COURT PRACTICES TOWARD MINORITIES IN CRIMINAL PROCEEDINGS

MONITORING REPORT

Ministarstvo ljudskih
i manjinskih prava

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INTRODUCTION

In the process of judicial reform, which is crucial to fulfill the requirements for accession to the European Union, it is extremely important to ensure the full protection of the rights of all citizens, which at the same time means ensuring full protection of the rights of members of national minorities.

Minority groups, including national, ethnic, religious and linguistic minorities, often face additional challenges before the courts, because of their disadvantaged socio-economic status, language barriers, lack of awareness of their rights, as well as systemic deficiencies and inadequate legislative solutions.

Judicial processes involving members of minorities frequently serve as a test for the actual application of human rights and the principle of equality before the law. Through careful monitoring of these procedures, it becomes possible to observe how well the procedural rights of minorities are respected and to what extent the judicial system fulfills its obligations in accordance with international standards.

In this context, an analysis of judicial practices in proceedings against minorities, aimed at identifying shortcomings in the implementation of international standards, is essential for achieving fairness at all stages of criminal proceedings. The analysis of court cases presented in this report represents a step forward in this process.

This report provides an answer to the question of the extent to which courts, prosecutor's offices and judicial and other institutions in Montenegro act in accordance with international standards and provides recommendations for improvement.

By establishing the current level of respect for procedural rights, this report provides a detailed insight into key areas that require improvement, thereby enabling the development of better practices and strategies for improving the status and rights of members of minorities. Based on the established findings, the report provides concrete recommendations aimed at improving judicial practice and strengthening trust in the judicial system.

The report was developed as part of the project *Contributing to the Protection of the Rights of Minority Groups in Judicial Proceedings,* implemented by the Center for Monitoring and Research (CeMI) in partnership with the Institute for Legal Studies (IPLS), with financial support from the Ministry of Human and Minority Rights.

LEGAL AND INSTITUTIONAL FRAMEWORK

2.1. GENERAL LEGAL FRAMEWORK

Within the objectives of the project, which focuses on monitoring access to justice and the respect for the fundamental human rights of minorities through the analysis of criminal proceedings in which members of minority nations are either accused or victims, special attention is dedicated to the compliance of Montenegrin court practices with the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR). Specifically, Articles 5 and 6 of the Convention, which guarantee the right to freedom and security, as well as the right to a fair trial, are the main focus. This section briefly presents the key international standards regarding the right to a fair trial and the right to liberty and security.

2.1.1. RIGHT TO A FAIR TRIAL

The right to a fair trial is a fundamental standard in protection of human rights. Without reliable guarantees for its realization, it is difficult to speak of genuine respect for human rights.

In addition to Article 6 of the ECHR, the right to a fair trial is prescribed in almost all major international human rights documents, such as the Universal Declaration of Human Rights (Article 10), as well as in the International Covenant on Civil and Political Rights (Article 14).

In the context of Article 6 of the ECHR, the right to a fair trial also encompasses additional guarantees arising from the jurisprudence of the ECtHR, which continuously evolves and adapts to the challenges of modern society.

In this regard, the ECtHR has developed a rich practice that further strengthens the right to a fair trial and provides clear guidelines to member states for its implementation. Through its decisions, the Court has established standards that go beyond formal provisions.

One of the key guarantees affirmed by the ECtHR relates to the right to an impartial and independent court. In judgments such as *Findlay v. the United Kingdom*,[1] the Court emphasized that impartiality must be both subjective and objective, meaning that judges must not have prejudices, and the judiciary system must appear impartial from the perspective of any reasonable person.

Additionally, the ECtHR emphasized the importance of the right to a trial within a reasonable time, as an integral part of the right to a fair trial. In criminal proceedings, which are the subject of the analysis in this report, that moment is related to the date of the notification of the criminal charge (not necessarily only the moment of formal indictment, but practically the moment of notifying the applicant that there is a possibility that he has committed a

1 Application no. 22107/93, Decision of February 25, 1997

criminal offense), i.e. the date of arrest or hearing, when these procedural actions significantly affected the position of the applicant, the moment of filing a criminal complaint against a person by the competent authority.[2]

One of the key elements of the right to a fair trial is the equality of the parties before the court. The Court has repeatedly emphasized that equality of the parties in the proceedings implies that each party has a reasonable opportunity to present its arguments under conditions that do not put it in a disadvantageous position in relation to the opposing party.[3]

2.1.2. RIGHT TO FREEDOM

The right to freedom and security is also extremely important. The Universal Declaration of Human Rights guarantees this right alongside with the right to life and personal security in Article 3, while in the International Covenant on Civil and Political Rights it is guaranteed in Article 9.

The European Convention on Human Rights guarantees the right to liberty and security in Article 5. According to the ECHR, no one can be deprived of their liberty except in circumstances that are clearly defined by law and in accordance with procedures prescribed by law.

The case law of the European Court of Human Rights (ECtHR) has made a significant contribution to the development and interpretation of the right to liberty, setting standards that ensure deprivation of liberty never becomes a tool for the abuse of state power, but remains in line with the principles of legality, proportionality, and necessity.

Through numerous rulings, the Court has protected individuals' rights and directed the contracting states to improve their judicial systems and legislative frameworks. For example, in the case of Winterwerp v. the Netherlands[4], the Court clarified the criteria for the lawful deprivation of liberty of individuals with mental disabilities, thereby establishing standards for the protection of their rights.

At the same time, deprivation of liberty cannot be arbitrary[5], and it is particularly important to ensure the right to regular judicial monitoring of the legality of detention.[6] Courts must ensure that any deprivation of liberty is based on objective criteria and that the possibility of imposing appropriate legal remedies is provided in cases where the deprivation of liberty was not justified. An individual who has been deprived of their liberty must be promptly informed of the reasons for the deprivation of liberty and has the right to be brought before a court without undue delay. If a person believes that his deprivation of liberty was unlawful, he has the right to seek an effective legal remedy, including the right to compensation for damages.

2 Eckle v. Federal Republic of Germany, Application no. 8130/78, Judgment of July 15, 1982, para. st. 73-74
3 Öcalan v. Turkey [GC], 2005, para 140; Foucher v. France, 1997, para. 34 et seq.
4 Application no. 6301/73, para. 39
5 McKay v. United Kingdom, Application no. 543/03, Decision of October 3, 2006
6 Ibidem

2.1.3. NATIONAL LEGISLATION

The Constitution of Montenegro[7] and the Code of Criminal Procedure (CPC)[8] are of fundamental importance for the purposes of monitoring criminal court proceedings to determine the compliance of court practice with fair trial standards. In the context of the rights of minorities and equality of minorities in judicial proceedings, an essential element is the role of court interpreters, whose status is regulated by the Law on Interpreters[9], as well as the Law on Free Legal Aid.[10]

CONSTITUTION

The European Convention for the Protection of Human Rights and Fundamental Freedoms forms part of the legal system of Montenegro, according to the provisions of Article 9 of the Constitution, which states that confirmed and published international treaties, as well as generally accepted rules of international law, are an integral part of the internal legal order. These rules take precedence over domestic legislation and apply directly when there is a conflict with national legislation. This obliges Montenegro to harmonize internal norms with international standards of human rights in its legal system, which enables the harmonization of domestic legislation with international principles of protection of human rights and fundamental freedoms.

The Constitution of Montenegro additionally ensures the realization of rights and freedoms according to international agreements through Article 17, which confirms the state's obligation to respect international human rights standards. This article establishes the obligation to implement international norms in the domestic legal system and ensures that the rights of citizens are protected in accordance with international principles. The direct guarantee of the right to a fair trial is contained in Article 32 of the Constitution, which guarantees every citizen the right to a fair and public trial within a reasonable time, before an independent, impartial and legally established court.

The independence and impartiality of the courts are fundamental principles of a fair trial, confirmed by Article 118, Paragraph 1. Additionally, Article 120 provides for the publicity of the trial, which enables all interested parties to follow and have an insight into the judicial processes. The presumption of innocence, as one of the fundamental human right, is guaranteed by Article 35 of the Constitution, while the right to trial only once for the same legal matter, known as the principle ne bis in idem, is guaranteed by Article 36, safeguarding individuals from double prosecution for the same thing. Also, the Constitution also guarantees the right to defense in Article 37, as well as the right to a legal remedy (Article 20), in order to enable protection against illegal or unjust decisions, while Article 21 ensures the right to legal aid, including free legal aid.

7 "Official Gazette of Montenegro", no. 1/2007 and 38/2013 - Amendments I-XVI
8 Official Gazette of Montenegro," No. 57/2009, 49/2010, 47/2014 – Constitutional Court decision, 2/2015 - Constitutional Court decision, 35/2015, 58/2015 - other law, 28/2018 – Constitutional Court decision, and 116/2020 - Constitutional Court decision, 145/2021, 54/2024, 58/2024
9 "Official Gazette of Montenegro," No. 52/2016, dated August 9, 201
10 "Official Gazette of Montenegro," No. 020/11, dated April 15, 2011, No. 020/15, dated April 24, 2015

The Constitution also guarantees the right to be informed of the reasons for deprivation of liberty according to (Art. 30), which is crucial for preventing arbitrary deprivation of liberty, as well as the right to compensation due to a court error, which is provided in Article 38, ensuring that victims of judicial mistakes are adequately compensated.

LAW ON CRIMINAL PROCEDURE

The Criminal Procedure Code (CPC) is the base for monitoring criminal proceedings and guarantees the right to a fair trial through a series of provisions.

