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TECHNICAL PAPER

Guiding Paper in light of the Review of the Criminal Procedure Code of Albania regarding Pre-Trial Detention

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Disclaimer

This Technical Paper has been prepared by international experts engaged by the Council of Europe's Co-operation Programmes Division[1], and the Economic Crime and Cooperation Division.

The opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe.

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ABBREVIATIONS

CC	Criminal Code
CFREU	Charter of Fundamental Rights of the European Union
CPC	Criminal Procedure Code
Convention	Convention for the Protection of Human Rights and Fundamental Freedoms
Court	European Court of Human Rights
EU	European Union
GJKKO	Special Court against Corruption and Organised Crime
GP	Guiding Paper
ICCPR	International Covenant on Civil and Political Rights
TEU	Treaty on European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNODC	United Nations Office on Drugs and Crime

1 EXECUTIVE SUMMARY

This Guiding Paper (GP) was commissioned at the request of the Government of the Republic of Albania, with the aim of informing the legislative drafting process to amend the Criminal Code (CC) and Criminal Procedure Code (CPC), with a particular focus on provisions related to pre-trial detention, to ensure alignment with European and international standards, including the case-law of the European Court of Human Rights.

The suggestions and findings provided in this GP are the result of a desk review of reports, international legislation, jurisprudence, the legislative/regulatory framework, and online meetings held among the three international experts.

The Albanian legislation consulted was an unofficial English translation provided by the Ministry of Justice, while the Council of Europe also provided unofficial English translation of sublegal acts and court decisions. Therefore, some inaccuracies in the analysis may have occurred in relation to the original text as a result of this translation.

As mentioned in the "cross-cutting issues" chapter below, the statistical data provided was limited and the analysis made may have limitations stemming from the lack of in-depth detailed information on how the law is applied in practice.

Key Recommendations:

The main recommendations formulated are as follows:

I. Legal foundations and safeguards

1. Grounds and authorisation for detention

   - **Clarify vague legal concepts** - develop clear statutory definitions or judicial guidelines for vague terms such as "important reasons" or "particular danger" (Articles 228–230 CPC).
   - **Align terminology with international standards** and Commission Recommendation (EU) 2023/681,[2] ensuring predictability and legal certainty.
   - **Adopt explicit offence-thresholds for detention** - consider amending the CPC to introduce a minimum custodial sentence threshold for ordering pre-trial detention (in this GP it is proposed a three-year threshold, but at least one year, as recommended in Commission Recommendation (EU) 2023/681)).
   - **Strengthen judicial reasoning requirements** - enforce article 245 CPC by requiring judges to provide individualised, case-specific reasoning when ordering detention.
   - **Introduce structured risk-assessment tools** to support judges in evaluating whether less intrusive measures could adequately address risks.
   - **Require courts to document explicitly in decisions** why measures such as bail, reporting duties, or electronic monitoring would be insufficient.

2. Hearing and judicial oversight

   - **Improve the quality of judicial reasoning** - provide training and monitoring to

[2] Commission Recommendation (EU) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, OJ L 86, 24.3.2023.

ensure that detention orders contain detailed, individualised reasoning rather than formulaic references - reasoning should explicitly address why alternatives are inadequate and why detention is strictly necessary.

- **Invest in judicial capacity-building** - develop continuous professional training for judges and prosecutors.
- **Extend the deadline for lodging appeal of pre-trial detention decisions** from five to ten days.
- **Strengthen appellate oversight** - enhance the effectiveness of appeal mechanisms by ensuring appellate courts rigorously scrutinise reasoning at first instance.
- **Clarify the scope of appellate review** - amend Article 249 CPC to explicitly state that appellate courts must examine both factual and legal elements of the detention order, including the available evidence, the grounds invoked (flight risk, risk of reoffending, obstruction of justice), the proportionality of detention in light of alternatives.
- **Guarantee the right to be heard in appeal** - codify that both the suspect and their lawyer must be heard during the appeal proceedings.

3. Duration and periodic review of detention

- **Limit maximum durations** – Set strict maximum time limits that may only be exceeded in truly exceptional cases, and only when supported by concrete, individualised, and well-reasoned justifications.
- **Enhance review quality standards** – Establish stronger criteria for the depth, independence, and reasoning of reviews to ensure they are substantive rather than formalistic.
- **Ensure that periodic review is focused on the evaluation/consideration of whether pre-trial detention is still necessary, proportionate and reasonable** and not only based on the progress of the investigation.
- **Establish a rule setting a general principle that the prosecutor must also seek evidence in favour of the person under investigation** and promptly inform the court.
- **Eliminate the temporal foreclosure of 6 months before challenging the duration of the detention on remand** (the only limit should be the prohibition to repeat arguments which have already been submitted and debated).
- **Establish that the time limit starts to run at the same moment of the previous precautionary measure also for different acts committed** prior to the issuance of the first warrant for which there is a connection pursuant to Article 55 CC.
- **Establish an equivalence between house arrest and pre-trial detention** and change the deduction in the final conviction, so that one day of pre-trial/house arrest equals one day in the final conviction.

4. Access to legal counsel and other procedural safeguards

- **Codify safeguards for waiver of counsel** - if in the Albanian system there is the

possibility of a waiver of legal counsel, amend the CPC to require that any waiver of the right to a lawyer be informed, unequivocal, and voluntary, recorded in writing (or audio-video), after the letter of rights is explained in clear and simple language, and confirmed by the suspect's signature.

- **Strengthen the lawyer's role during questioning** - explicitly provide in the CPC that defence lawyers may intervene during interrogations to protect privilege, object to improper questioning, and clarify misunderstandings, ensuring meaningful—not merely formal—legal assistance.
- **Guarantee timely access to case materials** - ensure that suspects and their lawyers have prompt access to essential documents and evidence necessary to challenge the legality of detention and the substance of accusations.
- **Implement impartial duty-lawyer systems** - establish a bar-managed, 24/7 duty-lawyer system with rapid response times, to prevent police influence in lawyer selection and guarantee immediate and independent legal assistance.
- **Improve facilities for effective assistance** - require private consultation space in all police stations to protect confidentiality between lawyers and suspects.
- **Mandate audio-video recording of police interviews** - introduce compulsory recording of all interrogations, documenting both the presence/effective participation of lawyers and any waiver of rights, to safeguard procedural fairness and evidentiary reliability.

5. Alternatives to Pre-trial Detention

- **Strengthen the use of alternatives to detention** - ensure that judges systematically assess and apply less restrictive measures before resorting to pre-trial detention, in line with the principle of detention as a measure of last resort.
- **Broaden the scope of the bail regime** - expand the applicability of bail beyond flight risk, allowing it to serve as an alternative to detention in cases involving risks of reoffending or obstruction of justice.
- **Enable bail at the initial detention stage** - amend the CPC to ensure that courts assess the possibility of bail before ordering pre-trial detention or house arrest, in line with Article 5(3) of the Convention and the United Nations Tokyo Rules.
- **Establish an effective and functional electronic monitoring system**, following the standards laid down in Recommendation CM/Rec(2014)4 of the Committee of Ministers to Member States on electronic monitoring (Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies).
- **Fully enforce Law No. 10 494, of 22/12/2011**, on electronic monitoring of persons whose movement is restricted by court decision, either by putting in place the necessary technical means and by adapting Article 237, § 2 CPC.
- **Strengthen supervisory capacity** - enhance the resources, training, and authority of supervisory bodies responsible for monitoring compliance with alternative measures.
- **Introduce a no-contact order** - amend Article 232 CPC to include a "prohibition on

contacting specific persons".

- **Change article 57 of the CC**, equating the reduction in the final sentence to the days spent in preventive detention, eliminating the premium currently in force.

6. Specific Consideration for Persons in a Vulnerable Situation

- Establish that pre-trial detention of **minors** should be used only as a measure of last resort; it should be as short as possible and, where detention is strictly necessary, minors should be kept apart from adults.
- **Consecrate procedural safeguards for children**: limitation of cases when pre-trial detention may be applicable to minors, mandatory assistance when detention/pre-trial detention is decided; suitability of the lawyer; adapted explanations.
- For **women**, allow pregnant women to give birth in hospital outside detention facilities, and to keep infant children with them (always when compatible with the child's best interests).
- Establish that **foreign nationals** have the right to information about legal assistance and about sentence transfer possibilities.
- **Anti-radicalisation measures must be put in place**; a system of initial risk assessment for terrorist/extremist suspects, together with regular risk assessments during detention; training for staff to recognise signs of radicalisation; put in place rehabilitation and deradicalisation programmes.

7. Complaints and remedies

- **Review limitations and exceptions** - reconsider restrictive exclusions, such as denying compensation when the wrongful decision was "caused wholly or in part" by the person.
- **Revise the special law on compensation ceilings** - update Law No. 9381 of 28/042005 to ensure that compensation levels are realistic and proportionate to actual harm. Compensation should adequately reflect pecuniary and non-pecuniary damages.
- **Explicitly cover house arrest on equal footing**.
- **Guarantee effective enforcement of compensation awards** - introduce safeguards ensuring that compensation decisions are paid promptly, with statutory deadlines and mechanisms to prevent administrative delays.
- **Ensure transparency and accessibility** - provide clear procedural rules and accessible guidance for applicants on how to file compensation claims. Legal aid should be available to ensure that vulnerable individuals can effectively claim their rights.

II. Cross-Cutting Issues

1. Data Collection

- **Conduct a comprehensive survey on pre-trial detention**, following the guidelines established by the Council of Europe and the EU in the document "Pre-Trial Detention Assessment Tool".

2. <u>The need for a change in judicial culture – a global approach</u>

- **Define an institutional strategy aiming to reduce the ratio of pre-trial detention** in Albania to levels compatible with the Council of Europe standards, with the definition of vision, mission and values, from which clear strategic objectives derive, together with persons responsible and assessment indicators.

The conclusions of this report will be discussed with the Albanian Government in the framework of the Council of Europe's continued cooperation and support for the criminal law reform.

2 INTRODUCTION

2.1 Purpose, methodology and scope

The purpose of this guiding paper is to provide principled and practice-oriented guidance for the drafting of provisions on pre-trial detention in the Criminal Procedure Code (CPC). It seeks to identify the key legal standards, safeguards, and promising practices that should underpin a modern system of criminal procedure, with particular focus on the right to liberty and the use of custodial measures. The paper is intended to inform legislative drafting and reform efforts, ensuring that the CPC is fully aligned with international and European human rights obligations, as well as with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) and the case law of the European of Human Rights (the Court).

The following methodological steps were undertaken:

1. Review of international and European standards
2. Analysis of the Jurisprudence of the Court relating to Article 5 of the Convention
3. Comparative examination of national legislation
4. Review of domestic practice and selected jurisprudence
5. Institutional and statistical inputs
6. Expert consultations: Experts held a series of online meetings to discuss findings, compare perspectives, and formulate joint conclusions.

This guiding paper focuses on the legal and practical aspects of pre-trial detention as regulated within criminal procedure. The scope includes the identification of key principles for regulating pre-trial detention, drawn from international and European standards and examination of good practices in legislative drafting and judicial practice that may serve as models or benchmarks for reform.

