the court to conduct proceedings without delay and to prevent the abuse of procedural rights. Amendments to this Code from 2015 were also relevant to improving a portion of procedural provisions important for more efficient international legal cooperation in criminal matters.[21]

It is important to emphasize that the Criminal Procedure Code (CPC) was drafted at a time when the Montenegrin judiciary was not faced with the extensive and complex cases of organised crime and high-level corruption that are prosecuted today before the Special Department of the High Court in Podgorica.[22] Therefore, there is a clear need for its further enhancement, as highlighted by publicly stated views of the judges of the Special Department of the High Court in Podgorica, expert discussions dedicated to proposed amendments to the CPC,[23] as well as the latest European Commission Report for 2025, which identifies the adoption of amendments to the CPC to overcome obstacles and unjustified delays in criminal proceedings as one of the measures for more efficient prosecution of high-level corruption.[24]

An important part of the legal framework consists of regulations governing the financial dimension of crime. **The Law on the Confiscation of Criminal Proceeds**[25] regulates the temporary and permanent confiscation of property for which there is grounds to believe that it was acquired through the commission of a criminal offense. In cases of organised crime and high-level corruption, this law holds a special place, as it ensures that proceedings do not end merely with the criminal liability of the perpetrators, but also with the confiscation of illegally acquired proceeds. The fact that the law contains a specific set of provisions on international cooperation—including cooperation in tracing, freezing, confiscation, and management of assets, as well as the possibility of sharing permanently confiscated proceeds of crime with other states is of particular importance.

The Law on Prevention of Money Laundering and Terrorist Financing[26] is also important for the area of fighting organised crime. This law regulates the measures and actions taken to prevent and detect money laundering and terrorism financing, the obligations of competent authorities and reporting entities, the identification of beneficial ownership, internal controls, and other matters relevant to financial security. Although this law does not directly regulate

20 "Official Gazette of Montenegro", Nos. 057/09 of 18 August 2009, 049/10 of 13 August 2010, 047/14 of 7 November 2014, 002/15 of 16 January 2015, 035/15 of 7 July 2015, 058/15 of 9 October 2015, 028/18 of 27 April 2018, 116/20 of 4 December 2020, 145/21 of 31 December 2021, 054/24 of 11 June 2024
21 See more: "Legal Framework and Case Law – Study on the System of International Legal Assistance", CeMI, 2023 available at https://cemi.org.me/storage/uploads/yXXsaZ5QjsIjOxGY9iJCuOHCrrLqtnAua1PsmkVC.pdf
22 https://www.dan.co.me/vijesti/hronika/sudije-specijalnog-odjeljenja-traze-izmjene-zkp-a-ne-mogu-se- izboriti-sa-prilivom-predmeta-5264062/
23 https://www.dan.co.me/vijesti/hronika/sudije-specijalnog-odjeljenja-traze-izmjene-zkp-a-ne-mogu-se-izboriti-sa-prilivom-predmeta-5264062/
24 *European Commission Montenegro 2025 Report,* p. 6
25 "Official Gazette of Montenegro", Nos. 58/2015, 47/2019 and 54/2024
26 "Official Gazette of Montenegro", Nos. 110/23 of 12 December 2023, 065/24 of 5 July 2024

court proceedings, it is vital to the broader legal framework as it contributes to revealing financial flows and assets that may be the subject of investigation and criminal proceedings, particularly in cases involving a cross-border element.

International legal assistance is primarily governed by **the Law on International Legal Assistance in Criminal Matters,**[27] which regulates the conditions and procedures for submitting and executing letters rogatory, hearing individuals, obtaining evidence, extradition, transfer and assumption of criminal prosecution, recognition and execution of foreign criminal judgments and other judicial decisions, as well as other matters of cooperation in criminal cases. This law forms the basis for the conduct of domestic judicial authorities in providing international legal assistance, both regarding requests sent to foreign countries for the needs of criminal proceedings and with respect to providing legal assistance upon request from foreign judicial and competent authorities. The Law on International Legal Assistance in Criminal Matters provides the conditions and procedures for providing legal assistance in criminal matters. The law defines the rules and procedures for acting upon requests from Montenegro and issuing letters rogatory for international legal assistance submitted by Montenegro to a foreign country. In addition, the law addresses issues of extradition, transfer of criminal proceedings (by assigning and assuming criminal prosecution), recognition and execution of criminal judgments and other court decisions, and other matters of importance for providing international legal assistance.[28]

Furthermore, **the Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union**[29] regulates in more detail the cooperation between Montenegro and the member states of the European Union. Through this law, instruments such as the European Arrest Warrant, the European Investigation Order, decisions on financial penalties, judgments imposing prison sentences or other measures involving deprivation of liberty, decisions on probation measures and alternative sanctions, decisions on supervision measures, the European Protection Order, and cooperation with the European Judicial Network in criminal matters have been introduced into the domestic legal framework. The full application of some of these instruments is tied to the date of Montenegro's accession to the European Union.

2.2. Institutional Framework

The backbone of the institutional framework for the fight against organised crime and high-level corruption consists of the Special Department of the High Court in Podgorica, the Special State Prosecutor's Office, and the Special Police Department.

Although functionally connected, the organisation, competencies, and operating procedures of these bodies are not governed by a single act, but by separate laws regulating individual branches of the judiciary. In this regard, it is important to note that the legal basis for the establishment of the Special Police Department is found in the Law on the Special State

27 "Official Gazette of Montenegro", No. 160/2025 of 30 December 2025
28 More on this: Center for Monitoring and Research: *International Cooperation in the Fight against Organised Crime in Montenegro,* Podgorica, 2026, available at:
https://cemi.org.me/storage/uploads/DzDIPlxnNKDsEqOAPG52HpEMYDlVFJQ6JWASSm0H.pd
29 "Official Gazette of Montenegro", No. 85/2018

Prosecutor's Office rather than the Law on Internal Affairs. Furthermore, all three bodies are primarily bound by the Criminal Procedure Code (CPC) when prosecuting criminal offenses within their jurisdiction.

2.2.1. Special State Prosecutor's Office

The work of the Special State Prosecutor's Office (*Specijalno državno tužilaštvo,* SDT) is governed by **the Law on the State Prosecutor's Office** [30] **and the Law on the Special State Prosecutor's Office.**[31] Article 11 of the Law on the State Prosecution Service provides the legal basis for the establishment of the Special State Prosecutor's Office, while Article 13 provides that the conditions for the election of the Head and state prosecutors in the Special State Prosecutor's Office, as well as its competence, organisation, and other matters of importance to its work, shall be regulated by a special law.

It is important to mention that the most recent amendments to the Law on the Special State Prosecutor's Office from 2024 led to a narrowing and further clarification of the SDT's jurisdiction. Under the previous legal solution, the SDT was competent for organised crime, high-level corruption, money laundering, terrorism, war crimes, and criminal offenses involving violations of electoral rights. At that time, the concept of high-level corruption was defined more broadly, as it encompassed corruption offenses committed by a public official—under a very broad definition of a public official as well as certain economic criminal offenses if the proceeds of crime obtained exceeded 40,000 euros. Additionally, the SDT's jurisdiction over money laundering was not restricted to specific aggravated forms of that offense. Under the current amendments, Article 3 of the Law was amended so that the SDT now has exclusive jurisdiction over the prosecution of perpetrators of organised crime offenses; corruption offenses only when specific criminal offenses are committed by a high-ranking public official; money laundering when the amount of money or property value exceeds 40,000 euros or when the offense was committed by multiple persons who joined together to commit such offenses; terrorism offenses; and war crimes. Consequently, criminal offenses involving violations of electoral rights were removed from the SDT's jurisdiction, jurisdiction over money laundering was narrowed, and jurisdiction over corruption was linked to a narrower group of individuals through the legal definition of a high-ranking public official, replacing the previous broader category of public official. The same amendments introduced a new Article 42a, which stipulates that cases in which the indictment was submitted before the amendments came into force shall be completed by the SDT in accordance with the previously applicable law.

The SDT represents the central prosecution authority for offenses of organised crime and high-level corruption. More specifically, it holds special and exclusive jurisdiction over the prosecution of perpetrators of the following criminal offenses: criminal offenses of organised crime, regardless of the severity of the prescribed sentence; corruption offenses if a high-ranking public official committed the following offenses: abuse of official position, fraud

30 "Official Gazette of Montenegro", Nos. 11/2015, 42/2015, 80/2017, 10/2018, 76/2020, 59/2021, 54/2024 and 92/2025

31 "Official Gazette of Montenegro", Nos. 10/2015, 53/2016 and 54/2024; the draft Law on Amendments to the Law on the Special State Prosecutor's Office, as well as an invitation to the public debate with a deadline for submission until 25 February 2026, are available on the website of the Government of Montenegro. According to data available on the Parliament's website, the law is not yet in procedure.

in office, illegal influence, inducement to illegal influence, accepting a bribe, and giving a bribe; money laundering under Article 268, Paragraphs 3 and 4, of the Criminal Code of Montenegro; terrorism; and war crimes.

The tasks of prosecuting perpetrators of the listed criminal offenses are performed by the Chief Special Prosecutor as the head of the state prosecution office, and by special prosecutors as state prosecutors. Their number is determined by the Prosecutorial Council in accordance with the Law on the State Prosecution Service. The Chief Special Prosecutor is accountable for his/her work and the work of the Special State Prosecutor's Office to the Supreme State Prosecutor, while special prosecutors are accountable for their work to the Chief Special Prosecutor. Supervision over the work of the Special State Prosecutor's Office is exercised by the Supreme State Prosecution Office.

The Special State Prosecutor's Office directs pre-investigative and investigative proceedings, issues orders to the police, decides on initiating proceedings, and files indictments.

The work of the SDT takes place within specialised departments that cover criminal prosecution, financial investigations, analytics and research, international cooperation, digital evidence, and information technologies, while the coordination of the prosecution service's work is conducted within the Cabinet of the Chief Special Prosecutor. The Special State Prosecutor's Office is a highly specialised body, and its work is characterized by an interdisciplinary approach, the integration of legal, economic, IT, and analytical knowledge, and the application of modern methods in criminal investigations.[32]

The SDT conducts investigations, files indictments, and coordinates work with the police and other authorities. Within the SDT, there is also a department for international cooperation, which enables the exchange of information and coordination with foreign judicial authorities and international organisations. This is particularly important because organised crime often transcends state borders, so an effective fight against it requires constant communication with the institutions of other states. The SDT also plays a key role in establishing joint investigation teams, allowing for simultaneous investigations to be conducted in multiple countries. This significantly increases efficiency in detecting and prosecuting complex criminal structures.[33]

Although the new Rulebook on Internal Organisation and Systematization of December 2025 increased the number of staff positions in the SDT from 60 to 93,[34] the capacity of this institution is still not fully aligned with the volume and complexity of cases being handled. As of March 16, 2026, the prosecutorial function in the SDT was performed by the Chief Special Prosecutor, eight special prosecutors, and six state prosecutors assigned to work in the SDT, while 55 civil servants were employed. Bearing in mind that during 2024 the SDT handled 2,362 criminal complaints against individuals, the average workload amounted to approximately 131 criminal complaints per prosecutor per year, which points to significant pressure on the existing prosecutorial and administrative capacities. A particular challenge

32 More on this: Center for Monitoring and Research: *Judicial, Prosecutorial and Police Resources in the Fight against Organised Crime in Montenegro,* Podgorica, 2026, available at: https://cemi.org.me/storage/uploads/6w1W0LeWR0WK5ysSjnnEn34CkC3KjiBXRqyvgAF9.pdf
33 Ibid
34 Ibid

remains the need for additional economic, financial, analytical, and digital-forensic expertise, considering that cases of organised crime and high-level corruption increasingly require the processing of complex financial flows, large amounts of digital evidence, and intensive international cooperation.

2.2.2. Special Police Department

The legal basis for the establishment of the Special Police Department (SPO) is found in Article 26 of the 2015 Law on the Special State Prosecutor's Office, which stipulates that police duties related to criminal offenses within the jurisdiction of the SDT shall be performed by police officers working in a special organisational unit of the administrative authority responsible for police affairs for work with the Special State Prosecutor's Office, the so-called Police Department. The head of this Police Department is appointed by the Director of the Police Directorate with the consent of the Chief Special Prosecutor, and duties within the department itself are carried out by police officers. Both the head and the police officers from the Police Department act upon the order of the Chief Special Prosecutor or a special prosecutor.

The Special Police Department, therefore, operates as a special organisational unit within the Police Directorate and is formally integrated into the structure of the Police Directorate through the **Rulebook on Internal Organisation and Systematization of the Ministry of Interior,**[35] parts of whose provisions are classified as confidential, making it impossible to determine the department's exact structure. The current Rulebook was adopted by the Government of Montenegro in December 2024 (with amendments from October 2025) and introduced a novelty regarding the status of the SPO. Under the same act, the number of planned positions was increased from 50 to 60, but according to publicly available data, only 33 positions have been filled.[36] An additional constraint in assessing actual capacity is the fact that part of the rulebook is marked confidential, which prevents a precise overview of the internal structure, the distribution of officers, their specific tasks, and the degree of specialisation within the department.

Specifically, it was through this act that the Special Police Department obtained the status of a special department and a higher degree of autonomy, all in accordance with European Commission recommendations that the most sensitive police structures should be protected from external influence and possess sufficient operational independence to conduct complex investigations. However, it is important to emphasize once again that the (Specijalno policijsko odjeljenje, SPO) does not have independent jurisdiction, but rather acts on the orders of the Special State Prosecutor's Office, fulfilling an operational role. It collects evidence, conducts special investigative measures, and executes police operations in cases of organised crime, corruption, money laundering, and other serious criminal offenses. This normative solution establishes a clear hierarchy in which the police act as the executive arm of the prosecution.[37] The Special Police Department also participates in international cooperation with partner police organisations, and the importance of this body lies in its specialisation and focus on complex cases that require a high level of expertise, technical equipment, and

35 The current version from October 2025 is available at the following link: https://www.gov.me/dokumenta/d7e7e12f-b890-4fe5-8ea8-e8d56d8dbd63
36 *Judicial, Prosecutorial and Police Resources in the Fight against Organised Crime in Montenegro,* ibid.
37 Ibid

coordination with other institutions. It is precisely through the work of this department that the state attempts to respond to the challenges posed by modern criminal networks, particularly those of a transnational character.

The capacities of the SPO must also be viewed within the broader context of the Police Directorate's capacities to fight crime. The Crime Fighting Sector, as the central operational structure of the Police Directorate for dealing with various forms of criminality, has 493 systematized positions, of which 249 approximately half are filled.[38] This level of staffing points to a broader personnel deficit in the police system, which necessarily impacts the police's ability to provide continuous support in complex cases of organised crime and high-level corruption. In addition to staffing constraints, the European Commission has also pointed out that the spatial and technical working conditions of the SDT and SPO fall significantly below minimal European standards, particularly regarding premises, digital data processing, protection of confidential information, and security infrastructure.

2.2.3. Special Department of the High Court in Podgorica

The Special Department as it exists today in the High Court in Podgorica was established by the Law on Courts,[39] which in Article 16 provides that, regardless of local jurisdiction rules, the High Court in Podgorica shall adjudicate in criminal proceedings for criminal offenses of organised crime regardless of the severity of the prescribed sentence; high-level corruption (if a public official committed the offenses of abuse of official position, fraud in office, illegal influence, inducement to illegal influence, accepting a bribe, or giving a bribe); if the proceeds of crime that exceed the amount of forty thousand euros were obtained through the commission of the criminal offenses of abuse of position in business operations and abuse of authority in the economy; money laundering; terrorism; and war crimes. For the trial of the aforementioned criminal offenses, the same article provides that a special department shall be established within the High Court in Podgorica.

It should be noted, however, that the establishment of specialised departments for trials involving criminal offenses of organised crime, corruption, terrorism, and war crimes (in both high courts) was originally provided for by amendments adopted in 2008 to the previously applicable Law on Courts,[40] whereas the simplified name "Special Department" has been in use since 2015 (aligned with the then-established Special State Prosecutor's Office), and under that name, the department exists only within the High Court in Podgorica.[41]

The Special Department, therefore, constitutes the judicial branch of the institutional framework for the fight against organised crime and high-level corruption. It was established as a specialised department competent to try cases falling under the jurisdiction of the SDT. The judges of this department act in complex criminal cases that frequently involve many

38 Ibid

39 "Official Gazette of Montenegro", Nos. 11/15, 76/20 and 54/24; the Proposal for the Law on Amendments to the Law on Courts has also been in parliamentary procedure since 27 March 2026

40 "Official Gazette of the Republic of Montenegro", Nos. 5/2002, 49/2004 and "Official Gazette of Montenegro", Nos. 22/2008, 39/2011, 46/2013 and 48/2013

41 On the website of the High Court, in the Departments and Panels section, the department is still referred to as the Specialised Department for Trial of Criminal Offenses of Organised Crime, Corruption, Terrorism and War Crimes.

defendants and extensive evidentiary material. In addition, this court plays a significant role in international legal assistance, including the execution of evidentiary actions pursuant to letters rogatory from foreign authorities, decisions on extradition, and the recognition of foreign judicial decisions.[42]

In recent years, the Special Department has faced pronounced personnel and spatial constraints. In October 2024, the judges of this department publicly warned that a small number of judges could not handle the burden of 162 active proceedings, especially considering the complexity of cases involving organised crime and high-level corruption. Subsequently, on December 13, 2024, the Judicial Council adopted a decision to increase the number of judges in the Special Department by six, along with an increase in the number of judicial advisors so that every judge has their own advisor, while nine new judges of the High Court in Podgorica were selected in February 2025. This represented a significant staffing boost, but the stability of the department still depends on retaining trained judicial staff and carefully managing the promotion of judges to higher court instances.

Spatial capacity presents a particular challenge for the operation of the Special Department. The High Court in Podgorica disposes of only two courtrooms, which is insufficient for proceedings where a large number of defendants are tried simultaneously, alongside the presence of the defence counsel, witnesses, expert witnesses, police officers, and the public. Consequently, cases of the Special Department are also conducted in the courtrooms of the Appellate Court and the Supreme Court, which have been temporarily made available to the High Court. Although such an arrangement enables the conduct of the most complex trials, it does not represent a long-term sustainable model, making it necessary to strategically plan permanent spatial capacities, including large, technically equipped courtrooms for organised crime cases.

42 *Judicial, Prosecutorial and Police Resources in the Fight against Organised Crime in Montenegro,* ibid.