One of the fundamental principles of human rights contained in the CPC is the presumption of innocence, meaning that everyone is considered innocent until proven guilty by a final court judgment. In the absence of sufficient evidence, the court must make a more favorable decision for the defendant (principle *in dubio pro reo*).

Also, along with the presumption of innocence, it is worth mentioning the right to defense, which is regulated by Articles 12 and 66, which allow the accused to defend themselves independently or with the assistance of a lawyer. The court is obliged to provide sufficient time and opportunities for the preparation of the defense. The CPC prescribes the right to a mandatory defense, among other things, for individuals in detention (Art. 69), as well as the possibility of appointing a defense attorney due to poor financial status (Art. 70).

Suspects and victims have the right to be familiar with the evidentiary material and to present evidence during the investigation and main trial (Art. 58). The right to a trial without delay, as well as the right to an accurate and complete determination of the facts, are also guaranteed in the CPC. Article 15 of the CPC guarantees the defendant the right to be brought before the court without undue delay.

In the context of the right to liberty, the CPC prescribes the conditions under which detention can be ordered (Articles 175 and 448), the duration of detention at various stages of the procedure, and the supervision measures that can be imposed as alternatives to detention, along with the conditions for their application.

As one of the fundamental rights guaranteed to members of linguistic minorities, the CPC ensures the right to an interpreter, recognizing that criminal proceedings are conducted in the Montenegrin language, but parties, witnesses, and other participants have the right to use a language they understand.

To uphold all the rights guaranteed by the CPC, it is essential that the court remains impartial, so the CPC regulates judicial impartiality in Article 38, prohibiting judges from performing their judicial duties in circumstances that could call their objectivity into question, such as personal interests or previous involvement in the same case. A judge cannot make decisions in cases where there is a conflict of interest, either through familial or professional ties, or if the judge has previously been involved in the case as an investigating judge, prosecutor, or witness. Additionally, any circumstances that raise doubts about a judge's impartiality may result in their exclusion from the proceedings.

Equally important is the principle of truth and fairness, contained in Art. 16 of the CPC, which orders the court, the prosecutor and other authorities to accurately and completely determine the facts that are important for making a legal and fair decision, as well as to examine and determine with equal care both the facts that incriminate the defendant and those that go against him benefit, and to provide the parties and the defense attorney with equal conditions regarding the presentation of evidence and access to evidence and its presentation.

LAW ON COURT INTERPRETERS

According to the Law on Court Interpreters, an interpreter is a person who provides translation between the Montenegrin language and other languages, including both written and oral communication. Experts in sign language interpretation are also considered interpreters under this law.

In cases where it is not possible to provide an interpreter for a certain language or when there are other justified reasons, an interpreter from another country may be hired, provided that he is qualified to perform these tasks in accordance with the legislation of that country.

The duties of an interpreter, as defined by law, include work at the request of the court, the prosecution, other authorities that lead the proceedings, as well as individuals or legal entities. In all these situations, the interpreters are obliged to perform the translation conscientiously, impartially and in accordance with professional norms, with the obligation to respect the deadlines, which usually must not be longer than 60 days, except in cases where there are justified reasons for an extension.

The list of court interpreters is regularly published on the website of the Ministry of Justice of Montenegro. According to the latest list of interpreters, published on November 7, 2024[11], Montenegro currently has 17 active interpreters for the Albanian language and only one interpreter for the Romani language, who took the oath on November 5, 2024.

Beside them, Montenegro also has interpreters for Arabic (3), Bulgarian (1), Czech (1), English (232), French (13), Greek (5), Hebrew (1), Dutch (3), Italian (18), Chinese (1), Latin (1), Hungarian (2), Macedonian (3), German (28), Polish (6), Portuguese (1), Russian (42), Slovak (1), Slovenian (3), Spanish (5), Swedish (4), Turkish (16), Ukrainian (2) and sign language (5).

LAW ON FREE LEGAL AID

The current Law on Free Legal Aid was adopted in 2011, with the most recent amendments made in 2015, with the aim of establishing a normative framework for the realization of the right to free legal assistance. The law defines conditions, procedures, and forms of legal assistance, including legal counseling, drafting of legal documents, representation before courts and other institutions, and exemption from court fees.

The right to free legal assistance belongs to individuals who, due to financial hardship,

11 Accessed at: https://www.gov.me/clanak/azurirani-spisak-tumaca-azuriran-na-dan-07112024-godine

cannot access judicial protection without jeopardizing their basic means of subsistence. Among the priority categories are beneficiaries of social assistance, children without parental care, persons with special needs, victims of violence and human trafficking.

The approval of free legal assistance is carried out by the president of the Basic Court or an authorized judge, according to the applicant's residence criterion, while the authority conducting the proceeding monitors the quality of the provided assistance. In cases of unsatisfactory quality, a request can be made for the replacement of the appointed lawyer.

According to the Law, free legal assistance can be granted for various aspects of legal proceedings in the same case, including legal advice, drafting of legal documents, as well as providing legal advice and representation in out-of-court dispute resolution procedures. It also includes legal advice and representation in proceedings before the State Prosecutor's Office, before courts of first and second instance, as well as in connection with extraordinary legal remedies and constitutional complaints.

2.2. INSTITUTIONAL FRAMEWORK

The basic judicial institutions are the courts and the state prosecutor's offices.

COURTS

Courts are the primary mechanism for the protection of human rights. Their role in safeguarding minority rights is particularly important, as they are responsible for interpreting and applying laws, including those related to the protection of minority rights. Courts are the ones who, through their judgements, give practical application to legal provisions and ensure their consistent application, provide protection to individuals and groups from discrimination. In cases where members of minorities believe they have been victims of discrimination, courts provide an opportunity for them to fight for their rights and are tasked with ensuring that all proceedings are fair, transparent and take place in accordance with the law, which is particularly important for members of minorities who may be marginalized or exposed to prejudice.

The organization and jurisdiction of courts are regulated by the Law on Courts[12]. Considering that the monitors followed the trials in the basic and higher courts, we will look briefly at the organization of these courts.

Basic Courts, exactly 15 of them in Montenegro, have jurisdiction over, among other things, criminal offenses punishable by up to ten years of imprisonment under the law. These courts cover various territorial units, with some courts serving the territories of multiple municipalities.

Basic Courts in Bar, Cetinje, Danilovgrad, Herceg Novi, Kolašin, Pljevlja, Rožaje, and Ulcinj have jurisdiction over the territories of their respective municipalities, i.e. the municipalities where they are established, while the Basic Court in Berane has jurisdiction over the municipalities of Berane, Andrijevica, and Petnjica; the Basic Court in Bijelo Polje covers the

12 "Official Gazette of Montenegro," No. 11/2015, 76/2020, and 54/2024

municipalities of Bijelo Polje and Mojkovac; the Basic Court in Niksic has jurisdiction over the municipalities of Nikšić and Plužine, while the Basic Court in Žabljak covers the municipalities of Žabljak and Šavnik. The jurisdiction of the Basic Court in Kotor extends to the territories of the municipalities of Kotor, Budva and Tivat, while the jurisdiction of the Basic Court in Plav covers the municipalities of Plav and Gusinje. Finally, the Basic Court in Podgorica has jurisdiction over the territories of the Capital City of Podgorica, the municipality of Tuzi and, according to the latest amendments to the Law from 2024, the municipality of Zeta.

Regarding Higher Courts, their jurisdiction is determined based on the areas covered by Basic Courts, i.e. the Higher Court in Bijelo Polje has jurisdiction over the areas of Basic Courts in Bijelo Polje, Berane, Žabljak, Kolašin, Plav, Pljevlja, and Rožaje, and the Higher Court in Podgorica, has jurisdiction for the areas of Basic Courts in Podgorica, Bar, Danilovgrad, Kotor, Nikšić, Ulcinj, Herceg Novi, and Cetinje.

The Higher Court decides on appeals against decisions made by the basic courts and conducts proceedings to determine the prerequisites for requests related to the extradition of accused and convicted persons. Its duties also include tasks related to international criminal legal assistance in criminal matters, such as requests for the hearing of individuals, conducting special investigative actions, as well as other forms of international criminal legal assistance.

The Higher Court, in addition to other competencies, has the responsibility to judge in the first instance in criminal proceedings for offenses for which a prison sentence of more than ten years has been prescribed. Also, it is competent for trial in cases related to the following criminal acts: murder, rape, abuse of position in business operations (according to Article 272 Paragraph 3 of the Criminal Code of Montenegro), endangering the safety of air traffic, unauthorized production, holding and distribution of narcotic drugs, calling for a violent change in the constitutional order, disclosure of secret information, inciting national, racial and religious hatred, discord and intolerance, violation of territorial sovereignty, association for unconstitutional activities, as well as preparation of acts against the constitutional arrangement, the security of Montenegro and against humanity or other goods protected by international law.

Regardless of the rules on territorial jurisdiction, the Higher Court in Podgorica is specifically responsible for the trial of organized crime, high corruption, money laundering, terrorism and war crimes.

STATE PROSECUTOR'S OFFICES

Prosecutor's offices, as well as courts, are organized at several levels (Basic State Prosecutor's Offices, Higher State Prosecutor's Offices, Special State Prosecutor's Office and Supreme State Prosecutor's Office), and their work and jurisdiction are regulated by the Law on State Prosecutor's Office[13]. The State Prosecutor's Office is a unique and independent body, in charge of prosecuting perpetrators of criminal offenses and other punishable offenses that are prosecuted *ex officio*,[14] and its functioning is organized on several levels.