2.2 Overview of international legal instruments

Pre-trial detention is used to refer to the period during which a person is deprived of liberty prior to adjudication, including detention by the police, through to the conclusion of the criminal trial, including appeal[3]. It is defined as court-ordered or legally authorised confinement of suspects or accused persons during the pre-trial phase of criminal proceedings, extending from the point of formal criminal process until trial commencement or case resolution.

The standards governing pre-trial detention essentially go back to the framework of international human rights[4] with the most important international standards deriving from the Convention.

[3] United Nations Office on Drugs and Crime (UNODC), *Handbook on Strategies to Reduce Overcrowding in Prisons*. Available at www.unodc.org, (accessed: 23/09/2025).

[4] Universal Declaration of Human Rights (UDHR)(1948); International Covenant on Civil and Political Rights (ICCPR) (1966) - Articles 9 and 14.

The essential principles are 'the Right to Liberty' and 'the Presumption of Innocence'. Furthermore, one of the core principles is that pre-trial detention only can be imposed when strictly necessary and proportionate.

Article 5 of the Convention more specifically provides for detailed protections and has generated extensive case law through the Court. In this Article 5 of the Convention sets out the admissible grounds for pre-trial detention and some procedural safeguards, which are reflected in all legal systems of Council of Europe Member States.

Article 5 of the Convention requires clearly that detention can only be ordered on the basis of a reasonable suspicion of having committed an offence or when it is reasonably necessary to bring the person before a competent legal authority for a decision.

Anyone arrested must be brought before a judge whose decisions must be based on individualised reasoning, not vague or abstract references to 'public safety'. The need to prevent the commission of a new offence or the risk of flight after an offence has been committed are key factors to consider when deciding on pre-trial detention.

One of the relevant aspects of Article 5 of the Convention and the corresponding case-law of the Court is the duration of pre-trial detention. The Court has held that authorities must show 'special diligence' in conducting proceedings.

From the Court's case law, eight principles for the reasoning of pre-trial detention decisions can be extracted, namely[5]:

1. A remand order must be reasoned.
2. The reasoning must not be 'general and abstract'.
3. Authorities must give 'relevant and sufficient' reasons for continuing pre-trial detention.
4. Severity of sentence is not an independent reason for pre-trial detention.
5. The longer the detention, the more thorough the judicial review.
6. Pre-trial detention should not be used to anticipate punishment.
7. The judge should consider alternatives to custody.
8. The defence presented is a relevant factor in the decision.

Article 6 of the Charter of Fundamental Rights of the European Union (CFREU), which includes the right to liberty, mirrors Article 5 of the Convention.

Within the EU, although there is an emphasis on 'mutual recognition' and 'harmonisation' within the area of security and justice, pre-trial detention remains without harmonised standards in terms of concrete conditions.

The key EU instrument on pre-trial detention is the Commission Recommendation (EU) 2023/681, of 8 December 2022, on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions[6]. It provides guidance to Member States on adopting effective, appropriate, and proportionate measures to strengthen the rights

[5] Bemelmans, J.H.B.; Jacobs, P.; Steenhuijsen, T.L.H., *Follow-up study on the reasoning for pre-trial detention*, Tilburg University, April 2025. Available at www.mensenrechten.nl (accessed: 23/09/2025).

[6] *Official Journal of the European Union*, L86/44, 24. 03.2023.

of suspects and accused persons deprived of their liberty. The Recommendation covers both procedural safeguards during pre-trial detention and the material conditions of detention. It also recalls Article 2 of the Treaty on European Union (TEU), which affirms that the Union is founded on respect for human dignity, freedom, democracy, equality, the rule of law, and human rights.

The recommendation (EU) 2023/681 includes the principle that pre-trial detention is a measure of last resort to be applied. The grounds for detention should be limited to (a) risk of absconding; (b) risk of re-offending; (c) risk of the suspect or accused person interfering with the course of justice; or (d) risk of a threat to public order.

The following procedural safeguards are included in recommendation (EU) 2023/681:

- Requirement of reasoning
- Periodic review
- Right of the suspect to be heard in person or through legal representative
- Right of appeal
- Length of detention must not exceed the penalty that may be imposed

Apart from these mentioned international standards, several EU Directives also enshrine a number of guarantees in criminal law, such as the right to interpretation and translation, right to information, right of access to a lawyer and the right to be present at one's trial. Material conditions of suspects who are subject to pre-trial detention are also included in these directives. All of these measures are intended to guarantee the fundamental rights of persons in pre-trial detention.

At the United Nations level, the International Covenant on Civil and Political Rights (ICCPR), among others, also encourage the use of non-custodial measures, such as release on personal recognisance, bail or surety, electronic monitoring, regular reporting requirements or travel restrictions.[7]

In addition, there are also some UN Standard Minimum Rules relevant for pre-trial detention[8]. The Tokyo Rules specifically provide that alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings[9].

These Tokyo Rules also establish other principles, such as:

- Pre-trial detention shall last no longer than necessary,
- Pre-trial detention must be administered humanely and with respect for the inherent dignity of human beings,

[7] UN Human Rights Committee, *General Comment No. 35 (2014) on Article 9 of the International Covenant on Civil and Political Rights: Liberty and security of person*, UN Doc. CCPR/C/GC/35, 16 December 2014.

[8] UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (2015); UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) (1990); UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (1985).

[9] Tokyo Rules, rule 6.2.

- The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed and
- Non-custodial measures placing obligations on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.

3 PRE-TRIAL DETENTION: LEGAL FOUNDATIONS AND SAFEGUARDS

Articles 227 to 269 of the CPC (as amended several times between 1995 and 2017 to align with constitutional changes and European standards) define the rules for managing the pre-trial detention.

In the light of the above-mentioned international legal instruments and standard-setting documents, the analysis of the Albanian criminal procedure requirements currently in force will be made focusing on seven main topics:

1. Grounds and authorisation for detention.
2. Hearing and judicial oversight.
3. Duration and periodic review of detention.
4. Access to legal counsel and other procedural safeguards.
5. Alternatives to pre-trial detention.
6. Specific consideration for persons in a vulnerable situation.
7. Complaints and remedies.

3.1 Grounds and Authorisation for Detention

Recommendation Rec(2006)13 of the Committee of Ministers to Member States on the use of remand in custody defines the conditions under which pre-trial detention may take place and provides safeguards against abuse[10]. Points 3 to 5 of its *General Principles* and points 6 and 7 of the *Justification* establish the main guidelines for the grounds and lawfulness of a decision on pre-trial detention:

> ***General principles***
>
> *3. [1] In view of both the presumption of innocence and the presumption in favour of liberty, the remand in custody of persons suspected of an offence shall be the exception rather than the norm.*
>
> *[2] There shall not be a mandatory requirement that persons suspected of an offence (or particular classes of such persons) be remanded in custody.*
>
> *[3] In individual cases, remand in custody shall only be used when strictly necessary and as a measure of last resort; it shall not be used for punitive reasons.*
>
> *4. In order to avoid inappropriate use of remand in custody the widest possible range of alternative, less restrictive measures relating to the conduct of a suspected offender shall be made available.*
>
> *5. Remand prisoners shall be subject to conditions appropriate to their legal status; this entails the absence of restrictions other than those necessary for the administration of justice, the security of the institution, the safety of prisoners and staff and the protection of the rights of others and in particular the fulfilment of the requirements of the European Prison Rules and the other rules set out in Part III of the present text.*

[10] Adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers' Deputies. Available at www.coe.int, (accessed: 23/09/2025).

Justification

6*. Remand in custody shall generally be available only in respect of persons suspected of committing offences that are imprisonable*

7*. A person may only be remanded in custody where all of the following four conditions are satisfied:*

a. there is reasonable suspicion that he or she committed an offence; and

b. there are substantial reasons for believing that, if released, he or she would either (i) abscond, or (ii) commit a serious offence, or (iii) interfere with the course of justice, or (iv) pose a serious threat to public order; and

c. there is no possibility of using alternative measures to address the concerns referred to in b.; and

d. *this is a step taken as part of the criminal justice process*

Under Albanian criminal procedure, the imposition of personal precautionary measures is guided by the principles of suitability, proportionality, and necessity, thus being to a great extent in line with international standards. Nevertheless, some concepts and terminology used are often too vague and lack development - **concrete criteria for somewhat vague grounds such as 'important reasons' or 'particular danger' should be developed**.

Article 228 CPC provides three grounds for pre-trial detention as one of the precautionary measures, namely: evidence, flight risk, and the risk that the defendant will commit serious crimes similar to the one for which he/she is being prosecuted. These grounds are consistent with Convention standards. However, the courts are criticised for applying these grounds in general terms. The necessary concrete and individual assessments are said to be lacking.

However, the *reasonable suspicion* against a suspect required by the first paragraph of Article 228 CPC as a condition for the adoption of precautionary measures does not appear to be an appropriate threshold: a *reasonable suspicion* is a threshold higher than a mere suspicion yet falls short of the level of real circumstantial evidence (or indicia)[11]. As such, the concept of *reasonable suspicion* is closer to the domain of administrative preventive measures than to the criminal procedure. *Reasonable suspicion* is analogous to the *reasonable doubt* used in Article 222 for authorising interceptions and, it is obvious that the same minimum requirement cannot be applied for both collecting evidence and depriving person of their liberty. **It would be preferable to use in Article 228 CPC the wording *"reasonable grounds based on evidence"* or *"serious indicia"*, rather than *"reasonable suspicion"*.** This rewording would even make clear that the basic assessment methodology is the same for both a decision on guilt and on precautionary measures.

Articles 229 CPC (assessment of the appropriateness and proportionality of each measure in light of the precautionary needs of the specific case, the seriousness of the offence, the prescribed sanction, and aggravating or mitigating circumstances), and 230 CPC (use of pre-trial detention only when other measures are inadequate and restriction on the detention of vulnerable persons) appear to be in line with the principle that pre-trial detention must

[11] In this regard, see the second paragraph of Article 152 (Evaluation of evidence): 2. The existence of a fact cannot be inferred from circumstantial [indicia] evidence, unless such evidence is serious, precise and consistent.

operate as an *extrema ratio* and be restricted only to serious cases and only when less afflictive measures are not adequate.

It should be noted, however, that contrary to the Commission Recommendation (EU) 2023/681, of 8 December 2022, which encourages Member States to impose pre-trial detention only for offences carrying a minimum custodial sentence of one year[12], the Albanian CPC does not establish such a threshold.

By providing that whatever offence is held as imprisonable[13], not only the Albanian CPC does not comply with Article 6 of the Convention – that provides that imprisonable offences must be listed in a more severe category – but it also incurs in incoherence, as Article 241 CPC provides that interdiction measures[14] "*may be applied only in proceedings concerning criminal offences punishable by law by more than one year imprisonment, in the maximum term*". In other words, it is not coherent that less afflictive measures meet stricter conditions of application than more afflictive ones. Another contradiction can also be found between the said rule and the second part of § 2 of Article 229 CPC: if a pre-trial detention measure cannot be ordered when the court deems that the offence in question could result in a conditional sentence (thus prohibiting its use for minor offences), it is inconsistent not to establish a minimum threshold in law.

