THE REASONING OF COURT DECISIONS IMPOSING PREVENTIVE ARREST / HOUSE ARREST IN THE REPUBLIC OF MOLDOVA IN 2022 AND 2023

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

THE REASONING OF COURT DECISIONS IMPOSING PREVENTIVE ARREST / HOUSE ARREST IN THE REPUBLIC OF MOLDOVA IN 2022 AND 2023

Prepared by:

Jeremy McBride and Vadim Vieru on the basis of submissions and data collected by

Ion Graur

Nicoleta Hriplivii

Alexandru Cebanas

Vasile Cantarji

Council of Europe

This work was developed and published within the framework of the Project "Strengthening the Human Rights Compliant Criminal Justice System in the Republic of Moldova phase II", funded by the Council of Europe Action Plan for the Republic of Moldova 2025-2028.

All other correspondence concerning this document should be addressed to Division I, Human Rights and Justice Co-operation Department, Directorate of Human Rights, Directorate General Human Rights and Rule of Law.
E-mail: dgi-coordination@coe.int

This publication has not been copy-edited by the DPIV Editorial Unit to correct typographical and grammatical errors.

Cover design and layout:
IS Tipografia Centrala
1 Florilor St., Chisinau
Republic of Moldova
www.tipografiacentrala.md

Cover photos: © Shutterstock.com
Council of Europe Publishing
F-67075 Strasbourg Cedex
http://book.coe.int

Contents

EXECUTIVE SUMMARY

This Report provides the results of research into the way in which courts in the Republic of Moldova reason their decisions when determining both applications by prosecutions for the imposition of preventive measures involving deprivation of liberty, i.e. preventive arrest and house arrest, and appeals against the grant or refusal of such measures.

It first reviews the requirements under the European Convention on Human Rights for the imposition of preventive measures affecting the right to liberty of the person under Article 5 in the course of criminal proceedings and, in particular, the reasoning to be given when imposing such measures and determining appeals against the grant or refusal of them, as elaborated in the case law of the European Court. It then gives an overview of the legislative framework for the imposition of preventive measures in the Republic of Moldova.

Thereafter, it explains the methodology followed for undertaking the research, identifying the period that was covered, the way in which the case files examined were selected and the way in which the examination of those decisions was conducted. This is followed first by a presentation of certain national data relating to the two forms of preventive measure entailing a deprivation of liberty – preventive arrest and house arrest and – then by an analysis of the findings of the different stages in the proceedings that dealt with the selected cases and the problematic aspects that need to be addressed.

The Report finds that there has been some move to achieving greater compliance with the requirements of the European Court relating to the imposition of preventive measures. Nonetheless, there was seen to be a clear preference for the imposition of preventive arrest and house arrest as preventive measures, with no great difference between the approach of prosecutors and of investigating judges in terms of resorting to such measures at the stage of the proceedings when these were under consideration.

There was also not much difference between prosecutors and investigating judges as regards the extent to which their submissions or decisions:

- *did not refer to any evidence supporting the grounds that they relied upon for the imposition of preventive measures;*
- *failed to apply certain key elements involved in the imposition of preventive measures in line with the case law of the European Court; and*
- *appeared to rely upon copy-pasted material.*

The analysis of the initial submissions of prosecutors, as well as their later ones in the same cases, shows a number of other shortcomings as regards the imposition of preventive measures entailing a deprivation of liberty:

- *some tendency also to invoke grounds for imposing preventive measures that are not considered relevant for this purpose by the European Court;*
- *insufficient consideration in some cases of the proportionality of imposing preventive measures involving a deprivation of liberty, the potential relevance of the accused's condition in proposing that they be*

imposed and, at the later stage of the proceedings, the length of deprivation of liberty already endured; and
- *reliance placed on a reference to a Recommendation of the Committee of Ministers of the Council of Europe (Recommendation Rec R (80) 11) that has been replaced by a more recent one, Recommendation Rec(2006)13).*

Although the investigating judges were somewhat more ready than prosecutors to consider preventive measures other than preventive arrest and, indeed, slightly to resist submissions by prosecutors, there were still shortcomings in their approach to the substantiation both of the rejection of submissions by the accused or their lawyers and of the grounds for imposing such measures.

At the later stage, there was at times a failure by investigating judges to:

- *provide specific reasons for imposing preventive measures other than the preventive arrest/house arrest previously imposed;*
- *evaluate the current behaviour and conduct of the accused while under previous preventive measures;*
- *evaluate the current effectiveness and adequacy of previously imposed preventive measures; and*
- *consider, or at least to demonstrate that they had considered the appropriateness of the length of the deprivation of liberty endured by the accused and to address the adequacy of the handling of the investigation in them.*

Furthermore, at least some of the investigating judges – like the prosecutors – seemed strangely unaware of the more recent Committee of Ministers Recommendation on the issues to be determined by them and were clearly not always conversant with the approach of the European Court in this matter.

The approach changed to some extent at the appellate stage as regards the nature of the measures to be imposed, with a greater reluctance in the appellate courts to apply less draconian preventive measures than preventive arrest.

However, there remained weaknesses in the degree of substantiation, the readiness to expect new evidence or to take a fresh approach to the reasoning that underpinned decisions. In addition, familiarity with or readiness to act in accordance with the case law of the European Court was still not always evident.

Furthermore, there was also limited consideration of the adequacy of the steps taken in the investigation and the length of the deprivation of liberty already endured. Moreover, the reliance by some courts on Recommendation Rec(80)11 was again surprising. Although overall submissions and decisions were seen in many instances to be consistent with the case law of the European Court, this was still not always the case.

The Report considers that the problems did not seem to result from the substance of the applicable legal provisions. Rather, more relevant seemed to be the approach of both prosecutors and judges to the handling of cases. Where this falls below the standards that have been clearly elaborated by the European Court, that appeared to stem in part from inadequate knowledge of the relevant standards but also from insufficient understanding as to how these should be applied in concrete situations and possibly the lack of real commitment to them. It may also be that workload is a factor in the way submissions are prepared and decisions adopted.

Certainly, there is scope for enhancing the reasoning skills of all involved but, in doing so, there is also a need to avoid exacerbating the general problem of copy-pasting seen at all stages of the process.

The Report recommends:

- *reviewing the adequacy of the initial training provided to intending judges and prosecutors as to the imposition of preventive measures in accordance with the requirements elaborated by the European Court;*
- *reinforcing the continuing training provided to judges and prosecutors with respect to those requirements;*
- *reinforcing such training by clear direction from the higher courts and the preparation of a reasoning*

checklist with respect to the elements to be satisfied when considering or proposing the imposition of preventive measures;

- *providing appropriate training also for existing and intending lawyers not only as to the relevant requirements but also as to how to demonstrate their applicability to their cases;*
- *considering the inclusion of effective reasoning skills training as part of the curriculum for those studying law at the university level;*
- *monitoring on an ongoing basis the decision-making with respect to the imposition of preventive measures;*
- *giving consideration as to how failure to fulfil the requirements of national legislation, as well as those elaborated by the European Court, might be taken into account in career development procedures and even, in the more extreme cases, where appropriate and proportionate disciplinary proceedings, but only failures performed intentionally or with gross negligence should give rise to disciplinary actions.*
- *revising the 24-month cumulative limit on non-custodial preventive measures in Article 176(5) of the Criminal Procedure Code; and*
- *assess the effectiveness of non-custodial preventive measures in addressing any risks justifying the imposition of preventive measures and, where necessary, adopt reforms to strengthen their use as credible alternatives to pre-trial detention and house arrest.*

The Annex I sets out the checklists used for the analysis of the case files examined and the second one provides a statistical analysis of the completed checklists.

A. INTRODUCTION

1. This Report is concerned with the results of research into the way in which courts in the Republic of Moldova reason their decisions when determining both applications by prosecutions for the imposition of preventive measures involving deprivation of liberty, i.e. preventive arrest and house arrest, and appeals against the grant or refusal of such measures.

2. The need for such research was identified by the Committee of Ministers on 7 June 2023 in its note on the execution of the Sarban group of cases, in which it stated:

> As concerns the reasoning of court decisions, it follows from the findings of the above-mentioned Council of Europe Study on the activity of the investigating judges in the Republic of Moldova in the period 2017-2021 that frequently the courts order detention on remand even if the prosecutor's arguments do not reach the necessary level to justify such a measure. The above and the fact that new complaints concerning alleged breaches of Article 5 § 3 continued to be communicated by the European Court in 2022, give an indication that the problem persists and that the respective Court's case-law principles are not fully applied at the domestic level. It would thus be useful if the Committee receives comprehensive information in this respect further investigating the root causes of the problem, based on empirical data on the current practices as to the reasoning of court decisions and the prosecutorial requests for detention on remand.

3. The problem of the adequacy of the reasoning of decisions concerned with the imposition of preventive measures involving deprivation of liberty is a longstanding one, as is evident from both the many applications to the European Court of Human Rights ("the European Court") in which this has been challenged and a previous study undertaken for the Council of Europe.[1]

4. However, in view of the suggestion made in the Committee of Ministers' note, it seemed appropriate to subject more recent decisions of investigating judges and appellate courts to scrutiny in order to establish to what extent, if at all, this is an ongoing problem.

5. In this Report, the term "accused" is used – for the sake of simplicity and regardless of the stage of the proceedings – to describe all the persons subjected to preventive measures except where there is discussion of national legislation, a quotation and in the research checklists which are linked to national legislation. Also, although "pre-trial detention" and "remand in custody" are the terms most frequently used in connection with deprivation of liberty under Article 5(3) of the European Convention on Human Rights ("the European Convention"), the term "preventive arrest" is used in the research checklists, reflecting the language of the Criminal Procedure Code of the Republic of Moldova ("Criminal Procedure Code").

6. The Report first reviews the requirements under the European Convention for the imposition of preventive measures affecting the right to liberty of the person under Article 5 in the course of criminal proceedings and, in particular, the reasoning to be given when imposing such measures and determining appeals against the grant or refusal of them, as elaborated in the case law of the European Court. It then gives an overview of the legislative framework for the imposition of preventive measures in the Republic of Moldova.

---

1 *Report on the Research on the Application of Pre-Trial Detention in the Republic of Moldova*, (2020).

7. Thereafter, it explains the methodology followed for undertaking the research, identifying the period that was covered, the way in which the case files examined were selected and the way in which the examination of those decisions was conducted. This is followed first by a presentation of certain national data relating to the use of preventive and house arrest and then by an analysis of the findings of the different stages in the proceedings that dealt with the selected cases and the problematic aspects that need to be addressed.

8. The Report concludes with an overall assessment of the reasoning employed both in submissions by prosecutors when seeking the imposition of preventive measures involving deprivation of liberty and the rulings adopted with respect to them by investigating judges and appellate courts, together with suggestions as to how the problems identified might be most appropriately addressed. The first Annex sets out the checklists used for the analysis of the case files examined and the second one provides a statistical analysis of the completed checklists.