13 "Official Gazette of Montenegro," No. 11/2015, 42/2015, 80/2017, 10/2018, 76/2020, 59/2021, and 54/2024
14 Article 134 of the Constitution of Montenegro

In Montenegro, there are 13 Basic State Prosecutor's Offices. Each Basic State Prosecutor's Office has jurisdiction over the territory of one or more basic courts.

The Basic State Prosecutor's Offices in Bar, Berane, Bijelo Polje, Cetinje, Herceg Novi, Kolašin, Kotor, Nikšić, Plav, Rožaje, and Ulcinj are established for the jurisdictions of the basic courts in those municipalities.

The Basic State Prosecutor's Office in Podgorica is established for the jurisdiction of the Basic Court in Podgorica and the Basic Court in Danilovgrad, while the Basic State Prosecutor's Office in Pljevlja is established for the jurisdiction of the Basic Court in Pljevlja and the Basic Court in Žabljak.

Higher State Prosecutor's Offices in Bijelo Polje and Podgorica are established for the area of these two higher courts.

The Supreme State Prosecutor's Office and the Special State Prosecutor's Office are established for the entire territory of Montenegro, with their headquarters located in Podgorica.

METODOLOGY

For the purposes of this project, trial monitors were hired to monitor the hearings in criminal proceedings and inspect the files of legally concluded criminal cases. The focus was on the basic courts in Bar, Bijelo Polje, Nikšić and Podgorica, as well as the Higher Court in Bijelo Polje and the Higher Court in Podgorica, selected based on the size of the population and the presence of minorities according to the 2011 Census, since the last census was not completed at the time the project was made.

The research was primarily concerned with the human rights of minorities in criminal proceedings, with special reference to members of the Roma-Egyptian (RE) population, and the application of laws and international standards, especially Articles 5 and 6 of the ECHR. All data collected through standardized forms, both quantitative and qualitative, were used for the formulation of conclusions and recommendations, whereby the names of judges and parties were omitted from the report to protect privacy.

As only cases with defendants or injured persons who are members of minorities were analyzed, the sample was smaller than in previous trial monitoring projects, and the trial monitoring period itself was significantly shorter, so the period of analysis of legally concluded cases was harmonized with the previous CeMI project for comparison and determination of possible differences in treatment. The monitors monitored 61 cases at 68 main hearings, while they inspected 95 legally concluded cases. Although it was originally planned to follow the work of the Higher Court in Bijelo Polje, relevant cases meeting the required criteria were currently in the Appellate Court. In the Higher Court in Podgorica, monitors were given access to only one case that matched the required parameters. Out of the total number of cases analyzed, 44 were of the detention type, i.e. cases in which detention was ordered. The monitors followed the work of the courts in a total of 156 cases, and filled out 208 forms, with the largest number of cases analyzed in the Basic Court in Podgorica (103 cases - 66%).

The trial monitoring was conducted in accordance with CeMI's harmonized trial monitoring methodology, based on the "Trial Monitoring: A Reference Manual for Practitioners" methodology initially developed by OSCE. Within judicial proceedings monitoring projects, CeMI applies the principles of objectivity, consent and non-interference in judicial proceedings.

This essentially means that CeMI's observers do not interfere, i.e. they do not affect the course of the procedure or the outcome of the trial, which, on the other hand, does not exclude criticism of the judicial authorities. But the criticism must be based on objective, accurate and unbiased information, and the conclusions and recommendations must be balanced.

ANALYSIS OF COURT PRACTICE IN CRIMINAL PROCEEDINGS INVOLVING DEFENDANTS AND/OR VICTIMS BELONGING TO MINORITY GROUPS

Before analyzing the data, it is important to note that monitors noticed that case files are not always equally well-organized, and certain information is missing from them, such as the order to schedule the main trial or decisions on the appointment of *ex officio* defense attorney, etc. The absence of this data does not necessarily mean that the mentioned procedural actions were not carried out. Moreover, the conclusion that they were most often can be drawn on the basis of other available data. However, this means that the monitors could not always find evidence of the execution of certain actions in the files. Considering that files and minutes represent a formal-legal presentation of the course of the procedure, it is not possible to confirm the validity of the actions carried out outside of these documents.

4.1. PRELIMINARY PROCEEDING

During the monitoring of proceedings involving members of minorities, we observed the same irregularities noted in previous studies. Although these are not exclusively related to the rights of minority groups, we will briefly mention them.

Namely, in some prosecutor's files, there were no official notes or statements in minutes about the presence of the defendant and the defense attorney during the hearing of the witness or the witness/victim, as well as the reason for their possible absence, i.e. that the victim declared that he did not want to attend the hearing of the defendant/victim (Art. 262 Par. 2 and 3 in connection with Art. 282 Par. 4 of the CPC). Similarly, in the defendant hearing minutes, there was no confirmation that they were asked if they wanted to attend the hearing of the victim or the witness and that the prosecutor informed them accordingly (Art. 282 Par. 1 of the CPC).

Furthermore, it was observed that there were no written invitations for hearings in the prosecutor's files - according to the data we have, prosecutors call the parties and injured parties by phone in most proceedings, which is not in accordance with the CPC (Art. 195 and Art. 112), which requires written summons, especially in the pre-criminal phase of the procedure. Also, in the records of the hearing of the defendant, precise questions of the prosecutor are often omitted, and instead there is a general statement: "On a special question of the prosecutor, the defendant/victim/witness states...", which leaves the possibility for asking suggestive questions. This may lead to a violation of Art. 100 Par. 6 of the Criminal Procedure Code, which stipulates that questions are asked exclusively to fill gaps or eliminate contradictions in the defendant's testimony.

In the context of members of minorities, especially members of the RE population, this is especially important to point out, because it is mostly about people with a lower level of education, who are not sufficiently familiar with their rights. Additionally, these people may

face language barriers, which may further complicate their position in criminal proceedings.

4.2. FIRST INSTANCE PROCEEDING

Regular criminal proceeding includes first-instance criminal proceeding and legal remedy proceeding, whereby the first-instance proceeding is divided into preliminary and main criminal proceeding. Within the preliminary proceeding, we find two phases: investigation and indictment. Once the indictment becomes final, the preliminary procedure ends[15], and the main criminal procedure begins, in which the subject of the trial is resolved. The main criminal procedure consists of three parts: preparation of the main trial, main trial and sentencing.[16]

During the first-instance proceedings, monitors analyzed case files and filled out standardized forms that included control of the indictment, scheduling and holding of hearings, the right to a public announcement of the judgments, as well as the average duration of the proceedings. Additionally, in cases involving pre-trial detention, they filled out special forms related to decisions on detention, grounds for detention, demands of detained persons, etc. The findings are organized in accordance with the structure of the form, enabling a detailed analysis of the process in the first instance procedure.

4.2.1. CONTROL OF THE INDICTMENT

4.2.1.1. THE INDICTMENT CONTROL PROCEEDING

Upon receipt of the indictment, the president of the council, within 15 days, schedules a hearing to examine and assess the legality and justification of the indictment. The prosecutor, the defendant and the defense attorney are invited to this hearing, with a note that the hearing will be held in their absence if they do not respond to the proper summons. The hearing will also be held even if the summons cannot be delivered to the defendant at the previously known address. The president of the council first checks the presence of all the invitees and the orderliness of the delivery of the summons, then opens the hearing and informs those present of the content of the indictment that has been submitted to the court for control and confirmation. The prosecutor presents the evidence on which the indictment is based, while the defendant and the defense attorney have the right to point out possible procedural errors, illegal evidence or lack of sufficient evidence for reasonable suspicion, as well as evidence in favor of the defendant.

In cases where the court determines that there are errors in the indictment, procedural deficiencies or the need for additional clarification of the state of the subject matter, the indictment is returned to the prosecutor in order to eliminate those deficiencies or supplement the investigation. The prosecutor is obliged to submit a corrected indictment within three days or to supplement the investigation within two months. Based on justified

15 Radulović, Drago, *Criminal Procedure Law,* University of Montenegro, Faculty of Law, Podgorica, 2009, p. 282
16 Grubač, Momčilo, *Criminal Procedure Law,* Official Gazette, Belgrade, 2006, p. 73; some authors use the phrase "rendering and publishing" the judgment instead of "announcing" the judgment; see: Radulović, Drago, *Criminal Procedure Law,* University of Montenegro, Faculty of Law, Podgorica, 2009, p. 282

reasons, the prosecutor may request an extension of the deadline. If the prosecutor fails to meet the deadline, they must immediately inform the higher state prosecutor's office about the reasons for the delay. In the event that the injured party as a private prosecutor does not meet the deadline, it is considered that they have abandoned the prosecution, and the proceeding is suspended.

If the court judges that the justification of the indictment requires clarification, the indictment of the injured party as a private prosecutor may be forwarded to the investigating judge, who will undertake the necessary evidentiary actions within two months.

According to the practice of the Supreme Court of Montenegro, in the case concerning prolonged indictment control, where the court assessed that, even after two and a half years, the procedure for confirming the indictment had still not been completed, and the decision that had been made in the process of controlling the indictment had been revoked three times by the Appellate Court of Montenegro, there was a violation of the right to a trial within a reasonable time guaranteed by the provisions of Art. Par. 6 Par. 1 of the ECHR and the right to fair compensation was recognized.[17]

4.2.1.2. SITUATION ANALYSIS

By reviewing the files of legally concluded cases, the monitors analyzed 31 cases in which an indictment was filed, out of 95 cases which they inspected, namely: Basic Court Podgorica - 22, Basic Court Nikšić - 4, Basic Court Bar - 3, Basic Court Bijelo Polje – 1 and Podgorica Higher Court – 1. In other cases, there was an indictment proposal.