This gap and inconsistency could be solved by introducing a specific regulatory provision concerning coercive measures, in particular precautionary detention in prison, similar to that established by the above-mentioned Article 241 CPC for interdiction measures.

This possible regulatory provision could be constituted by three new paragraphs added in Article 232 CPC, worded as follows:

> New paragraphs to add to the existing Article 232 CPC:
>
> **2.** *Except as provided for by specific provisions, in paragraphs 3 and 4 of this Article and in Article 251[15], the measures provided in the first paragraph may be applied only when proceedings are being conducted for crimes for which the law establishes a penalty of life imprisonment or a maximum term of imprisonment of more than three years.*
>
> **3.** *Pre-trial detention in prison may be ordered only for crimes, whether completed or attempted, for which a maximum term of imprisonment of not less than five years is established.*
>
> **4.** *The provisions set forth in paragraph 2 and 3 do not apply to anyone who has violated the provisions relating to a precautionary measure[16].*

Article 245 CPC establishes detailed requirements for court decisions on pre-trial detention and, at least on paper, provides a robust legal framework. The provision obliges judges to set out specific reasons justifying detention, to explain why defence arguments are rejected, and to indicate why alternative measures are considered inadequate, with non-compliance rendering the decision invalid. In practice, however, the quality of implementation needs to be improved. Albanian courts often fail to provide the required concrete, case-specific

[12] Point (21).

[13] See Articles 232 and 244 CPC establish that there is no minimum punishability threshold for precautionary measures.

[14] Article 227 procedural code points out that "*Personal precautionary measures are classified in coercive and interdicted measures*".

[15] Article 251 regulates the arrest *in flagrante delicto* by judicial police officers and agents as well as private citizens.

[16] In this regard, see Article 231 (Replacement or joining of personal precautionary measures).

analysis, relying instead on abstract references to factors such as the "seriousness of the offence" or the "criminal character" of the defendant.

The wording of article 245, § 1, ç) places house arrest and detention in prison on the same level, although they have much different consequences on the suspect and on State resources. This may undermine the principle of pre-trial detention as last resort, as there is a logical incoherence between Article 230 and Article 245, § 1, point ç). A possible solution could be to require specific reasons, in the court's decision, about the indispensability of the pre-trial detention. The experts therefore suggest **the replacement of the above-mentioned line in point ç) of § 1 of Article 245 CPC, with the following:**

> ***"ç) when ordering pre-trial detention, the court must indicate the specific reasons why it deems house arrest unsuitable in the specific case, with the control procedures referred to in Article 237".***

Recommendations

- **Clarify vague legal concepts** - develop clear statutory definitions or judicial guidelines for vague terms such as "important reasons" or "particular danger" (Articles 228–230 CPC).
- **Align terminology with international standards and Recommendation (EU) 2023/681**, ensuring predictability and legal certainty.
- **Adopt explicit offence-thresholds for detention -** consider amending the CPC to introduce a minimum custodial sentence threshold for ordering pre-trial detention (in this GP it is proposed a three-year threshold, but at least one year, as recommended in Commission Recommendation (EU) 2023/681))
- **Strengthen judicial reasoning requirements -** enforce article 245 CPC by requiring judges to provide individualised, case-specific reasoning when ordering detention
- **Introduce structured risk-assessment tools** to support judges in evaluating whether less intrusive measures could adequately address risks.
- **Require courts to document explicitly in decisions** why measures such as bail, reporting duties, or electronic monitoring would be insufficient.

3.2 Hearing and judicial oversight

As mentioned in the overview of international legal instruments and standard-setting documents, international law requires that any deprivation of liberty be lawful, non-arbitrary, and subject to prompt judicial review.

The above-mentioned Committee of Ministers Recommendation Rec(2006)13 enshrines the following relevant standards concerning judicial authorisation:

> ***13.*** *The responsibility for remanding someone in custody, authorising its continuation and imposing alternative measures shall be discharged by a judicial authority.*
>
> ***18.*** *Any person remanded in custody, as well as anyone subjected to an extension of such remand or to alternative measures, shall have a right of appeal against such a ruling and shall be informed of this right when this ruling is made.*

> **21.** *[1] Every ruling by a judicial authority to remand someone in custody, to continue such remand or to impose alternative measures shall be reasoned and the person affected shall be provided with a copy of the reasons.*
>
> *[2] Only in exceptional circumstances shall reasons not be notified on the same day as the ruling.*

Under Albanian legislation, the use of pre-trial detention is governed by appropriate safeguards: it may only be ordered by the court[17] upon Prosecutor's request or, in the event of arrest by the Police[18] or detention ordered by the Prosecutor or the Police[19], be ratified by the court within 96 hours from the moment of deprivation of liberty[20]. This mechanism guarantees early judicial oversight and minimises the risk of arbitrary detention. Moreover, the measure imposed may not exceed the severity of that requested by the Prosecutor, whereas the court can turn down the Prosecutor's request, revoke the measure or grant a less afflictive one.

Court decisions ordering pre-trial detention must be duly reasoned and must contain all the elements required by law, including the factual and legal grounds justifying the necessity of detention. A mere reference to the prosecutor's request is not sufficient – the Court, even though it can transcribe and report what written by the Prosecutor, must demonstrate to have carried out an autonomous assessment and a critical examination of the evidentiary material and the precautionary requirements and of the reasons why it deems them suitable to support the application of the measure.

In this perspective and **in addition to the change already suggested above in *"Grounds and Authorisation for Detention"* (to point ç) of § 1), the experts suggest changing point c) of § 1 of Article 245 (Court Decision) as follows:**

> ***"c) Autonomous assessment of the specific reasons and data legitimating the precautionary measure;"***

The system of legal remedies further reinforces these protections (see Article 249 CPC). A decision imposing pre-trial detention may be appealed before the court of appeal within five days of notification. The appellate court is required to examine the case within ten days, thereby providing a prompt and effective remedy. In addition, an appeal on points of law (recourse) may be lodged before the Supreme Court against the decision of the court of appeal, ensuring a final layer of judicial scrutiny.

Article 5, § 4 of the Convention enshrines the right of everyone to challenge a pre-trial detention and this domestic remedy, according to the Court's case law, must be effective. In light of this jurisprudence, the experts believe that a five-day deadline to lodge an appeal to challenge a decision of detention on remand is not sufficient. Five days is a very limited period of time to have access to a copy and examine all the evidentiary material - which might be composed of a large number of pages -, to have lawyer-suspect consultations, to search for useful evidence to exonerate the accused from any reasonable suspicion and to file a well-reasoned appeal. The experts believe that this deadline should be extended to ten days, in

[17] See Article 244 CPC.

[18] See Article 251 CPC.

[19] See Article 253 CPC.

[20] See Articles 258-259 CPC.

order to render this domestic remedy effective. With this aim, **the first paragraph of Article 249 CPC should be amended as follows:**

> ***"1. Against the decision of the court for the application of a precautionary measure, under Article 244 of this Code, an appeal may be lodged within ten days of the notification of the court decision."***

Another issue regarding the appeal against a court decision imposing a precautionary measure is the lack of clarity of the scope of the review by the superior court. It would be advisable to have clearly stated in law that both the factual elements, the evidence available, any measures imposed, and the proportionality of the arrest are subject to this review.

Another problematic issue is that the Court of Appeal is not granted the power to order the immediate release of the detained person. This is not only inefficient, as it works as a delay, but may lead to a longer than necessary detention.

Also, when § 6 of Article 249 establishes that the Court of Appeal may decide on *"the annulment, amendment or approval of the decision, even on different grounds from those presented or indicated in the reasoning part of the decision"*, it is important to guarantee that the rights of the defence are respected and that new grounds can be adequately contested before the appeal decision.

In that sense, the experts suggest that **Article 245, §4 should be reworded as follows:**

> ***"The prosecutor, defendant and his/her defence lawyer are notified on the date of the hearing at least 3 days in advance and they are heard in the hearing if they appear. If new evidence or data are presented by the prosecutor, the defendant can obtain a postponement of the hearing to examine them".***

Recommendations

- **Improve the quality of judicial reasoning -** provide training and monitoring to ensure that detention orders contain detailed, individualised reasoning rather than formulaic references - reasoning should explicitly address why alternatives are inadequate and why detention is strictly necessary.
- **Invest in judicial capacity-building -** develop continuous professional training for judges and prosecutors.
- **Extend the deadline for lodging appeal** of pre-trial detention decisions from five to ten days.
- **Strengthen appellate oversight -** enhance the effectiveness of appeal mechanisms by ensuring appellate courts rigorously scrutinise reasoning at first instance.
- **Clarify the scope of appellate review -** amend Article 249 CPC to explicitly state that appellate courts must examine both factual and legal elements of the detention order, including the available evidence, the grounds invoked (flight risk, risk of reoffending, obstruction of justice), the proportionality of detention in light of alternatives.
- **Guarantee the right to be heard in appeal -** codify that both the suspect and their lawyer must be heard during the appeal proceedings.

- **Introduce limited flexibility in time limits -** maintain the ten-day deadline for appellate review but allow narrowly defined extensions upon request of the defence.
- **Ensure immediate release power for appellate courts.**
- **Safeguard defence rights when new grounds are introduced** - if appellate courts may base their decision on grounds other than those raised before the court issuing the measure, the CPC should require that the defence is notified and given an opportunity to contest these new grounds.

3.3 Duration and periodic review of detention

Article 5, § 3 of the Convention is the leading standard relating to 'reasonable time' of pre-trial detention. After initial detention based on reasonable suspicion, continued detention must be justified by "relevant and sufficient reasons" that are concrete and individualised. The Convention and the Court do not set strict rules regarding the maximum duration of pre-trial detention. From case-by-case assessments, some concrete principles can be formulated, such as the need for regular reassessment of detention necessity, the insufficiency of relying solely on the initial justification, the need to consider new circumstances, and enhanced quality standards related to individual evaluation.

In this regard, Committee of Ministers Recommendation Rec(2006)13 establishes the following:

> ***17.*** *[1] The existence of a continued justification for remanding someone in custody shall be periodically reviewed by a judicial authority, which shall order the release of the suspected offender where it finds that one or more of the conditions in Rules 6 and 7 a, b, c and d are no longer fulfilled.*
>
> *[2] The interval between reviews shall normally be no longer than a month unless the person concerned has the right to submit and have examined, at any time, an application for release.*
>
> *[3] The responsibility for ensuring that such reviews take place shall rest with the prosecuting authority or investigating judicial authority, and in the event of no application being made by the prosecuting authority or investigating judicial authority to continue a remand in custody, any person subject to such a measure shall automatically be released.*
>
> ***23.*** *Any specification of a maximum period of remand in custody shall not lead to a failure to consider at regular intervals the actual need for its continuation in the particular circumstances of a given case.*
>
> ***24.*** *[1] It is the responsibility of the prosecuting authority or the investigating judicial authority to act with due diligence in the conduct of an investigation and to ensure that the existence of matters supporting remand in custody is kept under continuous review.*
>
> ***33.*** *[1] The period of remand in custody prior to conviction, wherever spent, shall be deducted from the length of any sentence of imprisonment subsequently imposed.*
>
> *[2] Any period of remand in custody could be taken into account in establishing the penalty imposed where it is not one of imprisonment.*

[3] The nature and duration of alternative measures previously imposed could equally be taken into account in determining the sentence

The Court established a strengthened framework for assessing the justification for the extension of pre-trial detention under Article 5 § 3 of the Convention, ruling against Albania in a case involving a seven-month detention[21]. The Court found that while reasonable suspicion remained a necessary condition for detention, national authorities had failed to provide "sufficient" grounds by offering only general references to risks of evidence tampering and absconding without concrete specification. Critically, the Court emphasised that domestic courts must explain why evidence could not have been collected at earlier stages, seriously consider alternative measures beyond mere formal statements, and regularly reassess whether detention grounds remain valid as proceedings develop.