9. The Report has been prepared by Jeremy McBride,[2] together with Vadim Vieru,[3] at the request of the Council of Europe project "Strengthening the human rights compliant criminal justice system in the Republic of Moldova phase II".

2 Barrister, Monckton Chambers, London.

3 Lawyer, Promo-LEX Association, Chisinau.

B. REQUIREMENTS UNDER THE EUROPEAN CONVENTION[4]

10. In applying Article 5(3) of the European Convention, the European Court has established that the court must always be first satisfied that there is a reasonable suspicion that the person before it has committed an offence.[5]

11. In this connection, it is essential for the courts concerned – as well as the prosecutors making submissions to them – to base their assessment as to the existence of a reasonable suspicion by reference to the following points elaborated by the European Court:

> 317. As a rule, problems with the "reasonableness of suspicion" arise at the level of the facts. The question then is whether the arrest and detention were based on sufficient objective elements to justify a "reasonable suspicion" that the facts at issue had actually occurred (see *Włoch*, cited above, §§ 108-09). In addition to its factual side, the existence of a "reasonable suspicion" within the meaning of Article 5 § 1 (c) requires that the facts relied on can be reasonably considered to fall under one of the sections of the law dealing with criminal behaviour. Thus, there could clearly not be a "reasonable suspicion" if the acts or facts held against a detained person did not constitute a crime at the time when they occurred (see *Kandzhov v. Bulgaria*, no. 68294/01, § 57, 6 November 2008; *Mammadli v. Azerbaijan*, no. 47145/14, § 52, 19 April 2018; *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 152, 20 September 2018; and *Kavala v. Turkey*, no. 28749/18, § 128, 10 December 2019).
> 318. Further, it must not appear that the alleged offences themselves were related to the exercise of the applicant's rights under the Convention (see *Kavala*, cited above, § 129).
> 319. As it has consistently held, when assessing the "reasonableness" of a suspicion, the Court must be able to ascertain whether the essence of the safeguard afforded by Article 5 § 1 (c) has been secured. Consequently, the respondent Government have to furnish at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged offence (see *Fox, Campbell and Hartley*, cited above, § 34 *in fine*; *O'Hara*, cited above, § 35; *Ilgar Mammadov*, cited above, § 89; and *Alparslan Altan*, cited above, § 129).[6]

12. Furthermore, the case law of the European Court is clear that, even if such a suspicion is established, deprivation of liberty or some other preventive measure can only be imposed where that court is satisfied that this is required to deal with one or more of the following risks, i.e.,

    a) a risk of flight (or of absconding);
    b) a risk to the administration of justice, such as through collusion, evidence being tampered with or pressure being brought to bear on witnesses;

---

[4] Other relevant standards are: Article 9(3) of the International Covenant on Civil and Political Rights as interpreted and applied by the United Nations Human Rights Committee; Recommendation No. R (80) 11 of the Committee of Ministers to member states concerning custody pending trial; and Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse (which replaced d Recommendation No. R (80) 11).

[5] "While reasonable suspicion must exist at the time of the arrest and initial detention, it must also be shown, in cases of prolonged detention, that the suspicion persisted and remained "reasonable" throughout the detention"; *Selahattin Demirtaş v. Turkey (No. 2)* [GC], no. 14305/17, 22 December 2020, at para. 320.

[6] *Selahattin Demirtaş v. Turkey (No. 2)* [GC], no. 14305/17, 22 December 2020.

c) a risk of further offences; and
d) a threat to public order and the need for the protection of the accused.[7]

13. As the European Court has underlined:

> the requirement on the judicial officer to give relevant and sufficient reasons for the detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest.[8]

14. In the absence of such reasons, no deprivation of liberty or indeed the imposition of any other preventive measure would not be justified.

15. However, where there are such reasons – i.e., where one of the four relevant grounds has been substantiated – the European Court has also made it clear that it is not appropriate to start from the assumption that the imposition of a deprivation of liberty is required.

16. Instead, the court should first consider whether a particular risk could be satisfactorily addressed through the use of one or more preventive measures <u>not</u> involving deprivation of liberty.[9]

17. Moreover, whenever the continuation of deprivation of liberty as a preventive measure is sought by the prosecution or its discontinuance or change is sought by the accused, the court must first consider not only whether there are still relevant and sufficient reasons for requiring its imposition but also whether remand could be replaced by a less restrictive preventive measure on account of factors such as:

- the availability of more information about the accused;[10]
- a change in the accused's personal situation;[11] or
- the risk no longer existing or having been significantly diminished[12].

18. Thus, in all cases, it is essential that due account is always taken of the suitability, in the circumstances of a given case, of resorting to less draconian alternatives to the loss of liberty where the imposition of a preventive measure is considered justified.[13]

19. This means that, in order to comply with Article 5(3) of the European Convention, the court – if satisfied that one or more of the relevant risks exists – must also determine which preventive measure would be required to allay concerns about it or them and, in particular, whether non-custodial ones would be sufficient for this purpose. Indeed, the imposition or continuation of deprivation of liberty should only occur after the court is satisfied that one or more non-custodial measures would not be sufficient to allay concerns about particular risks that have been established.[14]

20. The European Court – as well as the Committee of Ministers in the Appendix to <u>Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse</u> ("Recommendation Rec (2006)13")[15] – has recognised that less draconian restrictions on rights under the European Convention – and, in particular freedom of movement – could be justified as a means of allaying concerns about the risks such as flight or interference with the administration of justice.

---

7 See, e.g., *Aleksandr Makarov v. Russia*, no. 15217/07, 12 March 2009 and *Merabishvili v. Georgia* [GC], no. 72508/13, 28 November 2017.
8 *Buzadji v. Republic of Moldova* [GC], no. 23755/07, 5 July 2016, at para. 102.
9 See, e.g., *Khayredinov v. Ukraine,* no. 38717/04, 14 October 2010.
10 E.g., *Kuc v. Slovakia*, no. 37498/14, 25 July 2017.
11 E.g., *Khodorkovskiy v. Russia*, no. 5829/04, 31 May 2011.
12 *Ibid.*
13 See *Piruzyan v. Armenia*, no. 33376/07, 26 June 2012.
14 See *Piroth v. Germany* (dec.), no. 3737/17, 21 September 2021.
15 In paragraphs 2 and 7c. This superseded Recommendation Rec R (80) 11 concerning custody pending trial ("Recommendation Rec R (80) 11")

21. The Recommendation sets out a non-exhaustive list of alternative, non-custodial, preventive measures, namely,

> 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;
> requirements to report on a daily or periodic basis to a judicial authority, the police or other authority;
> requirements to accept supervision by an agency appointed by the judicial authority;
> requirements to submit to electronic monitoring;
> requirements to reside at a specified address, with or without conditions as to the hours to be spent there;
> requirements not to leave or enter specified places or districts without authorisation;
> requirements not to meet specified persons without authorisation;
> requirements to surrender passports or other identification papers; and
> requirements to provide or secure financial or other forms of guarantees as to conduct pending trial.[16]

22. Many of these alternative preventive measures, have figured in cases considered by the European Court, notably,

- bail;[17]
- compulsory residence orders;[18]
- parental supervision;[19]
- police supervision through a reporting requirement;[20]
- restrictions on going to bars, associating with certain persons or attending public meetings;[21]
- restrictions on leaving one's home during certain periods of the day or night;[22] and
- travel restrictions.[23]

23. In addition, the European Court has noted, with implicit approval, requirements to wear an electronic tag as an alternative to detention.[24]

24. The European Court has not generally elaborated on the application of most of these measures but certain points have been clarified.

25. In the first place, there must be a legal basis for the imposition of any of these preventive measures. This is not a mere formal condition as there will always be a need to satisfy the foreseeability test that is inherent in assessing whether any legal restriction on a right or freedom guaranteed by the European Convention is admissible.

26. Thus, in applying this test, the European Court has observed, e.g., of obligations to "lead an honest and law-abiding life" and to "not give cause for suspicion" to be problematic in this regard as they were "worded in very general terms and their content is extremely vague and indeterminate" and had not been sufficiently delimited by the interpretation of them by the Italian Constitutional Court. As a result, it concluded that the relevant part of the law concerned had not been formulated in

---

16 Paragraph 2.
17 E.g., *Mangouras v. Spain,* no. 12050/04, 28 September 2010.
18 E.g., *Ciancimino v. Italy,* (dec.), no. 12541/86, 27 May 1991.
19 E.g., *Nikolov v. Bulgaria,* no. 38884/97, 30 January 2003.
20 E.g., *Poninski v. Poland,* (dec.), no. 28046/95, 10 February 2000 .
21 E.g., *Labita v. Italy* [GC], no. 26772/95, 6 April 2000.
22 E.g., *Gatt v. Malta,* no. 28221/08, 27 July 2010.
23 E.g., *Schmid v. Austria,* (dec.), no. 10670/83, 9 July 1985.
24 In *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France,* no. 48151/11, 18 January 2018. This was in the context of restrictions on the movement of sports persons for the purpose of drug testing rather than as an alternative to remand in custody/pre-trial detention. The use of this measure is also the subject of Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring ("Recommendation CM/Rec(2014)4").

sufficient detail and did not define with sufficient clarity the content of the preventive measures which could be imposed on an individual.[25]

27. Secondly, any conditions should not have an unjustified impact on rights such as freedom of expression, association and peaceful assembly. In this regard, the European Court has, e.g., considered a legal provision that allowed for an absolute prohibition to be imposed on attending public meetings – i.e., without specifying any temporal or spatial limits to this fundamental freedom and leaving the scope of any discretion imposed entirely to the discretion of the judge concerned – also failed the foreseeability test so that there were no adequate safeguards against possible abuses.[26]

28. Similarly, the imposition of a condition on a registered journalist accused of harassment that she does not post any messages on any form of media relating to the alleged victim, whether through inference or by direct reference, was considered not to have balanced her right to freedom of expression and either the alleged victim's right to respect for his private life and reputation or the need to prevent disorder or crime.[27]

29. Moreover, any restrictions on travel – whether within the country or abroad – must always respect the principle of proportionality as otherwise there will be a violation of Article 2 of Protocol No. 4.[28] Such a lack of proportionality was found, e.g., not to have existed in a case where the accused had been forced to stay in a foreign country for over five years and there had yet to be a first-instance judgment in the case against him.[29]

30. Thirdly, a complete prohibition on leaving certain premises rather than a requirement to stay in them for a certain period each day[30] will be regarded by the European Court as a deprivation of liberty for the purpose of Article 5 of the European Convention.