3. METHODOLOGY

3.1. Objectives and Basic Principles of Trial Monitoring

Monitoring court proceedings represents a method of data collection and analysis regarding how the judicial system functions in specific cases, aimed at assessing the extent to which proceedings are conducted in accordance with domestic law and international standards of a fair trial. In modern practice, trial monitoring programs are not reduced merely to observing individual hearings; they also serve as a tool for identifying broader patterns in the functioning of the judiciary, particularly regarding the efficiency of proceedings, procedural guarantees, court transparency, and institutional capacity to respond to complex cases.

Such an approach is methodologically framed by the OSCE manual *Trial Monitoring: A Reference Manual for Practitioners,*[43] which CeMI has applied and adapted for years across various trial monitoring projects in Montenegro. Within this methodological tradition, trial monitoring is understood as a multifaceted instrument: as an expression of the right to a public trial, as a diagnostic tool for assessing the functioning of the judicial system, and as an instrument that can contribute to professional and institutional learning through problem identification and the formulation of recommendations.

The presence of a monitor in the courtroom stems directly from the principle of the publicity of trial. It does not imply interference with the court's work, but rather observing how the proceedings unfold from the perspective of procedural rights and fair trial standards. In individual cases, monitoring can register irregularities, as well as positive examples of good practice. On a broader level, it allows for the identification of trends in judicial work based on a larger sample of observed proceedings, such as the frequency of postponements, case management methods, attitudes toward procedural discipline, the position of the defence, the treatment of witnesses and victims, and the overall dynamics of proceedings.

For the purposes of this project, trial monitoring had a narrower and more precisely defined focus. Unlike earlier CeMI trial monitoring projects, which focused more broadly on human rights compliance in criminal proceedings, this project centres on the judicial response to organised crime and high-level corruption, with a particular emphasis on the course and efficiency of proceedings, procedural guarantees, the organisation of trials, and the broader institutional context in which these cases are conducted.

3.2. Basic Principles of CeMI's Trial Monitoring Programs

The methodology applied in this research is based on principles that CeMI consistently applies in its trial monitoring programs, which were developed through earlier projects implemented in cooperation with the OSCE Mission to Montenegro. These principles are: the principle of non-interference in judicial proceedings, the principle of objectivity, and the principle of consent.

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

The principle of non-interference in judicial proceedings implies full restraint on the part of monitors from any action that could affect the course or outcome of a specific case. Observers do not communicate with the court, the parties, or other participants in a manner that could be perceived as an attempt to influence the proceedings, nor do they express a stance on the merits of the case. However, this principle does not exclude the organisation's right to publicly present findings and recommendations after conducting monitoring, based on gathered facts and legal analysis.

The principle of objectivity means that monitoring must be grounded in accurate, verifiable, and methodologically uniform data. Trial observers do not take sides in any case; instead, they record information according to pre-established indicators, ensuring that findings are not based on impressions, but on what was directly observed in the courtroom or established through the inspection of files and decisions. Objectivity also applies to the selection of cases itself, which must be based on clear criteria, as well as to the formulation of conclusions and recommendations.

The principle of consent refers to the institutional framework within which monitoring is conducted. In practice, trial monitoring programs are significantly more effective when professional cooperation and communication exist with judicial institutions. In this project, monitoring is not understood as a replacement for the work of judicial authorities nor as a supervisory function over their actions, but rather as a research and analytical tool aimed at collecting data and formulating recommendations that can be useful for the further development of judicial policies and practice.

3.3. Project Monitoring Methodology

For the purposes of the project, the methodology was tailored to the specific nature of the cases conducted before the Special Department of the High Court in Podgorica. Monitoring activities were primarily focused on organised crime cases and high-level corruption cases, where monitoring encompassed continuous tracking of selected cases through direct attendance at hearings, inspection of case files, and analysis of relevant judicial and prosecutorial acts, to the extent that they were accessible to the research team.

The research was conducted using a combination of quantitative and qualitative approaches. The quantitative component pertained to recording the number of monitored hearings, the frequency of postponements, the reasons for postponements, procedural stages of cases, the status of the accused, and other measurable elements. The qualitative component concerned the substantive analysis of the course of proceedings, procedural case management, the court's attitude toward participants in the proceedings, compliance with the principle of publicity of trials, treatment of the defence, witnesses, and victims, as well as the analysis of individual decisions and procedural mechanisms that emerged in the sample cases. Monitors also analysed relevant decisions of the Constitutional Court and reports of the Protector of Human Rights and Freedoms, particularly regarding the right to defence and the presumption of innocence. To analyse the presumption of innocence, monitors also examined online portal headlines related to proceedings conducted before the Special Department of the High Court in Podgorica, as well as publicly available statements, press releases, and public appearances by public officials concerning organised crime and high-level corruption cases.

Monitoring activities were carried out by CeMI's legal team alongside engaged trial observers and researchers who had been previously briefed on the project methodology, internal operating rules, and professional standards of conduct. Throughout project implementation, standardized forms were used to log data from hearings and files in order to ensure data comparability and a uniform approach to all cases.

The subject of monitoring was criminal proceedings for organised crime and high-level corruption conducted before the Special Department of the High Court in Podgorica. The focus of the research was not on assessing the merits of the charges or the correctness of judicial decisions, but rather on how the proceedings are conducted, their dynamics, procedural guarantees, and the broader institutional framework in which they take place.

Monitoring did not cover second-instance proceedings before the Appellate Court and the Supreme Court, nor proceedings on extraordinary legal remedies through direct attendance at hearings; rather, those levels were relevant only to the extent that their decisions were available for analysis within the framework of specific cases.

3.3.1. Trial Monitoring Team

Trial monitors were tasked with tracking the course of criminal proceedings before the Special Department of the High Court in Podgorica in organised crime and high-level corruption cases, as well as inspecting, to the extent permitted, the case files of selected final and binding cases from the same field. The objective of such an approach was to collect and analyse the data necessary to evaluate the course of proceedings, their efficiency, procedural guarantees, and case management methods. As part of the inspection of case files, relevant procedural acts and judicial decisions of importance for understanding the course and outcome of cases were analysed.

3.3.2. Sample of Monitored Trials

For the purposes of drafting this report, the CeMI monitoring team attended a total of 160 hearings across 52 organised crime and high-level corruption cases before the Special Department of the High Court in Podgorica. In addition to direct observation of hearings, an inspection was conducted on a sample of a total of 32 final and binding cases, of which 10 pertained to organised crime cases and 22 to high-level corruption cases. Monitors did not attend indictment control hearings.

Although, according to data obtained through free access to information requests, more than 400 final and binding cases have been recorded since the establishment of the Special Department, it should be borne in mind that a significant portion of that figure, according to available information, referred to abuse of official position cases which, following the 2024 amendments to the Law on Courts, no longer fall under the exclusive jurisdiction of the Special Department of the High Court in Podgorica. For this reason, the sample of 32 cases which the monitoring team, according to the court administration's explanation, received as all the final and binding K-S cases available at the court does not represent a negligible sample relative to the actual number of relevant final and binding organised crime and high-level

corruption cases. On the contrary, taking into account other procedural circumstances discussed in more detail further in the report (severance of proceedings, partial conclusions through plea agreements, suspension of proceedings due to the death of the accused, and other similar situations), this sample, according to the monitoring team's findings, provides a realistic insight into the volume and structure of final and binding cases. At the same time, the fact that after nearly ten years of the Special Department's existence, the number of substantially relevant final and binding cases remains relatively limited points to a pronounced efficiency problem in prosecuting organised crime and high-level corruption cases.

When interpreting this sample, it is important to keep in mind that the term *final and binding case* in this report does not necessarily denote a case that was entirely concluded with a judicial decision on merits. A significant number of cases inspected by the monitors consist of cases in which finality was reached only in relation to certain defendants, while proceedings under the same indictment or regarding the same factual description of the offense were continued in another case or in severed proceedings. This applies, among other things, to cases involving the suspension of proceedings due to the death of the accused, the conclusion of plea agreements with respect to individual defendants, the dismissal of criminal complaints, as well as other forms of formal procedural conclusion that did not simultaneously mean a complete conclusion of the criminal matter on its merits.

To complement the fieldwork, desk research was also conducted, encompassing a review of relevant legislative and regulatory acts, strategic documents, publicly available indictments and judicial decisions, official statistical data, and reports from domestic and international institutions. In addition, data was collected from relevant judicial and other state authorities through free access to information requests, in order to contextualize the findings obtained through direct monitoring within a broader legal, institutional, and strategic framework.

Table 1: Overview of the sample of cases monitored through hearing attendance

Case Type	Number of Monitored Hearings	Number of Cases
Organized Crime	135	43
High-Level Corruption	25	9
Total	**160**	**52**

Table 2: Overview of the sample of cases analyzed through file inspection

Case Type	Broj analiziranih predmeta
Organized Crime	10
High-Level Corruption	22
Total	**32**

4. ANALYSIS OF THE EFFICIENCY OF CRIMINAL PROCEEDINGS CONDUCTED FOR ORGANIZED CRIME AND HIGH-LEVEL CORRUPTION

The efficiency of criminal proceedings is not reduced solely to their duration. It implies the capacity of the judicial system to conduct a case continuously, without unnecessary delays, while simultaneously respecting the procedural guarantees of all participants. Therefore, the question of efficiency in this report is not observed separately from the right to a fair trial, but rather as an integral part of it: proceedings cannot be assessed as effective if conducted quickly but at the expense of the rights of the accused, defence, or victim, nor if formal guarantees are respected while the case remains without procedural progress for years. Article 6 of the European Convention requires for this very reason that a criminal charge be decided within a reasonable time.

To assess whether proceedings lasted for a reasonable time, it is first necessary to determine the moment from which that period begins to run. In the case law of the European Court of Human Rights, the starting point in criminal matters is that "reasonable time" begins to run from the moment a person is considered "charged," which can occur even before the case reaches the trial court for example, upon arrest, official notification of criminal prosecution, or the opening of a preliminary investigation that is, from the moment when the position of the suspect has been substantially affected by the suspicion of having committed a criminal offense.[44]

In domestic procedural law, Article 19a of the CPC specifically regulates the initiation of criminal proceedings and ties it to exhaustively defined procedural actions, including the issuance of an order to conduct an investigation and the confirmation of a direct indictment.

In earlier CeMI projects, the moment of filing the accusatory instrument was taken as the operational starting point for calculating the duration of proceedings, as it enables more uniform case monitoring and easier data comparability when inspecting files. That approach is retained here as well, with the caveat that in the Convention sense, protection of the right to a trial within a reasonable time may be triggered even earlier if the person was already formally or factually affected by the criminal charge.

Data on the efficiency of proceedings in this report are primarily based on the analysis of case files to which the monitoring team had access, as well as data obtained by the research team through desk research and free access to information requests. It is important to emphasize that when interpreting the data contained in the case files inspected by the monitors, one must bear in mind that the files were not always equally orderly or complete. In certain cases, specific procedural documents were missing or it was impossible to determine with

44 *Eckle v. Germany,* 15 July 1982, § 73, Series A no. 51

certainty the date of individual actions from the available documentation for example, when an order scheduling a hearing did not contain the date of issuance, or when all minutes, submissions, or legal remedies were not available in the file. Such situations do not in themselves mean that a procedural action was not taken, but rather that its existence or the timing of its execution could not be confirmed based on the documentation available to the monitors. Since the case file constitutes the formal trace of the course of proceedings, the analysis had to be based strictly on what could be reliably established from it.

4.1. First-Instance Proceedings

Regular criminal proceedings encompass first-instance criminal proceedings and proceedings on legal remedies. First-instance criminal proceedings are divided into two stages: preliminary proceedings and the main criminal proceedings. Preliminary proceedings consist of two phases: investigation and the filing of the indictment. When the indictment enters into legal force, preliminary proceedings conclude, and the main criminal proceedings begin, during which the subject matter of the trial is resolved. The main criminal proceedings encompass the preparation of the main hearing, the conduct of the main hearing, and making decision that is, the pronouncement of the judgment.[45]

As part of monitoring first-instance proceedings, CeMI's monitors inspected case files and completed standardized forms covering various aspects of the proceedings, including indictment control, the scheduling of the main hearing, the number of held and postponed hearings, reasons for hearing postponements, procedural discipline measures, the right to the public pronouncement of judgment, and the average duration of first-instance proceedings.

Starting from this procedural structure, monitors attended hearings, inspected case files, and recorded data through standardized forms during first-instance proceedings. These forms covered issues of importance to the course and efficiency of the proceedings, including indictment control, scheduling of the main hearing, the number of held and postponed hearings, reasons for postponement, the application of procedural discipline measures, the public pronouncement of judgment, and the duration of first-instance proceedings.

The presentation of findings has been adapted to the data collection methodology. Results are presented across several thematic sections following key stages and procedural issues of first-instance criminal proceedings.

4.1.1. Indictment Control

Out of the 32 final and binding cases inspected by the monitors, an indictment was filed in 16 cases—namely, in nine organised crime cases and seven high-level corruption cases. In five cases, a detention measure was ordered, and all cases involving detention were organised crime cases.

Pursuant to Article 293 of the CPC, the deadline for scheduling an indictment control hearing is 15 days from the date of receipt of the indictment. Following its issuance, the indictment

45 *In certain specific cases, the proceedings are concluded by a decision.*

was most frequently received by the court on the same or the following day, while the longest recorded interval was three days, in instances where the indictment was filed on a Friday and delivered to the court on the next business day, i.e., Monday.

Monitors did not record a single case in which this statutory deadline was respected, while in **14 cases (87.5%),** the period ranged from **17 to 336 days.** In the files of the remaining two cases, there were no relevant data to calculate this timeframe.

The average time taken to schedule an indictment control hearing in the analysed cases with available data was **117 days.** The longest period recorded was in two high-level corruption cases **(317 and 336 days),** while the longest period for scheduling an indictment control hearing in an organised crime case was **204 days** from the date the court received the indictment.

The 15-day statutory deadline for scheduling an indictment control hearing was not respected in any of the five cases where a detention measure was ordered; in this context, the relevant detention was ordered prior to the confirmation of the indictment, which the monitors also took into account.

Earlier trial monitoring reports indicated that the deadline for scheduling an indictment control hearing was missed in more than 50% of cases, suggesting that exceeding this deadline is not unique to the cases covered by this report. In organised crime and high-level corruption cases, this data should also be viewed within the context of the total caseload, as well as the personnel and spatial capacities of the High Court in Podgorica and the Special Department, particularly during the period to which the majority of the cases covered in this report pertain.

In addition to the cases inspected directly, based on hearing attendance and available data on the official websites of the court and the prosecution office, CeMI's monitoring team compared the period from the filing to the confirmation of the indictment for an additional 49 cases not included in the file inspection sample. It was established that the average time required to confirm an indictment following its filing amounts to **96 days.**

Furthermore, through continuous monitoring of proceedings, the monitors **recorded 13 postponements across 9 distinct organised crime and high-level corruption cases**, meaning that in certain cases the indictment control hearing was postponed multiple times. Postponements were most frequently linked to requests by the parties, primarily defence counsel requests for postponement to inspect files, obtain copies of files or evidentiary material, as well as motions for recusal. A portion of the postponements pertained to procedural prerequisites for holding a hearing, including improper service on the defendant or the lack of proof that the summons was properly served on the defence counsel, while individual postponements were tied to the recusal of judges and the reassignment of the case to another presiding judge. Postponements were also recorded due to health reasons on the part of the defendant, prior commitments of defence counsel, as well as other procedural reasons, including the need for defence counsel to clarify representation terms or prepare the defence prior to entering a plea on the indictment.

Pursuant to Article 296, Paragraph 1, of the CPC, the statutory deadline for confirming an indictment is eight days, and in complex cases, 15 days from the day the indictment control hearing is held. In the analysed cases, there were no violations of this statutory deadline.

The average period for confirming an indictment following the control hearing is one day; that is, in the vast majority of cases, the indictment was confirmed on the very day the indictment control hearing was held, and only in a single complex organised crime case did this period amount to 10 days.

The findings of the report in this section closely match the findings of previous reports. In that regard, comparative data show that there has been no deterioration in the decision-making phase regarding indictment confirmation compared to the previous state, but rather continuity in timely action following the control hearing. Additionally, monitors did not record a single instance in which an indictment was returned to the prosecution for supplementation.

However, this finding itself does not provide a complete answer to the question of the quality of judicial control at this stage of the proceedings. Given the complexity of certain indictments in organised crime and high-level corruption cases, the question arises as to whether the short duration of this phase in all instances simultaneously reflects a full, substantive review of the indictment. The importance of this issue is highlighted by Human Rights Action's 2023[46] analysis, which notes that while the CPC allows for the exclusion of unlawful evidence as early as the indictment control phase, judicial practice reveals that such evidence is sometimes excluded only at later stages of the proceedings. In this sense, data showing compliance with deadlines for indictment confirmation should be viewed primarily as an indicator of formal efficiency at this stage, but not necessarily as a sufficient indicator of its actual substantive scope.

This is supported by situations recorded by the monitors in which certain evidence was excluded from the case files during the main hearing, after the court assessed that such evidence could not be used as legally valid evidentiary material:

- **In one case**, the court excluded transcripts of secret surveillance measures after it was impossible to verify their authenticity by comparing them with the original audio recordings. The issue stemmed from the fact that the original recordings from which the transcripts were compiled were not submitted, preventing the court from verifying whether the written content corresponded to the actual recorded communication. Under those circumstances, the court ruled that the transcripts could not be used as evidence, as their use without the ability to verify the source material would compromise the reliability of the evidence.

- **In another case,** the trial panel decided *ex officio* to exclude from the evidence the official notes of the Police Directorate compiled regarding the identification of SKY ECC application users, as well as communication review reports of encrypted phones related to alleged users of that application. The reasoning behind this decision was that the aforementioned notes and reports were compiled by officers of the Special Police Department based on operational intelligence, which led the panel to reject them as evidence in those proceedings.

46 Human Rights Action, *Exclusion of Illegally Obtained Evidence in Criminal Proceedings – Principles from the Case Law of the European Court of Human Rights and Rules and Case Law in Montenegro,* June 2023, p. 18, available at: https://www.hraction.org/wp-content/uploads/2023/07/Izdvajanje-nezakonito-pribavljenih-dokaza-u-krivicnom-postupku.pdf

4.2. Trial (Main Hearing)

In earlier reports, this section of the analysis presented data on the timeframe within which the main hearing was scheduled following the confirmation of the indictment or the filing of a summary indictment, including the average duration of that period and potential violations of the deadlines laid down in Article 304, Paragraph 2, and Article 451, Paragraph 4, of the CPC. Such a breakdown is not provided in this report, as the sample of 32 final and binding cases is not sufficiently large or uniform to allow for a reliable quantitative analysis of this stage of the proceedings.