Of the 31 cases in which an indictment was filed, detention was ordered in 21 cases: Podgorica Basic Court - 15, Nikšić Basic Court - 3, Bar Basic Court - 1, Bijelo Polje Basic Court - 1, Podgorica Higher Court - 1.

The 15-day deadline for scheduling hearings for indictment control was exceeded in 20 cases (64.5%), including 13 detention cases (61.9%). The average time needed to schedule a hearing for indictment control was 27 days. The shortest recorded deadline for scheduling hearings for indictment control was 6 days, and the longest was 77 days, while the longest deadline in detention cases was 62 days.

Given that the analysis included only cases from a limited number of courts, it is likely that the average duration would be lower in a larger sample. We base this assumption on the results of the analysis from 2023, in which, on a significantly larger sample of cases, it was determined that the deadline was exceeded in 55.45% of cases.[18]

Although the average deadline might be lower with a larger sample, exceeding the deadline in over 50% of cases analyzed, especially in detention cases, is a concerning indicator of the inefficiency of the judicial system, which can directly affect the level of respect for human rights, especially when it comes to vulnerable categories population such as members of

17 The Supreme Court of Montenegro, Tpz no. 24/16 dated 27.09.2016
18 CeMI, *Annual Report on Monitoring Court Proceedings in Montenegro,* June 2022-September 2023, p. 32, available at: https://cemi.org.me/storage/uploads/DezmzNaECzHPCq1J6K4AuH7h3SCPbruZKwN3y3IT.pdf.

the RE population.

In one detention case, the indictment was returned to the prosecutor for further investigation.

The deadline for confirming the indictment is eight days, and in complex cases 15 days from the day of the hearing for the purpose of control of the indictment (Article 296, Par. 1 of the CPC).

The analysis of the monitored cases showed that in most cases this deadline was respected, i.e. in 26 out of 31 cases, the indictment was confirmed on the same day when the indictment review hearing was held (83.87%), while in one case in the Basic Court in Bar, this deadline was exceeded by two days, i.e. it was 17 days. In another case conducted before the Basic Court in Podgorica, this deadline was 14 days; however, as it is not possible to methodologically determine the degree of complexity of each analyzed case, it was not even possible to assess whether the eight-day deadline for less complex cases was violated.

4.2.2. PREPARATORY HEARING AND MAIN TRIAL

4.2.2.1. LEGAL FRAMEWORK

The preparatory hearing, regulated by Article 305 of the Criminal Procedure Code (CPC), allows the court to define the course of the main trial, including the evidence presentation plan, schedule, and other details. Within two months, if deemed necessary by the presiding judge, participants such as parties, defense attorneys, injured parties, their representatives, potential experts, and other relevant actors are summoned. The presiding judge informs the attendees about the trial plan and seeks their input, particularly regarding evidence proposals and their availability to attend on specific dates and times.

Parties are warned that all evidence proposals should generally be presented at the preparatory hearing. Evidence proposed later during the main trial requires justification for why it was not submitted earlier, and the court may reject such proposals unless the parties demonstrate that they were unaware or unable to present the evidence earlier.

The main trial, led by the presiding judge, involves questioning of the accused, witnesses, and experts. The presiding judge ensures order in the courtroom, decides on proposals and objections from the parties, and strives for efficient case proceedings while eliminating unnecessary delays.

The sequence of the main trial is determined by the CPC, though the court may adjust it depending on the number of defendants, the nature of the offenses, and the volume of evidence. If necessary, the presiding judge may, upon the parties' proposal or *ex officio*, postpone the trial for up to 15 days and notify all summoned participants. To maintain the dignity of the court and all participants, the presiding judge can order security searches and remove disruptive individuals. The use of audiovisual equipment in the courtroom is permitted only with special approval from the Supreme Court.

During the initial questioning of the accused, the court will inquire about basic personal

information, including the language the accused wishes to use during the proceedings. If the accused is a minor, the presence of a legal representative is mandatory.

The accused is informed of their obligation to respond to court summonses and report any changes in address. They are also made aware of their rights and obligations: to know the charges against them, the basis of suspicion, the right to remain silent, the right not to answer questions, and that their statements will be used as evidence. The accused is invited to present their defense if they wish.

The accused's acknowledgment of these rights is recorded in the minutes and confirmed with their signature. The court is obligated to allow the accused to freely present all circumstances in their defense and to provide facts in their favor. After the accused concludes their statement, additional questions may be posed to clarify ambiguities.

The questioning of the accused must be conducted with full respect for their person, and the use of force, threats, deception, coercion, or other means to extract a confession is strictly prohibited.

The accused may be questioned without the presence of a defense attorney if they explicitly waive this right, if defense counsel is not mandatory, if an attorney is absent and the accused cannot secure another within 24 hours after being informed of this right, or in cases where defense is not compulsory.

If the provisions regarding the right to counsel or respect for the accused's personal rights are violated, or if the accused's statement regarding their right to have a defender is not recorded in the minutes, such statements cannot be used as evidence in the criminal proceedings.

4.2.2.2. SITUATION ANALYSIS

Monitors analyzed various aspects of the main trial, including scheduling, the number of hearings held, adjournments, reasons for postponing, interruptions, reasons for interruptions, announcement of judgements, delivery of judgments, average duration of first-instance and second-instance proceedings, as well as detention duration and grounds for ordering detention.

Before presenting statistical findings, observations from cases monitored and analyzed are as follows:

- *In all analyzed cases involving defendants from the Roma and Egyptian (RE) population, the accused were individuals of poor financial status. Only one defendant, who did not meet the criteria for mandatory defense, requested the appointment of a defense attorney due to financial hardship, in accordance with Article 70 of the CPC.* Monitors noted that defendants from minority groups often do not understand their rights, even when read by the judge. While the court has no formal obligation to elaborate on the rights of a defendant who claims to understand them, additional explanations in cases of evident misunderstanding could enhance the protection of the accused's rights.

Monitors also recorded no cases where participants in proceedings approached the free legal aid office. Furthermore, a review of Judicial Council reports from recent years reveals a continuous decline in funds allocated for free legal aid, indicating decreased utilization of this mechanism. Following the adoption of the latest amendments in 2015, the number of requests for free legal aid was 761, whereas in 2023, this number more than halved to 352, with only 284 requests approved.[19] Although specific data on the beneficiaries are lacking, the low number of requests indicates public unawareness of this mechanism. The website of the Basic Court in Podgorica, in a 2022 publication, also highlighted the evident lack of interest among vulnerable groups in exercising this right.[20] These shortcomings are also recognized in the Judicial Reform Strategy 2024-2027, which states that vulnerable categories of the population are still insufficiently informed about the rights it provides.[21]

- *In a case before the Basic Court in Podgorica, the defendant, an Albanian national with no prior convictions, was acquitted of charges for causing general danger after spending nine months in pretrial detention. The only evidence presented against him was a DNA analysis, which, according to judicial practice, is insufficient to support a conviction.*

- *In another case before the Basic Court in Podgorica, a hearing was delayed for over 30 days due to the absence of the accused. The presiding judge explained that such delays often occur when police fail to bring the accused to court or provide a valid explanation for their absence. Additional time is frequently lost in coordinating communication between the relevant authorities, particularly when considering issuing a warrant.*

- *In a case before the Basic Court in Podgorica, involving the criminal offense of unlawful deprivation of liberty, where both the accused and the victim were members of the Roma and Egyptian (RE) community, the hearing was postponed because the defense attorney mistakenly recorded the wrong time for the hearing. This attorney is known to judicial authorities for practices that frequently result in trial delays. However, the presiding judge did not find it necessary to penalize the attorney for delaying the proceedings under Article 251 of the CPC.*

- *In a bribery case against an Albanian national and citizen of Albania, who was in pretrial detention, the presiding judge had to expand the investigation by asking the accused questions that should have been addressed during the initial investigation phase.*

- *A case before the Basic Court in Bar, involving an Albanian minority member in detention, highlights systemic issues in the judiciary due to a shortage of judges. The case experienced three recusals for objective reasons: judges had participated in earlier stages of the proceedings, and one judge was married to the defense attorney. Since there were no other available judges to preside, the case was transferred to the Basic Court in Ulcinj.*

- *In a case of aggravated theft before the Basic Court in Nikšić, against a detained defendant from the RE community, the defendant requested a visit from his attorney after not seeing*

19 *Annual report on the work of the Judicial Council and the overall situation in the judiciary for 2023,* p. 72
20 More on this: https://sudovi.me/ospg/sadrzaj/RRy3
21 Justice Reform Strategy 2024-2027, Government of Montenegro, p. 39, available at: https://rm.coe.int/hf7-judicial-reform-strategy-cnr/1680b108b8

them for four months. The detainee did not know the attorney's name or phone number. Records indicated only two attorney visits, both following repeated requests from the defendant. The defendant also waited two months for a copy of the judgment. Although this does not meet the criteria for ineffective defense under the European Convention on Human Rights (ECHR) standards, it raises questions about why the detainee lacked basic information about his defense counsel and why multiple court requests were necessary to secure a visit.