The judgment establishes that personal circumstances—such as voluntary surrender and return from abroad—must be properly weighed when assessing flight risk, and that detention decisions require concrete, evolving justification rather than formulaic repetition of initial concerns.

This ruling significantly raises the evidentiary bar for pre-trial detention across Council of Europe Member States, requiring judicial authorities to provide detailed, case-specific reasoning and demonstrate genuine consideration of less restrictive alternatives, thereby strengthening the presumption of liberty enshrined in international human rights law.

Articles 246, §6, 249, §§8-9, 263, 264 and 265 CPC, as well as Article 57 CC, regulate the monitoring, governing and compensatory mechanism of pre-trial detention:

- Article 246, §6 imposes on the Prosecutor an obligation to systematically inform the court on the conducted investigation activity and the security needs;
- Article 249, §§8-9 lays down a temporal foreclosure: the detention on remand can be challenged again before six months have elapsed since the execution of the arrest;
- Article 263 establishes the time limits of precautionary detention in prison[22];
- Article 264 provides that, during preliminary investigations, the prosecutor may request the extension of the time limits of the precautionary detention in prison when they are expiring, where there are serious security needs and special complex verifications which render such extension indispensable. The court shall decide

[21] *Gëlliçi v. Albania*, no. 15468/23, 25 February 2025.

[22] Those applicable to the pre-trial phase are:

- up to 3 months in case of criminal contraventions.
- up to 6 months for crimes punishable with up to 10 years imprisonment.
- up to twelve months for crimes punishable with to 10 years- life imprisonment.

The time limits applied to the trial phase before the first court are:

- up to 2 months in case of criminal contraventions.
- up to 9 months for crimes punishable with up to 10 years imprisonment.
- up to 12 months for crimes punishable with to 10 years - life imprisonment.

The time limits applied to the trial phase before the court of appeal are:

- up to 2 months in case of criminal contraventions.
- up to 6 months for crimes punishable with up to 10 years imprisonment.
- up to 9 months for crimes punishable with to 10 years - life imprisonment.

after hearing the prosecutor and the defence lawyer, and the extension may be granted only once for a period not exceeding three (3) months. In any case, even in the event of an extension of the precautionary detention in prison, the maximum total term cannot exceed three (3) years or half of the maximum punishment provided for the criminal offence under proceedings.

- Article 265 CPC allows the court not only to extend but also to suspend the said time limits in the event of alleged abuse of process or legal misconduct;
- Article 57 CC provides that in case of conviction, the period spent in pre-trial detention in prison is deducted from the imposed penalty, with one day of pre-trial detention counting as one and a half days of imprisonment.

Given this legal framework, it may be observed that the Albanian legal regime is, in general, compliant with the European standards.

Some remarks may nevertheless be made.

The obligation imposed on the Prosecutor to continuously inform the court of the conducted investigation activity must be read together with the obligation of judicial confidentiality enshrined in Article 279 CPC. A balance must be achieved so that the latter is not endangered by the former.

Article 246, §6 CPC provides for a periodic review every two months. Currently, this review is mainly (only) based on the progress of the investigation, while in essence the review should focus on the evaluation/consideration of whether pre-trial detention is still necessary, proportionate, and reasonable. The duration of the investigation is one of the aspects to be considered in this assessment. Especially in cases of extended pre-trial detention, the Court's case-law requires scrutiny and no routine approval without any individualised case-specific analysis.

A rule setting a general principle provides that the Prosecutor not only carries out all activities necessary to decide if initiating criminal proceedings, but he/she must also seek evidence in favour of the person under investigation and promptly inform the court of such evidence.

In light of these remarks, **the experts suggest a revision of Article 246, §6 CPC in the following manner:**

> ***"6. Every two months starting from the execution of an arrest decision, the prosecutor shall inform in writing the court establishing the precautionary measure on the conducted investigation activity and the security needs. The information shall contain data on the status of the proceedings, on the questioning of the defendant and other persons, a description of the information obtained and shall be accompanied by copies of the file's acts, without prejudice of the "Obligation to keep secrecy", established in Article 279.***
>
> ***If the prosecutor fails to provide information in due time, the court shall verify the security needs upon request of the defendant or ex officio.***
>
> ***The court, after hearing the parties, will assess if the arrest is still necessary, proportionate and reasonable and will issue a decision to continue the application of, or to replace or revoke the precautionary measure. Provisions of Articles 248 and 249 of this Code shall apply.***

The Prosecutor has the duty to also seek evidence in favour of the person under investigation and promptly inform the court thereof, in order to avoid the continuation of an unfounded or no longer necessary precautionary measure."

Setting a temporal foreclosure of 6 months before challenging the duration of the detention on remand (Article 249, §§8-9) is also not in line with point 23 of the Committee of Ministers Recommendation Rec(2006)13, which requires considering the actual need for the continuation of a precautionary measure at regular intervals, regardless of the maximum period of remand in custody and similarly of other time restrictions. The only limit should concern the prohibition to repeat arguments which have already been submitted and debated. In that light, **Article 249, §8 could be reworded as follows:**

"The defendant and his/her defence lawyer may file a request to the court to annul, revoke or replace the coercive measure on the basis of new elements as well as may challenge the court's decision filing an appeal to the court of appeal".

Article 263, §8 CPC regarding consecutive accusations, establishes that the time limit starts to run at the same moment as the previous precautionary measure only in the event of legal qualification change of the same fact and not also for different acts committed prior to the issuance of the first warrant for which there is a connection pursuant to Article 55 CC.

The experts suggest that **Article 263, § 8 CPC be reworded as follows:**

"When the new charge relates to a new fact, which was unknown at the beginning of the proceedings, the court shall assign a new time limit, which starts to run from that moment, whereas in cases where only the legal qualification of the offence changes or a different act was committed prior to the issuance of the first warrant for which there is a connection pursuant to Article 55 CC, the court shall apply the precautionary measure, and the time limit to consider shall be the one started to run with the application of the previous precautionary measure".

Article 57 CC presents two problematic aspects:

a) establishing that one day of pre-trial detention amounts to one and a half days of imprisonment to deduce from the imposed penalty is likely, on one hand, to induce defendants and their lawyers to exploit as much as possible the precautionary detention in prison, and, on the other, to induce the court to make extensive use of its power of suspension of the time limits established in Article 265 CPC, thereby contributing to prison overcrowding and prison population inflation[23];

b) house arrest has the effect of restricting personal freedom and indeed Article 237, §5 CPC states that "*The period of stay under house arrest shall be calculated as part of the imposed sentence*". It is not clear what is the calculation method for the deduction of the period under house arrest from the imposed penalty. Article 237, §4, by saying that "*The duration of the house arrest shall be subject to the rules applicable to the precautionary detention in prison*", would point toward an interpretation of equivalence between

[23] In this regard, see point 12 of the Recommendation N° R (99) 22 of the Committee of Ministers of the Council of Europe to member States concerning Prison Overcrowding and Prison Population Inflation: 12. The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection, attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

precautionary detention and house arrest for the deduction from the sentence. At present, the relevant case-law on the topic is unclear, except for an interesting decision of the Constitutional Court[24]. In practice, the result could create a surreal incentive to prefer detention in prison for defendants and their lawyers. **The solution is to expressly equate detention on remand and precautionary house arrest and, through a clear provision, deduct both from the imposed penalty at the rate of one day of remand for one day of penalty.**

The predetermined maximum period of three years for serious crime and two years for mid-level crimes is on the high side, especially as a generally applicable principle. Such a statutory scheme can certainly give rise to systematic exceeding of the reasonable detention period. There is no clear mechanism whereby the justification of long-term detention is subject to higher requirements.

According to article 264, §2 CPC, the prosecutor may request during the preliminary investigations an extension of the time limits of the precautionary detention in prison when they are expiring, when there are serious security needs and special complex verifications which render such extension indispensable. Extension may be done only once for a period of time not exceeding three months. The concept of 'serious security needs and special complex verifications' as such is too vague. Also here, the justification requirements are lacking as detention length increases. Relevant and sufficient reasons supported by concrete individualised analysis should be required.

Recommendations

- **Limit maximum durations** – Set strict maximum time limits that may only be exceeded in truly exceptional cases, and only when supported by concrete, individualised, and well-reasoned justifications.
- **Enhance review quality standards** – Establish stronger criteria for the depth, independence, and reasoning of reviews to ensure they are substantive rather than formalistic.
- **Ensure that periodic review is focused on the evaluation/consideration of whether the pre-trial detention is still necessary, proportionate and reasonable,** and not only based on the progress of the investigation.
- Establish a rule **setting a general principle that the Prosecutor must also seek evidence in favour of the person under investigation** and promptly inform the court.
- **Eliminate the temporal foreclosure of six months before challenging the duration of the detention on remand** (the only limitation should be the prohibition to repeat arguments which have already been submitted and debated);
- Establish that the **time limit** starts to run at the same moment of the previous precautionary measure **also for different acts committed prior to the issuance of the first warrant** for which there is a connection pursuant to Article 55 CC;

[24] See also Decision of the Constitutional Court n. 40 of 16.06.2025 about the application of the same time limits to precautionary detention in prison and house arrest.

- **Establish an equivalence between house arrest and pre-trial detention** and **change the deduction in the final conviction, so that one day of pre-trial/house arrest equals one day in the final conviction**.

3.4 Access to Legal Counsel and other Procedural Safeguards

Committee of Ministers Recommendation Rec(2006)13 dedicates one specific chapter to this topic:

Assistance by a lawyer, presence of the person concerned and interpretation

25. *[1] The intention to seek remand in custody and the reasons for so doing shall be promptly communicated to the person concerned in a language which he or she understands.*

[2] The person whose remand in custody will be sought shall have the right to assistance from a lawyer in the remand proceedings and to have an adequate opportunity to consult with his or her lawyer in order to prepare their defence. The person concerned shall be advised of these rights in sufficient time and in a language which he or she understands so that their exercise is practicable.

[3] Such assistance from a lawyer shall be provided at public expense where the person whose remand in custody is being sought cannot afford it.

[4] The existence of an emergency in accordance with Article 15 of the European Convention on Human Rights should not normally affect the right of access to and consultation with a lawyer in the context of remand proceedings.