The reason for this lies partly in the fact that a portion of the cases in the sample were not conducted from start to finish as single proceedings, but rather resulted from the severance of proceedings from previously initiated cases. In such situations, it is not always possible to reliably determine from which point the deadline for scheduling the main hearing should be calculated. If, for instance, one were to start from the date of the confirmation of the indictment or the filing of the summary indictment in the original case without insight into the initial order scheduling the main hearing, it might appear that the main hearing in the severed proceedings was scheduled with a significant delay, even though that would not accurately reflect the actual course of proceedings in that case. In addition, some of the cases inspected by the monitors did not even reach the stage of an order being issued to hold a main hearing, as the proceedings were either suspended or the accusatory instruments were dismissed.

4.2.1. Postponement of the Main Hearing

The total number of hearings[47] across the 32 analysed cases was **314 specifically,** 241 in organised crime and corruption cases and 73 in high-level corruption cases. The total number of held hearings was **218 (69.43%),** while **96 (30.57%)** were postponed. Among organised crime cases, **179 hearings (74.27%)** were held and **62 (25.73%)** were postponed, whereas in high-level corruption cases, **39 hearings (53.42%)** were held and **34 (46.58%)** were postponed.

We emphasize once again that the sample of files provided to the monitors for analysis was specific and contained cases that had been severed from other ongoing proceedings to which the monitors did not have access, as well as cases that were concluded without holding a main hearing.

In cases where a detention measure was ordered, 188 hearings (75.81%) were held and 60 (24.19%) were postponed. In organised crime cases involving detention, **179 hearings (76.17%)** were held and **56 (23.83%)** were postponed, while in high-level corruption cases, **9 hearings (69.23%)** were held and **4 (30.77%)** were postponed.

47 The Criminal Procedure Code does not provide for "hearings" as part of the main trial, but associates this term with other stages of the proceedings (e.g., hearings for the examination and assessment of the legality and justification of the indictment, deciding on a plea agreement), and considers the main trial as a whole (from the confirmation of the indictment to the sentencing/pronouncement of the judgment). It treats the conclusion of actions conducted at the trial on a single day and the scheduling of a continuation for another day as an adjournment of the main trial, while referring to that single "gathering" of the participants in the courtroom as a session (Article 322 of the CPC). In this Report, the term "hearing" is used more broadly, for practical and statistical reasons, and applies to both the main trial as a whole and to each hearing within the main trial which implies one scheduled time slot for holding the main trial, which may be adjourned-unheld, adjourned-held, or held.

The average length of postponement across all cases was 34 days. In organised crime cases, the average length of postponement was **28 days or 27 days** for cases where detention was ordered—whereas in high-level corruption cases, the average length of postponement was **48 days, or 41 days** for cases involving detention.

At the end of July 2025, the Judicial Council of Montenegro introduced a more detailed record-keeping system for the reasons behind trial postponements, and its annual report presented aggregate data on the number and percentage of postponed trials.[48] However, these data were not presented by individual courts, departments, or case types, but only at an aggregate level, stating that 60.9% of scheduled trials were postponed. For the purpose of a more precise statistical analysis, CeMI's legal team attempted to obtain data from the Judicial Council via a free access to information request regarding the number and status of all hearings in cases pending before the Special Department of the High Court in Podgorica; however, that part of the request was rejected with the explanation that within the existing judicial information system, statuses for a certain number of cases especially older ones had not been updated after the initial scheduling. It follows that hearings remain recorded as "scheduled" even though they have in the meantime been held, postponed, or rescheduled, making the provision of these data unreliable.[49]

Ultimately, this means that there is currently no detailed record-keeping system that would allow for a reliable and comprehensive statistical analysis of hearing statuses across all cases in the Special Department of the High Court in Podgorica, which further underscores the importance of continuous trial monitoring and the role of civil society organisations in providing an additional layer of verifiable data and analysis on the functioning of the judiciary in this field.

4.2.1.1. Reasons for Postponement

For the purposes of this Report, we refer to the postponement of a hearing when, for whatever reason, on a given day scheduled for the main hearing (or more precisely, one of its sessions), it is not possible to carry out any or all of the proceedings intended for that main hearing as a whole. The Criminal Procedure Code uses the term postponement of (the day of) the main hearing rather than postponement of a hearing; thus, the presiding judge of the trial panel may by order, for compelling reasons, upon the motion of the parties and defence counsel or *ex officio,* postpone the day of the main hearing for up to 15 days, with all summoned persons to be notified immediately of the postponement (Art. 311). Furthermore, in Articles 323–328, the CPC prescribes the following as grounds for postponement:

1. Non-appearance of the prosecutor at the main hearing;
2. Non-appearance of the defendant at the main hearing;
3. Non-appearance of defense counsel;
4. Non-appearance of witnesses;
5. Non-appearance of expert witnesses;
6. For the purpose of obtaining new evidence;

48 *Annual Work Report of the Judicial Council and the Overall State of the Judiciary for the Year 2025,* p. 162, available at: https://sudovi.me/static//sdsv/doc/Izvjestaj_o_radu_2025_web.pdf
49 Judicial Council of Montenegro, Decision No. 17-2 – 2265/26-2

7. If during the main hearing it is established that the defendant has developed a temporary mental disorder following the commission of the criminal offense;
8. The existence of other obstacles preventing the main hearing from being conducted successfully.

Although the CPC prescribes the basic procedural situations in which a main hearing may be postponed, these statutory categories themselves do not provide a sufficiently precise picture of the actual reasons why hearings are postponed in practice. Some of the statutory grounds are broadly and generally formulated, while in judicial practice, very different factual situations may lie behind the same legal basis—ranging from the non-appearance of individual participants and service of process issues, to health reasons, change of defence counsel, motions for recusal, procedural proposals by the parties, logistical obstacles, and the like. Therefore, statutory classification, while necessary as a baseline framework, is insufficient for a more detailed analysis of postponement patterns.

Starting from this premise, CeMI developed a more detailed breakdown of reasons for hearing postponements based on experience from previous trial monitoring programs and direct insight into court practice. This allows formal statutory grounds to be broken down into more specific and analytically useful categories, enabling a more precise recording of immediate reasons for postponement and a more reliable assessment of their recurring occurrence in practice.

The most frequent reasons for hearing postponements in the analysed cases were requests by defence counsel, recorded in **14 (14.58%)** postponed hearings, followed by requests by the prosecutor in **13 (13.54%),** the absence of a judge in **13 (13.54%),** and the absence of the defendant due to improper service of process in **11 (11.46%)** postponed hearings.

Table 3: Reasons for Hearing Postponements in Analysed Cases

Reason for Postponement	Number and Percentage of Postponed Hearings		Total Duration of Postponement (in days)	Average Duration of Postponement (in days)
Improper service of process on the defendant	11	11.46%	570	51.82
Improper service of process on a witness	1	1.04%	7	7
Defendant failed to appear despite proper summons	2	2.08%	28	14
Prosecutor failed to appear despite proper summons	2	2.08%	73	36.5
Defense counsel failed to appear despite proper summons	3	3.13%	26	8.67
Defendant failed to appear (unclear from case file if properly summoned)	4	4.17%	14	3.5
Absence of the judge	13	13.54%	433	33.31
Lack of technical conditions	1	1.04%	59	59
Organizational reasons on the part of the court	1	1.04%	1	1
Expert report/opinion not submitted on time	3	3.13%	119	39.67
Request by defense counsel	14	14.58%	466	33.29
Request by the prosecutor	13	13.54%	541	41.62
Agreement of the parties	1	1.04%	15	15
Other health reasons	9	9.38%	286	31.78
Other objective reasons	4	4.17%	287	71.75
Absence of multiple persons	2	2.08%	36	18
Revocation/cancellation of power of attorney for defense counsel	4	4.17%	110	27.5
Other reasons	8	8.33%	242	30.25
Total	**96**	**100%**	**3,313**	**34.51**

Table 4: Reasons for Hearing Postponements in Analysed Organised Crime Cases

Reason for Postponement	Number and Percentage of Postponed Hearings		Total Duration of Postponement (in days)	Average Duration of Postponement (in days)
Improper service of process on the defendant	3	4.84%	91	30.33
Improper service of process on the defendant	1	1.61%	7	7
Improper service of process on the defendant	1	1.61%	1	1
Prosecutor failed to appear despite proper summons	2	3.23%	73	36.5
Defense counsel failed to appear despite proper summons	3	4.84%	26	8.67
Defendant failed to appear (unclear from case file if properly summoned)	4	6.45%	14	3.5
Absence of the judge	10	16.13%	277	27.7
Lack of technical conditions	1	1.61%	59	59
Organizational reasons on the part of the court	1	1.61%	1	1
Request by defense counsel	12	19.35%	327	27..5
Request by the prosecutor	2	3.23%	27	13.5
Agreement of the parties	1	1.61%	15	15
Other health reasons	5	8.06%	113	22.6
Other objective reasons	4	6.45%	287	71.75
Revocation/cancellation of power of attorney for defense counsel	4	6.45%	110	27.5
Other reasons	8	12.9%	242	30.25
Total	**62**	**100%**	**1,670**	**26.94**

Table 5: Reasons for Hearing Postponements in Analysed High-Level Corruption Cases

Reason for Postponement	Number and Percentage of Postponed Hearings		Total Duration of Postponement (in days)	Average Duration of Postponement (in days)
Improper service of process on the defendant	8	23.53%	479	59.88
Defendant failed to appear despite proper summons	1	2.94%	27	27
Absence of the judge	3	8.82%	156	52
Expert report/opinion not submitted on time	3	8.82%	119	39.67
Request by defense counsel	2	5.88%	139	69.5
Request by the prosecutor	11	32.35%	514	46.73
Other health reasons	4	11.76%	173	43.25
Absence of multiple persons	2	5.88%	36	18
Total	**34**	**100%**	**1,643**	**48.32**

Table 6: Reasons for Hearing Postponements in Analysed Detention Cases

Reason for Postponement	Number and Percentage of Postponed Hearings		Total Duration of Postponement (in days)	Average Duration of Postponement (in days)
Improper service of process on the defendant	4	6.67%	119	29.75
Improper service of process on a witness	1	1.67%	7	7
Defendant failed to appear despite proper summons	2	3.33%	28	14
Prosecutor failed to appear despite proper summons	2	3.33%	73	36.5
Defense counsel failed to appear despite proper summons	2	3.33%	17	8.5
Defendant failed to appear (unclear from case file if properly summoned)	4	6.67%	14	3.5
Absence of the judge	9	15%	265	29.44
Organizational reasons on the part of the court	1	1.67%	1	1
Request by defense counsel	9	15%	273	30.33
Request by the prosecutor	2	3.33%	27	13.5
Agreement of the parties	1	1.67%	15	15
Other health reasons	7	11.67%	224	32

Reason for Postponement	Number and Percentage of Postponed Hearings		Total Duration of Postponement (in days)	Average Duration of Postponement (in days)
Other objective reasons	4	6.67%	287	71.75
Revocation/cancellation of power of attorney for defense counsel	4	6.67%	110	27.5
Other reasons	8	13.33%	242	30.25
Total	**60**	**100%**	**1,702**	**28.37**

Table 7: Reasons for Hearing Postponements in Analysed Organised Crime Detention Cases

Reason for Postponement	Number and Percentage of Postponed Hearings		Total Duration of Postponement (in days)	Average Duration of Postponement (in days)
Improper service of process on the defendant	3	5.36%	91 days	30.33
Neuredna dostava svjedoku	1	1.79%	7 days	7
Defendant failed to appear despite proper summons	1	1.79%	1 day	1
Prosecutor failed to appear despite proper summons	2	3.57%	73 days	36.5
Defense counsel failed to appear despite proper summons	2	3.57%	17 days	8.5
Defendant failed to appear (unclear from case file if properly summoned)	4	7.14%	14 days	3.5
Absence of the judge	9	16.07%	265 days	29.44
Organizational reasons on the part of the court	1	1.79%	1 day	1
Request by defense counsel	9	16.07%	273 days	30.33
Request by the prosecutor	2	3.57%	27 days	13.5
Agreement of the parties	1	1.79%	15 days	15
Other health reasons	5	8.93%	113 days	22.6
Other objective reasons	4	7.14%	287 days	71.75
Revocation/cancellation of power of attorney for defense counsel	4	7.14%	110 days	27.5
Other reasons	8	14.29%	242 days	30.25
Total	**56**	**100%**	**1,536 days**	**27.43**

Table 8: Reasons for Hearing Postponements in Analysed High-Level Corruption Detention Cases

Reason for Postponement	Number and Percentage of Postponed Hearings		Total Duration of Postponement (in days)	Average Duration of Postponement (in days)
Improper service of process on the defendant	1	25%	28	28
Defendant failed to appear (unclear from case file if properly summoned)	1	25%	27	27
Other health reasons	2	50%	111	55.5
Total	**4**	**100%**	**166**	**41.5**

Through continuous monitoring of proceedings, the monitors recorded 41 postponed hearings across 23 distinct organised crime and high-level corruption cases. In certain cases, postponements recurred multiple times, most frequently linked to requests by the parties including requests by defence counsel, requests by the defendant, motions for recusal, and agreements between the parties as well as the revocation/cancellation of power of attorney for defence counsel or the non-appearance of defence counsel at the hearing. Postponements were also recorded due to health and other objective reasons, including bomb threats reported at the courthouse and court staff strikes. A portion of the postponements pertained to reasons on the part of the court, primarily the absence of the judge, while individual hearings were postponed in order to obtain new evidence or because evidence had not been provided by other authorities. In a smaller number of cases, postponements were tied to the need for additional time to inspect case files, decisions on procedural proposals prior to resuming proceedings, joinder of proceedings, or other reasons of a procedural nature.

Regarding bomb threats reported at the courthouse, monitors recorded at least 12 bomb threats from the beginning of 2024 to the end of 2025, 10 of which concerned the building housing the High Court in Podgorica.[50] On all days when bomb threats were received, cases within the jurisdiction of the Special Department were also scheduled.

50 See: RTCG, "Bomb Threat in Courts Was False", 29 January 2024; Radio Titograd, "Bomb Threat: High, Appellate, and Supreme Court Evacuated", 11 March 2024; Dnevno, "False Bomb Threat at the Basic, High, and Appellate Court", 12 March 2024; Vijesti, "False Bomb Threat in Several Courts in Podgorica", 1 April 2024; Vijesti, "Report of Allegedly Planted Bombs in Buildings Housing the Basic, Supreme, Appellate, and High Court", 24 June 2024; Vijesti, "Courts in Several Towns Evacuated, Bomb Threats Were False", 24 September 2024; Dan, "Bomb Threat in Courts Was False", 3 December 2024; CdM, "False Bomb Threats in Buildings of the Basic and Appellate Court", 25 December 2024; RTCG, "Podgorica: False Bomb Threat at the Supreme, Appellate, and High Court", 17 March 2025; Vijesti, "Police Directorate: False Bomb Threat in the Building of the Appellate and High Court During Trial of Criminal Group Members", 23 June 2025.

4.2.2. Measures of Procedural Discipline

In a narrower sense, measures of procedural discipline are tools available to the court to maintain order in the courtroom, namely:

1. Admonition (when a participant in the proceedings or a person attending the main hearing disturbs order, insults the court, the parties, or other participants in the proceedings, or fails to comply with the directions of the presiding judge for maintaining order);
2. Removal of the defendant from the courtroom if the admonition proves unsuccessful;
3. Removal and a fine of up to €1,000 for other persons; and
4. Notification by the presiding judge of the competent State Prosecutor if the State Prosecutor or their deputy disturbs order (in addition, the presiding judge may interrupt the main hearing and request the competent State Prosecutor to designate another person to represent the indictment).

In a broader sense, measures of procedural discipline also encompass measures used to secure the attendance of participants at the main hearing, including:

1. Compulsory appearance (forced entry/bringing in);
2. Fines; and
3. Issuance of an arrest warrant.

In any event, these measures should be distinguished from measures aimed at securing the presence of the defendant and the unimpeded conduct of criminal proceedings, which will be discussed in further detail in Section 5 of this Report.

In the analyzed cases, a total of **83** measures of procedural discipline were imposed on various participants: **8** admonitions, **50** fines, **7** removals from the courtroom, **14** compulsory appearance measures, and **4** arrest warrants.

Table 9: Number of Procedural Discipline Measures Imposed on Participants in the Proceedings

Measure	Defendant		Defense Counsel		Witness		Prosecutor		Total
Admonition	2	25%	4	50%	1	12.5%	1	12.5%	8
Fine	0	0%	45	90%	5	10%	0	0%	50
Removal from courtroom	7	100%	0	0%	0	0%	0	0%	7
Compulsory appearance (forced bringing in)	5	35.71%	0	0%	99	64.29%	0	0%	14
National arrest warrant	3	100%	0	0%	0	0%	0	0%	3
International arrest warrant	1	100%	0	0%	0	0%	0	0%	1
Total	**18**	**21.69%**	**49**	**59.04%**	**15**	**18.07%**	**1**	**1.2%**	**83**

Out of this total, the largest number of measures were imposed in detention cases **(76),** namely: 8 admonitions, **47** fines, **7** removals from the courtroom, **10** compulsory appearance measures, and 4 arrest warrants.

In the analyzed cases, the court imposed fines totaling **€5,900,** of which **€2,900** was in detention cases.

Regarding the measure of compulsory appearance (forced bringing in), the monitors recorded **9 (64.28%)** cases in which the Police Administration failed to act upon the bench warrant for compulsory appearance, while in **3 (33.33%)** cases the Police Administration failed even to notify the court of the reasons for non-compliance. In detention cases, the Police Administration failed to act upon the warrant in 8 cases **(57.14%),** and in 2 **cases (25%)** failed even to inform the court of the reasons for non-compliance.

The importance of timely and documented compliance with compulsory appearance warrants is also highlighted by a publicly recorded case involving a final-sentenced individual who failed to report for the execution of a prison sentence. Although that case did not involve a procedural discipline measure imposed during the main hearing, but rather concerned the execution phase of a final judgment, it is relevant to the issue of institutional coordination between the court and the Police Administration. Specifically, according to publicly available data, the police stated that the convicted person had not voluntarily reported to serve the sentence and that they had notified the competent court of the established facts, after which an arrest warrant was issued. The position of the Police Administration was that no obligation existed for earlier action until requested by the court, whereas the court stated that the order for compulsory enforcement had been issued earlier, and that the police only subsequently informed the court that the individual was not found at the registered address.[51]

Although this involves a different procedural stage, in cases with a large number of defendants, defense counsel, and witnesses, the lack of timely action by the Police Administration can directly impact the conduct of the main hearing, lead to postponements, and lengthen the total duration of the proceedings.