31. Thus, the requirements under Article 5(3) of the European Convention governing the use of deprivation of liberty as a preventive measure will be equally applicable whenever house arrest is imposed in the sense of mounting to a complete prohibition on leaving particular premises in

---

25 *De Tommaso v. Italy* [GC], no. 43395/09, 23 February 2017. As regards the interpretation of the Constitutional Court, the European Court observed: "Firstly, the "duty for the person concerned to adapt his or her own conduct to a way of life complying with all of the above-mentioned requirements" is just as indeterminate as the "obligation to lead an honest and law-abiding life", since the Constitutional Court simply refers back to section 5 itself. In the Court's view, this interpretation does not provide sufficient guidance for the persons concerned. Secondly, the "duty of the person concerned to comply with all the prescriptive rules requiring him or her to behave, or not to behave, in a particular way; not only the criminal laws, therefore, but any provision whose non-observance would be a further indication of the danger to society that has already been established" is an open-ended reference to the entire Italian legal system, and does not give any further clarification as to the specific norms whose non-observance would be a further indication of the person's danger to society" (para. 122).

26 *Ibid*., at para. 123.

27 *Pal v. United Kingdom,* no. 44261/19, 30 November 2021.

28 Although the impact on family life – in particular, where the accused have difficulties in providing for their family, they have young children and a lengthy period is involved – may be a factor leading to the conclusion that restrictions on travel abroad are disproportionate because they prevent her or him visiting the country where her or his family are based, the European Court will assess them from the perspective of Article 2 of Protocol No. 4 rather than Article 8 unless the State concerned has not ratified Protocol No. 4 (as was the situation in, e.g., *İletmiş v. Turkey,* no. 29871/96, 6 December 2005.

29 As in *Miażdżyk v. Poland,* no. 23592/07, 24 January 2012. See also *Pfeifer v. Bulgaria*, no. 24733/04, 17 February 2011, in which it was concluded that the factors militating in favour of lifting a ban on leaving the country included the amount of time which had elapsed since it had been imposed, the unreasonably slow pace of the proceedings, the applicant's punctilious attendance at all hearings, the fact that he had twice travelled to Germany and returned in time for hearings, the increasingly serious disruption of his family life due to his absence, and that he could not provide adequately for his family from Bulgaria and had a young child, none of which seemed to have been adequately addressed by the courts dealing with his requests to lift it.

30 Such as the requirement not to leave one's home at night (i.e., between 10 p.m. and 6 a.m.) seen in *De Tommaso v. Italy* [GC], no. 43395/09, 23 February 2017. In this case, particular emphasis was placed on the fact that there were no restrictions on the applicant's freedom to leave home during the day and that he was able to have a social life and maintain relations with the outside world.

view of its degree and intensity.[31] In this connection, the European Court has emphasised that the conditions of detention and the level of (dis)comfort experienced by an accused subject to such a measure were not relevant to determining whether the protection of Article 5 was applicable.[32]

32. Finally, a considerable body of case law now exists regarding the use of bail in the sense of requiring financial guarantees as a condition for releasing the accused from custody.[33] In particular, the amount of bail required must be based on the ability of the individual concerned to pay it and with due regard to which the extent to which the prospect of its loss will be a sufficient deterrent to allay the risk concerned.[34] This does not mean that: (a) they cannot be expected to provide the information about their assets and income;[35] (b) a large amount may not be justified in particular cases;[36] or (c) account cannot be taken of the accused's professional environment[37]. However, the amount sought should not be impossible for the person concerned to provide.[38]

33. Furthermore, the financial guarantee should not generally be fixed by reference to the amount of loss inflicted by the alleged offence committed.[39] Moreover, an insistence that only cash can be used for bail is unlikely to be considered appropriate by the European Court.[40] Also, the financial guarantee required need not come from the accused[41].

34. In addition, the fact that the accused spends a prolonged period in detention after the amount of bail has been set will be seen as a strong indication that the court had not taken the necessary care in fixing an appropriate amount.[42] Indeed, the European Court has emphasised that:

> Since the issue at stake is the fundamental right to liberty guaranteed by Article 5, the authorities must take as much care in fixing appropriate bail as in deciding whether or not continued detention is indispensable.[43]

35. In any event, there is always a need to ensure that the necessary facilities to receive the payment required actually exist.[44]

36. Continued detention will not, however, be contrary to Article 5(3) where: (a) the amount has yet to be paid;[45] (b) the accused has taken no steps to secure that amount;[46] or (c) they refuse to pay it[47].

37. The requirement of financial guarantees will not be regarded as an unjustified interference with the right to property under Article 1 of Protocol No. 1.[48] Also, the forfeiture of amounts paid to secure bail where conditions have been breached will not necessarily be contrary to that

---

31 *Buzadji v. Republic of Moldova* [GC], no. 23755/07, 5 July 2016 and reaffirmed in *De Tommaso v. Italy* [GC], no. 43395/09, 23 February 2017, at para. 87.

32 *Buzadji v. Republic of Moldova* [GC], no. 23755/07, 5 July 2016, at para. 113.

33 The text of Article 5(3) refers only to "Release may be conditioned by guarantees to appear for trial" and so it should not be assumed that a financial guarantee is the only way of securing undertakings as to conduct on the part of the accused.

34 See, e.g., *Piotr Osuch v. Poland*, no. 30028/06, 3 November 2009, *Gafà v. Malta*, no. 54335/14, 22 May 2018 and *Bluks Savickis v. Latvia*, no. 44570/19, 13 June 2024.

35 See, e.g., *Mikalauskas v. Malta*, no. 4458/10, 23 July 2013 and *Alperin v. Ukraine*, no. 41028/20, 10 October 2024.

36 See. E.g., *Istomina v. Ukraine*, no. 23312/15, 12 January 2022.

37 As in, e.g., *Mangouras v. Spain* [GC], no. 12050/04, 28 September 2010.

38 As in *Toshev v. Bulgaria*, no. 56308/00, 10 August 2006.

39 See *Neumeister v. Austria*, no. 1936/63, 27 June 1968. However, that did seem to be considered relevant in *Mangouras v. Spain* [GC], no. 12050/04, 28 September 2010.

40 See. e.g., *Iwańczuk v. Poland,* no. 25196/94, 15 November 2001.

41 See, e.g., *Fedorenko v. Russia*, no. 39602/05, 20 September 2011.

42 See, e.g., *Mikalauskas v. Malta*, no. 4458/10, 23 July 2013 and *Kolakovic v. Malta*, no. 76392/12, 19 March 2015.

43 *Bluks Savickis v. Latvia*, no. 44570/19, 13 June 2024, at para. 37.

44 As was not the situation in *Kolesin v. Russia*, no. 72885/10, 28 November 2017.

45 As was the case in *Nikolishen v. Ukraine*, no. 65544/11, 15 April 2021.

46 See *Kudla v. Poland* [GC], no. 30210/96, 26 October 2000, at para. 109.

47 As in *Melia v. Georgia*, no. 13668/21, 7 September 2023.

48 As was made clear in *Jedamski v. Poland* (dec.), no. 29691/96, 4 March 1998.

provision[49] but proceedings for this purpose must comply with the requirements of Article 6 of the European Convention[50] and they should be recoverable where there is no breach once the requirement to provide bail ceases to be applicable[51].

38. Moreover, there should be caution in imposing imprisonment as a means of securing the payment of a financial guarantee when there has been a breach of certain bail conditions that have been imposed where these conditions were unrelated to securing the accused's attendance at the trial and the effect was a prolonged deprivation of liberty of the accused.[52]

39. It is not enough for decisions concerning the imposition of preventive measures to have taken account of all the considerations for deciding whether to impose any preventive measures, let alone ones involving deprivation of liberty. The decision itself must also demonstrate that this is what actually occurred. The existence of sufficient reasoning in this respect is an essential element in the case law of the European Court applying Article 5(3) of the European Convention.

40. Thus, it cannot be expected that the European Court will find sufficient reasoning where none has been articulated in the relevant decision, e.g., as seemed to have been suggested to it in *Bykov v. Russia,*[53] when the Government submitted that the circumstances of the case and the applicant's personality were self-evident for the purpose of justifying his pre-trial detention.

41. This requires the submissions made by prosecutors in favour of the imposition (or continuation) of preventive measures to be shown to have been carefully scrutinised and for there never to have been an automatic acceptance of them nor any impression to be given of this having occurred.

42. Certainly, in *Magnitskiy and Others v. Russia*[54] the European Court seemed to gain an impression of automatic acceptance of prosecutorial submissions from the fact that the courts had remained silent as to why risks of absconding and witness tampering could not have been offset by any means other than detention.

---

49 See, e.g., *Lavrechov v. Czech Republic*, no. 57404/08, 20 June 2013; "52. The Court observes that the bail in the present case was not forfeited because of the impossibility of delivering a single document to the applicant. The High Court concluded that the applicant had been avoiding criminal prosecution by staying out of the country for several years. The Court considers that even though originally the applicant may have had objective reasons for not attending the hearings, this cannot be said of the period after he acquired a new passport. 53. The applicant was given ample opportunity to appear at the trial. The hearings were rescheduled several times. The applicant received his passport, according to his version of the events, in April 2003, and the decision to hold the trial *in absentia* was taken only in December 2005. He had thus had at least two years and eight months to enter into contact with the Regional Court so that it could set a date for a hearing for which he could travel to the Czech Republic. In these circumstances the High Court's finding that the applicant's own behaviour had shown that he had been avoiding his criminal prosecution does not seem unreasonable. 54. In these circumstances – that is, where the applicant must have been aware of the fact that he was in breach of his bail conditions for a substantial period of time – it was incumbent on him to inform the Regional Court clearly and unequivocally of his address in Russia and to remain in regular contact with it in order to counterbalance the difficulties with delivery of official documents to Russia, which needed to be considered under the European Convention on Mutual Assistance in Criminal Matters. The applicant failed to do so. The letter from the applicant's lawyer of 8 July 2002 cannot be considered sufficient in these circumstances. The letter only noted where the applicant had his official registered address in Russia, but it did not in any way indicate where he wanted to receive his correspondence. Furthermore, on 2 September 2004 the applicant informed the court that he was unable to attend a hearing because he had health problems and new lawyers, but still failed to give an address for service in Russia". See also, *Alperin v. Ukraine*, no. 41028/20, 10 October 2024, in which the forfeiture of half the amount of bail for failure to comply with the obligation to hand over all international travel documents that could have enabled him to cross the State border was considered to be proportionate.

50 As was found to be the case in *Koval v. Ukraine*, no. 65550/01, 19 October 2006 and *Alperin v. Ukraine*, no. 41028/20, 10 October 2024.

51 See *Agontsev v. Bulgaria* (dec.), no. 44448/07, 21 October 2014, in which it was found that there were no obstacles in that regard.

52 As in *Gatt v. Malta,* no. 28221/08, 27 July 2010. In that case, the condition breached was a curfew and the resulting deprivation of liberty lasted more than five and a half years.