26. *A person whose remand in custody is being sought and his or her lawyer shall have access to documentation relevant to such a decision in good time.*

27. *[1] A person who is the national of another country and whose remand in custody is being sought shall have the right to have the consul of this country notified of this possibility in sufficient time to obtain advice and assistance from him or her.*

[2] This right should, wherever possible, also be extended to persons holding the nationality both of the country where their remand in custody is being sought and of another country.

28. *A person whose remand in custody is being sought shall have the right to appear at remand proceedings. Under certain conditions this requirement may be satisfied through the use of appropriate video-links.*

29. *Adequate interpretation services before the judicial authority considering whether to remand someone in custody shall be made available at public expense, where the person concerned does not understand and speak the language normally used in those proceedings.*

30. *Persons appearing at remand proceedings shall be given an opportunity to wash and, in the case of male prisoners, to shave unless there is a risk of this resulting in a fundamental alteration of their normal appearance.*

31. *The foregoing Rules in this section shall also apply to the continuation of the remand in custody.*

Article 6 of the Convention and the Court's case-law require that suspects must be informed about their rights and have access to legal counsel from the first police questioning onwards. The possibility of effective legal assistance during questioning must be guaranteed, and the waiver of the right to a lawyer must be unequivocal, informed and voluntary. These minimum safeguards are reinforced by several EU Directives, which complement the Convention[25].

The relevant articles in Albanian CPC are Articles 246, § 4; 247, §3; 248, §3; 249, §1/1, 4 and 9; 255, §1; 256, §1; 258, § 2; 259, §1 and 2; and 264, §1 and 2. These norms appear to meet all European standards and requirements, considering the various notification obligations on the authorities to ensure an efficient legal assistance.

Beyond the CPC, Law No. 111/2017 sets up state-guaranteed legal aid (primary and secondary) for criminal cases and for priority/vulnerable groups.

Although the CPC is in general aligned with international standards, some improvements may be suggested in order to strengthen the right to defence.

Firstly, if the Albanian system allows for a waiver of legal counsel, **the CPC should expressly codify the conditions under which a waiver of the right to legal counsel may be accepted**. Any such waiver must be informed, unequivocal, and voluntary, and should be documented in a reliable manner. This requires that the letter of rights be delivered to the suspect promptly after deprivation of liberty, explained in clear and simple language, and adapted to the individual's level of understanding. Only after the letter of rights has been fully explained can a waiver be considered valid. Such a waiver should be confirmed by the person's signature and, ideally, by audio- or video-recording, in order to prevent disputes at a later stage of the proceedings.

Secondly, **the role of the lawyer during questioning should be more clearly defined and strengthened**. The CPC should make explicit that the defence lawyer's presence is not passive, but active, enabling him/her to intervene at the interrogation, in order to safeguard legal privilege, clarify questions or answers, and object to improper or coercive questioning techniques, and also at the moment of deciding on the measure, eventually proposing alternatives to pre-trial detention, without hindering the efficiency of the questioning. Furthermore, suspects and their lawyers should be guaranteed timely access to case materials that are essential to challenge both the lawfulness of detention and the substance of the accusation. Without such access, the right to effective legal assistance risks becoming purely formal.

Thirdly, **the practical arrangements surrounding the letter of rights and access to counsel must be reinforced**. It should be expressly safeguarded that police authorities cannot influence or steer suspects toward specific lawyers. Instead, a bar-managed duty-lawyer list or digital allocation system should be used to ensure impartiality, transparency, and independence of legal representation. Such a system should guarantee 24/7 coverage, with

[25] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012, on the right to information in criminal proceedings.
Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.
Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

strict targets for rapid contact and attendance. Police stations must also provide private consultation spaces to ensure confidentiality of communications between lawyer and client, which the Court has consistently underlined as a fundamental aspect of the right to defence. In addition, the audio-visual recording of all interrogations should be introduced as a mandatory safeguard. Recordings would provide reliable documentation of the presence and participation of counsel, the voluntariness of any waiver, the proper delivery and explanation of the letter of rights, and the overall fairness of the interrogation process.

Taken together, these reforms would not only bring the Albanian CPC closer in line with Convention standards and EU directives, but also strengthen trust in the criminal justice system by ensuring that suspects' defence rights—beginning with the letter of rights and extending to effective legal representation—are meaningful and effective in practice

Recommendations

- **Codify safeguards for waiver of counsel -** Amend the CPC to require that any waiver of the right to a lawyer be informed, unequivocal, and voluntary, recorded in writing (or audio-video), after the letter of rights is explained in clear and simple language, and confirmed by the suspect's signature.
- **Strengthen the lawyer's role during questioning -** explicitly provide in the CPC that the defence lawyer's presence is not passive, but active, enabling him/her to intervene at the interrogation, in order to safeguard legal privilege, clarify questions or answers, and object to improper or coercive questioning techniques, and also at the moment of deciding on the measure, eventually proposing alternatives to pre-trial detention, without hindering the efficiency of the questioning.
- **Guarantee timely access to case materials -** ensure that suspects and their lawyers have prompt access to essential documents and evidence necessary to challenge the legality of detention and the substance of accusations.
- **Implement impartial duty-lawyer systems -** establish a bar-managed, 24/7 duty-lawyer system with rapid response times, to prevent police influence in lawyer selection and guarantee immediate and independent legal assistance.
- **Improve facilities for effective assistance -** require private consultation space in all police stations to protect confidentiality between lawyers and suspects.
- **Mandate audio-video recording of police interviews -** introduce compulsory recording of all interrogations, documenting both the presence/effective participation of lawyers and any waiver of rights, to safeguard procedural fairness and evidentiary reliability.

3.5 Alternatives to pre-trial detention

International standards[26] explicitly require that pre-trial detention shall be used as a measure of last resort in criminal proceedings. Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary. Article 5 of the Convention recognises the importance of alternatives to detention and the Court has

[26] Art. 6.1 and art. 6.2 UN Tokyo Rules, 1990; Art. 10(2)a ICPCR.

repeatedly stated in several judgments that national courts must consider 'less intrusive measures' before prolonging detention.[27]

At EU level, the *"Council conclusions on alternative measures to detention: the use of non-custodial sanctions and measures in the field of criminal justice (2019/C 422/06)"*[28] explicitly encouraged Member States to *"to raise awareness among legal practitioners of the benefits of alternative measures to detention as well as of the availability and technical features of existing tools, such as electronic monitoring"*. Following that line, the European Commission, in its Recommendation (EU) 2023/681, of 8 December 2022 [29] clearly states that *"alternative measures to detention should be preferred, in particular where the offence is punishable only by a short sentence of imprisonment or where the offender is a child"*, and to that aim, Member States *"should make available the widest possible range of alternative measures"*, including:

(a) undertakings to appear before a judicial authority as and when required, not to interfere with the course of justice and not to engage in particular conduct, including that involved in a profession or particular employment;

(b) requirements to report on a daily or periodic basis to a judicial authority, the police or other authority;

(c) requirements to accept supervision by an agency appointed by the judicial authority;

(d) requirements to submit to electronic monitoring;

(e) requirements to reside at a specified address, with or without conditions as to the hours to be spent there;

(f) requirements not to leave or enter specified places or districts without authorisation;

(g) requirements not to meet specified persons without authorisation;

(h) requirements to surrender passports or other identification papers; and

(i) requirements to provide or secure financial or other forms of guarantees as to conduct pending trial.

At Council of Europe level, the standards and requirements are provided by the following recommendations:

Committee of Ministers Recommendation No. R (99) 22, concerning prison overcrowding and prison population inflation:[30]

12. *The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this*

[27] *Buzadji v. The Republic Moldova*, no. 23755/07, 5 July 2016.

[28] *Official Journal of the European Union*, C422/13, 16/12/2019.

[29] See note 5.

[30] Adopted by the Committee of Ministers on 30 September 1999 at the 681st meeting of the Ministers' Deputies. Available at https://rm.coe.int/168070c8ad (accessed: 23/09/2025).

connection, attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

Committee of Ministers Recommendation Rec(2006)13[31]:

Preamble

The present rules are intended to:

b. encourage the use of alternative measures wherever possible;

33. *[1] The period of remand in custody prior to conviction, wherever spent, shall be deducted from the length of any sentence of imprisonment subsequently imposed.*

[2] Any period of remand in custody could be taken into account in establishing the penalty imposed where it is not one of imprisonment.

[3] The nature and duration of alternative measures previously imposed could equally be taken into account in determining the sentence.

Albanian criminal legislation appears to be in line with these requirements:

- Article 230, §1 explicitly states that pre-trial detention may be ordered only when all other measures are found inadequate because of the particular danger of the criminal offence and of the defendant;
- Article 245 CPC includes the obligation for the court to give reasoning for deeming inadequate the other precautionary measures; and Articles 232 to 239 CPC provide and regulate a panoply of less restrictive measures alternative to precautionary detention in prison, including, *inter alia*, house arrest, bail, periodic reporting to the police, restrictions on freedom of movement.

Although the legal framework is largely in line with international standards, a number of critical remarks may nevertheless be made.

First of all, although Article 245 CPC requires judges to provide clear reasoning when ordering detention, **this obligation is often fulfilled in a rather formalistic manner**.

In the legislation **there is no standalone 'prohibition of contact' (no-contact order)**, which is one of the essential alternatives to lower the risk of the suspect or accused person interfering with the course of justice by making arrangements with other suspects, victims or third parties.

While the regulation of **bail** can be regarded as a positive step, **its scope of application is regrettably narrow**. Article 236 CPC links bail exclusively to cases involving a risk of flight. Although bail is indeed the most significant instrument to mitigate such a risk, this does not preclude its suitability as an alternative measure where detention is sought on other grounds. A further limitation lies in the timing of bail: the statutory language indicates that bail may only be considered *after* a detention order has been issued. This approach conflicts with Article 5, §3 of the Convention and the UN Tokyo Rules, both of which require that alternatives be assessed *before* detention is imposed.

Moreover, the regulation risks going too far in another respect: under Article 236 CPC, **any breach of bail conditions automatically triggers re-imposition of pre-trial detention**. Such

[31] See reference above.

rigidity is inconsistent with the principle of proportionality. International standards encourage a graduated response, leaving room for other non-custodial measures rather than mandating detention in every instance of breach. Not all violations justify a return to full custody[32].

A more general comment, which applies to all possible alternatives, is that the **legislation does not include a mechanism for periodic review of the measures imposed**. There is a time-limit, similar to pre-trial detention, but there is no periodic automatic re-evaluation. On this point too, however, international standards such as the UN Tokyo Rules[33] and Courts's jurisprudence[34] are clear.

The main challenge regarding alternatives to pre-trial detention in Albania lies in their practical application by the courts.