It is important to emphasize that the vast majority of procedural discipline measures—namely **64 (77.1%)** were imposed in a single case out of the 32 analyzed by monitors, which lasted nearly 10 years. Therefore, based on the analyzed cases, it cannot be concluded that the court frequently applies the measures of procedural discipline at its disposal.

4.2.3. Right to Public Pronouncement of the Judgment

Under Article 375 of the Criminal Procedure Code (CPC), after the court passes a judgment, the presiding judge shall pronounce it immediately. If the court is unable to pronounce the judgment on the very same day the main hearing is concluded, it shall postpone the pronouncement of the judgment for a maximum of three days and specify the time and place of the pronouncement. If the judgment is not pronounced within three days from the conclusion of the main hearing, the presiding judge is obliged to immediately inform the president of the court upon the expiration of this deadline and state the reasons for the delay.

51 https://www.hraction.org/2026/03/07/b17-t2-osudena-bivsa-tuziteljka-lidija-mitrovic-u-bjekstvu/

In the analysed cases, **20** first-instance judgments were rendered. **In eight cases,** the judgment was pronounced on the same day the main hearing concluded, whereas in **12** cases this deadline was not observed. The average number of days required to pronounce the judgment following the conclusion of the main hearing in the analysed cases was **13 days.**
Pursuant to Article 378, Paragraph 1, of the CPC, a pronounced judgment must be drawn up in writing and dispatched within one month of its pronouncement, and exceptionally within two months in complex matters. If the judgment is not drawn up within these deadlines, the presiding judge is obliged to notify the president of the court in writing of the reasons why this was not done, after which the president of the court takes measures to ensure the judgment is drawn up as soon as possible. According to Article 378, Paragraph 3, of the CPC, a certified copy of the judgment is served on the prosecutor, the defendant, and the defence counsel in accordance with the rules on serving documents to the accused under Article 195 of the CPC.

In the analysed cases, monitors recorded seven **cases (35%)** in which the judgment was written within one month, in **five cases (25%)** the judgment was drawn up within 1 to 2 months, while in **eight cases (40%)** it took more than two months.

The importance of timely service of the written copy of the judgment stems from Article 381 of the CPC, according to which an appeal against a first-instance judgment may be filed within 15 days from the date of service of the written copy of the judgment, while a timely filed appeal stays the execution of the judgment. Consequently, even after the pronouncement of the judgment, the proceedings cannot be considered procedurally concluded (in the first or second instance) until the judgment is drawn up in writing, dispatched, and properly served on the individuals whose service triggers the statutory deadlines for legal remedies.

The service of judgments is particularly relevant in cases involving multiple defendants and multiple defence counsel. According to Article 195, Paragraph 4, of the CPC, if the accused has a defence counsel, the judgment and all decisions from whose service the period for appeal or objection runs shall be served on both the defence counsel and the accused, with the deadline running from the date of service of the document on the accused or defence counsel, respectively. Simultaneously, Article 195, Paragraph 5, of the CPC stipulates that if a document is to be served on the defence counsel of an accused who has multiple defence counsel, service on one of them shall be sufficient.

The CPC also contains rules aimed at preventing the deadlock of proceedings in the event of refusal to accept documents. Under Article 197, Paragraph 4, of the CPC, if the recipient refuses to sign the proof of service or return receipt, the process server will note this on the proof of service or return receipt, stating the date and time of delivery, whereby service is deemed to have been delivered. Furthermore, under Article 198 of the CPC, if the recipient or an adult member of their household refuses to accept the document, the process server will record the date, time, and reason for refusal on the proof of service, leave the document in the recipient's residence or workplace, whereby service is deemed to have been delivered.

Despite these rules, the service stage of court decisions in practice can create room for additional delay in proceedings, especially when questions arise regarding the method of delivery, proof of proper receipt, or the necessity of delivering the decision to specific individuals. This is illustrated by a publicly recorded procedural situation before the High Court in Podgorica, where the issue pertained not to the service of the written copy of the judgment,

but to the service of a decision ordering detention issued on the same day the judgment was pronounced. In that instance, it was stated that the decision was properly served on the accused and one of the defence counsel, whereas the second defence counsel refused to receive the decision electronically and insisted on service via regular post, which the court evaluated as obstruction and deliberate delay of the decision on appeal in an urgent matter. Although this concerned a decision rather than a final judgment, the scenario is equally relevant to the service of written copy of judgments, as it demonstrates that the method and propriety of serving court decisions can impact procedural dynamics even after a ruling has been pronounced.

For these reasons, monitors tracked the time elapsed between the pronouncement of the judgment and the service of its written copy on the parties to the proceedings. This data was monitored to assess whether additional procedural delays occur in the service phase following the conclusion of the main hearing and pronouncement of the judgment, which could affect the start of appeal deadlines, the transmission of the case file to the second-instance court, and the overall duration of the proceedings.

In this regard, monitors noted that the average time from pronouncement to service of the written copy of the first-instance judgment in the analysed cases was **71** days for service on the prosecutor, **101 days** for service on defence counsel, and **105 days** for service on the defendant. Compared to service on the prosecutor, service on defence counsel took approximately **42.25% longer,** while service on the defendant took approximately **47.89% longer.**

4.3. Second-Instance Proceedings

Pursuant to Article 385 of the Criminal Procedure Code (CPC), a judgment may be challenged on the following grounds:

1. a substantial violation of the provisions of the criminal procedure;
2. a violation of the Criminal Code;
3. an incorrectly or incompletely established factual situation;
4. the decision on criminal sanctions, confiscation of pecuniary gain, costs of criminal proceedings, and civil claims.

Following the lodging of an appeal, the second-instance court decides on the case either at a panel session or at a hearing. A hearing before the second-instance court is provided for under Article 395(1) of the CPC and constitutes an exception to decision-making at a panel session. It may be held only where, due to an incorrectly or incompletely established factual situation, it is necessary to present new evidence or repeat evidence already presented, and where, at the same time, there are justified reasons not to refer the case back to the first-instance court for a retrial.

In the cases analysed, an appeal was lodged **17** times across **10** cases, of which in two cases the detention measure was still in force.

The average duration of the second-instance proceedings in the analysed cases, i.e. from the date of lodging the appeal to the date of the decision on the appeal, was **138 days,** or **170**

days in cases where the detention measure was still in force.

Table 10: Types of decisions issued in the second-instance proceedings in the analysed cases

Type of decision	Number	Percentage
The appeal is dismissed as inadmissible	0	0%
The appeal is rejected	10	58.82%
The judgment is quashed	6	35.29%
The judgment is amended	1	5.88%
Total	**17**	**100%**

4.4. Average Duration of Proceedings

International standards do not prescribe a fixed time threshold after which a violation of the right to a trial within a reasonable time would automatically be deemed to have occurred. Instead of adopting such an abstract approach, international case-law, and in particular the case-law of the ECtHR, assesses each individual set of proceedings on its own merits, taking into account all circumstances relevant to its duration.

Therefore, the question of whether proceedings have lasted a reasonable length of time cannot be assessed separately from the characteristics of the case itself. The case-law of the ECtHR has consistently established that this assessment is based on several criteria, primarily the complexity of the case, the conduct of the applicant, and the conduct of the competent authorities. The König judgment of 28 June 1978 added another criterion: what is at stake for the applicant.[52]

The guidelines concerning the length of proceedings, based on an analysis of the ECtHR case-law by the European Commission for the Efficiency of Justice (CEPEJ),[53] are as follows:

- A total duration of up to two years per level of jurisdiction in ordinary (non-complex) cases is generally considered reasonable. Where proceedings last longer than two years, the Court carefully examines the case to determine whether there are objective reasons, such as the complexity of the case, and whether the national authorities have demonstrated due diligence throughout the proceedings;
- In complex cases, the Court may allow a longer period, but particular attention is paid to periods of inactivity that are manifestly excessive. However, the longer periods permitted are rarely more than five years and almost never more than eight years in total;
- In so-called priority cases, involving specific issues, the Court may depart from the general approach and find a violation even where the case has lasted less than two years

52 *Length of Proceedings in the Member States of the Council of Europe: Based on the Case-Law of the European Court of Human Rights,* CEPEJ (2006)15, Strasbourg, 8 December 2006, p. 13
53 Calvez, Françoise and Regis, *Nicolas, Length of Court Proceedings in the Member States of the Council of Europe Based on the Case-Law of the European Court of Human Rights,* Third Edition – CEPEJ Studies No. 27, p. 5

per level of jurisdiction. This may be the case, for example, where the applicant's state of health is a critical factor or where a delay could have irreversible consequences for the applicant;
- The only cases in which the Court has not found a violation despite an obviously excessive length of proceedings are those in which the applicant's conduct was a significant contributing factor.

The sample of finally concluded cases does not provide a sufficient basis for drawing firm conclusions about the average duration of proceedings in organised crime and high-level corruption cases. The average duration of the cases reviewed by the monitors was **685 days,** while in cases in which a detention measure had been imposed, the average duration was **1,438 days.** It should be noted that this result was significantly influenced by one detention case involving 14 defendants, which lasted almost 10 years from the date of the indictment to the date of the final judgment. It is also important to emphasise that this is the arithmetic average of the actual duration of the finally concluded cases in the analysed sample, calculated from the date of the indictment to the date of the final judgment. Therefore, this figure does not represent the CEPEJ indicator of the expected duration of proceedings (*disposition time*), [54]but rather shows how long the specific cases analysed actually lasted.

It is also important to reiterate that the structure of the analysed sample is not uniform. One part of the sample consists of cases that were formally concluded within a short period, for example by the dismissal of the indictment, while the other part consists of cases separated from proceedings that are still ongoing. Therefore, the data on the average duration of proceedings in this sample do not, in themselves, provide a sufficiently reliable picture of the actual length of proceedings in this area.

A more comprehensive picture of the duration of proceedings in organised crime and high-level corruption cases can only be obtained by taking into account data on the overall caseload of the Special Department of the High Court in Podgorica.

As at 6 April 2026, a total of **172** cases were pending before the Special Department.[55]

The largest number of pending cases originated in 2024 and 2025 (**67 cases** in total). At the same time, a significant number of older cases remained pending: **42 cases** from the period 2017–2021, while a further **44 cases** had been received in 2022 and 2023.

This section of the report will also present data on the actual duration of the pending cases, i.e. the length of time that cases which remained pending had been before the court as at 6 April 2026. As noted above, these data do not represent the duration of proceedings calculated according to the CEPEJ methodology, but rather show the age of the specific unresolved cases as at the cut-off date.
Measured by the time spent pending before the court as at 6 April 2026, the oldest active case had been pending for **3,231 days.**

54 According to the CEPEJ methodology, the average duration of proceedings is calculated by dividing the number of pending cases at the end of the year by the number of cases concluded during that year, multiplied by 365 (days).
55 Decision of the High Court in Podgorica – I Su. No. 46/26

When considering the aggregate duration of all pending cases by year of receipt, it is evident that the greatest cumulative workload is generated not only by the oldest cases, but also by the larger cohorts of cases received in subsequent years.

Table 11: Active cases by year of receipt (number of cases, total duration in days, and average duration as at 6 April 2026)

Year of case receipt	Number of pending cases	Average number of days per case
2017	2	3.164.5
2018	5	2.764.6
2019	9	2.524.8
2020	14	2.021.6
2021	12	1.756.8
2022	20	1.415.3
2023	24	1.041.0
2024	36	643.2
2025	31	224.5
2026	19	31.0
Total	**172**	**1,024.7**

The overall average duration of all organised crime (OC) cases pending as at 6 April 2026 was **1,024.7 days** per case. However, this figure alone does not provide the most accurate picture of the duration of proceedings in organised crime and high-level corruption cases. It is influenced by the large number of newer cases from 2024, 2025 and 2026, which have not yet had sufficient time to reach longer durations. Therefore, for the purpose of assessing the duration of proceedings, it is more relevant to consider separately cases received up to and including 2023, i.e. those that had already been pending for more than three years at the cut-off date. This group comprised a total of **86 active cases,** with an average duration of **1,692.4 days** per case.

Table 12: Cases Pending up to and Including 2023 (Number of Cases, Total Duration in Days, and Average Duration as at 6 April 2026)

Year	Number of pending cases	Average number of days per case
2017	2	3,164.5
2018	5	2,764.6
2019	9	2,524.8
2020	14	2,021.6
2021	12	1,756.8
2022	20	1,415.3
2023	24	1,041.0
Total	**86**	**1,692.4**

Given the ECtHR standards, according to which proceedings lasting more than five years in complex cases are rare, while proceedings lasting more than eight years are highly exceptional, it is important also to present the duration of pending cases that, as at 6 April 2026, had been ongoing for more than five years and those ongoing for more than eight years.

Table 13: Cases Pending for More Than Five and Eight Years, Respectively (number of cases, total duration in days, average duration and duration range as at 6 April 2026)[56]

Case category	Number of cases	Average duration in days	Duration range in days
More than 5 years olds	31	2,240.7	1,839 – 2,771
More than 8 years old	3	3,089.7	2,940 – 3,231

As at 6 April 2026, **34** cases pending before the court had been ongoing for more than five years, with an average duration of **2,315.6 days.** Within this group, three cases had been ongoing for more than eight years, with an average duration of **3,089.7 days**.

It is worth emphasising in this context that, in June 2025, the President of the Supreme Court of Montenegro adopted the ***Unified Programme for the Resolution of Old Cases for the Period 2025–2027,***[57] as a strategic document aimed at systematically reducing the number of old cases and preventing their further accumulation. The Programme was adopted in accordance with Measure 2.6 of the Judicial Reform Strategy 2024–2027 and Measure 2.6.2 of the Action Plan for the Implementation of the Judicial Reform Strategy 2024–2027 for the period

56 To avoid double-counting, the categories are presented as mutually exclusive. This means that cases pending for more than eight years are not included in the category of cases pending for more than five years; instead, they are separated and presented as a distinct category.
57 Available at: https://www.sudovi.me/static//vrhs/doc/Jedinstveni_program_rjesavanja_starih_predmeta.pdf

2024–2025, with the Supreme Court of Montenegro designated as the institution responsible for its implementation.

The Programme starts from the assessment that lengthy court proceedings and backlogs cannot be addressed on an *ad hoc* basis, but rather through strategic planning, clearly defined priorities, continuous monitoring and effective use of available resources. One of the priority challenges identified is reducing the number of old cases, i.e. "red covers", as well as preventing their emergence and further accumulation. The Programme points out that long-standing backlogs in the resolution of cases are the result of several interconnected factors, including a shortage of judicial staff and resources, outdated and inefficient working processes, the complexity of cases, a large number of submissions by the parties, and insufficient coordination between institutions.

4.5. Presumption of Innocence

The presumption of innocence is one of the fundamental elements of the right to a fair trial, guaranteed by Article 11 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights. These international legal instruments are based on the principle that everyone charged with a criminal offence must be presumed innocent until proven guilty in accordance with the law. The same standard is contained in Article 6(2) of the European Convention on Human Rights, which provides that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. As with other rights protected by the Convention, this right must be interpreted and applied in such a way as to be practical and effective, rather than merely formal, theoretical or illusory. In essence, the presumption of innocence means that everyone against whom criminal proceedings are brought is considered innocent until their criminal liability has been established by a final court decision.

Respect for the presumption of innocence is also guaranteed by Article 35 of the Constitution of Montenegro, which provides that everyone shall be presumed innocent until their guilt has been established by a final court decision. The accused is therefore not required to prove their innocence, and any doubt as to guilt must be interpreted by the court in favour of the accused.

The European Court of Human Rights has, through its extensive case-law, considered various forms of violation of the accused's right to be presumed innocent. According to the standards established by the Court, the presumption of innocence must, first and foremost, be respected by judges. A criminal court must not proceed from a preconceived view that the accused has committed the criminal offence with which they are charged. On the contrary, the burden of proving criminal liability rests with the prosecution, while any reasonable doubt must be assessed in favour of the accused.[58]

During the trial monitoring period, the monitors did not record any violations of the presumption of innocence by judges, either during the main hearings or in their public statements.

58 *Barberà, Messegué and Jabardo v Spain,* Application No. 10590/83, Judgment of 6 December 1988

The obligation to respect the presumption of innocence applies not only to courts, but also to other State officials.[59] In the public sphere, however, statements by public officials and politicians can frequently be heard that imply the guilt of persons suspected or charged with criminal offences.

For the purposes of this report, the monitors analysed publicly available statements, press releases and public appearances by public officials concerning organised crime and high-level corruption cases during the period from 1 January 2024 to 30 April 2026. In this regard, 10 relevant public appearances, statements and press releases reported by the media were identified.

A possible violation of the presumption of innocence in this regard most commonly takes the form of categorical wording by which individuals or groups are prematurely characterised as members of criminal organisations, perpetrators of criminal offences, or persons whose involvement in unlawful activities has already been established, even though proceedings against those persons are still ongoing, i.e. they have not been finally convicted.

The presumption of innocence must also be respected in media reporting. Freedom of the media plays an exceptionally important role in a democratic society, but it cannot be understood as authorising the integrity of judicial proceedings to be undermined or the accused's right to a fair trial to be jeopardised. Principle 2 of the Council of Europe Recommendation on the provision of information through the media in relation to criminal proceedings provides that respect for the presumption of innocence forms an integral part of the right to a fair trial. Accordingly, opinions and information concerning ongoing criminal proceedings may be published only where this does not call into question the presumption of innocence of the suspected or accused person. The European Court of Human Rights has also addressed the impact of media reporting on the presumption of innocence in its case-law.14 In one of its cases, the Court noted that, in the context of ongoing criminal proceedings, the limits of permissible journalistic comment do not extend to statements which, whether intentionally or unintentionally, could affect the accused's ability to receive a fair trial or undermine public confidence in the role of the courts and the administration of justice.[60]

The monitors also analysed media articles and published reports concerning organised crime and high-level corruption cases during the same period, from 1 January 2024 to 30 April 2026. The analysis covered 26 relevant media publications published by a number of Montenegrin online news portals and media outlets.