- *Monitors recorded only one case before the Basic Court in Podgorica where the defendant, a member of the Roma and Egyptian (RE) population, requested legal counsel under Article 70 of the Criminal Procedure Code (CPC). This provision allows for the appointment of a defense attorney even when the conditions for mandatory defense are not met, provided that the interests of justice require so and the defendant cannot afford the costs of defense. It is important to note that all observed cases involved individuals in poor financial circumstances, raising questions about the level of awareness among members of the RE community regarding their rights.*

4.2.3. HEARINGS AT THE MAIN TRIAL

The total number of hearings in 95 cases analyzed through final court decisions in the monitored courts was **342,** of which **333** were held in Basic Courts and nine in the Higher Court in Podgorica. Out of these, **155** hearings **(45.32%)** were conducted, while **187** hearings **(54.67%)** were postponed. When compared to findings from the 2023 trial monitoring report, which involved a significantly larger sample size, the relative ratio of conducted to postponed hearings remains similar.[22]

In the context of this report, "postponed hearings" refers to sessions where no procedural actions were undertaken. These include hearings where the court determined that procedural prerequisites were not met and subsequently issued a ruling to postpone the hearing. This category does not include so-called "postponed-conducted" hearings, where some procedural actions were nonetheless carried out.

4.2.3.1. REASONS FOR POSTPONING HEARINGS

The reasons for postponement, as outlined by the Criminal Procedure Code (CPC), include:

1. Significant reasons, either at the request of the parties or defense counsel, or *ex officio* (Article 311);
2. Absence of the defendant (Article 324);
3. Absence of the defense attorney (Article 325);
4. The need to obtain new evidence (Article 328, Paragraph 1);
5. If it is determined during the main trial that the defendant has developed a temporary mental disorder after committing the criminal offense (Article 328, Paragraph 1);
6. Other impediments that prevent the successful conduct of the main trial (Article 328, Paragraph 1).

22 Ibidem, p. 40

The most common reason for postponement, identified in **35** cases **(36.84%)**[23] analyzed, was the absence of the defendant. Specifically, **63** hearings were postponed for this reason, accounting for **33.68%** of the total number of postponed hearings.

REASON FOR POSTPONEMENT	NUMBER AND PERCENTAGE OF POSTPONED HEARINGS	
Abscence of the accused	63	33,68%
Abscence of the injured party	43	22,99%
Abscence of the witness	28	14,97%
Abscence of the prosecutor	7	3,74%
Abscence of the expert	13	6,95%
Abscence of the defence attorney	6	3,2%
Abscence of the judge	17	9,09%
Other reasons	10	5,34%
UKUPNO	**187**	**54,67%**

4.2.3.2. MEASURES OF PROCEDURAL DISCIPLINE

Procedural discipline measures are regulated by Articles 324, 325, and 327 of the CPC. In their review of 95 cases, monitors identified the most common measure as the issuance of orders for compulsory appearance. However, in none of the cases analyzed the court did impose fines. Additionally, it was observed that in certain instances, police officers failed to comply with orders for compulsory appearance, sometimes without providing an explanation.

The issue of properly summoning defendants is particularly pronounced for members of the Roma and Egyptian (RE) community, as these individuals often lack a permanent residence. Furthermore, even when they have an address, repeat offenders in property crimes may be released from serving one sentence only to quickly begin serving another, or they may be detained in a new case without prior notice to their family or neighbors. Consequently, police often fail to act on orders for summons or compulsory appearance, citing the defendant's absence from the address.

- *For example, in a case before the Basic Court in Podgorica involving a member of the RE community charged with aggravated theft, the police responded with a standard notification stating they could not locate the defendant at the given address. As a result, the procedural prerequisites for continuing the trial were not met, forcing the court to postpone the hearing and reissue the compulsory appearance order. The court noted that the police chief was expected to ensure the officers acted on the order efficiently.*

- *Additionally, during trial monitoring, a main hearing was observed to be postponed for the second time due to the defendant not being brought from the Special Psychiatric*

23 The percentage is given in relation to the number of cases analyzed (95).

Hospital "Dobrota" in Kotor. The court waited for some time to avoid further delays, but after half an hour, a message from the hospital indicated that the defendant could not be transported due to their health condition, although the court had not received an official notice. Interestingly, the defendant's family claimed he had already been discharged from the hospital and sent alone to Podgorica because they could not afford the bus fare.

The reasons for hearing delays in such cases cannot be attributed to either the court or the defendant but highlight broader issues such as the poor social position of RE community members and the responsibilities of other institutions indirectly involved in the proceedings.

Compulsory appearance measures were issued in **30** cases, totaling **99** times, distributed as follows: **63** times **(63.64%)** for the defendant and **36** times **(36.36%)** for witnesses. The police failed to comply with **50** such orders, and in **22** cases, no explanation for noncompliance was provided.

In detention cases, the police issued **15** compulsory appearance orders for witnesses and/or victims across **5** cases. In **12** instances, the police failed to comply with the orders, and in **6** cases, the court was not informed of the reasons for noncompliance.

Particularly noteworthy are two detention cases before the Basic Court in Podgorica. In one case, involving the crime of damage to or destruction of another's property, the police failed to execute witness appearance orders **5** times. In another case, involving theft, the police failed to comply with the orders **3** times and did not inform the court of the reasons for their inaction.[24]

Monitors also attended **20** hearings at the Basic Court in Podgorica involving members of minorities, during which the court imposed procedural discipline measures. In these cases, the court issued **12** compulsory appearance orders, **9** for defendants and **3** for witnesses. Witness appearance orders were issued in only one detention case observed by the monitors.

4.2.4. THE RIGHT TO PUBLIC ANOUNCEMENT OF JUDGMENTS

According to Article 375, Paragraph 2 of the CPC, if the court cannot deliver a judgment immediately after the conclusion of the main hearing, it may postpone the announcement for up to three days. The court must also specify the time and place of the judgment's announcement. If the judgment is not delivered within three days after the conclusion of the main hearing, the presiding judge must immediately inform the court president and explain the reasons for the delay.

In the monitored and analyzed cases, the statutory deadlines for judgment delivery were exceeded in only one case before the Higher Court in Podgorica, where the judgment was

24 CeMI's trial monitors also encountered these problems in a previous trial observation project. More on this: https://cemi.org.me/storage/uploads/DezmzNaECzHPCq1J6K4AuH7h3SCPbruZKwN3y3IT.pdf, p. 43

pronounced 14 days after the conclusion of the main hearing. In all other cases, the statutory deadline was adhered to, with most judgments being delivered on the same day.

The delivery of the written judgment must also comply with the deadlines prescribed by Article 378 of the CPC. After the judgment is pronounced, it must be drafted and sent within one month. In complex cases, this period may exceptionally be extended to two months. If the judgment is not completed within these deadlines, the presiding judge must provide a written explanation to the court president for the delay. The court president is obligated to take necessary measures to ensure that the judgment is drafted as quickly as possible.

Due to methodological limitations that prevent an exact assessment of the complexity of each analyzed case, monitors focused on situations where the deadline was exceeded by more than one month but less than two months, as well as cases where the deadline was exceeded by more than two months.[25]

Regarding the number of cases in which the period from the issuance of the judgment to the delivery of the written judgment exceeded one month but was less than two months, this was recorded in **25** out of 95 analyzed cases **(26.31%),** broken down as follows: Basic Court in Bar - 5 cases; Basic Court in Bijelo Polje - 5 cases; Basic Court in Nikšić – 1 case; Basic Court in Podgorica - 14 cases.

For cases where the deadline for delivering the written judgment was exceeded by more than two months, this occurred in **9** cases **(9.47%),** distributed as follows: Basic Court in Bar - 1 case; Basic Court in Nikšić - 3 cases; Basic Court in Podgorica - 5 cases.

On average, the time taken to deliver judgments was: **44** days in the Basic Court in Bar; **28** days in the Basic Court in Bijelo Polje; **48** days in the Basic Court in Nikšić and **32** days in the Basic Court in Podgorica.

4.3. SECOND-INSTANCE PROCEEDINGS

Judgments can be appealed on the following grounds:

1. Significant violations of criminal procedure provisions
2. Violations of the Criminal Code
3. Incorrect or incomplete establishment of the facts
4. Decisions regarding criminal sanctions, confiscation of property benefits, procedural costs, or property claims (Article 385 of the CPC).

A hearing before the Appellate court is regulated by Article 395, Paragraph 1 of the CPC. In second-instance proceedings, decisions can be made in council sessions or at a hearing. A hearing is required only if there is a need to present new evidence or repeat previously presented evidence due to incorrect or incomplete establishment of the facts. Valid reasons must exist for not returning the case to the first-instance court for a retrial.

25 Given that only one case was reviewed in the Higher Court in Podgorica, in which the accused and/or injured parties were members of minorities, the data is not representative and therefore we will not cite it.

The total number of cases reviewed through file inspections, where decisions were made at the second-instance level, was **31** cases **(32.63%),** of which **25** cases **(26.31%)** were detention cases.

The courts rejected the appeal in **22** cases, of which 19 were detention cases, and dismissed one case with a detention order, while the appeal was accepted and the case was remanded for retrial in **4** cases, of which **2** were detention cases. In **4** cases, the judgement was revised, of which **3** were detention cases.

Within the analyzed cases, one case stands out due to the severity of the sentence modification. Specifically, in a case before the Basic Court in Nikšić concerning the criminal offense of aggravated theft, involving a habitual offender who had previously been convicted seven times for similar or identical offenses, the first-instance court sentenced the defendant to four years of imprisonment. However, the High Court reduced this sentence to two years of imprisonment. This is the same case in which the detained individual complained that they did not know the name of their defense counsel and that the counsel had not visited them while in detention.