Moreover, it is essential that alternatives are supported by a functioning framework that ensures their effectiveness in practice. On this point, Albania faces significant shortcomings, which understandably reduce the willingness of judges to rely on alternatives in place of detention. The absence of a functional electronic monitoring and adequate supervision systems in Albania raises concerns. It is essential that Law No. 10 494, of 22/12/2011, on electronic monitoring of persons whose movement is restricted by court decision, is fully enforced and becomes an effective alternative at the disposal of judges when deciding on pre-trial restrictive measures. With that aim, apart from the need to put in practice the technical means to enforce that law, the experts suggest adding to **§ 2 of Article 237 CPC, after the word "supervision", the following**:

> *"When ordering house arrest, even in lieu of pre-trial detention in prison, the judge, unless he/she deems it unnecessary given the nature and degree of the precautionary needs to be met in the specific case, prescribes control procedures using electronic or other technical means mentioned in Law N. 10 494 of 22.12.2011, subject to verification of their technical feasibility, including operational feasibility, by the judicial police.*
>
> *With the same order, the judge provides for the application of pre-trial detention in prison if the defendant refuses to consent to the use of the aforementioned means and instruments."*

Another important provision to be considered for its consequences is the above mentioned Article 57 of the Albanian CC, according to which one (1) day of pre-trial detention is equivalent to one and a half (1,5) days of the final prison sentence. Defendants who are convinced of a conviction at the final stage of the proceeding may be interested in not having an alternative measure, as the pre-trial detention could guarantee them a greater "discount" in the final conviction. This may also be a factor leading to a reduction in the use of non-custodial alternative measures.

Recommendations

[32] *Sulaoja v. Estonia*, no. 55939/00, 15 February 2005.

[33] Art. 6.2 UN Tokyo Rules.

[34] *Buzadji v. the Republic of Moldova*, 2016

- **Strengthen the use of alternatives to detention -** ensure that judges systematically assess and apply less restrictive measures before resorting to pre-trial detention, in line with the principle of detention as a last resort.
- **Broaden the scope of the bail regime -** expand the applicability of bail beyond flight risk, allowing it to serve as an alternative to detention in cases involving risks of reoffending or obstruction of justice.
- **Enable bail at the initial detention stage -** amend the CPC to ensure that courts assess the possibility of bail **before** ordering pre-trial detention or house arrest, in line with Article 5(3) of the Convention and the UN Tokyo Rules.
- **Establish an effective and functional electronic monitoring system**, following the standards laid down in Recommendation CM/Rec(2014)4 of the Committee of Ministers to Member States on electronic monitoring (Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies);
- **Fully enforce Law No. 10 494**, of 22/12/2011, on electronic monitoring of persons whose movement is restricted by court decision, either by putting in place the necessary technical means and by adapting Article 237, § 2 CPC.
- **Strengthen supervisory capacity -** enhance the resources, training, and authority of supervisory bodies responsible for monitoring compliance with alternative measures.
- **Introduce a no-contact order -** amend Article 232 CPC to include a "prohibition on contacting specific persons".
- **Change article 57 of the Criminal Code**, equating the reduction in the final sentence to the days spent in preventive detention, eliminating the premium currently in force.

3.6 Specific Consideration for Persons in a Vulnerable Situation

Article 230, §2 provides enhanced protections for pregnant women, elderly persons (over 70 years old), those with serious health conditions, and drug/alcohol addicts undergoing treatment, which is in line with minimum Convention requirements.

The criteria laid down in § 3 (reasons of special importance and crimes punishable by no less than ten (10) years of imprisonment) are stricter than the Convention baseline and supports the last-resort character of detention, which is consistent with UN Bangkok/Mandela Rules and Court's vulnerability lens.

As for minors, although Article 229 §3 mentions that the court shall consider the best interest of the child and the request for an uninterrupted concrete educational process, the rule of Article 230, §4 (minors accused of a misdemeanour may not be arrested) seems to fall short of the Court's standards - pre-trial detention of minors should be used only as a measure of last resort; it should be as short as possible and, where detention is strictly necessary, minors should be kept apart from adults[35].

[35] *Nart v. Turkey*, no. 20817/04, 6 May 2008, § 31; *Güveç v. Turkey*, no. 70337/01, 20 January 2009, § 109.

The CPC should be adapted to the requirements laid down in Directive (EU) 2016/800 of the European Parliament and of the Council, of 11 May 2016, on procedural safeguards for children who are suspects or accused persons in criminal proceedings: limitation of cases when pre-trial detention may be applicable to minors, mandatory assistance when detention/pre-trial detention is decided; suitability of the lawyer; adapted explanations.

With regards to women, pregnant women should be allowed to give birth in hospital outside detention facilities, and to keep infant children with them (always when compatible with the child's best interests).

Foreign nationals, apart from the rights already enshrined in Articles 34/b, § 1, c) and 123 (right to contact diplomatic/consular services and access to professional interpretation services), should have the right to information about legal assistance and about sentence transfer possibilities.

Another important issue relates to anti-radicalisation measures. A system of initial risk assessment for terrorist/extremist suspects should be put in place, together with a regular risk-assessments during detention. Staff should receive training to recognise signs of radicalisation and rehabilitation and deradicalisation programmes should be put in place.

Recommendations

- Establish that **pre-trial detention of minors** should be used only as a measure of last resort; it should be as short as possible and, where detention is strictly necessary, minors should be kept apart from adults;
- **Consecrate procedural safeguards for children**: limitation of cases when pre-trial detention may be applicable to minors, mandatory assistance when detention/pre-trial detention is decided; suitability of the lawyer; adapted explanations;
- For **women**, allow pregnant women to give birth in hospital outside detention facilities, and to keep infant children with them (always when compatible with the child's best interests);
- **Establish that foreign nationals** have the right to information about legal assistance and about sentence transfer possibilities;
- **Anti-radicalisation measures** must be put in place; a system of initial risk assessment for terrorist/extremist suspects, together with regular risk-assessments during detention; training for staff to recognise signs of radicalisation; put in place rehabilitation and deradicalisation programmes.

3.7 Complaints and remedies

Article 5, § 5 of the Convention states that everyone who has been the victim of arrest or detention in contravention of the provisions of that article shall have an enforceable right to compensation.

Article 268 CPC includes the right to compensation for unjust imprisonment, namely:

- to whoever is declared innocent by a final court decision, except in cases where it is proven that the wrongful decision or failure to discover the unknown fact in due time was caused wholly or in part, by the person himself/herself.

- in cases of illegal detention, irrespective of the culpability of the person.
- in cases of persons whose cases have been dismissed by the court or the prosecutor.

The request for compensation must be submitted within three years.

The compensation amount, the method for its calculation, and the cases of house arrest compensation, are established by special law. The inclusion of house arrest must be regarded as a positive aspect.

Considering these rules, Albanian criminal legislation guarantees the principle of the right to compensation for those who are subject to unjust detention, in accordance with article 5, § 5 of the Convention.

However, as regards the concrete application of the right to compensation, reference is made to a 'special law'. Albania's Law no. 9381, 28.04.2005 *"On compensation for unjust imprisonment"* is the operative act on eligibility for compensation. Courts assess earnings and circumstances, but the law imposes ceilings, namely up to 3,000 ALL/day for pre-trial detention, up to 2,000 ALL/day for imprisonment. House arrest is capped at no more than half of the imprisonment rate of the imprisonment rate (≤ 1,000 ALL/day), what is very limited, especially for long periods under house arrest.

It is important that this 'special law' is fully enforceable and provides a concrete mechanism for calculating the right to compensation, including non-pecuniary damages.

A last remark is about the final payment of the compensation. This should be guaranteed and safeguarded with timeframes.

Recommendations

- **Review limitations and exceptions -** reconsider restrictive exclusions, such as denying compensation when the wrongful decision was "caused wholly or in part" by the person.
- **Revise the special law on compensation ceilings -** update Law No. 9381/2005 to ensure compensation levels are realistic and proportionate to actual harm. Compensation should adequately reflect both **pecuniary and non-pecuniary damages**.
- **Explicitly include house arrest on equal footing with pre-trial detention.**
- **Guarantee effective enforcement of compensation awards -** introduce safeguards ensuring that compensation decisions are **paid promptly**, with statutory deadlines and mechanisms to prevent administrative delays.
- **Ensure transparency and accessibility -** provide clear procedural rules and accessible guidance for applicants on how to file compensation claims. Legal aid should be available to ensure that vulnerable individuals can effectively claim their rights.

4 CROSS-CUTTING ISSUES

4.1 Data Collection

Two sets of statistical data were provided to the experts.

The first was a general document titled *Information on Pre-trial Detention* from July 2025.

What stands out in these admittedly very general figures is the particularly high ratio of persons under pre-trial detention compared to the number of residents in Albania. It should be noted that with an arrest rate of 2,623 persons out of a population of 2,771,508, there is a ratio of 94.6 persons per 100,000 inhabitants in pre-trial detention. This ratio is particularly high compared to the EU Member States. In Belgium, this ratio can currently be estimated at around 10 persons per 100,000 inhabitants. Although, it is advisable to be particularly careful about drawing conclusions on the basis of very rudimentary statistics, this seems to be a particularly high figure.

The received figures reveal also a striking gender imbalance: men account for 98.2% of all pre-trial detainees (2,578 of 2,623). This disparity is even more pronounced than expected. Only 9 minors are held in pre-trial detention, representing 0.3% of the total pre-trial detainee population. This is a positive finding, assuming that alternatives within the juvenile justice system are functioning effectively.

The statistics also allow some conclusions about the types of crimes. Narcotics-related offenses constitute the largest category (887 cases, approximately 34% of the total), pointing either to a high prevalence of drug-related crime or to stringent drug policies that result in pre-trial detention. Murder cases (231) also form a significant share, reflecting the use of detention in serious violent crime cases where public safety is at stake. Theft cases (392), the second-largest category, raise proportionality concerns—unless they are tied to organised crime or criminal networks.

One of the key issues in Albania is the length of pre-trial detention. The average of 253 days (8.4 months) is substantial and likely exceeds international standards. For comparison, in Belgium pre-trial detention lasting more than three months is subject to close scrutiny. Only under specific conditions—such as repeat offending, prior convictions, serious mental health concerns, involvement with organised crime, or clear threats to public security—may detention extend beyond this point. At six months, detention becomes a critical threshold, and further extension is justified only in exceptional circumstances, such as homicide cases or particularly serious cross-border organised crime.

The situation is even more striking in the Special Court against Corruption and Organised Crime (GJKKO), where the average detention period reaches 616 days (over 20 months). While such lengthy detentions may reflect the complexity of organised crime and corruption cases, they also point to excessive delays. Although 1,611 individuals were released within a seven-month period, the lengthy average detention times indicate systemic inefficiencies.

Consequently, the gap between ordinary and special court processing times does not allow for meaningful comparisons, as the types of cases handled by these institutions are fundamentally different.

The second received statistics were the Statistical Data on Cases with Pre-trial Detainees – 2024 and January–June 2025. There are two datasets included, namely 'Cases with pre-trial

detainees - Courts of First Instance of General Jurisdiction (excluding Tirana)' and 'Arrest with Prison – Measures: Courts of First Instance of General Jurisdiction'. The distinction between datasets is unclear and the datasets are unclear. As such it is impossible to come to founded conclusions, based on such information. If you compare two datasets and the second one includes cases of Tirana, it seems that majority of pre-trial detentions are linked to Tirana. This suggests an over-centralised system that may cause delays.