In media reporting, violations of the presumption of innocence most commonly occur through headlines and the manner in which allegations from investigations, indictments or other procedural documents are presented. Some of the publications analysed use wording that directly associates suspected or accused persons with criminal groups, drug or cigarette smuggling, money laundering, bribery, abuse of office or other unlawful activities, without sufficiently clearly indicating that these are suspicions, allegations by the prosecution, or charges that have yet to be proven in judicial proceedings. In one case, the monitors also recorded an official response from defence counsel concerning media headlines that violated the presumption of innocence of their client. In addition to raising concerns about the violation of the presumption of innocence, the defence counsel also highlighted an attempt to ex-

59 *Allenet de Ribemont v France,* Application No. 15175/89, Judgment of 10 February 1995
60 *Worm v Austria,* Application No. 22714/93, Judgment of 29 August 1997

ert pressure in this way on the judges of the High Court in Podgorica and the Court of Appeal of Montenegro, who were due to decide on the review of the detention measure shortly after the publication of the disputed article.

4.5.1. Presumption of Innocence in the Case-Law of the Constitutional Court

For the purposes of this research, CeMI's monitoring team also analysed decisions of the Constitutional Court ruling on constitutional complaints lodged in organised crime (OC) cases on the grounds of a violation of the presumption of innocence under Article 35 of the Constitution of Montenegro. The analysis covered six decisions from 2023, three decisions from 2024 and seven decisions from 2025.

Of the decisions analysed, two constitutional complaints were dismissed as inadmissible, 11 were rejected and three were upheld. The decisions dismissing the complaints as inadmissible were based on formal deficiencies (e.g. failure to submit a special power of attorney) or on the fact that the contested act was not an individual legal act amenable to review by way of a constitutional complaint.

The rejection of the constitutional complaints was justified in almost identical terms in all decisions, namely that the presumption of innocence under Article 35 of the Constitution and the corresponding Article 6(2) of the European Convention on Human Rights would be violated if the contested judicial decision reflected the opinion that the applicant was guilty before their guilt had been established in accordance with the law. It is sufficient for there to be reasoning that suggests that the court considers the accused guilty, since any premature expression of such an opinion by a court inevitably results in a violation of the presumption of innocence. The Constitutional Court supports this reasoning by referring to the ECtHR judgments in *Karan v Croatia,* No. 21139/05, and *Getoš Magdić* v Croatia, No. 56305/08.

The Constitutional Court considers that an expression of an opinion that the accused is guilty must be distinguished from an expression of suspicion that a criminal offence has been committed, which does not, in itself, constitute a violation of the presumption of innocence. In this regard, the words and expressions used by the court are of decisive importance in assessing whether the presumption of innocence has been violated. It can be concluded from all the Constitutional Court decisions referred to above that the applicants alleged a violation of the presumption of innocence specifically in the context of challenging decisions ordering or lifting detention, arguing that a finding of reasonable suspicion constituted a violation of the presumption of innocence.

The applicants in their constitutional complaints argued that their presumption of innocence had been violated by the imposition of pre-trial detention, essentially maintaining that there was no reasonable suspicion that they had committed the criminal offences with which they were charged and that the courts had failed to take into account the results of the evidence presented.

In all of these decisions, the Constitutional Court took the position that the fact that the applicants were reasonably suspected of having committed a criminal offence, as a *conditio* sine

qua non for ordering detention (provided that at least one of the grounds under Article 175 of the CPC is present), does not amount to prejudging their guilt: "This is because, for anyone reasonably suspected of having committed a criminal offence, there is a possibility that they may be found guilty and punished for that offence, and it is a generally known fact that the possibility of any punishment, particularly imprisonment, is the main motive for absconding from criminal prosecution. Thus, the competent courts did not express a view or opinion that the applicants had committed the criminal offences with which they were charged but referred exclusively to the evidence on which the order to conduct the investigation was based, from which reasonable suspicion arose that the applicants had committed the criminal offences, which was in accordance with the powers of the court at that stage of the proceedings."[61]

In one of the decisions, it was noted that, presumably by mistake, the applicant was stated to have complained of a violation, inter alia, of the right to defence under Article 37 of the Constitution of Montenegro, while the decision itself was subsequently made in relation to a violation of the presumption of innocence. For the purposes of this research, and having regard to the substance of the reasoning, this decision was considered as part of the sample relating to the presumption of innocence.

The decision states that, according to the case-law of the European Court of Human Rights, the presumption of innocence is violated if a judicial decision concerning the applicant reflects the view that they are guilty, before their guilt has been established in accordance with the law, particularly where they have not had the opportunity to exercise their right of defence. The presumption of innocence also applies throughout the proceedings, and not only to the examination of the merits of the charge. In this regard, the Constitutional Court refers to the ECtHR judgments in *Minelli v Switzerland,* of 25 March 1983, *Sekanina v Austria,* of 25 August 1993, Series A No. 266-A, and *Allenet de Ribemont v France,* of 10 February 1995, Series A No. 308, and finds that the contested decision did not contain any advance statement by the court that the applicant had committed the criminal offences, nor any advance finding that the applicant was guilty. Rather, in assessing the existence of the grounds for detention based on the risk of absconding and the seriousness of the criminal offences with which the applicant was charged, the court expressed the view that there were lawful and legitimate grounds for extending the detention in order to prevent the applicant from absconding and having regard to the seriousness of the criminal offences with which they were charged, "which, in the Constitutional Court's assessment, cannot constitute an expression of a view or preconception as to the applicant's guilt."[62]

As regards the three decisions in which constitutional complaints lodged, inter alia, on the grounds of a violation of the right to respect for the presumption of innocence were upheld, these concerned decisions in which the Constitutional Court quashed decisions ordering or extending the detention measure, having found a violation of the right to personal liberty, and remitted the cases to the competent courts for fresh proceedings and decision-making, in order to ensure effective and practical judicial review of the lawfulness and justification of the applicants' deprivation of liberty. Consequently, the Constitutional Court did not consider any other potential violations of constitutional or Convention rights raised in the constitutional complaints.

61 Decision of the Constitutional Court of Montenegro, U-III No. 856/23, of 1 November 2023
62 Decision of the Constitutional Court of Montenegro, U-III No. 541/24, of 18 July 2024

4.5.2. Presumption of Innocence in the Practice of the Protector of Human Rights and Freedoms

With regard to complaints submitted to the Protector of Human Rights and Freedoms of Montenegro, according to the 2023 Annual Report, one complaint was submitted to the Protector of Human Rights and Freedoms of Montenegro seeking protection of the right to the presumption of innocence before the judicial authorities, while a violation of the right to the presumption of innocence was raised in one complaint in respect of which the proceedings had been concluded. The Report also states that, in the course of its proceedings, the Protector referred to and highlighted the standards and case-law of the European Court of Human Rights, as well as those of the Constitutional Court of Montenegro, concerning the protection of the rights of persons deprived of their liberty under Articles 5 and 3 of the European Convention on Human Rights, including, inter alia, the right to the presumption of innocence.[63]

The 2024 Annual Report contains no data on complaints concerning this right but emphasises the importance of respecting the presumption of innocence both in journalistic reporting and in statements made by public figures.[64]

According to the 2025 Annual Report, no complaints were submitted to the Protector of Human Rights and Freedoms of Montenegro alleging a violation of, or seeking protection of, the right to the presumption of innocence.[65]

4.6. Right to Defence

The right to defence, as defined by the Constitution of Montenegro, means that everyone is guaranteed the right to defence and, in particular, the right to be informed, in a language they understand, of the charges against them, to have adequate time to prepare their defence, and to defend themselves in person or through a defence counsel of their own choosing.

The findings from the main hearings monitored by CeMI's monitors during the reporting period do not indicate any systematic denial of the right to defence. On several occasions, accused persons and defence counsel raised concerns about violations of this right in situations where they took the floor without first obtaining the court's permission, after which the presiding judge admonished them or withdrew their right to speak. Such situations, in themselves, do not necessarily indicate a violation of the right to defence, particularly where the court is managing the proceedings in order to maintain procedural discipline.

At the same time, in the cases monitored, the court adjourned main hearings when accused persons or defence counsel requested additional time to prepare the defence, particularly in cases involving extensive evidentiary material. This was particularly relevant in cases in which correspondence from the "Sky ECC" application was presented as evidence, as well as in

63 The Protector of Human Rights and Freedoms of Montenegro: *Annual Report for 2023,* Podgorica, March 2024, available at: https://www.ombudsman.co.me/docs/1715154847_finalizvjestaj_29042024%20_zastitnik.pdf
64 The Protector of Human Rights and Freedoms of Montenegro: *Annual Report for 2024,* Podgorica, March 2025, available at: https://www.ombudsman.co.me/docs/1744199272_izvjestaj%2031-03-2025.pdf
65 The Protector of Human Rights and Freedoms of Montenegro: *Annual Report for 2025,* Podgorica, March 2026, available at: https://www.ombudsman.co.me/docs/1776061932_izvjestaj_31.03.2026.pdf

situations where an accused person who had previously been tried in absentia subsequently became available to the court and presented their defence at a stage when the evidentiary proceedings were already well advanced.

A particular issue that may be considered in the context of the effective exercise of the right to defence concerns communication between defence counsel and accused persons held in UIKS. (*Uprava za izvršenje krivičnih sankcija,* Administration for the Execution of Criminal Sanctions) This issue is particularly sensitive in the case of court-appointed defence counsel, who, due to the distance of UIKS, the extent of their regular professional obligations and the urgency of certain procedural situations, may at times be unable to visit accused persons sufficiently frequently. Although the hearings monitored do not provide a basis for concluding that there is a systematic violation of the right to defence, this issue warrants further attention, as the quality and frequency of communication between an accused person and their defence counsel directly affect the ability to prepare and conduct an effective defence.

In addition to directly monitoring the exercise of the right to defence during main hearings, CeMI's monitoring team, for the purposes of this research, also analysed available decisions of the Constitutional Court concerning organised crime and corruption cases in which constitutional complaints alleged a violation of the right to defence under Article 37 of the Constitution of Montenegro. Two decisions from 2023, two decisions from 2024 and three decisions from 2025 were analysed. None of the constitutional complaints in this regard was upheld: one was dismissed as inadmissible, while six were rejected.

The decision dismissing the complaint as inadmissible concerned a constitutional complaint challenging a decision confirming an indictment on the grounds, inter alia, of a violation of the right to defence. The complaint was dismissed on the grounds that a decision confirming an indictment is not an individual legal act in respect of which the Constitutional Court has jurisdiction to provide constitutional judicial protection, since such a decision does not determine the substance of the matter, namely a right or obligation, or a suspicion or criminal charge against the applicant.[66]

One constitutional complaint was rejected on the grounds that the applicants had been enabled to follow the proceedings, participate in the proceedings with the assistance of defence counsel, take procedural steps permitted by law and lodge legal remedies and, consequently, that their right to defence had been safeguarded.

In one of the decisions analysed, the right to defence was considered in the context of the presumption of innocence. The Court stated that "where the complaints concern the presumption of innocence, according to the case-law of the European Court of Human Rights, the presumption of innocence is violated if a judicial decision concerning the applicant reflects the view that they are guilty before their guilt has been established in accordance with the law, particularly where they have not had the opportunity to exercise their right to defence."[67]

In two decisions, it was stated that the applicants had complained of a violation of the right under Article 37 of the Constitution of Montenegro, but neither the decision nor its reasoning specifically referred to Article 37; instead, the decisions concerned only the ordering or extension of detention.

66 Decision of the Constitutional Court of Montenegro, U-III No. 300/23, of 22 June 2023
67 U-III No. 541/24, ibid.

In one constitutional complaint, the applicant argued, inter alia, that it was unclear on the basis of which evidence the courts had established the existence of reasonable suspicion against the applicant, since correspondence via the "Sky" application had not been proposed as evidence in the indictment, despite the fact that the reasonable suspicion was based on that correspondence, and the applicant had not been granted access to the correspondence by the court dealing with the case. The applicant therefore argued that their right to defence had also been violated. The Constitutional Court held that, where a request by a suspect/accused person or their defence counsel to inspect and copy the case file is refused by the prosecution, the law provides for the possibility of lodging an objection, which is decided by the investigating judge, thereby ensuring legal protection of the right of access to the case file and, consequently, the right to defence. However, it followed from the case file that the applicant's defence counsel had neither submitted a request to the competent prosecution service to inspect and copy the case file nor used the available legal remedies in the event of a possible refusal. The Constitutional Court therefore concluded that "the right to defence is not an absolute right and is subject to restrictions in exceptional cases, whereby the legislator has comprehensively regulated the procedure for restricting the right of access to the case file at the pre-trial stage", and that "the accused's right to defence in the present case will be assessed in the further course of the proceedings, through the various stages, particularly after the indictment has been confirmed, from which point access to the case file can no longer be denied."

As already noted in the section on the presumption of innocence, in one decision of the Constitutional Court it was, presumably by mistake, stated that the applicant had complained of a violation, inter alia, of the right to defence under Article 37 of the Constitution of Montenegro, while the decision itself subsequently addressed a violation of the presumption of innocence.

The monitors also analysed complaints submitted to the Protector of Human Rights and Freedoms of Montenegro. According to the 2023 Annual Report, one complaint was submitted to the Protector of Human Rights and Freedoms of Montenegro seeking protection of the right to defence before the judicial authorities, while a violation of the right to defence was raised twice in complaints in respect of which the proceedings had been concluded.[68]

The 2024 Annual Report contains no data on complaints concerning this right.

According to the 2025 Annual Report, one complaint was submitted to the Protector of Human Rights and Freedoms of Montenegro concerning the work of the judicial authorities, seeking protection of the right to defence, while in two complaints in respect of which the proceedings had been concluded, the applicants alleged a violation of this right.[69]

68 Protector of Human Rights and Freedoms of Montenegro: *Annual Report for 2023,* ibid.
69 Protector of Human Rights and Freedoms of Montenegro: *Annual Report for 2025,* ibid.

5. RIGHT TO PERSONAL LIBERTY – PRACTICE IN ORDERING MEASURES TO ENSURE THE PRESENCE OF THE ACCUSED AND THE UNHINDERED CONDUCT OF CRIMINAL PROCEEDINGS

Measures to ensure the presence of the accused and the unhindered conduct of criminal proceedings are procedural instruments designed to ensure that the accused remains available to the court and that the proceedings can be conducted without the risk of absconding, concealment, interference with the taking of evidence or other impediments to their lawful and effective conduct. The CPC regulates these measures as a system based on the principle of graduated intervention, from less restrictive to more restrictive measures, and provides for summonses, bringing before the court, supervisory measures, bail and detention. Their common purpose is not to punish the accused, but to ensure their presence and the orderly conduct of the proceedings. Accordingly, each measure may be applied only under the conditions prescribed by law and to the extent necessary to achieve that purpose.

Within this system, detention constitutes the most severe measure, as it directly interferes with the right to personal liberty, which is why its exceptional nature is consistently emphasised in legal theory and legislation. It follows that the authority conducting the proceedings must have regard to proportionality and the priority of less restrictive measures, meaning that the most severe restriction of liberty can be justified only where the same purpose cannot be achieved through a summons, bringing the accused before the court, supervisory measures or bail. This structure of measures is particularly important when analysing judicial practice, as it makes it possible to assess whether, in individual cases, the courts have respected the statutory principle of graduated recourse to more restrictive forms of procedural coercion and whether the restriction of liberty was a measure of last resort rather than the rule.

Through a freedom of information request, CeMI's legal team sought to obtain data on the total number of cases before the Special Department of the High Court in Podgorica in which, during a specified period, measures to ensure the presence of the accused and the unhindered conduct of criminal proceedings had been ordered, namely detention, supervisory measures and bail, as well as the total number of accused persons to whom such measures had been applied. The request was refused on the grounds that granting it would require the creation of new information, as the requested data are not maintained in a separate record.[70]

It should be noted that CeMI's report on the monitoring of judicial proceedings, published in October 2025, contains a table showing the frequency with which measures to ensure the presence of the accused and the unhindered conduct of proceedings were ordered across all courts in Montenegro.[71] With the exception of the Basic Court in Kotor and the High Court

70 Decision of the High Court in Podgorica – I Su. No. 46/26
71 CeMI, *Annual Report on the Monitoring of Judicial Proceedings in Montenegro: April 2024 – April 2025,* p. 54, available at: https://cemi.org.me/storage/uploads/mKfiQgEERccVgiHXwFVNXpdo8kAcONo1SO5WA4KE.pdf

in Podgorica, courts in Montenegro maintain this type of record. It therefore remains unclear why such data are not available specifically for the High Court in Podgorica, particularly given the importance of the Special Department and the analytical value of these data for understanding the practice of ordering such measures in organised crime and high-level corruption cases.

The Judicial Council also does not possess detailed data on the ordering of detention. According to data from the Judicial Council obtained by CeMI through a freedom of information request, between 1 January 2023 and 31 March 2026, **15 decisions ordering detention, 270 decisions extending detention and 105 decisions lifting detention** were recorded. As the records do not contain all the data required for a more substantive analysis, particularly regarding the type of case, the number of persons covered by detention decisions, the duration of detention and the grounds for ordering/extending detention, part of the findings in this chapter is based on data collected by CeMI through an examination of case files.

The Administration for the Execution of Criminal Sanctions (UIKS) maintains records of detained persons according to the court before which the proceedings are conducted and the type of case. According to data provided by UIKS, as at 31 March 2026, there were **577** detained persons in the Podgorica Remand Prison, while **101** persons were being held in detention at Bijelo Polje Prison. On the same date, all **188** detained persons whose proceedings were being conducted before the Special Department of the High Court in Podgorica were held in the Podgorica Remand Prison.[72] This means that persons involved in cases before the Special Department accounted for **32.58%** of the total number of detainees in that facility, or more than one quarter **(27.72%)** of the total detained population in Montenegro.

With regard to the sample of detained persons recorded in the case files examined by the monitors, detention was ordered 35 times in respect of a total of 32 persons in six cases, including three persons who were tried in absentia.

5.1. Analysis of the Legal Grounds for Ordering Detention

Detention is the most restrictive measure for ensuring the presence of the accused and the unhindered conduct of criminal proceedings, as it entails deprivation of liberty before a final judgment has been delivered. Among the measures for ensuring the presence of the accused, detention is prescribed as the most severe measure and may be ordered only in cases provided for by law and where the same purpose cannot be achieved by another measure.