4.4. AVERAGE CASE DURATION

The length of a reasonable timeframe is not precisely defined in international standards, in terms of a specific period within which a procedure should conclude. However, there is an approach exists which establishes criteria for assessing the reasonableness of the timeframe in each individual case. In this regard, the European Court of Human Rights (ECHR) uses the following formulation: the reasonableness of the duration of proceedings must be assessed based on the circumstances of the case and taking into account the criteria established by the Court's case law, particularly the complexity of the case, the conduct of the applicant, and the conduct of the competent authorities. An analysis of ECHR case law conducted by the European Commission for the Efficiency of Justice (CEPEJ) in 2018[26] led to the following guidelines concerning the duration of proceedings:

- Overall duration of up to two years per level of jurisdiction in ordinary (non-complex) cases is generally considered reasonable. When proceedings last longer than two years, the Court closely examines the case to determine whether there are objective reasons, such as the complexity of the case, and whether national authorities demonstrated due diligence throughout the process.

- In complex cases, the Court may allow for a longer duration but pays particular attention to periods of inactivity that are clearly excessive. However, longer permitted durations are rarely more than five years and almost never exceed eight years in total.

- In so-called priority cases involving specific issues, the Court may deviate from the general approach and find a violation even if the case lasted less than two years per level of jurisdiction. This applies, for instance, when the applicant's health condition is

26 Calvez, Françoise and Regis, Nicolas, *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights*, third edition – CEPEJ Studies no. 27, p. 5

a critical issue or when delays could have irreparable consequences for the applicant.

- The only instances in which the Court has not found a violation despite an obviously excessive duration of proceedings are those where the applicant's conduct was a significant factor.

Based on the review of files from finalized cases analyzed by the monitors, it can be concluded that the longest average duration of proceedings occurred in cases monitored at the Basic Court in Nikšić **(608 days),** followed by the Basic Court in Bijelo Polje **(277 days),** the Basic Court in Podgorica **(204 days),** and the shortest at the Basic Court in Bar **(183 days).**

Across all monitored cases in basic courts, the average duration of proceedings, from the filing of the indictment to the final judgement, was 318 days.

It is important to highlight that in most cases, the reasons for postponing, and consequently the prolonged duration of trials, cannot be attributed solely to the courts. On the contrary, through their presence at hearings, monitors observed that judges, particularly in cases involving pre-trial detention, generally take all necessary measures to prevent unnecessary delays in proceedings. The reasons for adjournments were most often external factors, such as the absence of summoned participants who, despite being duly notified, failed to attend hearings. This issue is further linked to the previously mentioned and relatively frequent instances of police failing to act on orders for compulsory attendance.

4.5. DETENTION

Detention is prescribed by the Criminal Procedure Code (CPC) as an exceptional measure to ensure the presence of the accused and the smooth conduct of criminal proceedings. This measure may only be applied in cases provided by law and exclusively if its purpose cannot be achieved by less severe measures.

Article 175 of the CPC outlines the grounds for ordering detention when there is reasonable suspicion that a person has committed a criminal offense. Detention may be ordered if:

1. The person is hiding, their identity cannot be established, or there are other circumstances indicating a risk of escape;
2. There are circumstances indicating that the person will destroy, conceal, alter, or falsify evidence or traces of the criminal offense or that they will obstruct the proceedings by influencing witnesses, accomplices, or concealers;
3. There are circumstances suggesting that the person will repeat the criminal offense, complete an attempted offense, or commit a criminal offense with which they have threatened;
4. Detention is necessary for the unobstructed conduct of proceedings, and the case involves a criminal offense punishable by imprisonment of ten years or more, particularly due to the manner of execution or consequences;
5. A duly summoned defendant avoids appearing at the main trial.

In summary proceedings, which apply to criminal offenses punishable by a fine or imprisonment of up to five years, the grounds for ordering pre-trial detention are regulated by Article 448 of the CPC and differ slightly. Specifically, detention, due to the nature of these offenses, cannot be ordered based on the grounds in Article 175, Paragraph 1, Point 4, as this provision pertains to particularly serious offenses punishable by imprisonment of ten years or more.

4.5.1. SITUATION ANALYSIS

In the analyzed cases, there were no instances of pre-trial detention being ordered due to the inability to establish a person's identity. However, identity issues do arise in cases involving members of the Roma (RE) community, as a significant number of these individuals do not have identification documents. Additionally, it is common for multiple individuals to share the same name, which can further complicate their summons to hearings for the main trial or their transfer from detention or serving a sentence in another case.

- *In another case before the same court, a Roma individual was found in the Bijelo Polje prison only after four postponed main trials.*

- In addition to the circumstances arising from the poor socio-economic conditions in which members of the Roma community often live, other specific circumstances related to the ordering of pre-trial detention in cases where participants belong to minorities can also be identified.

- *In a case before the High Court in Podgorica, involving a defendant from the Roma community with Kosovo citizenship, the prosecutor's motion for pre-trial detention cited grounds from Article 175, Paragraph 1, Points 1 and 2. As a reason for Point 1, which indicates a risk of flight, the prosecutor referred to the fact that the defendant was a citizen of Kosovo and had business and family ties to foreign individuals, although no explanation was provided as to what these ties were. The prosecutor also interpreted the lack of employment as proof that the defendant had no connections to Montenegro, ignoring the fact that the defendant was born and lived in Podgorica, where he had a family, including a wife and a one-year-old child, and occasionally worked physically in Podgorica, although he was currently unemployed. The prosecutor referenced the European Court of Human Rights (ECtHR) case Punzelt v. the Czech Republic (Application No. 31315/96), showing selectivity and ignoring other relevant rulings such as Neumeister v. Austria (Application No. 1936/63), which states that* ***other factors, particularly those related to the person's character, morality, home, occupation, property, family ties, and any connections to the country where the trial is taking place, can either confirm the existence of a flight risk or make it so small that it cannot justify pre-trial detention before the trial.***

- *Initially, the investigating judge correctly recognized all relevant facts and rejected the grounds from Point 1 in the decision to order pre-trial detention, accepting only the grounds from Point 2. However, when the prosecutor submitted the indictment and motion to extend pre-trial detention, both detention grounds were once again cited, and the court panel fully accepted this proposal, confirming pre-trial detention on both grounds.*

When it comes to circumstances indicating that the defendant might repeat the criminal offense or complete an attempted offense or commit the offense they are threatening, the repetition of the same or similar offenses (especially property crimes) and thus this ground for pre-trial detention, is common due to the poor socio-economic position of Roma individuals, which forces them to engage in such activities, fully aware of the sanctions.

- *Before the Basic Court in Podgorica, a case was being tried for prolonged theft and co-perpetration, involving spouses who repeatedly committed thefts of secondary raw materials, arguing that they were doing so to provide for their family.*

It should be emphasized that the reasoning behind decisions to order pre-trial detention on this basis, and the grounds considered by the court, do not differ for members of the Roma community compared to the general population. However, the frequency of such crimes is dictated by the prevalent criminal acts against property due to the poor living conditions of many members of the Roma community.

- *In support of this, the Basic Court in Bar decided to reject a motion for pre-trial detention on this ground, stating that "there is no sufficient degree of real danger or special circumstances to prove that the defendant, if at liberty, could repeat the criminal offense, given that they have not been previously convicted. For there to be a real danger that the defendant might repeat the offense, it must stem from their previous life, i.e., there must be evidence that they have been previously convicted."*

- *In the Basic Court in Bijelo Polje, the prosecutor's motion to order pre-trial detention on this ground was rejected in a case involving domestic violence, as the defendant had not been previously convicted, and the motion was based solely on the testimony of a witness, not the testimony of the victim, who had not joined the criminal prosecution. On the other hand, not ordering pre-trial detention based on the reasoning that the victim of domestic violence had not joined the prosecution can be problematic when considering provisions that require the prosecution of such offenses ex officio, regardless of whether the victim has joined the prosecution.*

- *In the Basic Court in Podgorica, the prosecutor proposed ordering pre-trial detention in the investigation based on Article 448, Paragraph 1, Points 1 and 2, but the court accepted only the ground from Point 1. The prosecutor argued that the defendant might flee because part of the defendant's family lived in Macedonia and part in Germany, while the defendant held Kosovo citizenship. The defendant visits his mother and brothers in Macedonia every other month, staying for several days. Furthermore, the defendant was not new to being violent towards the victim. The court rejected the second detention ground because there was no evidence that the defendant had been previously convicted, and the circumstances outlined in the motion did not indicate any special circumstances that would suggest the defendant would repeat the criminal offense if released.*

These examples point to the problem of easy access to pre-trial detention by the prosecutor's office, as seen in the use of insufficiently substantiated and sometimes weakly grounded grounds for detention. There is also a lack of understanding of ECtHR case law, with some prosecutors attempting to bolster their arguments for pre-trial detention by referencing the

Court's case law, even when the circumstances they describe do not exist or are contrary to the law. Such an approach can lead to the disproportionate use of pre-trial detention, without adequate consideration of all relevant factors and circumstances that should justify this exceptional measure. Furthermore, in these proceedings, there is a noticeable disregard for the principles of truth and fairness, which are part of the right to a fair trial and obligate the prosecutor to truthfully and fully establish the facts that are important for making lawful and fair decisions, paying equal attention to both the facts that incriminate and those that benefit the defendant.

Moreover, monitors did not record any instance where a less severe measure was determined over time, even in cases where the only circumstance was the risk of flight, which could be mitigated by seizing a passport and/or monitoring measures such as prohibiting leaving the home or place of residence. According to the practice of the ECtHR, the risk of flight does not arise merely from a lack of residence[27], and the risk decreases with the time spent in detention.[28]

4.5.1.1. POSTPONEMENT OF HEARINGS AND DURATION OF PROCEEDINGS IN PRE-TRIAL DETENTION CASES

Delays in pre-trial detention cases do not occur due to the absence of defendants, as they are usually brought to hearings from the Administration for the Execution of Criminal Sanctions (UIKS), except in exceptional cases previously described or for health reasons. However, hearings for the main trial are often postponed due to the failure of witnesses and victim-witnesses to appear.