53 [GC], 4378/02, 10 March 2009, at para. 66

54 no. 32631/09, 27 August 2019, at para. 219,

43. As a result, there is a need to be prepared to reject submissions by the prosecution which are either not supported by compelling evidence or which fail to respond in substantive terms to submissions made by the defence and for any such rejection to be clearly stated in the ruling.

44. Furthermore, in considering submissions made by the defence, account ought to be taken of the limitations to which it may be subject in adducing supporting evidence on account of not having full access to the investigation file and for the account that has been taken to be reflected in the text of the ruling.

45. Thus, in evaluating the submissions of both prosecution and the defence, the court should:

a) use very specific argumentation, which was found by the European Court to be absent in *Janiashvili v. Georgia*[55] (when the court, e.g., did not explain why the planned implementation of a forensic measure – forensic psychiatric examination – ran counter to a non-custodial measure of restraint)

and

b) clearly respond substantively, in particular, to the submissions made by or on behalf of the accused, as was considered by the European Court not to have occurred in *Kuc v. Slovakia*[56] (where a new expert report contradicting previous findings about the applicant's mental condition required the court to respond to his allegation about an absence of grounds for his detention).

46. It will never be regarded by the European Court as sufficient for this purpose to:

a) cite just the relevant legal provisions and possible fears without any substantiation, as could be seen to have occurred in the ruling considered in *Boicenco v. Moldova*;[57]
b) use formulaic reasoning, as was observed in the ruling considered in *Mamedova v Russia*[58] (such as the applicant's detention being "objectively justified" because of the complexity of the case, the gravity of the charge and the risk of her absconding or interfering with the establishment of the truth);
c) complete just a template form with pre-printed reasoning, as was found by the European Court to have occurred in *Saghinadze and Others v. Georgia*[59] (meaning that there was no reference to the existence of concrete facts justifying continued detention and no consideration of alternative non-custodial pre-trial restraint measures);
d) make virtually identical orders (not just in terms of their content – apart from the dates, the names of the judges and participants and the length of detention – but also in terms of their layout, including such details as the font used, the positioning of the text and the line spacing), as was evident in the ruling considered in *Svipsta v. Latvia*[60].

47. In addition, it is important to recognise that a reason that is initially invoked to justify the imposition of a preventive measure, and in particular one involving deprivation of liberty, may lose its relevance as a result of the passage of time, a point underlined by the European Court in *Kudla v. Poland*[61] with regard to the prolonged pre-trial detention on account of an alleged risk of absconding.

48. While the reasoning in judicial supervision leading to an initial imposition of pre-trial detention need not to be too elaborate – it would, e.g., be enough for the ruling to give the reasons for such a measure, the factual elements relied upon for taking it and an explanation as to why alternative, less draconian,

55 No. 35887/05, 27 November 2012, at para. 86
56 No. 37498/14, 25 July 2017, at para. 56
57 No. 41088/05, 11 July 2006, at para. 143-145.
58 No. 7064/05, 1 June 2006, at paras. 27 and 80.
59 No. 18768/05, 27 May 2010, at paras. 139-140.
60 No. 66820/01, 9 March 2006, at para. 131.
61 GC}, no. 30210/96, 26 October 2000, at paras. 113-114.

preventive measures would be inadequate – the subsequent exercise of judicial supervision will need to be more substantial as the passage of time can weaken the force of submissions initially regarded as compelling and give rise to fresh circumstances that need to be considered.

49. All the foregoing considerations relate to the insufficiency of reasons for any decision on the imposition, continuation or change of preventive measures.

50. However, it is equally important to ensure that such decisions are not based on unlawful reasons, namely ones that (a) do not take account of any circumstances that would preclude the use of the preventive measure in the case concerned or (b) rely upon a ground that is not itself admissible.

51. In structuring a proposal (as a prosecutor) for the imposition of a preventive measure or deciding (as a judge) to impose a preventive measure (i.e., the initial stage of the relevant proceedings), the following points – taking into account the issues raised above – need first to be addressed in turn:

    a) Is there a reasonable suspicion?
    b) Are there relevant and sufficient grounds requiring a preventive measure?
    c) Would a preventive measure not involving deprivation of liberty be adequate?

52. Only if an affirmative answer can be given to the first two questions, will it be appropriate to propose or to decide to impose a preventive measure. Moreover, only where a negative answer can be given to the third question will it be appropriate to propose or to decide to impose a preventive measure involving deprivation of liberty.

53. Where a preventive measure has already been imposed, in structuring a proposal (as a prosecutor) for the continuation of a preventive measure or deciding (as a judge) to continue a preventive measure (i.e., a review stage in the relevant proceedings), the following points – taking into account the issues raised above – need first to be addressed in turn:

    a) Is there still a reasonable suspicion?
    b) Are there still relevant and sufficient grounds requiring a preventive measure?
    c) Would a preventive measure other than the one currently being imposed be adequate or (if not) would the continuation of a preventive measure involving deprivation of liberty still be reasonable?

54. Only if an affirmative answer can be given to the first two questions, will it be appropriate to propose, or decide to continue, a preventive measure. Moreover, only where a negative answer can be given to the final questions will it be appropriate to propose the continuation of, or decide to continue, a preventive measure involving deprivation of liberty.

55. Thus, In drafting a ruling that imposes a preventive measure involving deprivation of liberty, there will be a need to show that the court has:

    a) had regard to the material and procedural requirements prescribed by the law;
    b) had regard to the specific circumstances and concrete evidence in the case file;
    c) had regard to specific conditions of the accused (such as age, state of health, disability, sexual orientation, other grounds of vulnerability of the accused);
    d) responded in specific terms to submissions made by or on behalf of the accused, including those that pre-trial detention was not required or lawful and those proposing other preventive measures;
    e) evaluated the substantiation provided by the prosecution as to the grounds for imposing pre-trial detention; and
    f) had regard to a possible change in circumstances since any preceding ruling.

56. In addition, the ruling would need to demonstrate that the imposition or continuation of a preventive measure involving a deprivation of liberty is:

a) not unlawful;
b) not disproportionate;
c) warranted; and
d) not inadequate in light of the unsuitability of measures not involving deprivation of liberty.

57. Finally, a ruling that continued an existing deprivation of liberty would need to show why the court had satisfied itself that its overall duration would still be reasonable in the particular circumstances of the case.

58. Unfortunately, the failure to provide such reasoning when imposing preventive arrest/house arrest has occasioned the finding in many cases a violation of Article 5(3) of the European Convention by the Republic of Moldova.

59. Thus, in *Sarban v. Moldova*,[62] there was the following finding:

> 100. The Court notes that the applicant advanced before the national courts substantial arguments questioning each of the grounds for his detention. He referred to the fact, for example, that since the first arrest warrant was issued he had never obstructed in any way the investigation and had appeared before the relevant authorities whenever summonsed. His conduct regarding the investigation had always been irreproachable. He had a family, had property in Moldova and none abroad, and several newspapers were prepared to offer guarantees for his release in accordance with the provisions of the Code of Criminal Procedure. The applicant was also ready to give up his passport as an assurance that he would not leave the country (see paragraph 12 above).
> 101. The Court further notes that the domestic courts devoted no consideration to any of these arguments in their relevant decisions, apparently treating them as irrelevant to the question of the lawfulness of the applicant's detention on remand, even though they were obliged to consider such factors under Article 176 § 3 of the Code of Criminal Procedure (see paragraph 52 above). This is striking, given the fact that on 18 November 2004 the Court of Appeal had found that a number of those factors militated against the applicant's detention. The other courts either did not make any record of the arguments submitted by the applicant or made a short note of them and did not deal with them. They limited themselves to repeating in their decisions in an abstract and stereotyped way the formal grounds for detention provided by law. These grounds were cited without any attempt to show how they applied to the applicant's case.

60. This was followed by similar findings in a considerable number of cases[63].

61. There have also been ones involving the imposition of a preventive measure involving deprivation of liberty in which:

- there was a failure to address the submissions of the applicants concerned.[64]
- there was a failure by the courts to substantiate why certain alleged risks which could, in principle, justify the imposition of preventive measures were well-founded;[65]
- there was not only an insufficiency of the initial reasons for detention and a lack of any new ones subsequently but also a failure to envisage the possibility of applying alternative measures such as house arrest, despite being asked to do so;[66]

---

62 No. 3456/05, 4 October 2005.

63 *Istrati v. Moldova*, no. 8721/05, 27 March 2007; *Castravet v. Moldova*, no. 23393/05, 13 March 2007; *Modarca v. Moldova*, no. 14437/05, 10 May 2007; *Stici v. Moldova*, no. 35324/04, 23 October 2007; *Muşuc v. Moldova*, no. 42440/06, 6 November 2007; *Ursu v. Moldova*, no. 3817/05; *Rimschi v. Republic of Moldova*, no. 1649/12, 13 January 2015; *Balakin v. Republic of Moldova*, no. 5947/11, 26 January 2016; *Buzadji v. Republic of Moldova* [GC], no. 23755/07, 5 July 2016; *Moscalciuc v. Republic of Moldova*, no. 42921/10, 1 October 2019; *Caşu v. Republic of Moldova*, no. 75524/13, 1 October 2019; *Muradu v. Republic of Moldova*, no. 2694/09, 19 January 2021; *Gilanov v. Republic of Moldova*, no. 44719/10, 13 September 2022; and *Malai v. Republic of Moldova*, no. 24179/18, 19 November 2024.

64 *Becciev v. Moldova*, no. 9190/03, 4 October 2005; *Ninescu v. Republic of Moldova*, no. 47306/07, 15 July 2014; and *Ceaicovschi v. Republic of Moldova*, no. 37725/15, 5 June 2018.

65 *Boicenco v. Moldova*, no. 41088/05, 11 July 2006; *Popovici v. Moldova*, no. 289/04, 27 November 2007; *Oprea v. Moldova*, no. 38055/06, 21 December 2010; *Ignatenco v. Moldova*, no. 36988/07, 8 February 2011; *Cotet v. Republic of Moldova*, no. 72238/14, 23 October 2018; *Cosovan v. Republic of Moldova*, no. 13472/18, 22 March 2022; and *Eşanu v. Republic of Moldova*, no. 15230/18, 31 January 2023.

66 *Turcan and Turcan v. Moldova*, no. 39835/05, 23 October 2007.

- there was a failure to demonstrate that detention was necessary;[67]
- the ordering of the person's detention was based only on the prosecution's submissions and in the absence of any materials to substantiate them;[68]
- there was a "collective" extension of pre-trial detention of the applicant and his co-accused and so did not take into account the specific circumstances of each person detained;[69]
- there was reliance on a reason that was not relevant to the case;[70]
- there was a statement that pre-trial detention was called to punish and discourage anti-social behaviour and that unjustified manifestations of clemency could encourage anti-social behaviour of the sort and could affect the peoples' trust in the law enforcement organs;[71] and
- it remained unclear what were the reasons for detention[72].

62. These rulings underline the existence of a problem in providing satisfactory reasoning for the imposition or continuation of the imposition of preventive measures involving deprivation of liberty.