With regard to the cases examined by the monitors, the breakdown of cases according to the grounds for detention is as follows:

72 Decision of UIKS, U-SPI No. 2/26-2

Table 14: Breakdown of the Analysed Cases by Grounds for Detention

Number of Analysed Detention Cases	Ground for Detention						Total
	Risk of absconding	Risk of Collusion	Risk of Reoffending	Particularly Serious Circumstances of the Case and Risk to Public Order	Failure to Appear at the Main Hearing	Multiple Grounds for Detention	
6	16	2	0	0	2	15	35
	45.71%	5.71%	0%	0%	5.71%	42.86%	100%

In cases where detention was ordered on the basis of multiple grounds, the risk of absconding and the risk of reoffending were cited 15 times each, while the risk of collusion was cited 14 times.

Table 15: Breakdown and Frequency of Detention Orders Based on Multiple Grounds for Detention

Grounds for Detention	Number of Decisions
Risk of Reoffending + Risk of Collusion + Risk of Absconding	14
Risk of Reoffending + Risk of Absconding	1
Total	**15**

5.2. Duration of Detention and Conditions of Detention

Our legislation is aligned with international standards regarding the duration of detention, and domestic law accordingly treats the duration of detention as a matter of particular constitutional and procedural sensitivity. The Constitution of Montenegro provides that detention must be limited to the shortest possible period (Article 30), and the same principle is reflected in the CPC (Article 15).

Article 268 of the CPC also establishes strict time limits and procedural safeguards in the earliest stages of deprivation of liberty. Where the State Prosecutor orders the detention of a suspect and considers it necessary to propose detention, the investigating judge must decide on the matter within 24 hours from the time the suspect is brought before them. If, during the period of detention, the State Prosecutor does not issue an order to open an investigation, or fails to do so within 48 hours of the detention being ordered, the investigating judge is required to release the suspect.

Before analysing the data on the duration of detention, it should be noted that, within the analysed sample, detention was also ordered in respect of three persons who were tried in absentia. These persons were not included in the analysis of the duration of detention, as their procedural status differs from that of persons whose detention is actually enforced in the

ordinary course of proceedings. They were therefore excluded from the analysis of detention duration, meaning that all figures presented regarding the duration of detention at different stages of the proceedings exclude persons tried in absentia.

A. Detention at the Investigation Stage

The CPC also provides that, together with an order to open an investigation, the State Prosecutor may propose supervisory measures or detention where the presence of the accused cannot be ensured by other means. In such circumstances, the investigating judge must likewise decide within the period of detention, and failure to comply with this time limit results in the release of the accused (Article 279).

With regard to detention at the investigation stage, an analysis of the available data shows that detention had already been ordered during the investigation stage in all **six** cases analysed. In addition, detention was extended during the investigation stage in **five** cases and lifted at this stage in two cases.

As regards the duration of detention during the investigation stage, in one case detention at this stage lasted up to 30 days, while in five cases it lasted more than 60 days. The average duration of detention at the investigation stage was **138 days.**

Although the sample is small, these findings are partly consistent with data obtained in our previous research, namely that detention during investigations before higher courts most commonly lasts more than 60 days. However, it should be noted that a panel of the Supreme Court may extend detention during the investigation stage for an additional three months where the proceedings concern a criminal offence punishable by a term of imprisonment exceeding five years, which was the case in the matters analysed.

B. Detention at the Main Hearing Stage

Following the filing of the indictment, the decision on the further continuation of detention is taken by the competent panel, while the CPC also prescribes the maximum duration of detention at this stage of the proceedings: from the filing of the indictment until the delivery of the first-instance judgment, detention may last for a maximum of three years. At the same time, the law requires the panel to review the detention regularly, both ex officio and at the request of the parties, every 30 days until the indictment becomes legally effective and, thereafter, every two months. Where the indictment proposes that detention be ordered or that the accused be released, the panel must decide on the matter immediately and no later than within 48 hours. Where the accused is already in detention and the indictment does not propose their release, the panel is required, within three days of receiving the indictment, to examine ex officio whether the grounds for detention continue to exist and to decide whether to extend or lift the detention.

Detention was ordered or extended after the filing of the indictment, i.e. at the trial stage, in five of the cases analysed. Detention was also lifted at this stage in five cases. Based on the data available to the monitors, the average duration of detention at this stage was 813 days.

It should be reiterated that this is a relatively small sample of cases in which detention was ordered. The sample included one case that lasted almost 10 years and in which detention was ordered in respect of a larger number of accused persons, which significantly contributed to the aforementioned figure.

C. Detention Following the Delivery of the Judgment

Pursuant to Article 376 of the CPC, where the court delivers a conviction imposing a prison sentence of less than five years, detention may be ordered after the delivery of the judgment where there is a risk of absconding or circumstances indicating that the accused may reoffend, complete an attempted criminal offence, or commit a criminal offence with which they have threatened. Where a sentence of five or more years' imprisonment has been imposed, detention may also be ordered on other grounds provided for by law. However, detention must be lifted if the accused is acquitted, sentenced to a non-custodial sentence, if the charges are dismissed, or if the sentence has already been served in detention.

Following the delivery of the judgment, detention was extended in **four** of the cases analysed, in respect of a total of **16 persons,** representing **66.7%** of the analysed detention cases and 50% of the persons in respect of whom detention had been ordered. At the same time, detention was lifted following the delivery of the judgment in **five** cases in respect of **six accused persons** which, when measured against the same sample, corresponds to **83.3%** of the analysed detention cases and **18.7%** of the persons included in the detention sample. The average duration of detention following the delivery of the judgment was **479 days.**

As regards the **average duration of detention from the date on which detention was ordered until the date on which it was lifted or the accused was sent to serve the prison sentence,** the figure in the cases analysed was **692 days.**

D. Conditions in the Podgorica Remand Prison

CeMI also highlighted the issue of detention conditions in its report published in 2025. At that time, based on an examination of case files, frequent requests by detained persons addressed to the judges handling their cases were recorded, seeking to exercise various rights, including visits, telephone calls, transfer and being sent to serve a prison sentence before the judgment became final. The most frequently cited reasons for such requests were poor detention conditions and limited contact with family members without prior judicial authorisation. The same report, also drawing on previous findings of the CPT and data from the Protector of Human Rights and Freedoms of Montenegro, pointed to overcrowding, poor ventilation, deteriorating walls, a lack of furniture, mattresses and bedding, as well as irregular provision of basic hygiene supplies.

The same report showed that the problem concerned not only the quality of accommodation but also its capacity. It had already been concluded that the Podgorica Remand Prison remained chronically overcrowded and that this was not an occasional but a persistent problem. This is further illustrated by the fact that, in April 2025, **186 detainees** went on hunger strike, citing overcrowding, limited access to healthcare and the prolonged duration of detention as reasons.

The CPT's preliminary observations from February 2026 indicate that the situation has not improved in the meantime and has, in certain respects, further deteriorated.[73] The new preliminary report states that detainees now account for **56%** of the total prison population in Montenegro and that overcrowding in remand prisons has reached a record level. The Committee also noted that some detainees in Montenegro have remained in detention for years, including persons who have spent more than six years in this procedural status, while alternatives to detention are used too infrequently.

The report further found that detainees in the remand prisons in Podgorica and Bijelo Polje remain locked in their cells for between 22 and 23 hours per day, without access to structured activities, education or work, and that basic hygiene supplies continue not to be provided systematically. It was particularly emphasised that contact with the outside world should not be restricted unless there are individual reasons related to the investigation, while the overall living conditions in remand prisons were assessed as so poor that, when combined with the length of detention and the almost complete absence of activities, they may amount to inhuman or degrading treatment.

The seriousness of these findings was also highlighted by the reactions of other actors. The Institution of the Protector assessed the CPT's preliminary report as a serious warning and a final opportunity to take action.[74] According to reporting by the Centre for Investigative Journalism of Montenegro (CIN-CG), the implementation of the European Court of Human Rights judgment in Bigović v. Montenegro, in which violations were found on account of poor detention conditions, as well as the unlawfulness and insufficient reasoning of extensions of detention, could be subject to enhanced supervision by the Committee of Ministers of the Council of Europe.[75]

According to the Council of Europe's annual penal statistics report – SPACE I,[76] Montenegro is classified among the countries with a very high prison population rate, as well as among those with a very high proportion of persons who are not serving a final sentence in penal institutions. The report also states that persons whose convictions are not yet final accounted for more than half of the total prison population, significantly exceeding the European average.

An additional indicator of concern is the fact that, in 2024, Montenegro recorded a suicide rate in penal institutions above the European average. Although this figure, in itself, does not allow conclusions to be drawn about the immediate causes of individual cases, it is relevant in the context of findings concerning prolonged detention, the almost complete absence of activities, limited contact with the outside world, and insufficient access to support and services within the system. In this regard, the SPACE I data further indicate the need to assess the conditions in which detained persons are held not only through the prism of physical

73 Preliminary observations of the Delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), who visited Montenegro in the period from 19 to 27 November 2025, available at: https://rm.coe.int/48802ae3f0

74 https://informacijecrnagora.me/institucija-zastitnika-o-izvjestaju-cpt-a-posljednji-trenutak-da-se-preduzmu-mjere/

75 https://www.vijesti.me/vijesti/crna-hronika/809113/cin-cg-pritvori-pod-lupom-brisela-i-strazbura-zbog-presude-u-predmetu-bigovic-protiv-crne-gore-prijeti-pojacan-nadzo

76 Council of Europe, *SPACE I – Annual Report for 2025,* available at: https://wp.unil.ch/space/files/2026/05/260518_rapport-space-i-2025.pdf

overcrowding, but also in light of the State's obligation to provide persons deprived of their liberty with a safe and humane environment.

5.3. Practice of the Constitutional Court in Cases Concerning the Ordering and Extension of Detention

With regard to the number of constitutional appeals alleging a violation of the right to liberty (Articles 29 and 30 of the Constitution of Montenegro) in cases pending before the Special Department of the High Court in Podgorica, **44** constitutional appeals were submitted to the Constitutional Court between 1 January 2023 and 31 March 2026: 10 in 2023, 15 in 2024, 16 in 2025, and 3 constitutional appeals in 2026, up to the date on which the freedom of information request was submitted. Of this total, **15** constitutional appeals were upheld, accounting for **34%,** or **one third,** of all appeals.

The Constitutional Court, relying on the fundamental international standards for the protection of the right to liberty, requires individualised and sufficiently specific reasoning, consideration of less restrictive measures, and prompt judicial review. At the same time, it demonstrates a degree of flexibility in complex organised crime cases, particularly with regard to the length of detention, taking into account the number of accused persons, the international dimension of the proceedings, and the volume of evidentiary material. The Constitutional Court's case-law in this area does not rule out prolonged detention in complex cases, but requires that such duration be accompanied by genuine, rather than merely formal, judicial reasoning.

5.3.1. Risk of Absconding

According to the case-law of the European Court of Human Rights, detention based on a risk of absconding must be justified by concrete and individualised reasons demonstrating why less restrictive measures cannot be applied.[77] Such a decision cannot be based solely on the severity of the potential sentence; the court must also consider other circumstances, including the accused's links abroad, any plans to leave the country, place of residence, family and social ties, property, occupation, and other circumstances indicating a genuine risk of absconding.

The Constitutional Court of Montenegro, relying on the case-law of the ECtHR, takes the same approach: the court's assessment that a risk of absconding exists must derive from specific, concrete and individualised circumstances, assessed both separately and in their interrelationship. The mere fact that a person faces a lengthy prison sentence cannot, in itself, justify an extension of detention. The reasons must not be superficial, stereotypical or repetitive, particularly given that the risk of absconding diminishes over time,[78] while the grounds for continued detention become weaker as the time spent in detention is credited towards the sentence.

77 *Yagcı and Sargın v. Turkey,* Applications nos. 16419/90 and 16426/90, judgment of 8 June 1995
78 Ibid.

A decision ordering detention must therefore explain not only the necessity of the detention measure but also consider the less restrictive measures provided for under Article 163 of the CPC, explaining why those measures would not be sufficient to ensure the proper conduct of the criminal proceedings.

In cases involving organised crime and high-level corruption, the Constitutional Court applies the same standards, while taking into account the specific nature of the offences and the circumstances of each individual case.

- In **Decision U-III No. 125/24 of 1 April 2024,** the Constitutional Court found that the Court of Appeal had failed to comply with the standards of the ECtHR, as it had justified the extension of detention in the same manner as in previous decisions. Such routine reliance on previously stated reasons is insufficient: each subsequent extension of detention requires the court to reassess the specific circumstances indicating that the statutory grounds for detention continue to exist, while applying the principle of proportionality.

- In **Decision U-III No. 910/23 of 10 November 2023,** the Constitutional Court found that the reasoning of the challenged decision did not provide clear and relevant grounds for concluding that there was a risk of the accused absconding. The mere possibility of a relatively severe sentence, the fact that the accused had frequently stayed outside Montenegro, and the fact that he owned an apartment in Belgrade could not, in themselves, constitute grounds for extending detention. The Constitutional Court emphasised that the ordinary court must conduct a proper and comprehensive assessment of all facts and circumstances, including the individual's character, moral standing, home, occupation, assets, family ties and links to Montenegro. It also stressed that, with each subsequent review of detention, stricter requirements are imposed on the ordinary courts, particularly with regard to the reasoning justifying detention considering the passage of time.

  In the same decision, the Constitutional Court recalled that reasons which may have justified the initial ordering of detention may lose their force over time, and that each further extension must therefore be supported by relevant and sufficient reasons. The court must establish specific and particular facts demonstrating that the public interest in continued detention, notwithstanding the presumption of innocence, outweighs the individual's right to liberty.

- The detention ordered or extended against the same person in the same case was the subject of several Constitutional Court decisions: **U-III Nos. 583/23, 909/23, 124/24, 125/24 and 910/23.** The Constitutional Court found a violation of the rights under Articles 29 and 30 of the Constitution and Article 5 of the European Convention on five occasions, while the ordinary courts continued to issue decisions extending detention that were substantively the same. It was only in the decision upholding the fifth constitutional appeal that the Constitutional Court noted that detention had meanwhile been lifted, after lasting for more than 20 months. The Constitutional Court specifically pointed out that repeatedly relying on the fact that the accused had travelled outside Montenegro 30 times over a four-year period constituted a ground that would never cease to exist, and that, as detention became prolonged, this circumstance had to be assessed more critically.

- In **Decision U-III No. 353/24 of 23 April 2024,** the Constitutional Court noted that the Court of Appeal, in the reopened proceedings, had issued a new decision substantively

similar to the previous one, disregarding the Constitutional Court's instructions. The Court recalled that Constitutional Court decisions are binding and enforceable, that everyone is required to respect them, and that the legal positions expressed in those decisions are binding on all State authorities. Compliance with a Constitutional Court decision does not merely entail the formal adoption of a new decision but also requires adherence to the legal reasoning set out in the Constitutional Court's decision.

- In **Decision U-III No. 892/23 of 12 October 2023,** the Constitutional Court found that the High Court in Podgorica and the Court of Appeal of Montenegro had failed to take into account the fact that the applicant had voluntarily surrendered. The courts had based their conclusion regarding the risk of absconding on the severity of the potential sentence and the fact that the applicant had been at large during the investigation, while disregarding the fact that he had voluntarily surrendered. According to the Constitutional Court, the courts were required to take this circumstance into account when deciding on the extension of detention, particularly since the detention had lasted since 5 July 2022.

5.3.2. Risk of Collusion

Collusion risk, i.e. the risk that the accused will destroy, conceal, alter or falsify evidence or traces of a criminal offence, or influence witnesses, accomplices or persons concealing the offence, is regulated by Article 175, Paragraph 1, Point 2, of the CPC. In relation to this ground for detention as well, the case-law of the ECtHR and the Constitutional Court establishes a clear requirement that the risk must be concrete and supported by facts, rather than based on abstract assertions. A general statement that there is a possibility of influencing co-accused persons or witnesses may potentially be acceptable at the initial stage of proceedings, but not as a permanent and independent justification for prolonged detention.

The case-law of the European Court of Human Rights sets relatively clear requirements in this regard. The risk of obstructing the taking of evidence cannot be based on abstract assertions but must be supported by facts and evidence.[79] A broadly formulated possibility that the accused might obstruct the proceedings may potentially carry greater weight at the initial stage, when evidence has yet to be collected, witnesses have yet to be heard, and the relationships between the participants have yet to be clarified. However, such reasoning becomes weaker over time. As the investigation progresses, statements are taken, evidence is obtained and the procedural situation becomes more stable, the requirements of the investigation alone are no longer sufficient to justify the continued detention.[80]

The Constitutional Court of Montenegro follows precisely this approach in its case-law. Its general position in criminal cases is that the risk that a person will destroy, conceal, alter or falsify evidence or traces of a criminal offence, or obstruct the proceedings by influencing witnesses, accomplices or persons concealing the offence, must originate from the accused, but may also consist of a risk that the accused, if at liberty, could cause obstruction of the taking of evidence through other persons.[81]

79 *Becciev v. Moldova,* ibid., para. 59
80 *Jarzynski v. Poland,* Application no. 15479/02, judgment of 4 October 2006, para. 43
81 Constitutional Court Decision U-III No. 211/24 of 28 February 2024

This is particularly important in organised crime cases. There is no doubt that such cases present additional procedural challenges, both during the investigation and at trial. The large number of accused persons, complex communication structures, an international dimension and the need for coordination among multiple authorities may justify increased caution. Nevertheless, the Constitutional Court's case-law clearly demonstrates that, even in such cases, complexity alone cannot substitute for specific and individualised reasoning.

- **Decision U-III No. 346/23 of 8 May 2023,** the Constitutional Court held that, for the ground for detention under Article 175, Paragraph 1, Point 2, of the CPC to apply, it is not sufficient to state that, if released, the applicant could communicate with co-accused persons who were absconding, as well as with the organiser and members of the criminal organisation, in order to coordinate their statements or facilitate their procedural position. The Constitutional Court found that the fear of the applicant influencing co-accused persons was not supported by concrete and valid reasons objectively indicating that the applicant had attempted, or that there was a serious risk that he would attempt to influence specific participants in the proceedings.

  In the same decision, the Constitutional Court attached particular importance to the nature of the evidentiary material in the case. It noted that a substantial part of the evidence consisted of communications conducted through the "SKY ECC" application, meaning that their content could not be altered through any subsequent communication between the co-accused. In this way, the Constitutional Court effectively demonstrated that the assessment of the risk of collusion must also depend on the type of evidence already obtained. Where key evidence has already been secured, permanently recorded and procedurally safeguarded, the court must explain with considerably greater precision how the accused's release could still jeopardise the taking of evidence. This illustrates the distinction between genuine and merely formal reasoning: it is not sufficient to invoke the possibility of contact between co-accused persons; it must be explained why such contact would still have procedurally relevant consequences.