- *At a hearing before the Basic Court in Podgorica, a witness notified the court only five minutes before the hearing started that they could not attend. The defense waived the witness' testimony, likely aiming to release the defendant from detention as soon as possible or to send them to serve their sentence, as defendants generally prefer the conditions in prison. Nevertheless, the court insisted on examining the witness, as the witness's statement was inconsistent with the defendant's statement in some parts.*

- *Additionally, during hearings, it was noticed that proceedings are frequently postponed due to the need to secure the presence of an interpreter for minority languages, the presence of an expert witness, additional expert evaluations by the Digital Forensic Center, or due to technical issues related to the presentation of evidence through the reproduction of audio-visual materials. However, these reasons are not specific to members of minority groups but are common in cases involving the general population.*

Regarding the data obtained from the review of the files of pre-trial detention cases that were finalized, i.e., the postponement of hearings in 44 finalized pre-trial detention cases reviewed by monitors, the total number of hearings was 132, with 123 in the Basic Courts and 9 in the High Court in Podgorica. Of these, 80 hearings (60.6%) were held, while 52 hearings (39.4%) were postponed.

27 Sulaoja v. Estonia, 2005, p. 64
28 Neumeister v. Austria, p. 10

Although the situation in pre-trial detention cases is relatively favorable, with a lower number of cases and a higher percentage of hearings held compared to those postponed, it is important to note that pre-trial detention cases are of an urgent nature. Urgency implies that these cases should be conducted without unnecessary delays, and the duration of detention should be as short as possible.

REASON FOR POSTPONEMENT	NUMBER AND PERCENTAGE OF POSTPONED HEARINGS	
Absence of the accused	8	6,06%
Absence of the injured party	7	5,3%
Absence of the witness	6	4,54%
Absence of the prosecutor	2	1,51%
Absence of the defence attorney	5	3,78%
Absence of the judge	5	3,78%
Absence of the expert	8	6,06%
The need to obtain new evidence	2	1,51%
Other reasons*	9	6,81%
TOTAL	**52**	**39,4%**

Of the 5 pre-trial detention cases in which hearings were postponed for other reasons, 4 hearings were postponed due to the suspension of the lawyers' work, 2 due to ongoing negotiations for a plea agreement, 1 hearing was postponed due to the COVID-19 pandemic, 1 due to a request from the victim's representative, and 1 because the expert did not prepare the report and opinion on time.

Regarding the duration of the proceedings, pre-trial detention cases generally take less time than other cases. The longest, on average, lasted in the Basic Court in Nikšić **(274 days),** followed by the Basic Court in Bar **(183 days)** and the Basic Court in Podgorica **(144 days),** with the shortest duration in the Basic Court in Bijelo Polje **(130 days).**

At the level of all observed pre-trial detention cases in the basic courts, the average duration of the proceedings, from the filing of the indictment to the final judgment, is **183 days.**

4.5.1.2. DURATION OF DETENTION

According to the practice of the European Court of Human Rights (ECtHR), Article 5 requires immediate and automatic judicial control over police and administrative detention.[29] Judicial control during the first hearing of the detained person must be carried out without delay[30], and any period exceeding four days is considered excessively long.[31] According to Article

29 De Jong, Baljet and Van Den Brink v. the Netherlands, Applications no. 8805/79, 8806/79 and 9242/81, p. 51
30 McKay v. United Kingdom, op.cit., p. 33
31 McKay v. United Kingdom, op.cit., p. 47

267 of the Criminal Procedure Code (CPC), the public prosecutor may detain the suspect for a maximum of 72 hours from the moment of detention if there are grounds for detention as outlined in Article 175, paragraph 1 of the CPC. The public prosecutor must immediately, and no later than two hours after detention, issue and deliver a decision on the detention to the detained person and their defense attorney.

When the public prosecutor issues a detention decision and determines that there are still grounds for detention, they will submit a request to the investigating judge. This request must be delivered to the investigating judge before the detention period expires. During this time, the suspect must be brought before the investigating judge.

The investigating judge, in the presence of the public prosecutor, must question the suspect about all circumstances relevant to the decision on detention. After the hearing, the judge must decide whether to order detention or reject the detention request within 24 hours of the suspect's arrival before the court.

In the analyzed cases, there were no deviations from these deadlines.

According to the decision of the investigating judge, the accused may be detained for a maximum of one month from the moment of detention. After this period, detention can only be extended by a new decision. Before the indictment proposal is submitted, detention lasts only as long as necessary to carry out investigative actions, but no longer than 30 days. Any appeals regarding the detention decision in the investigation are decided by a panel of three judges in the first-instance court. After the indictment is filed with the court, detention can only be imposed or revoked by a decision of the panel, with the prosecutor's opinion, and may last a maximum of three years from the filing of the indictment to the first-instance judgement. The panel is required to periodically review the grounds for detention, either on the parties' proposal or ex officio, and decide whether to extend or lift the detention – every 30 days until the indictment becomes final, and thereafter every two months

In the analyzed cases, there were no deviations from these deadlines.

Out of the 44 pre-trial detention cases analyzed by the monitors, detention was ordered in 41 cases during the investigation phase. In only four cases detention was lifted during that phase: three cases in the Basic Court in Bar and one case in the Basic Court in Bijelo Polje. The average duration of detention during the investigation was 22 days: Basic Court in Bar – 23 days, Basic Court in Bijelo Polje – 5 days, Basic Court in Nikšić – 42 days, Basic Court in Podgorica – 22 days, and Higher Court in Podgorica – 20 days.

Detention was ordered or extended after the filing of the indictment in 43 analyzed cases, including three cases in the Basic Court in Bar, one case in the Basic Court in Bijelo Polje, three in the Basic Court in Nikšić, 35 in the Basic Court in Podgorica, and one in the Higher Court in Podgorica. After detention was ordered or extended in this phase, it lasted until the completion of the proceedings.

After the filing of the indictment, detention lasted an average of 84 days: Basic Court in Bar – 79 days, Basic Court in Bijelo Polje – 64 days, Basic Court in Nikšić – 141 days, Basic Court in Podgorica – 76 days, and Higher Court in Podgorica – 64 days.

On average, the total duration of detention during the entire proceedings was 106 days: Basic Court in Bar – 103 days, Basic Court in Bijelo Polje – 69 days, Basic Court in Nikšić – 182 days, Basic Court in Podgorica – 95 days, and Higher Court in Podgorica – 84 days.

4.5.1.3. CONDITIONS IN DETENTION

For many years, the conditions in the Administration for the Execution of Criminal Sanctions (UIKS) have been inadequate for both convicted prisoners and those in pretrial detention. In 2023 alone, the Protector of Human Rights and Freedoms received 72 complaints regarding conditions in UIKS: 10 related to healthcare; 3 related to the prohibition of torture and cruel, inhuman, or degrading treatment and punishment; and 59 related to other rights or legally provided opportunities for persons deprived of liberty. These included complaints about the transfer of prisoners, lack of privileges (longer visits by close family members, use of prison telephones at the administration's expense), difficulties in classification into groups, assignment to collectives, work engagement, lack of programs and training, and exclusion from cultural and sports activities, among other issues.[32]

Respect for the dignity and personality of detainees, their accommodations, and the ability to receive visits and correspondence were highlighted in the 2022 report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment. The report noted problems in the Pre-trial detention center in Spuž, such as overcrowding, poor ventilation, dilapidated walls, and a lack of furniture, mattresses, and bedding. Additionally, irregular supply of basic hygiene products particularly affects individuals without financial means, forcing them to rely on other detainees, increasing the risk of exploitation. The report specifically mentioned members of the Roma and Egyptian (RE) population.[33]

The Committee noted that repeat detainees are often better prepared, whereas first-time detainees frequently lack basic necessities. This issue disproportionately affects Roma individuals and foreign nationals. The Committee documented instances where Roma and foreigners were forced to beg for basic items such as toilet paper, toothpaste, and extra clothing. The facility's procurement system failed to address this issue, as there is an approximately eight-day delay between ordering and delivery, and prices are nearly double the usual rates. Similar issues were observed in the Bijelo Polje Prison.

These conditions are corroborated by case files reviewed by monitors. Insufficient accommodation capacity and lack of equipment in detention units particularly impact members of the RE community due to their poor financial circumstances. This is also why many members of this community request to begin serving their sentences before their judgement becomes final. Serving their sentence allows them to work and earn at least minimal income for basic needs, with some attempting to save part of their earnings for their families.