[67] *Canuda v. Republic of Moldova*, no. 4670/16, 17 May 2022.
[68] *Feraru v. Moldova*, no. 55792/08, 24 January 2012.
[69] *Caracet v. Republic of Moldova*, no. 16031/10, 16 February 2016.
[70] *Secrieru v. Republic of Moldova*, no. 20546/16, 23 October 2018.
[71] *Sirenco v. Republic of Moldova*, no. 52053/15, 15 January 2019.
[72] *Alimpiev v. Republic of Moldova and Russia*, no. 48802/08, 27 April 2021.

C. THE LEGISLATIVE FRAMEWORK OF THE REPUBLIC OF MOLDOVA

63. Preventive measures, as defined in Article 175(1) of the Criminal Procedure Code, represent coercive actions directed at suspects, accused persons, or defendants.

64. These measures aim to prevent activities that could obstruct criminal proceedings, compromise public safety, or hinder the enforcement of court decisions. They are critical tools for ensuring the proper administration of justice by mitigating risks such as evasion of prosecution, interference with evidence or witnesses, and disruption of public order.

65. The categorisation of preventive measures includes:

- Obligation not to leave a locality;
- Obligation not to leave the country;
- Personal guarantee;
- Guarantee provided by an organisation;
- Temporary suspension of the right to drive vehicles;
- Removal from operating a vehicle
- Supervision of a military person;
- Supervision of a minor;
- Conditional release under judicial control;[73]
- Conditional release on bail;
- House arrest; and
- Preventive arrest.[74]

66. From the perspective of Council of Europe standards, these measures align broadly with the principle of proportionality, which mandates that restrictions on individual freedoms must correspond to the legitimate aims being pursued.

67. However, the application of such measures, particularly preventive arrest, warrants scrutiny to ensure it remains a measure of last resort. Specific provisions, such as restricting preventive arrest to individuals accused of crimes punishable by over three years of imprisonment, reflect adherence to this principle. Nonetheless, they are not in themselves a sufficient guarantee that the principle of proportionality will actually be observed when the imposition of preventive measures is sought or imposed.

68. Conditional release mechanisms, including judicial control and bail, represent alternatives to detention, aligning with European human rights norms that advocate for minimal reliance on deprivation of liberty. Nonetheless, the effectiveness of such measures depends on their consistent and fair application across cases.

---

73 I.e., under certain conditions as to conduct, such as observing a curfew, not entering certain places or meeting certain people.

74 Article 175(3) of the Criminal Procedure Code.

69. The legal grounds for applying preventive measures have been carefully delineated with a view to ensuring their necessity and proportionality.

70. Thus, these measures may only be imposed when supported by reasonable evidence indicating risks such as:

- Evasion of criminal investigation or trial;
- Pressure exerted on witnesses;
- Tampering with evidence;
- Obstruction of truth-finding processes;
- Commission of additional offences; and
- Threats to public order upon release.[75]

71. Courts and prosecutors are required to thoroughly evaluate whether a preventive measure is warranted based on case-specific circumstances. This evaluation includes an assessment of the gravity of the offence, the defendant's personal and financial circumstances, and potential risks to public order.[76] The requirement to justify the proportionality of each measure aligns with Council of Europe standards, which emphasise that any restriction on liberty must be necessary in a democratic society.

72. The 24-month cumulative limit on non-custodial preventive measures in Article 176(5) of the Criminal Procedure Code[77] deserves further examination from the perspective of European standards. While it ostensibly protects against excessive use of such measures, concerns may arise if the prolonged imposition of restrictions effectively results in punitive outcomes for individuals not yet convicted. This is because a statutory framework that allows restrictions to endure – continuously or intermittently – for as long as 24 months gives rise to the danger that the measure may out-live the risk which it was designed to counter. At that point it would cease to be *preventive* and becomes *de facto punitive*, contrary to the presumption of innocence and the Court's case law.[78]

73. European standards require regular, searching judicial review; a convincing, case-specific justification for every extension; and an obligation on the authorities to lift or relax the measure once a less intrusive alternative can adequately address the risk outlined above is mitigated, at least in law, by: the provision for mandatory periodic review;[79] the duty to give a case-specific justification for

75 Article 176(1) of the Criminal Procedure Code.

76 Thus Article 176(3) provides that: "When settling the issue on the need for a respective preventive measure, the prosecutor and the court shall mandatorily assess and reason if the preventive measure is proportionate to the individual circumstances of the criminal case, also considering: 1) the reasonable nature of the suspicion and the prejudicial degree of the incriminating act assessed in each individual case, without, however, deciding on the guilt; 20 the personality and the characteristics of the suspect/accused/defendant, including at the moment of commission of the incriminated acts; 3) his/her age and health; 40 his/her occupation; 5) the family's status and persons supported; 6) his/her material condition, income, possession of real estate and other properties; 7) the availability of a permanent domicile, the availability of a permanent or temporary job;8) other essential circumstances presented by the suspect, accused, defendant or the prosecutor, the criminal investigative body". Furthermore, Article 177 provides that: "(1) The prosecutor managing or conducting the criminal investigation shall issue ex officio or at the request of the criminal investigative body a reasoned order for applying a preventive measure. The order of the prosecutor shall refer to the act which is the object of the suspicion, charge, the legal provisions the act falls under, and the punishment set forth by the law for the committed act, the need to apply the preventive measure according to the conditions and criteria established in art. 176, as well as to whether the suspect, accused, defendant was explained the consequences of violating the preventive measure. ($1^{1)}$) The court shall issue a reasoned ruling making reference to: the crime the person is suspected of, accused of or indicted; the grounds for choosing the respective preventive measure by indicating concrete data and circumstances of the case that led to such measure; the need to apply preventive measure according to the conditions and criteria established in art. 176, and to whether the suspect, accused, defendant was explained the consequences of violating the preventive measure; the arguments of the prosecutor and of the representative, lawyer, suspect, accused, defendant, motivating their admission or non-admission when deciding on the measure".

77 "Non-custodial preventive measures may be imposed for a total cumulative period of no more than 24 months".

78 See *Buzadji v. Moldova* [GC], no. 23755/07, 5 July 2016, paras. 84-91.

79 In Articles 178(3), 191(3^1) and 192(2^2) of the Criminal Procedure Code.

every extension;[80]and the obligation to replace or revoke the measure once a lighter alternative suffices[81]. However, in the absence of those safeguards being applied rigorously, even a formally limited, 24-month period could turn a preventive restriction into ‘punishment in disguise, thereby engaging Articles 5 and 2 of Protocol No. 4.

74. Finally, the option to resort to alternative procedural measures under Article 197(1) of the Criminal Procedure Code provides flexibility in addressing cases where preventive measures may be unnecessary.[82] This approach supports the Council of Europe’s emphasis on promoting less intrusive alternatives whenever possible.

75. Article 177 of the Criminal Procedure Code provides a structured procedural framework for applying preventive measures in the Republic of Moldova, emphasizing the principles of legality, proportionality, and transparency.[83] This article mandates that prosecutors and courts justify their decisions through reasoned orders, aligning with the standards of the Council of Europe, particularly those enshrined in Article 5 of the European Convention.

76. The requirement for a prosecutor’s motivated ordinance is supposed to ensure that preventive measures are grounded in specific allegations, defined by the legal provisions applicable to the offence. This includes outlining the necessity of the measure in accordance with Article 176 of the Criminal Procedure Code and demonstrating that the individual has been informed of the consequences of non-compliance.[84] This procedural rigor reflects the Council of Europe’s insistence on ensuring that such measures are applied transparently and only when strictly necessary.

77. The judiciary’s role is similarly defined, with courts required to issue reasoned rulings that detail the offence, the justification for the preventive measure, and its proportionality to the circumstances of the case. By requiring the court to consider arguments from all parties involved, including the prosecution, defence, and the individual subject to the measure, the provision should foster a balanced approach. This requirement reflects European Convention standards, which stress the importance of judicial oversight and the right to a fair hearing.

78. Preventive arrest, house arrest, and conditional release mechanisms are strictly regulated, requiring judicial approval based on a prosecutor's request. The prioritization of alternative measures, such as bail or judicial supervision, underscores the principle that detention should be a measure of last resort. This approach aligns with the Council of Europe’s emphasis on minimizing restrictions on liberty while safeguarding procedural fairness.

79. Another crucial aspect of Article 177 is the obligation to provide the individual with a copy of the ruling and to communicate its reasons in a language they understand. This provision ensures that the individual’s rights to information and legal recourse are upheld. The explanation of the procedure and timeline for challenging the measure further reinforces access to justice, a cornerstone of the Council of Europe’s human rights framework.

80. Article 185 of the Criminal Procedure Code governs preventive arrest, outlining its purpose, conditions for application, and associated limitations. In the context of Council of Europe standards,

---

80 In Articles 176(3), 177(1^1) and 191(3^1) of the Criminal Procedure Code.

81 In Article 195 of the Criminal Procedure Code.

82 Thus, this provides that: “In order to ensure the method set out in this Code for a criminal investigation, a case hearing, and the enforcement of a sentence, the criminal investigative body, the prosecutor, the investigative judge or the court, based on their competence, shall have the right to apply to the suspect/accused/ defendant other coercive procedural measures such as: 1) the obligation to appear; 2) summoning by force; 3) provisional suspension from office; 4) measures securing the recovery of the damage caused by the crime; 5) measures securing the execution of a punishment by fine”.

83 See fn. 76.

84 Article 177(1) of the Criminal Procedure Code.

particularly those established by the European Convention and the jurisprudence of the European Court, several observations can be made.[85]

81. Preventive arrest is defined as the confinement of a suspect or accused person in legally designated facilities under specific conditions. The provision emphasises its exceptional nature, stipulating that detention should only be ordered when it is demonstrated that other preventive measures are insufficient to address the risks warranting detention. This aligns with Article 5 of the European Convention, which require that deprivation of liberty must be lawful, necessary, and proportionate.

82. The Moldovan provision explicitly requires judicial scrutiny to ensure that pretrial detention is justified by reasonable grounds. The law mandates that courts prioritise non-custodial measures and alternatives to detention. This resonates with the European Court's position that detention should be a last resort and that authorities must carefully assess whether the risks, such as flight, reoffending, or interference with evidence, can be mitigated through less restrictive measures.

83. Further, Article 185(2) of the Criminal Procedure Code enumerates specific circumstances justifying detention, such as the lack of a permanent residence, violations of other preventive measures, or evidence of imminent risk to public security and order. The requirement for substantial evidence aligns with the principle that any restriction on liberty must be supported by clear and compelling justification.

84. Article 185(3) of the Criminal Procedure Code imposes an obligation on the judiciary to thoroughly examine the sufficiency of alternative preventive measures and to dismiss requests for detention if the arguments presented lack adequate substantiation.[86] This reflects the European Court's insistence on rigorous judicial review of detention decisions to ensure compliance with Article 5(3) of the European Convention, which guarantees the right to judicial scrutiny and protection against arbitrary detention.