  In this context, the Constitutional Court also referred to the case-law of the European Court of Human Rights, in particular Mansur v. Turkey (Application no. 16026/90, judgment of 8 June 1995), in which the Court held that a mere assertion by the judicial authorities that an accused charged with several criminal offences might, if released, reach an agreement with an accomplice does not constitute a sufficient and relevant reason for extending detention.

At the same time, the Constitutional Court's case-law demonstrates that it does not disregard the specific features of organised crime.

- In Decision U-III No. 625/23 of 23 October 2023, although considered through the prism of the risk of absconding, the Court also addressed the broader procedural context of such cases, recalling the European Court's position in Luković v. Serbia (Application no. 43808/07, judgment of 26 March 2013, para. 46) that a criminal organisation creates serious difficulties for investigative authorities and courts in establishing the facts and determining the degree of responsibility of each member of the group. In this regard, it was noted that continuous monitoring and restricting the possibility of accused persons communicating with one another, as well as with other persons, may be of crucial importance, and that a longer period of detention than in other cases may therefore be reasonable.

5.3.3. Risk of Reoffending

When ordering or extending detention on the ground of a risk of reoffending, courts in criminal cases most often cite previous convictions for the same or similar criminal offences as a particular relevant circumstance. The same pattern can be observed in cases involving organised crime and high-level corruption. However, a previous conviction does not, in itself, necessarily constitute a circumstance indicating a genuine risk of reoffending. As with other grounds for detention, the risk of reoffending must be specified and individualised in relation to the circumstances of each particular case, supported by detailed and convincing reasoning.

According to the case-law of the European Court of Human Rights, ordering the detention of persons with previous convictions may be compatible with Article 5, Paragraph 3, of the Convention, but only in the particular circumstances of the case. The Court may reasonably take into account the seriousness of the consequences of criminal offences when assessing the risk of their repetition, or when determining whether a person may be released despite the possible existence of such a risk.[82] At the same time, the European Court makes clear that previous convictions may, but do not necessarily, provide sufficient grounds for such an assessment. In other words, previous convictions may constitute grounds for a justified fear that the accused might commit a new criminal offence,[83] but reliance on previous convictions alone cannot constitute a sufficient reason for refusing release.[84]

The case-law of the Constitutional Court of Montenegro follows this approach of the European Court, both in criminal matters generally and in cases involving organised crime. In 2019,[85] the Constitutional Court confirmed that courts may not justify the ordering or extension of detention solely by reference to previous convictions; rather, the reasons for continued detention must be concrete and convincingly reasoned. Automatic reliance on previous convictions, without a broader contextual assessment, is regarded by the Constitutional Court as a departure from the principle of individualisation. Accordingly, in addition to previous convictions, further circumstances of the particular case are required, such as membership of an organised criminal group or its organisation for the purpose of committing criminal offences; previous convictions combined with continuity and determination in committing offences, particularly where another criminal proceeding is simultaneously pending against the same person; previous convictions indicating disregard for the law and socially accepted standards of conduct; psychological instability, including alcohol or drug dependence; as well as a pronounced degree of persistence and particular disregard for others in the manner in which the criminal acts were committed.

- **Decision U-III No. 109/25** of 16 June 2025 also refers to the following circumstances: recidivism involving the same or similar criminal offence; real and serious threats made by the accused and his attitude towards the injured party; the seriousness of the motive for repeating the criminal offence; and the period during which the accused has continuously committed criminal offences.

82 *Matznetter v. Austria,* Application no. 2178/64, 10 November 1969, para. 9
83 *Selçuk v. Turkey,* Application no. 21768/02, 10 January 2006, para. 34
84 *Muller v. France,* Application no. 21802/93, 17 March 1997, para. 44
85 Constitutional Court Decision U-III No. 545/19 of 20 March 2019

The Constitutional Court also refers to the case-law of the European Court of Human Rights, according to which a finding that there is a risk of reoffending may more readily be drawn from the fact that the person is a recidivist in committing the same or similar criminal offences, particularly where such conduct regularly causes significant harm to society and property, whereas in the case of so-called first-time offenders, such a risk is considerably more difficult to establish. In this regard, the European Court emphasises that the risk of reoffending must be established, and that the measure of detention must be appropriate considering the circumstances of the particular case, and in particular the person's past and personality.

- In Decision U-III No. 52/25 of 24 March 2025, the Constitutional Court, with regard to this ground, refers to the case-law of the European Court of Human Rights, according to which a finding that there is a risk of reoffending may be drawn from the fact that a person is a recidivist in committing the same or similar criminal offences and that each time such conduct causes significant harm to society and property, whereas in the case of "first-time" offenders, this is considerably more difficult to establish. As regards the risk of reoffending, the European Court explains that "the danger must be established and the measure must be appropriate, in the light of the circumstances of the case and, in particular, the person's past and personality."

5.3.4. Particularly Serious Circumstances of the Case and the Need to Preserve Public Order and Peace

The ground for detention under Article 175, Paragraph 1, Point 4, of the CPC applies where the offence in question is punishable by a prison sentence of ten years or more and is particularly serious because of the manner in which it was committed or its consequences. Unlike the other grounds for detention, where the legitimate purpose is directly apparent from the wording of the statutory provision, this ground is normatively more complex. The Constitutional Court therefore emphasises that the fact that the law does not expressly specify its legitimate purpose does not mean that no such purpose exists; rather, when assessing the necessity of detention, courts must take into account the entire set of relevant factors in order to demonstrate why the application of this measure is justified in the particular case. In this regard, the Court insists that both statutory requirements must be cumulatively satisfied: the offence must be punishable by a prison sentence of at least ten years, and it must be particularly serious because of the manner in which it was committed or its consequences.

In this part of its case-law, the Constitutional Court also refers to the ECtHR standards concerning the protection of public order. According to that case-law, certain particularly serious criminal offences, by reason of their nature and the public reaction they provoke, may justify detention for at least a certain period, but only where such an approach is based on facts demonstrating that the release of the accused could genuinely jeopardise public order. This ground is therefore neither autonomous nor unlimited. Detention remains legitimate only for as long as public order is genuinely at risk; its extension must not serve as a premature imposition of a prison sentence.[86] In its explanation concerning the application of detention measures, the Committee of Ministers of the Council of Europe states that public order may be relied upon as a justification for detention only "where there is substantial evidence of a reaction to a serious crime such as murder", and that "it should also be borne in mind that the

86 *Letellier v. France,* Application no. 12369/86, judgment of 26 June 1991, para. 51

public order ground presupposes a particularly serious situation and that the release of most suspects cannot be expected to provoke such a scenario".[87]

- This approach is evident in **Decision U-III No. 541/24 of 18 July 2024,** in which the Constitutional Court emphasised that, unlike the other grounds for detention under Article 175 of the CPC, this statutory provision does not expressly specify the legitimate purpose it serves, but that this does not mean that no such purpose exists. On the contrary, the Constitutional Court notes that the objectives of this provision are "structured in a more complex manner", which is why courts, when assessing its application, must take into account the entire set of relevant factors. At the same time, it was emphasised that the conditions for applying this ground must be satisfied cumulatively, meaning that the offence must be punishable by a prison sentence of ten years or more and must be particularly serious because of the manner in which it was committed or its consequences.

  In the same decision, the Constitutional Court also considered the case-law of the ECtHR, noting that this ground for detention may encompass the protection of public order, namely protection against public disturbance, even though domestic courts do not always expressly refer to this when deciding on detention on this ground. Certain criminal offences, by reason of their particular gravity and the public reaction they provoke, may justify pre-trial detention for at least a certain period, but only where such an approach is based on facts indicating that the release of the accused would jeopardise public order. At the same time, it is expressly emphasised that the extension of detention on this ground cannot serve as an indication of a future prison sentence. In the particular case, the Court accepted that the charges concerned, by their nature, could give rise to particular public moral condemnation.

  The Constitutional Court accepted the submissions that the charges were serious and that the applicant was alleged to have participated in conduct indicating a high degree of criminal determination and the undertaking of a number of unlawful steps over a certain period of time. However, it also expressly stated that such reasoning **weakens with the passage of time** and that, at a later stage of the proceedings, additional elements are required to demonstrate that the applicant continues to pose a danger or that his release could adversely affect the conduct of the criminal proceedings. In addition, it noted that, where a person remains in detention after the indictment has been brought, the courts are required to consider more carefully alternative means of securing his presence, including bail. The Constitutional Court also clarified that an extension of detention under Article 175, Paragraph1, 4, of the CPC does not "absorb" the other grounds for detention, but constitutes a separate assessment in which the seriousness and maximum statutory penalty are considered cumulatively with the circumstances that make the offence particularly serious because of the manner in which it was committed or its consequences, as well as its impact on the public interest.

- In **Decision U-III No. 356/23 of 24 October 2023,** the Constitutional Court, in the part concerning the ground for detention under Article 175, Paragraph 1, Point 4, of the CPC, accepted the reasoning of the ordinary courts that both statutory conditions for its application had been satisfied in the particular case. The Court recalled that this ground may be applied only where the conditions are cumulatively satisfied, namely that the offence

87 CM(2006)122 Addendum, 30 August 2006, available at: https://search.coe.int/cm?i=09000016805d7b91

is punishable by a prison sentence of ten years or more and that it is particularly serious because of the manner in which it was committed or its consequences. The Constitutional Court found that the ordinary courts had separately reasoned these two elements and had provided sufficiently concrete reasons for characterising the conduct in question as particularly serious.

As regards the second condition, the Constitutional Court accepted the reasoning that the particular seriousness of the offence stemmed from a reasonable suspicion that the accused had participated in the smuggling of very large quantities of narcotic drugs, involving a pronounced transnational element and consequences that such criminal activity could have for the lives and health of a large number of people. In addition, the ordinary courts took into account the accused's social position, namely the fact that, during the relevant period, he had held prominent public functions, and linked this circumstance to the assessment of the particular seriousness of the offence in terms of the manner in which it was committed. The Constitutional Court accepted this reasoning as constitutionally acceptable, while noting that the reasons for extending detention must become stronger with the passage of time and that the courts must also consider the possibility of applying less restrictive measures.

5.4. Supervision Measures

Supervision measures are used in criminal proceedings as a less restrictive alternative to detention where the court considers that the presence of the accused and the proper conduct of the proceedings can be secured without deprivation of liberty.

Two data sources were used for the purposes of this analysis. The first is the record maintained by the Judicial Council, which shows that, between 1 January 2023 and 31 March 2026, **68** decisions ordering supervision measures, **772** decisions extending such measures, two decisions modifying them, and four decisions lifting supervision measures were recorded in proceedings before the Special Department of the High Court. The second source consists of data collected through monitoring of judicial proceedings. Given that the Judicial Council's records do not contain details on the number of persons subject to supervision measures or the type of measure imposed, as well as the fact that the High Court does not maintain detailed records on supervision measures, this part of the analysis is based on data collected by monitors through continuous case monitoring, i.e. direct monitoring and regular monitoring of media reports concerning proceedings before the Special Department of the High Court.

In the organised crime and high-level corruption cases continuously monitored by the monitors, supervision measures as an alternative to detention were recorded **37** times. The court imposed supervision measures either independently, together with bail, or following the lifting of detention.

Table 16: Breakdown of Supervision Measures by Type of Case

Supervision Measure	Number and Percentage of Supervision Measures Imposed	
Organised Crime	18	48.64%
High-Level Corruption	12	32.43%
Organised Crime and High-Level Corruption	7	18.91%
Total	**37**	**100%**

Two cases were also recorded in which a request to impose a supervision measure instead of detention was refused.

Supervision measures were imposed on **27 persons.** Of these, **14 (51.85%)** concerned organised crime cases, **nine (33.33%)** concerned high-level corruption cases, and **four (14.81%)** concerned cases involving both organised crime and high-level corruption.

The most frequently imposed measure was a **prohibition on leaving the residence,** recorded 18 times, including six instances in which it was accompanied by electronic monitoring. The prohibition on approaching or meeting specified persons, the temporary seizure of travel documents, and the obligation to report periodically to a competent authority were used less frequently. In one case, a prohibition on leaving the residence with electronic monitoring was imposed together with a prohibition on approaching or meeting specified persons.

A specific request to replace detention with supervision measures was refused twice, both times in cases involving both organised crime and high-level corruption. In one additional case, the court did not approve the release from detention of three persons in a high-level corruption case.

Subsequent decisions concerning previously imposed supervision measures were recorded nine times: in four cases the measures were lifted, in three they were relaxed, and in two they were replaced by detention.

Table 17: Breakdown of Supervision Measures by Type of Measure

Supervision Measure	Number and Percentage of Supervision Measures Imposed	
Prohibition on Leaving the Residence	18	31.57%
Prohibition on Approaching or Meeting Specified Persons	12	21.05%
Prohibition on Leaving the Place of Residence	11	19.29%
Temporary Seizure of a Travel Document	9	15.78%
Obligation to Report Periodically to the Competent State Authority	7	12.28%
Total	**57**	**100%**

In nine cases, subsequent decisions were issued concerning previously imposed supervision measures. In four cases, the supervision measures were lifted, in three cases they were relaxed, and in two cases they were replaced by detention.

The structure of the measures imposed shows that the court most frequently resorted to restrictions concerning the movement of the accused and their contact with other persons, while the seizure of travel documents and the obligation to report periodically to the competent authority were used as supplementary control mechanisms.

The subsequent decisions concerning previously imposed measures also show that the court did not regard supervision measures as a permanent or immutable solution. In some cases, the measures were lifted or relaxed following changes in the procedural circumstances, while in others they were replaced by detention. This indicates that the supervision measures imposed in the cases analysed were subject to further judicial review.

The issue of the implementation and monitoring of supervision measures is particularly important, as their effectiveness depends not only on the content of the court decision, but also on whether the competent authorities are able to monitor compliance with them continuously and in a timely manner.

Supervision measures require a continuous functional link between the court and the authority responsible for their implementation. The court issues the decision, determines the content and duration of the measure, reviews its justification and may request a report on its implementation, while the police or another competent authority implements the measure, carries out checks and informs the court of any non-compliance. If any of these links fails to function, the supervision measure loses its practical effectiveness.

The importance of this issue is also illustrated by the case of a person who absconded after the expiry of the maximum statutory period of detention before the delivery of a first-instance judgment, when detention was lifted and replaced by a prohibition on leaving the residence. According to publicly available information, the court's decision prohibited the person from leaving the residence except when summoned by the court, warned that detention could be imposed in the event of a breach of the measure, and provided that the measure was to be enforced by the competent police organisational unit. Following the person's absconding, the court publicly stated that the case file contained no correspondence or reports from the police concerning monitoring of compliance with the measure, referring to the statutory obligation of the police to enforce the prohibition on leaving the residence.[88]

The police, on the other hand, stated that the court had not issued any act requesting verification of the supervision measure or a report from the competent organisational unit, and that police officers had carried out checks during the relevant period and had not recorded any breach of the measure up to the day before the judgment was delivered. The police further stated that official records had been prepared concerning the monitoring of the measure and that, pursuant to Article 169 of the CPC, they would have been submitted to the court had the court requested them.[89]

88 https://www.vijesti.me/vijesti/crna-hronika/793372/visi-sud-obaveza-policije-je-da-sprijeci-bjekstvo-okrivljenog-iz-stana
89 https://www.cdm.me/hronika/uprava-policije-o-bjekstvu-medenice-sud-nije-trazio-izvjestaje-o-mjeri- na-

In addition, according to information obtained by the Network for Affirmation of the NGO Sector (MANS), monitoring of the implementation of the measure in that case was conducted on the basis of a previously prepared plan of measures and activities. However, the public was not provided with an explanation as to who had determined the frequency of the checks, on whose assessment the checks had been planned, or who had been responsible for their operational implementation.[90]

5.5. Bail

Bail is a measure which, under the conditions prescribed by law, may prevent the imposition of detention or enable the accused to be released from detention. Pursuant to Article 170 of the CPC, an accused who is to be placed in detention, as well as an accused who is already detained solely on the grounds indicating a risk of absconding, may be left at liberty or released if he or another person on his behalf provides bail guaranteeing that he will not abscond until the conclusion of the criminal proceedings, and the accused undertakes not to go into hiding and not to leave his place of residence without the court's permission. The same possibility exists where a duly summoned accused avoids appearing at the main hearing. The CPC also provides that bail may be imposed together with one of the supervision measures referred to in Article 166, Paragraph 2, in order to ensure compliance with that measure.

Upon reviewing the files of finally concluded proceedings, the monitors recorded only one case in which bail was requested and refused.

According to data available to the Judicial Council, between 1 January 2023 and 31 March 2026, 13 decisions imposing bail, 28 decisions accepting bail, three decisions lifting bail, and 20 decisions refusing a proposal for bail were recorded. The records themselves, however, do not provide a complete picture of all the circumstances in which bail was imposed, accepted, lifted or refused, nor do they contain information on the amount of bail, the type of case, etc.

With regard to the continuous monitoring of judicial proceedings in organised crime and corruption cases, the monitors recorded the acceptance or refusal of bail in 23 instances, across 15 different criminal cases.

The court accepted bail in nine cases, while it refused bail in 14 cases. In two cases, proposals for bail had been submitted but had not yet been decided upon.

dzora/
90 https://mans.co.me/postojao-plan-nadzora-milosa-medenice-uprava-policije-bez-odgovora-ko-ga-je- sacinio/

Table 18: Breakdown of Accepted and Refused Bail by Type of Case

Type of Case	Number of Decisions	Bail Accepted	Bail Refused
Organised Crime	16	6 (37.5%)	10 (62.5%)
High-Level Corruption	5	3 (60%)	2 (40%)
Organised Crime and High-Level Corruption	2	0 (0%)	2 (100%)
TOTAL	**23**	**9 (39.1%)**	**14 (60.9%)**

The total value of accepted bail amounted to €7,434,370. The total value of refused bail amounted to €17,687,571.83 and £75,000, while the total value of proposed bail for which no decision had yet been recorded amounted to €2,130,000. The lowest amount of accepted bail was €557,445, while the highest was €1,401,000. Among the refused bail proposals, the lowest amount was €173,740, while the highest was €9,300,000.

The most restrictive approach was recorded in organised crime cases, where the monitors recorded the refusal of bail in 10 out of 16 proposals. At the same time, the data indicate that the amount of bail offered was not, in itself, decisive, as the total value of refused bail was significantly higher than the value of accepted bail.