Another observation, which, in view of the aforementioned points, can be made very cautiously, is that the appeal rate in the Special courts is higher than in the courts of General Jurisdiction. The higher appeal rate in special courts suggests either more contested prosecutions or defendants with greater resources to challenge detention decisions in corruption and organized crime cases. In any case with 37% to 44% of cases reaching appeal courts, the system is overburdened. The latter has without any doubt an impact on the functioning of the system and the observed extended detention.

The Special court handles fewer cases, but the complexity (2,61 detainees per case) and longer processing times, indicate the need for specialised resources.

What in fact is the clearest and most important observation is that **clear / detailed monitoring is urgently needed**. With Albania's pre-trial detention rate of 94.6 persons per 100,000 inhabitants being nearly four or five times higher than the EU average, robust monitoring is essential to identify specific areas requiring reform. The exclusion of Tirana court data—which appears to handle approximately 56% of all general jurisdiction cases—creates a massive blind spot in national statistics. The variation in data collection periods, court categorisations, and definitional frameworks makes trend analysis nearly impossible and prevents accurate assessment of system performance. With average detention periods of 253 days (general) to 616 days (special courts), systematic monitoring is crucial to identify cases approaching dangerous detention thresholds and prevent violations of reasonable time standards. Enhanced monitoring is not merely an administrative improvement but a fundamental requirement. Greater transparency is urgently needed.

In order to tackle the high numbers of pre-trial detention, **Albanian authorities must conduct a thorough and comprehensive survey, covering not only statistical and empirical data, but also thematic issues**. A special team should be formed to conduct such a survey, following the model proposed by the Council of Europe and the European Union in the 2017 *"Pre-Trial Detention Assessment Tool"*[36]. This would be an essential tool to foster the judicial culture changes that will be referred below.

Recommendations

- **Conduct a comprehensive survey on pre-trial detention**, following the guidelines established by the Council of Europe and the EU in the document *"Pre-Trial Detention Assessment Tool"*.

[36] Available at https://rm.coe.int/pre-trial-detention-assessment-tool/168075ae06 (last accessed on 18/09/2025).

4.2 The need for a change in judicial culture – a global approach

The analysis conducted has revealed that the Albanian legislation is essentially in line with the international standards regarding pre-trial detention. The recommendations formulated above would, in the experts' view, improve the regime, but do not affect the main principles of the already existing guarantees.

Nevertheless, Albania shows one of the highest ratios of pre-trial detainees in Europe – according to the 2024 SPACE report, Albania has a 58% rate of pre-trial detention, the highest among the countries surveyed[37]. Given the figures of neighbouring countries, this cannot be explained by some kind of regional trend – Bulgaria (5%), North Macedonia (12%) and Romania (13%) are among the countries with the lowest pre-trial detainee ratios[38].

It stems from the analysis carried out in this guiding paper that there is a clear discrepancy between "law in the books" and "law in action": although the legal regime in Albania follows the main international standards, its application does not prevent a clear overuse of pre-trial detention.

The gap between legislation and practice regarding pre-trial detention is a common feature in several countries, from different judicial traditions. The tendency to tackle the problem exclusively through legislative changes has proven unsuccessful on several occasions.

Consider the example of England and Wales. A 2016 study[39] identified several shortcomings in pre-trial detention decisions. Although the law had all the guarantees and followed the international standards, the practice of courts diverged from the law:

- Courts devoted little time to pre-trial detention hearings, caused in part by high caseloads and a lack of resources;
- The provision of relevant information to defence lawyers and even to courts was often limited and very dependent on case summaries provided by the police, leading to decisions being taken without full knowledge of the relevant facts;
- Decisions often did not mention specifically the facts of the case and the circumstances of the defendant, due to the increasing complexity of the law on pre-trial detention, leading many defendants not to understand why they were being remanded in custody and many defence lawyers to believe that the courts favoured the prosecution;
- There was a lack of information on alternatives to detention and a lack of confidence that conditions attached to non-reclusive measures would be adequately enforced, leading to an increase of pre-trial detention decisions;
- There was in practice a shift of the burden of proof in the revisions of pre-trial detention decisions, imposing on the defendants the burden of persuading a subsequent court that they should be released.

[37] Aebi, M. F. & Cocco, E. (2025). *SPACE I - 2024 – Council of Europe Annual Penal Statistics: Prison populations. Council of Europe*, available at https://wp.unil.ch (accessed: 18/09/2025). See also *Prisons and Prisoners in Europe 2024: Key Findings of the SPACE I survey*, available at https://wp.unil.ch, (accessed: 18/09/2025).

[38] Ibid.

[39] Cape, Ed; Smith, Tom, *The practice of pre-trial detention in England and Wales: Research report*, Bristol: University of the West of England, 2016, available at https://uwe-repository.worktribe.com, (accessed: 18/09/2025).

Following this study and its recommendations, in 2017 amendments were introduced to the Criminal Procedure Rules, destined to ensure "sufficient time" for the decision-making on pre-trial detention decisions, the access of the defence to all the relevant evidence and the thoroughness of the reasoning behind the decisions[40].

This legislative reform proved, however, insufficient. A study conducted in 2020 revealed that the changes in the Criminal Procedure Rules did not alter the day-to-day work of courts, namely with regards to the time dedicated to pre-trial detention hearings and the reasoning of the decisions. The perception of the reasons behind this lack of enforcement of the new rules diverged: while magistrates considered that the new laws only confirmed what they were already previously doing (so they were unnecessary), lawyers considered that courts simply ignored the changes and so the problems remained unsolved[41].

Comparative research has also shown that despite differences between law systems, the problems affecting pre-trial detention decisions are common and difficult to tackle only through legislative reform. Even in countries with different legal and judicial systems, the issues regarding the reasoning of decisions, the access to evidence, the tendency to favour the prosecution and detention or the failure to consider alternatives to detention are a constant feature[42].

More than the legislative framework, it is the judicial/legal culture that has a decisive influence on how pre-trial detention is applied. Research on Ireland and the reasons behind its low pre-trial detention rates[43] has concluded that it is the result not only of a strong and freedom-oriented legislative framework, but also of a common understanding by practitioners (judges, prosecutors and lawyers) of the role and scope of pre-trial detention. As that study concludes, *"efforts to reduce the use of PTD must be targeted not only at legislation and legal norms, but also judicial and legal training and the more intangible elements of how legal practitioners view their role and the objectives of PTD decision-making"*[44].

This reality shows that **if Albania aims to tackle the high ratio of pre-trial detention, it should focus not exclusively on legislative reform, but give more attention to judicial and legal culture**. If the changes are only made at the level of legislation, they will most likely not succeed in reducing the high level of use of pre-trial detention.

A global approach is needed to address the issue: **an institutional strategy should be put in place jointly by the Ministry of Justice and the judicial governance bodies, with clear mission, vision, goals and strategic objectives (short, medium and long-term)**.

Strategic planning in the public sector is increasingly recognised as an essential management tool extending beyond the mere definition of effective resource allocation. John M. Bryson defines it as *"a disciplined effort to produce fundamental decisions and actions that shape and guide*

[40] The Criminal Procedure (Amendment) Rules 2017, available at www.legislation.gov.uk (accessed: 18/09/2025).

[41] Smith, T., *The Practice of Pre-trial Detention in England & Wales - Changing Law and Changing Culture.* European Journal on Criminal Policy and Research, 28, 435–449 (2022). Available at www.doi.org (accessed: 18/09/2025).

[42] See the analysis of the Dutch and English/Welsh systems made by Dhami, M.K.; van den Brink, Y.N., *A Multi-disciplinary and Comparative Approach to Evaluating Pre-trial Detention Decisions: Towards Evidence-Based Reform. European Journal on Criminal Policy and Research*, 28, 381–395 (2022). Available at www.doi.org (accessed: 18/09/2025).

[43] Rogan, M., *Examining the Role of Legal Culture as a Protective Factor Against High Rates of Pre-trial; Detention: the Case of Ireland. European Journal on Criminal Policy and Research*, 28, 425–433 (2022). Available at www.doi.org (accessed: 18/09/2025).

[44] Ibid.

what an organization is, what it does, and why it does it"[45]. The importance of developing a strategic plan is therefore multidimensional and influencing multiple aspects of the organisation's functioning. The United Nations Development Program (UNDP), referring specifically to the justice sector, describes a strategic plan as one that, among other goals*:*

- provides an opportunity to reflect the past and think anew to take up future challenges;
- defines a sense of purpose and thus establishes the reasoning for existence also in future;
- establishes a departure from ad-hocism and moves to more deliberate and learning oriented;
- brings consistency of all organisational works towards declared objectives;
- ensures efficient use of resources for more effectiveness as it questions the existing practices in view of the needs;
- establishes a basis for performance measurement, review and change;
- establishes transparency among all staff members and towards external constituents".[46]

An institutional strategy is not a mere list of isolated measures – it starts with an analysis of the current situation, followed by a clear definition of the objectives and a planning of the steps to be taken in order to reach those objectives. This approach ensures that all the activities are coherent and aligned with the mission.

An institutional strategy must therefore answer three fundamental questions:

- where do we currently stand?
- where do we aim to go?
- what actions must be undertaken to reach that goal?

Each of these questions corresponds to the three (3) parts which the institutional strategy must be composed of:

- strategic analysis (where do we currently stand);
- strategic framework (where do we aim to go);
- strategies (what actions must be undertaken to reach that goal).

In this framework, the experts believe that the governmental and the judicial governance authorities in Albania should define a common institutional strategy.

Based on the analysis already conducted, which shows that Albania has the highest pre-trial detention ratio in the Council of Europe area, **the long-term aim should be to reduce that ratio to levels compatible with the Council of Europe standards**.

[45] *Strategic Planning for Public and Nonprofit Organizations: A Guide to Strengthening and Sustaining Organizational Achievement*, 5th Edition, Wiley, December 2017.

[46] *Strategic Planning of the Justice Sector Institutions - A Handbook for Planner*, UNDP / Verulam Associates Bangladesh, Ltd, 2014, available at www.undp.org (accessed: 17/09/2025).

Developing an institutional strategy encompasses the definition of vision, mission and values, from which clear strategic objectives are derived. To this extent, these could be, in the experts' view, the vision, mission and values to be defined:

- ***vision*:** to achieve in the long-term a ratio of pre-trial detention in Albania that is within the range of the lowest levels among the member states of the Council of Europe;
- ***mission*:**
    - Promoting the respect for fundamental rights, the law, the Constitution, the European Convention on Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union;
    - Ensuring the delivery of a quality, effective and fair justice service;
    - Building trust in the judicial system among citizens and legal practitioners.
- ***values*:**
    - Independence;
    - Integrity;
    - Efficiency;
    - Quality
    - Transparency and Accountability.

Based on this strategic framework, these **main *Strategies* or *Strategic Objectives*** could be defined:

1. Adjusting the legal regime of pre-trial detention to favour non-custodial measures;
2. Building trust among judicial actors on the efficiency of non-custodial measures;
3. Building public trust in society in the efficiency of the system and on non-custodial measures.

Under each of these strategic objectives, concrete measures should be established, divided by short, medium and long-term deadlines, with the definition of the bodies/individuals responsible for its implementation.