85. The provision in Article 185(3^1) allowing release upon payment of bail for specific offences introduces a safeguard against excessive or prolonged detention.[87] This mechanism is consistent with Council of Europe standards advocating for the use of bail as an alternative to detention in appropriate cases, provided it is not set at a prohibitively high amount that would effectively amount to detention.

86. The requirement in Article 185(4) of the Criminal Procedure Code that decisions to impose pretrial detention must include reasons justifying why less restrictive measures are insufficient underscores the importance of transparency and accountability in detention decisions. Again, this is consistent

---

[85] Thus, it provides that: "(1) Preventive arrest implies keeping the accused/defendant under arrest in places and under conditions provided for in the law. Preventive arrest shall be an exceptional measure and shall be ordered only when it is proved that other measures are insufficient to eliminate the risks justifying the application of the arrest. (2) Preventive arrest may be applied in the cases and under the conditions set forth in art. 176 considering that and if: 1) the accused/defendant does not have a permanent domicile in the Republic of Moldova; … 3) the accused/defendant violates the conditions of other preventive measures applied to him/her or violated the protection order in case of domestic violence; 4) there is sufficient evidence that the accused/defendant, being at large, poses an imminent risk to the security and public order. (2^1) The reason provided in para. (2) point 1) shall be taken into account if the accused, defendant refused to provide information on his/her permanent place of residence. (3) While settling the issue of preventive arrest, the investigative judge or the court must examine in a prioritized manner the possibility to apply other measures not depriving of liberty and shall be entitled to order any other measure set forth in art. 175. (4) The ruling on preventive arrest shall include the reasons justifying the insufficiency of other preventive measures to eliminate the risks that were the ground for application of the preventive arrest. The ruling on preventive arrest may be subject to cassation in a higher court.

[86] Thus, it provides: "When deciding on preventive arrest, the investigating judge or the court must first examine the suitability of other non-custodial preventive measures, then of measures alternative to preventive arrest, and reject a motion for preventive arrest if it is insufficiently motivated or if the reasons invoked are not supported by evidence establishing reasonable grounds for its application. The judge may impose any other preventive measure listed in Article 175".

[87] Thus, it provides: "Preventive arrest shall not be applied, and a person already arrested shall be released— with or without another preventive measure—upon payment of the bail set by the court, at the request of the suspect or accused, for the offences listed in Articles 190(1)–(2), 191(1)–(2), 223-228(a)–(b), 241-242, 244-246^1, 250, 257-258, 262-263 of the Criminal Code".

with the European Court's jurisprudence, which mandates that any deprivation of liberty must be accompanied by a reasoned decision to allow for effective appeal and review.

87. Moldovan law also ensures the right to appeal detention decisions to a higher court. This procedural safeguard is a cornerstone of the Council of Europe's human rights framework, as it ensures access to effective remedies and protects individuals against potential abuses of power.

88. Article 186 of the Criminal Procedure Code regulates the duration of pretrial detention and its potential extension. This provision must be analysed in conjunction with the Council of Europe standards, especially Article 5 of the European Convention on and the jurisprudence of the European Court.

89. Thus, Article 186 establishes that the duration of detention begins at the moment of deprivation of liberty and emphasises the principle of proportionality. This reflects the European Court's requirement that any detention must be justified by compelling reasons and must not exceed a reasonable duration. According to the Council of Europe standards, states must ensure that detention is not arbitrary and is subject to periodic review.

90. Paragraph (2) of Article 186 emphasises that detention should not exceed a reasonable period, taking into account the complexity of investigations and the obligation to expedite criminal proceedings. This aligns with the European Court's interpretation in cases such as *Kalashnikov v. Russia*[88] and *Idalov v. Russia*[89] which stress the necessity of timely proceedings to avoid excessive detention.

91. The maximum duration of initial detention is set by paragraph 3 at 30 days, and any extensions must be justified by demonstrating that non-custodial measures are insufficient. This provision mirrors the European Court's stance that continued detention must be based on valid and specific reasons, such as preventing flight, reoffending, or interference with evidence, as outlined in *Buzadji v. Moldova*.[90]

92. Article 186 imposes a cumulative maximum duration of detention – 12 months for adults, 8 months for minors[91] – prior to a first-instance court's decision. This is consistent with the European Court's principle that prolonged detention must be exceptional and closely scrutinised. The limitation for minors reflects the Council of Europe's heightened protection for children under instruments such as the European Rules for Juvenile Offenders.

93. The requirement in Article 186(9) that judges must reassess the necessity of detention when considering extensions[92] reflects the European Court's demand for robust judicial oversight. Courts must examine whether initial justifications for the use of a preventive measure involving deprivation of liberty remain valid and whether alternative measures could now address the risks found still to exist, as emphasised in *Mooren v. Germany*.[93]

94. Paragraph 12 of Article 187 mandates that criminal investigations involving detainees must be conducted urgently and with priority. This reflects the Council of Europe's standards under Article 5(3) of the European Convention, which require that states justify any delay in proceedings and ensure that detention does not result from systemic inefficiencies.

---

88 No 47095/99, 15 July 2002, at para. 114.

89 [GC], no. 5826/03, 22 May 2012, at paras. 139-141.

90 [GC], no. 23755/07, 5 July 2016.

91 By paragraphs 6 and 7 respectively.

92 Thus, it provides that: "Prolongation of the preventive arrest duration shall be ordered by observing the conditions set by this Code for the initial application of preventive arrest measure. In addition, when settling the motion on prolongation of the preventive arrest duration, the investigative judge or, as the case may be, the court must examine if, in order to eliminate the risks that determined the application of preventive arrest measure, the application of other measures not depriving of liberty is sufficient or if there are relevant and sufficient grounds to prolong the preventive arrest measure or not".

93 [GC], no. 11364/03, 9 July 2009.

95. The procedural safeguards in paragraphs (10) and (11) of Article 187, requiring hierarchical approval for extensions beyond specific durations,[94] are an additional layer of accountability. These mechanisms aim to prevent abuse of detention and reflect the European Court's guidance in cases like *Lelievre v. Belgium*,[95] which underscore the necessity of procedural checks to uphold the right to liberty.

96. Article 188 of the Criminal Procedure Code governs house arrest, another form of preventive measure. The article provides a structured framework for its application and addresses the conditions under which it can be implemented, monitored, and revoked. When analysed in the context of Council of Europe standards, particularly the European Convention and European Court jurisprudence, house arrest can be seen as a measure aimed at balancing individual rights with the need to ensure the proper administration of justice.

97. However, house arrest, as defined in Article 188(1), involves the complete isolation of the accused in their dwelling, subject to detailed restrictions on movement, communication and contact. In *Buzadji v. Moldova*[96], as previously noted, the European Court ruled that the form of house arrest practised in the Republic of Moldova – a round-the-clock ban on leaving the premises enforced by police supervision – constituted a "deprivation of liberty" under Article 5, not merely a lesser restriction.

98. Consequently, house arrest must be treated as an exceptional, custodial measure of last resort, justified by the same four permissible risks (flight, evidence-tampering, re-offending, or public-order threat) and subject to the same strict tests of necessity, proportionality and periodic judicial review that govern preventive detention. While it may alleviate some hardships compared with detention in a remand centre, it does not relieve the authorities of their obligation to examine genuinely less intrusive, non-custodial alternatives—such as bail,

99. Paragraph 2 of Article 188 specifies the conditions for applying house arrest, including cases where full isolation is deemed unreasonable due to age, health, family circumstances, or other factors. This reflects the proportionality requirement under Council of Europe standards, emphasizing that measures restricting liberty must be tailored to the specific circumstances of the individual and the case. In cases like *Buzadji v. Moldova*[97] and *Svipsta v. Latvia*[98], the European Court has highlighted the necessity of considering less restrictive measures when addressing risks justifying pretrial detention.

100. Paragraph 3 outlines the restrictions accompanying house arrest, such as prohibiting the individual from leaving their residence, limiting communication, and restricting contact with specific individuals. These conditions are consistent with the European Court's recognition that states have discretion in designing measures to ensure compliance with judicial orders, provided they respect fundamental rights and are proportionate to the risks posed.

101. Paragraph 4 introduces obligations such as maintaining electronic monitoring devices or responding to control signals. Such measures align with the Council of Europe's emphasis on ensuring the enforceability of non-custodial measures, as long as these do not impose undue hardship on the individual.

---

94 "(10)The prolongation of the duration of preventive arrest shall be decided by the investigative judge from the territorial circumscription in which the criminal investigation is conducted or by the court examining the case based on a motion of the prosecutor. If, due to justified reasons, the court examining the criminal case fails to settle the motion to prolong the preventive arrest, it shall be assigned, in a duly established manner, to another judge. (11)The court judgment to prolong the duration of preventive arrest may be subject to cassation in a higher-level court. The cassation request against the judgment shall not suspend the examination of the criminal case".

95 No. 11287/03, 8 November 2007.

96 [GC], no. 23755/07, 5 July 2016.

97 *Ibid*.

98 No. 66820/01, 9 March 2006.

102. Paragraph 6 states that the terms and procedures for applying, extending, and appealing house arrest are similar to those for pretrial detention. This procedural parity underscores the need for judicial oversight and guarantees that the rights of individuals under house arrest are safeguarded, in line with the Council of Europe's principle of effective remedies under Article 13 of the European Convention.

103. Paragraph 7 provides that non-compliance with house arrest conditions may lead to its replacement with pretrial detention. This aligns with the European Court's acknowledgment that a breach of conditions can justify a stricter measure, as long as the decision is proportionate and justified by new circumstances.

104. Article 191 of the Criminal Procedure Code governs provisional release under judicial control, establishing its conditions, duration, and obligations. Analysing this provision in the context of Council of Europe standards, particularly the European Convention and the jurisprudence of the European Court, highlights its compatibility with the principles of liberty and security under Article 5 of the European Convention.

105. Provisional release under judicial control serves as a non-custodial preventive measure that aims to balance the accused's right to liberty with the need to safeguard the integrity of criminal proceedings. According to the European Court, such measures should respect the principle of proportionality, ensuring that restrictions imposed on the individual are necessary and appropriate to achieve legitimate objectives, such as preventing flight or interference with evidence.

106. The initial duration of judicial control, capped at 60 days, reflects the requirement for time-limited and specific measures. The periodic review stipulated in paragraph (3^1), ensuring that the necessity of maintaining the measure is assessed at least every 60 days, aligns with the Council of Europe's emphasis on procedural safeguards against arbitrariness. The European Court, in cases like *Svipsta v. Latvia*,[99] has stressed the importance of regular and meaningful judicial oversight to ensure that measures restricting liberty remain justified over time.