CONCLUSIONS AND RECOMMENDATIONS

The problems in prosecuting organised crime and high-level corruption cases cannot be reduced to individual procedural shortcomings or isolated situations in specific cases. Rather, they result from a combination of several interconnected factors: the lengthy duration of proceedings, a large number of old cases, limited human and physical resources, insufficiently developed management of complex cases, adjournments of hearings, problems with service of documents and compulsory appearance, delays in preparing and serving written copies of judgments, insufficiently reliable records, limited digitalisation of case files, and the insufficient use of alternatives to detention.

These problems are particularly significant in cases falling within the jurisdiction of the Special Department of the High Court in Podgorica. In such cases, every delay has multiple consequences: it prolongs the proceedings, increases the risk of statutory limitation or loss of procedural concentration, complicates the taking of evidence, prolongs the duration of detention or supervision measures, places additional pressure on the courts, prosecution, police and defence counsel, and creates a public perception that the system is unable to provide a timely response to the most serious forms of criminality.

The Unified Programme for Resolving Old Cases for the Period 2025–2027 starts from the premise that the issue of old cases cannot be addressed on an ad hoc basis, but rather through strategic planning, clear priorities, continuous monitoring and effective resource management. The document identifies, among other things, shortages of judicial staff, outdated and inefficient working processes, a large number of submissions by the parties, the complexity of cases and poor coordination among state institutions as causes of lengthy proceedings. These factors are to a significant extent also reflected in the cases covered by this and previous CeMI reports.

Efficiency of Criminal Proceedings

- The length of proceedings remains one of the most significant problems. As of 6 April 2026, there were 172 cases pending before the Special Department, including 34 cases that had been pending for more than five years, with an average duration of 2,315.6 days, as well as three cases that had been pending for more than eight years, with an average duration of 3,089.7 days.

  Data on the duration of organised crime and high-level corruption cases require a specific case-management regime that should include continuous review of the oldest cases, scheduling of hearings without undue interruption, verification of the fulfilment of procedural prerequisites before each hearing, active monitoring of service of documents, regular monitoring of the execution of orders for compulsory appearance, priority preparation of written copies of judgments, as well as reliable electronic records enabling the court to determine at any time the procedural stage of a case and the reasons for any stagnation.

Accordingly, the High Court in Podgorica, with the support of the Supreme Court and the Judicial Council, should establish a specific operational plan for resolving old cases falling within the jurisdiction of the Special Department. The plan should include an individual analysis of all cases pending for more than three, five and eight years, identification of the procedural stage reached in each case, identification of the reasons why the proceedings have not been concluded, a schedule for hearings during the forthcoming period, and periodic reporting on the actions taken. In cases in which detention or any supervision measure has been imposed, monitoring should be even more intensive, as the length of proceedings directly affects the right to personal liberty.

However, the efficiency of proceedings concerning organised crime and high-level corruption also depends on whether the key institutions (the courts, prosecution service and police) have sufficient human, physical, technical and organisational capacity to respond to the volume and complexity of the cases. The data show that the capacities of the key institutions remain limited. The SDT operates under a high workload per prosecutor, the SPO has not been staffed to its planned number of positions, while the Special Department of the High Court, despite increased staffing, continues to operate under limited physical capacity and depends on the use of courtrooms belonging to other courts.

It is necessary to continue strengthening the staffing of both the SPO and other key organisational units of the Police Directorate involved in the detection and investigation of organised crime, while adopting a multi-year staffing plan with clear annual targets. Particular priority should be given to criminal intelligence, financial investigations, special investigative measures, digital forensics, international police cooperation, and the investigation of criminal offences involving encrypted communications and cyberspace.

Furthermore, the SDT's average workload of 131 criminal complaints per prosecutor per year confirms that existing capacities are not fully aligned with the volume and complexity of cases within its jurisdiction. The SDT should therefore be further strengthened by increasing the number of special prosecutors, as well as economic, financial, analytical and IT experts and administrative staff necessary to handle extensive and evidentially complex cases. Particular attention should be paid to financial investigations, digital evidence, international cooperation and money-laundering cases.

With regard to the courts, it is necessary to continue strengthening the Special Department of the High Court in Podgorica, while simultaneously planning the capacity of the Court of Appeal of Montenegro, since the first-instance and appellate courts form a functional whole in the prosecution of these cases. Strengthening the staffing of the High Court will not produce its full effect if the Court of Appeal does not have a sufficient number of judges to decide appeals in the most complex cases in a timely and high-quality manner. Accordingly, staffing plans for both courts should be coordinated, while preserving continuity in proceedings that have already commenced, preventing the simultaneous departure of a large number of judges from the Special Department, and developing a system of succession and specialised training for judges handling organised crime and high-level corruption cases.

The recommendation from the 2025 trial-monitoring report also remains relevant, namely that efforts should be made to motivate law graduates to pursue careers in the judiciary. To achieve this, they should be provided with competitive remuneration, clear opportuni-

ties for professional advancement, high-quality mentoring programmes and professional development, as well as a working environment that recognises and rewards expertise and commitment.

In addition to strengthening staffing, the High Court in Podgorica, and particularly its Special Department needs permanent physical and technical solutions. The temporary use of courtrooms belonging to other courts, although useful as an interim solution, cannot constitute a sustainable model for conducting the most complex criminal proceedings. The Special Department must have a sufficient number of appropriately equipped courtrooms for cases involving large numbers of defendants, defence counsel, witnesses, police officers and evidentiary material.

- Although strengthening the human, physical and technical capacities of institutions is essential, the complexity of these cases also demonstrates the need for further improvement of procedural legislation. The CPC must provide a more effective framework for conducting complex criminal proceedings involving large numbers of defendants, defence counsel, witnesses, experts, digital evidence and extensive documentation, while preserving all fair-trial guarantees.

  It is particularly important that future amendments to the CPC be viewed as part of a broader response to the length and complexity of proceedings falling within the jurisdiction of the Special Department. The aim of such amendments should not be to restrict procedural rights, but rather to prevent abuse, strengthen procedural discipline and create conditions enabling the court to manage proceedings effectively.

- A particular problem concerns the condition of court files and records. The analysis showed that case files were not always equally well organised and complete. Since the case file represents the principal formal record of the course of proceedings, inadequate organisation of files limits the possibility of internal judicial oversight, external analysis and reliable monitoring of the efficiency of proceedings. One of the main reasons for this situation should be sought in the dual maintenance of records, both manually and electronically in PRIS.

  It is therefore necessary to discontinue the practice of maintaining records manually, implement full digitisation of case files, and establish a functional electronic case file that would provide a clear overview of procedural actions, submissions, minutes, decisions, proof of service and deadlines. Digitisation must be understood as a case-management tool. In this regard, digitisation should also have a clear procedural basis in the CPC.

- The report identifies examples in which evidence was excluded from the case file only during the main hearing, including transcripts of covert surveillance measures whose authenticity could not be verified, as well as official notes and reports concerning communications through the SKY ECC application that the court did not accept as legally admissible evidence.

  It is therefore important that the indictment control has genuine substantive scope. At the indictment control stage, the court should make more consistent use of its powers to examine the lawfulness and admissibility of evidence, in order to avoid key questions concerning the legality of evidentiary material being raised only at later stages of the pro-

ceedings, when resolving them may result in additional delays.

- With regard to the main hearing, the data show that the rate of adjournments, although lower than in some previous reporting periods, remains a serious obstacle to efficient proceedings. In the analysed sample of organised crime cases, more than one-third of hearings were adjourned, while in high-level corruption cases the figure was almost one-half. The reasons for adjournments show that delays cannot be attributed solely to one institution or one group of participants.

  In cases involving large numbers of defendants and defence counsel, the court should adopt a more active approach to case management, and judges should verify in a timely manner whether the procedural prerequisites for holding a hearing have been met. The court must prevent unjustified delays and ensure that procedural rights are exercised in accordance with their purpose.

- The data on compulsory appearance, which CeMI has also highlighted in previous reports, point to a continuing institutional problem that directly affects the efficiency of proceedings. The Police Directorate failed to execute orders for compulsory appearance in almost two-thirds of the cases analysed, while in one-third of the cases analysed it did not even inform the court of the reasons for its failure to act.

  Furthermore, penalties for procedural abuses are imposed extremely rarely and have no deterrent effect. This problem can only be addressed through amendments to the CPC. If monetary penalties are not an adequate means of preventing procedural abuses, the court should be provided with additional coercive mechanisms.

- The monitoring did not identify any violations of the presumption of innocence by judges during the main hearings observed, nor in their public statements. However, an analysis of public statements by officials and media reporting shows that this right continues to be at risk outside the courtroom, particularly through formulations presenting suspects or accused persons as perpetrators of criminal offences before the proceedings have been finally concluded. This is particularly problematic when such formulations come from public officials, as they may have a greater influence on public opinion and create an impression of institutional pre-judgment of guilt. A similar risk exists in media reporting, particularly in headlines and articles where information from an investigation, indictment or other procedural documents is not clearly presented as suspicion, allegations or claims that remain to be proven in judicial proceedings.

  As early as its 2018 trial-monitoring report, CeMI highlighted the need for courts, the media and other actors to consistently respect the presumption of innocence, as well as the need for additional training and consideration of normative mechanisms for preventing and sanctioning violations of this principle. The findings of this report show that these recommendations remain relevant, particularly given the high level of public attention surrounding organised crime and high-level corruption cases, as well as the increased influence of public statements and media reporting on perceptions of guilt before a final judicial decision.

  The courts should continue the practice of consistently respecting the presumption of innocence throughout the trial and, within the scope of their procedural powers, ensure

that this guarantee is respected by all participants in the proceedings. Where parties, defence counsel, authorised representatives, witnesses or other persons in the courtroom use formulations that could prejudge the guilt of the accused, the court should respond promptly and remind the participants in the proceedings of their obligation to respect the presumption of innocence.

Public officials and other holders of public authority should, in all public statements, refrain from formulations that could suggest that the guilt of suspects or accused persons against whom criminal proceedings are pending has already been established.

Journalists and editors should, when reporting on investigations and judicial proceedings, consistently apply the Code of Journalists of Montenegro and relevant legal standards, particularly with regard to the use of language that does not prejudge guilt. Additional training should be provided for journalists and editors on reporting on criminal proceedings, with a particular focus on the presumption of innocence, reporting on indictments, evidence and witness statements, and cases at the investigation or main-hearing stage.

Consideration should be given to improving the normative framework, including possible amendments to the CPC or other relevant legislation, in order to define more clearly the mechanisms for responding to violations of the presumption of innocence, while at the same time respecting freedom of expression, the public's right to be informed, and the role of the media in reporting on matters of public interest.

- In the cases monitored, no systemic denial of the right to defence was identified. According to the monitoring findings, courts generally enabled defendants and defence counsel to participate in the proceedings, submit procedural motions and exercise the legal remedies provided by law. It is particularly significant that, in the cases monitored, courts adjourned main hearings when defendants or defence counsel requested additional time to prepare the defence due to the volume of evidentiary material, particularly in cases involving evidence from communications through the "Sky" application, as well as in situations where a defendant who had previously been tried in absentia became available to the court at an advanced stage of the evidentiary proceedings.

  However, as early as its 2018 report, CeMI highlighted the problem of courtroom capacity and the seating arrangements for participants in proceedings, particularly with regard to the possibility of direct and effective communication between defendants and their defence counsel. This issue may be even more pronounced in organised crime and high-level corruption cases, which often involve large numbers of defendants, defence counsel, prosecution representatives, witnesses, experts, security personnel and members of the public. Under such conditions, courtrooms are frequently overcrowded, which may hinder confidential and timely communication between defendants and their defence counsel during the main hearing.

  The recommendation from the 2018 report therefore remains relevant. When planning the construction of new courtrooms, as well as the adaptation of existing premises, particular attention should be paid to the arrangement and positioning of the parties to the proceedings, in order to ensure conditions for unhindered communication between defendants and defence counsel, in accordance with the requirements for the effective exercise of the right to defence.

Measures to Ensure the Presence of the Accused and the Unhindered Conduct of Criminal Proceedings

- The right to personal liberty represents one of the most sensitive aspects of criminal proceedings, particularly in cases involving organised crime and high-level corruption. The complexity of such cases may justify heightened caution and longer periods of certain measures, but it cannot relieve the courts of their obligation to base every decision on detention on concrete, individualised and relevant grounds. Detention must not become a routine response to the seriousness of the charges, the volume of the case or public pressure; rather, it must remain a measure of last resort, applied only when the purpose of the proceedings cannot be achieved through less restrictive measures.

- Although the sample is limited and the average was significantly affected by one exceptionally lengthy case, the data collected by the monitors confirm that detention in organised crime and high-level corruption cases can last for very long periods and therefore requires stricter judicial scrutiny. As time passes, the grounds for detention must become increasingly compelling, specific and convincing. Courts should not extend detention by relying on the same circumstances that existed at the beginning of the proceedings without explaining why those circumstances continue to carry the same weight.

  The recommendation from the 2025 report remains relevant, namely that the practice of ordering and extending detention should be improved by ensuring that every decision ordering or extending detention genuinely explains why alternative measures were insufficient to achieve the objectives of the proceedings, i.e. why detention is necessary in the particular case.

  Consideration should also be given to developing comprehensive guidelines for courts and the prosecution service, based on the case-law of the ECtHR, to facilitate decision-making and reasoning when proposing, ordering, extending and lifting detention.

- The case-law of the Constitutional Court further confirms the need for a change in approach. Between 1 January 2023 and 31 March 2026, the Constitutional Court received 44 constitutional complaints concerning violations of the right to liberty in cases before the Special Department, of which one-third were upheld. Particularly significant is the case in which the detention of the same person in the same proceedings was the subject of several decisions of the Constitutional Court, with the Constitutional Court finding violations of the rights under Articles 29 and 30 of the Constitution and Article 5 of the European Convention on five occasions, while the ordinary courts continued to issue decisions that were substantially similar. Such practice calls into question the effectiveness of the constitutional complaint and the authority of the Constitutional Court's decisions.

  The ordinary courts must act in accordance with the decisions of the Constitutional Court, particularly where a decision concerns a violation of the right to liberty. It is recommended that the Supreme Court, the Court of Appeal and the High Court in Podgorica establish a practice of systematically reviewing Constitutional Court decisions concerning detention.

- Decisions on ordering and extending detention must be based on concrete, individualised and currently relevant assessments of risk, rather than on general formulations that

could be applied to the majority of cases of this type.

It is particularly important that, each time detention is extended, the courts demonstrate that they have genuinely and afresh examined whether the grounds for detention continue to exist, whether the circumstances have changed, how long the detention has already lasted, at what stage the proceedings are, what procedural actions have been undertaken, and whether the purpose of detention can be achieved through less restrictive measures.

- Conditions in pre-trial detention facilities further reinforce the need for a more restrictive approach to the use of detention. The CPT's findings from 2026 indicate that remand prisoners account for 56% of the total prison population, that overcrowding has reached a record level, that some detainees remain in detention for years, and that detainees spend 22 to 23 hours a day locked in their cells, without structured activities, education or work. A further indicator of risk is the high rate of suicides in correctional facilities.

  Under such conditions, every extension of detention must be accompanied by a particularly careful assessment of its necessity. It is recommended that, alongside improving material conditions in pre-trial detention facilities and strengthening access to healthcare and psychosocial support, urgent efforts be made to reduce the number of persons held in detention through the consistent application of supervisory measures and bail where these are sufficient to achieve the aims of the proceedings. Particular attention should be paid to cases in which detention has lasted for an extended period, in order to prevent a measure intended to secure the defendant's presence and the proper conduct of criminal proceedings from effectively acquiring the character of punishment prior to a final judgment.

- Supervisory measures represent an important instrument for reducing the use of detention, but their effectiveness depends on the actual possibility of their implementation and monitoring. In cases of organised crime and high-level corruption continuously monitored by the monitors, the most frequently imposed measure was house arrest, in some cases combined with electronic monitoring.

  The lack of electronic monitoring devices in the earlier period was one of the key practical reasons why supervisory measures were not used to the extent to which they could have been. Without functional electronic monitoring, courts may have less confidence that a prohibition on leaving one's home or place of residence can be effectively monitored. It is therefore necessary to ensure a sufficient number of electronic monitoring devices in order to create the conditions for supervisory measures to constitute a credible alternative to detention, rather than merely a formal option whose practical application remains limited.

- Subsequent decisions concerning supervisory measures show that the court did not regard them as a permanent solution, as in some cases they were lifted, relaxed or replaced by detention. This is positive insofar as it demonstrates that the court reviews their continued justification.

- The case involving the absconding of a person whose detention was replaced by a prohibition on leaving their home after the expiry of the maximum statutory period of detention

before the first-instance judgment demonstrates that the court's statutory authority to request checks, and the obligation of the enforcement authorities to inform the court of any breach of the measure, are not sufficient if there is no clear, regular and documented system of communication. The enforcement of supervisory measures must entail a clear chain of responsibility, a monitoring plan, records of checks carried out, rules governing the frequency of visits, and an obligation to promptly inform the court of any circumstances that may affect the assessment of risk.

- As regards bail, it is used selectively in cases of organised crime and high-level corruption, with a relatively restrictive approach. Continuous monitoring identified 23 instances in which bail was either accepted or rejected, across 15 cases. The court accepted bail in nine cases and rejected it in 14 cases. The most restrictive approach was recorded in organised crime cases, in which 10 out of 16 applications were rejected. The total value of rejected bail was significantly higher than the total value of accepted bail, indicating that the amount of bail offered was not, in itself, decisive.

  Such an approach may be justified in individual cases, but where the court rejects bail, it must explain why the value offered, in combination with any supervisory measures, is insufficient to neutralise the grounds for ordering detention.

- A particular problem is the absence of detailed and statistically usable records on measures aimed at securing the defendant's presence and ensuring the proper conduct of criminal proceedings before the High Court in Podgorica. The Judicial Council's records contain certain aggregate data, but do not provide a complete picture of the number of persons concerned, the type of measure, the grounds for imposing it, its duration, subsequent modifications or lifting, or the relationship between detention and less restrictive measures. The High Court in Podgorica does not maintain detailed records that would enable a reliable analysis of these issues. This constitutes a serious methodological and institutional problem, as measures restricting personal liberty must be monitored accurately, transparently and continuously.

- It is recommended that the High Court in Podgorica establish a court-wide record of measures aimed at securing the defendant's presence and ensuring the proper conduct of criminal proceedings. Such a record would enable more precise monitoring of judicial practice, improved internal oversight, more reliable reporting, and a stronger basis for public discussion on the application of measures that directly interfere with the right to liberty.

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