32 Protector of Human Rights and Freedoms, Report on Activities for 2023, p. 143, available at: https://www.ombudsman.co.me/docs/1715154847_finalizvjestaj_29042024%20_zastitnik.pdf

33 *Report to the Government of Montenegro on the ad hoc visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 13 June 2022*, p. 26-27, available at: https://rm.coe.int/1680abb132

- *In a case before the Basic Court in Podgorica, the accused stated that they had no access to the prison canteen or visits. As a result, they requested to begin serving their sentence before the judgement became final so they could work and earn for their basic needs. This request was submitted twice, on February 3 and February 17, 2023, and was granted by a decision on February 21. However, the order to commence the sentence was issued only on March 27, after the judgement became final on March 11, 2023.*

- *Before the same court, a detained individual in the Bijelo Polje pretrial detention facility reported having no visitors, clothing, or money for basic needs. This individual was granted permission to serve their sentence before the judgement became final on February 19, 2023, although the judgement had already become final on February 3.*

- *In the Basic Court in Bijelo Polje, one accused individual wrote to the court stating that they had requested a lawyer's visit three times to "speed up the finalization of the judgment," likely referring to being sent to serve their sentence before the judgement became final.*

- *In another case before the Basic Court in Podgorica, a detainee requested early transfer to serve their sentence to facilitate contact with their family. Similarly, in another case before the same court, two co-offenders submitted similar requests, arguing that by working and adhering to discipline, they could meet the conditions for conditional release.*

- *In five cases in the Basic Court in Podgorica, UIKS requested court approval to transfer multiple detainees from the Pre-trial detention center in Spuž to the Bijelo Polje prison, citing overcrowding. At that time, there were over 400 detainees in Spuž, which has a capacity of 284. This situation particularly affects individuals from disadvantaged backgrounds, such as members of the Roma and Egyptian (RE) population. Monitors noted that detainees transferred to Bijelo Polje often lost contact with their families, likely due to transportation costs. However, in the cases reviewed by monitors, detainees transferred from Podgorica to Bijelo Polje were also not visited by their legal counsel.*

- *According to the European Court of Human Rights (ECtHR), the ability of family members to visit detainees is essential for maintaining family life. It is a fundamental aspect of detainees' rights to respect for family life that prison authorities assist in maintaining contact with close family members.*[34]

- *In a case before the Basic Court in Podgorica, due to a lack of accommodation capacity, the accused was transferred from the Pre-trial detention center in Podgorica to the one in Bijelo Polje. The detainee requested weekly phone calls with their family ten times before asking for a transfer to a short-term detention facility to serve their sentence before the judgement became final. However, monitors found no records in the case files indicating that the court addressed this request. The defense lawyer visited the detainee five times but only while the detainee was in Podgorica.*

34 Vintman v. Ukraine, Application no. 28403/05, p. 78

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

Based on the data analyzed, it is evident that systemic shortcomings and inadequate legal regulations, which are still not fully aligned with international standards, contribute to the vulnerability of the rights of minorities.

The findings that courts frequently fail to comply with certain procedural deadlines are particularly concerning, especially in detention cases that require urgent handling. For instance, the deadline for scheduling a hearing to review the indictment was not met in more than half of the analyzed detention cases.

Additionally, there is a notable problem with the frequent postponements of main trial hearings –more than half of all hearings monitored were postponed. This recurring issue, observed year after year, can have a profoundly negative impact on both the rights of the accused and the rights of victims.

Postponements in detention cases are especially significant, as they exacerbate the hardship of prolonged detention for defendants. While the prolonged duration of trials cannot be attributed solely to the courts – since judges, particularly in detention cases, were observed to take necessary steps to prevent unnecessary delays – the issue of postponed hearings persists. The reasons are most often linked to external factors, such as the absence of duly notified participants who fail to attend hearings, and the failure of law enforcement to execute orders for the compulsory bringing of such individuals. Considering that courts operate with fewer judges than prescribed, the issue of postponements may also reflect the excessive workloads faced by judges.

The postponement of hearings for periods exceeding one month is also problematic. These delays are caused by poor communication between the courts and other relevant bodies, as well as the inefficiency of those bodies and institutions, resulting in excessive time being lost. Courts, learning from experience, often schedule hearings more than a month apart to avoid further postponements.

Furthermore, members of minorities, particularly those from the Roma and Egyptian (RE) population, frequently do not know their rights and often do not understand them even when read out by the judge. It is worth noting that monitors recorded only one case in which a participant in the proceedings invoked their right to a defense under Article 70 of

the Criminal Procedure Code. They also found no instances of parties seeking assistance from the Free Legal Aid Office. This suggests that significant progress has yet to be made in informing citizens, especially vulnerable groups such as the RE population, about their right to free legal aid and the conditions for exercising this right. Consequently, access to justice for these groups remains limited.

Although the Law on Free Legal Aid represents a significant step toward ensuring access to justice, insufficient awareness of the rights guaranteed under this law limits its effectiveness, especially in protecting the rights of economically disadvantaged individuals, such as members of the Roma and Egyptian (RE) population.

Particular issues arise in cases where defendants are placed in detention. Problems during detention are especially pronounced due to poor conditions and limited opportunities for contact with family and friends. Overcrowded detention facilities, inadequate living conditions, and restrictions on visits and telephone calls disproportionately affect detainees from the RE community. These detainees frequently request to begin serving their sentences prior to the finalization of their judgements to leave detention as soon as possible.

Another issue involves the transfer of detainees from the Pre-trial detention center in Podgorica to the one in Bijelo Polje due to overcrowding. This practice exacerbates the difficulties faced by members of the RE community, as their poor financial circumstances make it challenging for family members to visit them in a more remote facility, further limiting family contact.

The proposal for detention based on incorrectly cited circumstances by prosecutors, coupled with courts accepting such proposals while referencing the European Court of Human Rights (ECHR) case law, indicates a lack of understanding and implementation of ECHR standards and arbitrary decision-making. There is a perception that some judicial officials fail to grasp the significance of the right to liberty and treat detention as a routine measure rather than a last resort, which directly contradicts Article 5 of the European Convention on Human Rights (ECHR).

Furthermore, the fact that detention often lasts until the conclusion of proceedings, with monitors not recording a single case in which a milder measure was imposed over time – even in cases where the sole reason for detention was the risk of escape, which could be mitigated by confiscating travel documents and/or imposing supervisory measures such as house arrest or restrictions on leaving a residence – highlights issues with applying the principles of necessity and proportionality in determining this measure. Such practices may suggest that detention is being used not only as a preventive measure but also as a form of punishment before a final judgement is issued. This potentially signals neglect of the fundamental principle of the presumption of innocence.

RECOMMENDATIONS

- To address delays and procedural prolongations caused by poor communication and collaboration between various bodies and institutions involved in proceedings, better coordination should be established between courts, the police, and other relevant

bodies. This can be achieved by developing a modern judicial information system to facilitate faster, more efficient, and secure data exchange and notifications among all actors in the proceedings.

- Beyond improving coordination, efforts should focus on reducing dependency on the practices and timeliness of other bodies and institutions. Montenegro could look to Estonia as an example of an efficient judicial information system. In Estonia, all court communications, rulings, hearing invitations, and other relevant documents are sent electronically to all parties, significantly reducing delays caused by physical documents and their delivery via mail or police. Implementing a similar solution in Montenegro should not pose significant challenges, even in cases involving economically disadvantaged or minority groups. Monitors observed that all parties, regardless of financial status, possessed mobile phones. However, it is crucial to ensure that such a system is accessible as a free service for all users to guarantee fair and equal access to justice for all citizens.

- Considering the observed lack of awareness among defendants about their rights, especially in cases where they do not have mandatory defense, courts should take a more proactive approach. Although courts are not formally required to explain rights in detail if defendants state they understand them, providing additional explanations in cases where comprehension barriers are evident would be highly beneficial for protecting defendants' rights and ensuring the proper course of proceedings.

- To enhance awareness among minorities, particularly the Roma and Egyptian (RE) populations, about their right to free legal aid, it is necessary to intensify the promotion of this right. This includes creating informational materials in minority languages, such as Albanian and Romani, to ensure better understanding of these rights and the conditions for accessing them.

  Effective dissemination of these materials is crucial to reaching the target groups. Civil society organizations and international bodies could significantly contribute to these efforts through projects aimed at advancing the rights of minorities. Dissemination efforts should also involve schools, social work centers, cultural and religious institutions, and informational materials should be made available in courts, free legal aid offices, and municipal administrations. Distribution could be further enhanced through direct community engagement via field activities.

  Media campaigns, reports, and broadcasts play a key role in raising public awareness.

- Amendments are needed in the CPC concerning the rules on visits and correspondence for detainees (Article 183). Decisions on visits to detainees should be based on an individual assessment of potential risks and should be part of the detention ruling. Detainees should be allowed visits and phone calls without prior court approval. Any denial of visits or communication should be justified by investigative needs and time-limited to the duration of these reasons.

- To resolve overcrowding and ensure respect for detainees' rights, efforts should focus on expanding accommodation capacities by building a new pre-trial detention center. This

would reduce pressure on existing facilities in the long term and allow detainees from central Montenegro to remain in facilities closer to their families. Additionally, greater emphasis should be placed on promoting and implementing alternative supervisory measures to detention wherever possible. These measures, such as house arrest, travel bans, electronic monitoring, etc., are already provided for in the CPC and should be used more extensively, as they can significantly reduce the number of detainees without compromising the objectives of criminal proceedings.

- Until a new detention facility is built, temporary measures must be implemented to mitigate the negative effects of the current situation. Courts should carefully consider requests for transferring detainees to another pre-trial detention center. Relevant circumstances, such as family distance and socio-economic conditions of detainees and their families, should be taken into account to ensure detainees can maintain regular contact with family members. This is particularly important for vulnerable groups, such as the RE population, for whom the costs of visits are an additional burden.

- The Directorate for the Execution of Criminal Sanctions should approach detainee transfer requests with equal diligence. It should develop clear internal guidelines to ensure that transfer decisions are not based solely on overcrowding but also consider other factors affecting detainees' human rights, especially their right to family life.

- There is a clear need for continuous education and training of all judicial officials on rights arising from Article 5 of the European Convention on Human Rights (ECHR) and related European Court of Human Rights (ECHR) practices. Judges and prosecutors must be thoroughly familiar with all circumstances under which detention can be requested and extended, as per ECHR standards. They should also be able to identify when detention can or must be replaced with a milder measure and when it must be lifted.

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