107. Paragraph 3 of Article 191 outlines obligations accompanying judicial control, including restrictions on travel, communication, and contact with certain individuals, as well as the surrender of a passport. These conditions are consistent with the European Court's recognition that states may impose reasonable restrictions to ensure compliance with judicial orders. However, the restrictions must not amount to a de facto deprivation of liberty, as seen in *Guzzardi v. Italy*,[100] where overly stringent conditions were deemed equivalent to detention.

108. Paragraph 3^2 establishes cumulative maximum durations for judicial control, differentiated by the severity of the offence. This provision addresses the European Court's concern with the potential indefinite application of such measures, as highlighted in *Mooren v. Germany*.[101] By introducing time limits, the law ensures compliance with the principle that preventive measures must not become punitive or exceed reasonable bounds.

109. The role of law enforcement, outlined in paragraph 4 of Article 191, in monitoring compliance and reporting violations ensures practical enforceability. However, the European Court has emphasised that mechanisms for supervision must not unduly intrude into private life, protected under Article 8 of the European Convention, unless proportionate and necessary.

110. The option to lift or modify judicial control measures, as stipulated in paragraph (5) of Article 191, provides an important safeguard, allowing courts to respond to changes in circumstances. This

---

99 No. 66820/01, 9 March 2006.

100 [P], no. 7367/76, 6 November 1980.

101 [GC], no. 11364/03, 9 July 2009.

reflects the European Court's principle that preventive measures should be flexible and subject to judicial adaptation based on the evolving needs of justice.

111. Article 192 of the Criminal Procedure Code establishes the legal framework for provisional release on bail, providing a balance between the rights of the accused and the interests of justice. When analysed in the context of the Council of Europe standards, particularly Article 5 of the European Convention and the jurisprudence of the European Court, the provision aligns with key principles of proportionality, necessity, and effective judicial oversight.

112. Provisional release on bail serves as a preventive measure designed to secure the accused's compliance with judicial obligations while avoiding pretrial detention. Under Council of Europe standards, the use of bail is strongly encouraged as a less restrictive alternative to detention, provided it achieves the intended goals without unnecessarily infringing on individual liberty.

113. The provision in paragraph 1(1) allows bail to be granted when security for damages caused by the offence is applied or when requested by the accused in detention. This ensures that bail is both practical and accessible. The European Court has emphasised in cases like *Mangouras v. Spain*[102] that bail must be set at a level that is proportionate to the circumstances of the accused, taking into account their financial situation and the risk posed.

114. Paragraph 2^1 establishes that judges must consider bail as an alternative when rejecting requests for pretrial detention or house arrest. This reflects the European Court's principle, articulated in *Buzadji v. Moldova*,[103] that detention must always be a last resort, amount and deadline for payment adds transparency and accountability to the judicial decision-making process.

115. The periodic review requirement in paragraph 2^2 ensures that the necessity of continued bail is evaluated at least every 60 days. This aligns with the Council of Europe's emphasis on preventing arbitrary or prolonged restrictions on liberty. Judicial oversight at regular intervals allows for adjustments based on changes in circumstances, a safeguard highlighted in *Todorov v. Ukraine*.[104]

116. Paragraph 2^3 imposes cumulative time limits for bail based on the severity of the offence, which helps prevent the indefinite application of restrictive measures. This provision aligns with the European Court's principle that preventive measures must be time-bound and proportionate to the gravity of the allegations, as emphasised in *Mooren v. Germany*.[105]

117. Paragraph 3 outlines the obligations of individuals released on bail, including appearing before authorities when summoned and reporting changes in residence. Additional conditions may also be imposed, such as those outlined in Article 191(3), which address risks of flight or interference with justice. These obligations are consistent with the Council of Europe's recognition that conditions can be tailored to manage risks effectively while respecting personal freedoms.

118. Paragraph 4 ensures that failure to deposit the bail within the specified time frame results in the replacement of bail with pretrial detention or house arrest. While this provision introduces a degree of flexibility, the European Court's jurisprudence stresses that courts must consider individual circumstances, such as financial hardship, before revoking bail.

119. Article 195 of the Criminal Procedure Code outlines the procedures for the replacement, revocation, or automatic termination of preventive measures. The provision aligns closely with the principles established by the Council of Europe through the European Convention and the European Court, particularly in safeguarding individual liberty and ensuring proportionality, legality, and judicial oversight in the application of restrictive measures.

---

102 [GC], no. 12050/04, 28 September 2010.
103 [GC], no. 23755/07, 5 July 2016.
104 No. 16717/05, 12 January 2012.
105 [GC], no. 11364/03, 9 July 2009.

120. The ability to replace a preventive measure with a stricter or more lenient one, as stipulated in paragraph 1 of Article 195, reflects the principle of proportionality under Article 5 of the European Convention. The European Court has emphasised that preventive measures must be tailored to the specific circumstances of the case and adjusted as new information arises. This provision ensures flexibility while requiring that any stricter measure be justified by evidence, thereby minimizing unnecessary restrictions on liberty.

121. Paragraph 2 provides for the revocation of a preventive measure when the reasons for its application no longer exist. This aligns with the Council of Europe's standards that detention or restrictive measures must not be maintained when the initial justification ceases to be valid, as highlighted in cases like *Mooren v. Germany*.[106]

122. The specific reference in paragraph 3 to judicial and prosecutorial authority in revoking or replacing detention measures introduces safeguards against arbitrary detention. It emphasises the responsibility of both prosecutors and judges to reassess the necessity of such measures. The European Court has underscored in cases like *Svipsta v. Latvia*[107] that periodic review of detention and other measures is essential to uphold individual rights and prevent abuses of power.

123. Paragraph 3^1 specifically addresses the release of individuals with serious illnesses based on medical assessments. This provision ensures compliance with human rights principles that prohibit inhuman or degrading treatment under Article 3 of the European Convention. The mandatory timeframe of three days for deciding on the release following medical evidence reflects the Council of Europe's emphasis on prompt judicial responses in cases involving health risks, as seen in *Babar Ahmad and Others v. United Kingdom*.[108]

124. The automatic termination of preventive measures, detailed in paragraph 5, further underscores the principle of legality. Preventive measures cease by operation of law when time limits expire, proceedings are terminated, or a final judgment is executed. This aligns with the European Court's insistence that any deprivation of liberty must have a clear legal basis and time-bound application, as established in *Baranowski v. Poland*.[109]

125. Paragraphs 6-8 establish procedural safeguards to ensure immediate release when measures terminate automatically or are revoked. The obligation for authorities to promptly notify detention facilities and ensure release aligns with the principle of effective remedies under Article 13 of the European Court. In *Assanidze v. Georgia*,[110] the European Court highlighted the importance of immediate enforcement of release orders to avoid unlawful deprivation of liberty.

126. Article 196 of the Criminal Procedure Code addresses the right to challenge decisions regarding preventive measures. It provides mechanisms for judicial and hierarchical review of decisions made by prosecutors and courts. Analysing this provision in the context of Council of Europe standards, particularly the European Convention and the jurisprudence of the European Court, demonstrates its alignment with fundamental rights to liberty, effective remedies, and due process.

127. Paragraph 1 allows individuals affected by a prosecutor's order concerning the application, extension, or replacement of a preventive measure to lodge a complaint with an investigating judge. This reflects the principle under Article 13 of the European Convention, which requires the availability of an effective remedy to challenge decisions that may infringe upon fundamental

---

106 [GC], no. 11364/03, 9 July 2009.
107 No. 66820/01, 9 March 2006.
108 No. 24027/07, 10 April 2012.
109 No. 28358/95, 28 March 2000.
110 [GC], no. 71503/01, 8 April 2004.

rights. The European Court, in cases like *De Wilde, Ooms and Versyp v. Belgium*,[111] has emphasised the need for accessible and impartial mechanisms to review prosecutorial actions.

128. The ability of the accused, their legal counsel, or their legal representatives to file complaints ensures that the procedural rights of all parties are respected. This safeguard aligns with Article 6 of the European Convention, guaranteeing access to a fair hearing and equality of arms during the process.

129. Paragraph 2 provides for the appeal of judicial decisions regarding preventive measures, allowing for a hierarchical review by a superior court. This is consistent with Article 5(4) of the European Convention, which entitles individuals deprived of liberty to a prompt review of the lawfulness of their detention by a competent court. The European Convention has reiterated in cases such as *Hutchison Reid v. United Kingdom* that effective judicial review must involve a thorough examination of the lawfulness and necessity of the measure.

130. The provision also addresses appeals in cases involving the Supreme Court of Justice, specifying that such appeals are heard by a different panel of judges. This procedural rule ensures impartiality and compliance with the Council of Europe's standards on judicial independence and fairness, as outlined in *Piersack v. Belgium,*[112] offering a final check against arbitrariness in the imposition or extension of preventive measures.

131. Taken as a whole, the legal provisions governing the imposition of preventive measures in the Republic of Moldova and, in particular, the need for ones involving deprivation of liberty to be justified and not be an automatic choice can be regarded as consistent with the requirements elaborated in the case law of the European Court. There is, however, reason to be concerned about the 24-month cumulative limit on preventive measures and the inevitability of house arrest constituting a deprivation of liberty.

132. Furthermore, as the reasons for undertaking the research for this report indicate, there are reasons to be concerned as to whether the terms of the Criminal Procedure Code actually exert an appropriate influence on decision-making with respect to the imposition of preventive measures and, in particular, on ensuring that there is only resort to those involving deprivation of liberty when a particular risk cannot be satisfactorily addressed through the use of one or more measures <u>not</u> involving such a deprivation of liberty.

[111] [P], no. 2832/66 18 November 1970.
[112] No. 8692/79, 1 October 1982.

D. METHODOLOGY

133. As the concern of the Committee of Ministers is with the current situation, it was considered appropriate to confine the examination of the decisions to those taken in the course of the last two years, i.e., 2022 and 2023.

134. However, although the concern of the Committee of Ministers is with the reasoning of court decisions, limiting the examination to such decisions would not be sufficient for gaining an understanding of the approach seen in them. This is because there is a possibility that those decisions may be relying on the submissions and information provided by prosecutors in both their initial applications for preventive measures and in any subsequent appeals against the grant or refusal of deprivation of liberty as a preventive measure.

135. Thus, the examination also focused on both the prosecutorial submissions and information and the decisions in respect of them by investigating judges and, where applicable, the appeal courts.

136. The research covered the imposition of preventive measures on the accused, i.e., persons defined in Article 65(1) of the Criminal Procedure Code as individuals "against whom charges have been filed in line with the provisions of this Code".