Strategic objective 1. should include:

- The recommendations made above regarding individual aspects of the regime, reinforcing the principle that freedom is the rule and pre-trial detention is the exception and, to that end, it is for the prosecution to bear the burden of proof of the need for that exceptional measure and for the judge to detail the reasons why non-custodial measures are not sufficient or adequate;
- The establishment of an effective and functional electronic monitoring system, as an alternative to pre-trial detention.

Strategic objective 2. should include:

- Intensive continuous training for judges, prosecutors and lawyers on the international

standards on pre-trial detention, in collaboration with the Council of Europe (namely its HELP Programme – *Human Rights Education for Legal Professionals*) and the European Union (the *European Judicial Training Network* could be a valuable partner);

- Once the electronic monitoring system is in place, conduct on-site awareness-raising activities for judges and prosecutors, to show them that the system works and is reliable, thereby promoting its adoption by them;
- The establishment of a permanent committee to monitor pre-trial detention, composed of members of the judiciary, academia and government/parliament, to analyse and respond in a timely manner to any changes that may be necessary.

Strategic objective 3. must include the design of a media strategy intended to:

- raise awareness among the general public that pre-trial detention must not be seen as an 'early punishment' and that Albania has one of the worst records in Europe in this regard, thus generating public awareness of the need for change;
- show examples of countries where electronic monitoring has been implemented and works, thereby boosting public confidence in these systems and consequently reducing public pressure on actors in the judicial system to adopt custodial measures;
- continuously provide the general public with reliable and up-to-date data on the number of criminal proceedings in which non-custodial measures have been adopted and their success rate.

The development of this institutional strategy should be entrusted to a taskforce appointed by the Ministry of Justice/Parliament, with a diverse composition (politicians, academics and members of the judiciary) and a time-limited mandate.

As already mentioned, each of the measures must be accompanied by the **definition of the person/group of persons in charge of its implementation** and the respective **deadlines**, as well as **assessment indicators** that allow verification of the level of implementation of each individual measure.

Monitoring of the execution of the plan is also essential – periodic reports should be made by the taskforce and presented to Parliament on the level of execution of the strategic plan, the reasons for the non-implementation of some measures and the amendments/adaptations needed.

The experts believe that only through this coordinated and global approach and not by relying exclusively on legislative changes – will Albania be able to tackle the persistent problem of its high pre-trial detention ratio.

Recommendations

- **Define an institutional strategy aiming to reduce the ratio of pre-trial detention** in Albania to levels compatible with Council of Europe standards, with the definition of vision, mission and values, from which clear strategic objectives derive, together with responsible persons and assessment indicators.

5 CONCLUSIONS

Summary table of recommendations

I. **PRE-TRIAL DETENTION: LEGAL FOUNDATIONS AND SAFEGUARDS**	1. **Grounds and Authorisation for Detention**	- **Clarify vague legal concepts** - develop clear statutory definitions or judicial guidelines for vague terms such as "important reasons" or "particular danger" (Articles 228–230 CPC). - **Align terminology with international standards and Commission Recommendation (EU) 2023/6816,** ensuring predictability and legal certainty. - **Adopt explicit offence-thresholds for detention** - consider amending the CPC to introduce a minimum custodial sentence threshold for ordering pre-trial detention (in this GP it is proposed a three-year threshold, but at least one year, as recommended in Commission Recommendation (EU) 2023/681)) - **Strengthen judicial reasoning requirements -** enforce Article 245 CPC by requiring judges to provide individualised, case-specific reasoning when ordering pre-trial detention - **Introduce structured risk-assessment tools** to support judges in evaluating whether less intrusive measures could adequately address risks.

		- **Require Courts to document explicitly in decisions why measures such as bail, reporting duties, or electronic monitoring would be insufficient.**
	2. Hearing and Judicial Oversight	- **Improve the quality of judicial reasoning** - provide training and monitoring to ensure that detention orders contain detailed, individualised reasoning rather than formulaic references - Reasoning should explicitly address why alternatives are inadequate and why detention is strictly necessary. - **Invest in judicial capacity-building** - develop continuous professional training for judges and prosecutors. - **Extend the deadline for lodging an appeal** of pre-trial detention decisions from five to ten days. - **Strengthen appellate oversight** - enhance the effectiveness of appeal mechanisms by ensuring appellate Courts rigorously scrutinize reasoning at first instance. - **Clarify the scope of appellate review** - amend Article 249 CPC to explicitly state that appellate Courts must examine both factual and legal elements of the detention order, including the available evidence, the grounds invoked (flight risk, risk of reoffending,

		obstruction of justice), and the proportionality of detention in light of alternatives. - **Guarantee the right to be heard in appeal** - codify that both the suspect and their lawyer must be heard during the appeal proceedings. - **Introduce limited flexibility in time limits** - maintain the ten-day deadline for appellate review but allow narrowly defined extensions upon request of the defence. - **Ensure immediate release power for appellate Courts**. - **Safeguard defence rights when new grounds are introduced** - if appellate Courts may base their decision on grounds other than those raised before the court issuing the measure, the CPC should require that the defence is notified and given an opportunity to contest these new grounds.
	3. Duration and Periodic Review of Detention	- **Limit maximum durations** – Set strict maximum time limits that may only be exceeded in truly exceptional cases, and only when supported by concrete, individualised, and well-reasoned justifications. - **Enhance review quality standards** – Establish stronger criteria for the depth, independence, and reasoning of reviews to ensure they are substantive rather than formalistic.

		- **Ensure that periodic review is focused on the evaluation/consideration of whether pre-trial detention is still necessary**, proportionate and reasonable and not only based on the progress of the investigation. - **Establish a rule setting a general principle that the Prosecutor must also seek evidence in favour of the person under investigation** and promptly inform the court: - **Eliminate the temporal foreclosure of 6 months before challenging the duration of the detention on remand** (the only limit should be the prohibition to repeat arguments which have already been submitted and debated). - **Establish that the time limit starts to run as the same moment of the previous precautionary measure also for different acts committed prior to the issuance of the first warrant** for which there is a connection pursuant to Article 55 CC. - **Establish an equivalence between house arrest and pre-trial detention** and **change the deduction in the final conviction**, so that one day of pre-trial/house arrest equals one day in the final conviction.
	4. Access to Legal Counsel and other Procedural Safeguards	- **Codify safeguards for waiver of counsel** - if in the Albanian system there is the possibility

		of a waiver of legal counsel, amend the CPC to require that any waiver of the right to a lawyer be informed, unequivocal, and voluntary, recorded in writing (or audio-video), after the letter of rights is explained in clear and simple language, and confirmed by the suspect's signature. - **Strengthen the lawyer's role during questioning** - explicitly provide in the CPC that the defence lawyer's presence is not passive, but active, enabling him/her to intervene during the interrogation, in order to safeguard legal privilege, clarify questions or answers, and object to improper or coercive questioning techniques, and also at the moment of deciding on the measure, eventually proposing alternatives to pre-trial detention, without hindering the efficiency of the questioning. - **Guarantee timely access to case materials** - ensure that suspects and their lawyers have prompt access to essential documents and evidence necessary to challenge the legality of detention and the substance of accusations. - **Implement impartial duty-lawyer systems** - establish a bar-managed, 24/7 duty-lawyer rota system with rapid response times, to prevent police influence in lawyer selection

		and guarantee immediate and independent legal assistance. - **Improve facilities for effective assistance** - require private consultation space in all police stations to protect confidentiality between lawyers and suspects. - **Mandate audio-video recording of police interviews** - introduce compulsory recording of all interrogations, documenting both the presence/effective participation of lawyers and any waiver of rights, to safeguard procedural fairness and evidentiary reliability.
	5. Alternatives to Pre-trial Detention	- **Strengthen the use of alternatives to detention** - ensure that judges systematically assess and apply less restrictive measures before resorting to pre-trial detention, in line with the principle of detention as a measure of last resort, - **Broaden the scope of the bail regime** - expand the applicability of bail beyond flight risk, allowing it to serve as an alternative to detention in cases involving risks of reoffending or obstruction of justice. - **Enable bail at the initial detention stage** - amend the CPC to ensure that courts assess the possibility of bail before ordering pre-trial detention or house arrest, in line with Article

		5(3) of the Convention and the UN Tokyo Rules. - **Establish an effective and functional electronic monitoring system** - develop and implement a reliable electronic monitoring infrastructure to strengthen the effectiveness of non-custodial measures, following the standards laid down in Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring (Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies).); - **Fully enforce Law No. 10 494, of 22/12/2011**, on electronic monitoring of persons whose movement is restricted by Court decision, either by putting in place the necessary technical means and by adapting Article 237, § 2 CPC. - **Strengthen supervisory capacity** - enhance the resources, training, and authority of supervisory bodies responsible for monitoring compliance with alternative measures. - **Introduce a no-contact order** - amend Article 232 CPC to include a "prohibition on contacting specific persons". - **Change article 57 of the Criminal Code**, equating the reduction in the final sentence to

		the days spent in preventive detention, eliminating the premium currently in force.
	6. Specific Consideration for Persons in a Vulnerable Situation	- Establish that **pre-trial detention of minors should be used only as a measure of last resort**; it should be as short as possible and, where detention is strictly necessary, minors should be kept apart from adults. - **Consecrate procedural safeguards for children**: limitation of cases when pre-trial detention may be applicable to minors, mandatory assistance when detention/pre-trial detention is decided; suitability of the lawyer; adapted explanations. - For **women**, allow pregnant women to give birth in hospital outside detention facilities, and to keep infant children with them (always when compatible with the child's best interests). - Establish that **foreign nationals** have the right to information about legal assistance and about sentence transfer possibilities. - **Anti-radicalisation measures must be put in place**; a system of initial risk assessment for terrorist/extremist suspects, together with regular risk assessments during detention; training for staff to recognise signs of

		radicalisation; put in place rehabilitation and deradicalisation programmes.
	7. Complaints and Remedies	- **Review limitations and exceptions** - reconsider restrictive exclusions, such as denying compensation when the wrongful decision was "caused wholly or in part" by the person. - **Revise the special law on compensation ceilings** - update Law No. 9381 of 28/04 2005 to ensure that compensation levels are realistic and proportionate to actual harm. Compensation should adequately reflect pecuniary and non-pecuniary damages. - **Explicitly cover house arrest on equal footing**. - **Guarantee effective enforcement of compensation awards** - introduce safeguards ensuring that compensation decisions are paid promptly, with statutory deadlines and mechanisms to prevent administrative delays. - **Ensure transparency and accessibility** - provide clear procedural rules and accessible guidance for applicants on how to file compensation claims. Legal aid should be available to ensure that vulnerable individuals can effectively claim their rights.

II. **CROSS-CUTTING ISSUES**	**1. Data Collection**	-**Conduct a comprehensive survey on pre-trial detention**, following the guidelines established by the Council of Europe and the EU in the document "Pre-Trial Detention Assessment Tool".
	2. The need for a change in judicial culture – a global approach	- **Define an institutional strategy aiming to reduce the ratio of pre-trial detention** in Albania to levels compatible with the Council of Europe standards, with the definition of vision, mission and values, from which clear strategic objectives derive, together with responsible persons and assessment indicators.