137. There can be decisions as to whether deprivation of liberty should be continued once the trial starts and which technically might be ones treated as a pre-trial measure for the purpose of Article 5(3) of the European Convention. However, although such decisions may also give rise to violations of Article 5(3) on account of the reasoning in them, there did not seem to be a need to include them in the examination as they are not the principal focus of the Committee of Ministers' concern regarding the execution of judgments by the Republic of Moldova.[113]

138. Equally, the research was not concerned with the imposition of preventive measures on "a suspect", which Article 63(1) of the Criminal Procedure Code defines as "a person whom certain available evidence indicates committed a crime prior to charges being brought". This was because Article 175(4) of that Code precludes preventive measures involving deprivation of liberty being imposed on such a person.

139. On the other hand, the examination did cover the imposition of house arrest as defined by Article 188(1) of the Criminal Procedure Code[114] since the view of the judgment of the European Court in *Buzadji v. Republic of Moldova*[115] is that the use of this particular preventive measure in the Republic of Moldova amounts to a deprivation of liberty and is thus also subject to the requirements of Article 5(3) of the European Convention.

113 Under Article 65(2) of the Criminal Procedure Code, an accused person whose case has gone to court is termed "a defendant".

114 "(1) House arrest implies the isolation of the accused/defendant from society in his/her house in which certain restrictions shall be set. (…) (3) House arrest shall be accompanied by one or several restrictions: 1) an interdiction from leaving the house; 2) restrictions on telephone conversations, receiving and mailing postings and using other means of communication; 3) an interdiction from communicating with certain persons or hosting people in his/her house".

115 [GC], no. 23755/07, 5 July 2016.

140. As it would not have been practicable to examine every prosecutorial submission and every investigating judge and appellate decision concerned with the imposition of preventive measures in the course of 2022 and 2023, there was a need to make a selection from them.

141. This selection took account of the importance of ensuring that the examination covered submissions and decisions from a representative and geographically balanced sample, while also covering Chisinau and Balti as the most important ones in the country and also the ones which appear to have most cases in which preventive arrest is imposed.

142. In addition, the selection of cases recognised the need for these to be sufficiently numerous so that a reasonably accurate picture of the current practice in each of the regions covered can be obtained.

143. For the purpose of making the selection, assistance was sought from and kindly given by the Ministry of Justice, the Superior Council of Magistracy and the General Prosecutor's Office and then Vasile Cantarji, a statistician,[116] as to the regions actually to be covered, the size of the sample of case files (i.e., prosecutorial decisions and the related decisions of the investigating judges and appellate courts) to be examined in each of them (with an appropriate adjustment according to the size of the regions concerned) and the making of a random but sufficiently representative identification of the case files actually to be examined in respect of each region (including as far as practicable all the stages of decision-making in respect of each of the individual cases examined).

144. The ability to make the random identification of the cases and then to examine them required the cooperation of the Superior Council of Magistracy, the Agency for Court Administration and the General Prosecutor's Office. Although the data gathering needed to identify the names of cases and of courts, the resulting report does not name any of them but only attempts to give an accurate portrayal of the approach found in the period concerned.

145. In the event, the case files in 23 courts were examined, with the completion of the research checklists in respect of 314 cases covering both the initial and subsequent prosecutorial submissions and the initial and subsequent investigating court decisions, as well as the relevant decisions by appellate courts dealing with the imposition and/or extension of preventive measures in those cases.[117]

146. The courts concerned and the percentage of their files out of the 314 cases examined were as follows:

Court	Percentage of files
Anenii Noi Court (Central Office)	2.9%
Anenii Noi Court (Varnita branch)	0.3%
Balti Court (Central Office)	7.3%
Balti Court (Falesti branch)	1.0%
Balti Court (Singerei branch)	1.9%
Cahul Court (Central Office)	3.2%
Causeni Court (Stefan Voda branch)	2.2%
Chisinau Court (Ciocana branch)	42.4%

116 Centre for Social Surveys and Marketing "CBS-Research" .

117 The total number of files examined reduced as the cases passed through the different stages of the proceedings in respect of them.

Comrat Court (Central Office)	5.1%
Drochia Court (Central Office)	2.9%
Drochia Court (Riscani branch)	1.0%
Edinet Court (Central Office)	1.9%
Edinet Court (Donduseni branch)	2.9%
Edinet Court (Ocnita branch)	1.0%
Hincesti Court (Central Office)	4.1%
Hincesti Court (Ialoveni branch)	2.9%
Orhei Court (Central Office)	6.7%
Orhei Court (Rezina branch)	1.3%
Soroca Court (Central Office)	1.0%
Soroca Court (Floresti branch)	1.6%
Straseni Court (Calarasi branch)	2.2%
Straseni Court (Central Office)	2.2%
Ungheni Court (Central Office)	2.2%
Total	100.0%

147. The examination of the cases involved identifying the approach to submissions or decision-making in individual cases by completing specific checklists for different stages of the decision-making to establish whether there was:

a) A basis for imposing any preventive measure at all (namely, the existence of a reasonable suspicion of an offence having been committed and of risks that the European Court considers admissible for imposing such a measure);
b) Any evidence was adduced in support of imposing a preventive measure and this evidence was consistent with the case law of the European Court;
c) Any consideration of the possibility of imposing a preventive measure other than preventive arrest/house arrest and any reason for dismissing such a possibility that was consistent with the case law of the European Court;
d) Any account was taken of statements/submissions by the accused and/or their lawyer(s);
e) Any consideration of the specific situation of the accused, the impact of preventive arrest/house arrest on their family and, more generally, the proportionality of this preventive measure; and
f) Any consideration of the specific needs of an accused where they were foreign nationals.

148. In addition, as part of the context, it was considered appropriate to identify – when completing the checklists – the seriousness of the alleged offence involved, as well as whether the accused was legally represented and whether the submissions or decisions took into account international human rights standards or guidelines other than the European Convention and the case law of the European Court.

149. Also, to put the analysis of the decisions and decision-making into context, data was extracted from the Reports of the General Prosecutor's Office for 2022 and 2023, showing for the Republic of

Moldova as a whole: the use of preventive arrest following detention and pre-trial arrest; the appeals against or for the use of preventive arrest in 2022 and 2023; the persons subject to international or national search since the beginning of 2018; and the use of house arrest in 2022 and 2023.[118]

150. This data is set out in the following section of the Report.

151. The text of the checklists used to analyse the submissions and decisions is in the first Annex to the Report.

152. Although an individual case could be dealt with in more than one set of submissions by prosecutors and of decisions by investigating judges and appellate courts, only a checklist for the initial and last occasions that these occurred was completed as this was considered sufficient to establish the overall approach to applying preventive measures in the cases concerned.

153. Most of the questions in the checklists only required a "Yes" or "No" answer but some needed information derived from the text of the submissions or decision or an evaluation of that in the light of the requirements of the case law of the European Court (indicated by "to be specified"). In a few instances, there was either no information in a decision or submission relating to the matter covered by a particular question or it was so limited that no conclusion could be drawn from it. As a result, the response given to the question concerned would be "no data was available".

154. The examination of the case files was carried out by Council of Europe national experts Alexandru Cebanas,[119] Ion Graur[120] and Nicoleta Hriplivii,[121] using tablet computers programmed with the different checklists by Vasile Cantarji.

155. A statistical analysis was then prepared by Vasile Cantarji for each group of checklists (i.e., prosecutorial submissions, investigating judge decisions and appellate decisions) that would show in percentage terms the respective responses for each of the individual questions and sub-questions.[122] The aim of this was to reveal the general adequacy of the reasoning at each stage of the process and the specific areas in which this is weak in terms of compliance with the approach required under the case law of the European Court.

118 It was not possible to make use of data provided by the Agency for Court Administration as this was found not to be reliable on account of several overlaps in the indicators used.
119 Council of Europe national expert.
120 Council of Europe national expert.
121 Council of Europe national expert.
122 Set out in Annex 2. Although the analysis started with 314 cases, their number reduced as the proceedings moved to later stages or there were fewer cases relevant to some supplementary questions. The exact number is indicated in the following way: "N=".

E. NATIONAL DATA RELATING TO PREVENTIVE AND HOUSE ARREST

156. This section of the report sets out certain data from the Reports of the General Prosecutor's Office for the Republic of Moldova as a whole concerning the use of preventive arrest and house arrest and draws some conclusions as to such use.

157. The data relates, in turn, to: the persons subject to international or national search since the beginning of 2018; the use of preventive arrest following detention and pre-trial arrest in the period 2017-2023; the appeals against or for the use of preventive arrest in 2022 and 2023; and the use of house arrest in 2022 and 2023.

158. The figures for persons who were subject to international or national search are as follows:

A. Persons Wanted (International/National Search)

Year / Date	Persons in Search
Start of 2018	6,873
Start of 2019	7,699
Start of 2020	8,283
Start of 2021	8,913
Start of 2022	9,101
01 January 2023	9,646

159. The number of notifications received about persons sought abroad was 198 in 2022 and 183 in 2024, The figures for extradition requests initiated were 46 in 2022 and 38 in 2023, of which 33 were approved, 12 were refused and 8 were still pending out of those for 2022 and 21 were accepted and 8 refused out of those for 2023.

160. The figures for detention and preventive arrest were as follows:

B. Detentions and Preventive Arrests (2017-2023)

Indicator	2017	2018	2019	2020	2021	2022	2023
Persons detained	4,410	3,363	2,956	2,694	2,913	3,162	2,628
Persons released by prosecutors	1,980	1,771	1,356	1,293	1,484	1,570	1,405
Requests for preventive arrest	2,843	1,936	1,600	1,401	1,429	1,592	1,223
Persons placed in preventive arrest	2,430	1,592	1,403	1,174	1,207	1,292	1,084
% of detainees placed in preventive arrest	55.1%	47.3%	47.5%	43.5%	41.4%	40.8%	41.2%

161. Thus, of the 3,162 persons detained in 2022, 1,292 ended up subject to preventive arrest (some 40.8% of the persons concerned), whereas in 2023, the respective figures and percentage were 2,628, 1,084 and 41.2%.

162. In each of the years since 2017 except 2021 and 2022, there was a decline in the number of requests by prosecutors for the imposition of preventive arrest. However, in 2021, there were 28 more such requests than in 2020 and in 2022 there were 163 more requests than in 2021, a percentage increase of +10%. In 2023, there were 369 fewer requests by prosecutors for the imposition of preventive arrest than in 2022, a decline of 23%.

163. The total number of detentions increased in 2022 as compared with 2021 (249 cases or +7.8%) whereas they decreased in 2023 as compared with 2022 (534 fewer cases or -16.8%). The corresponding figures for detainees actually placed in preventive arrest saw an increase of 85 in 2022 as compared to 2021 (+6.5%) but a decrease of 208 in 2023 as compared to 2022 (-16%).

164. Whereas 300 requests in 2022 by prosecutors for the imposition of preventive arrest were rejected by judges (i.e., 19.4% of all requests), there were 139 instances in 2023 in which such requests were rejected (i.e. 11.3% of all requests).

165. In addition to the figures in Table B for persons placed in preventive arrest, there were also a number of persons made subject to it in absentia (i.e., due to their evasion, namely, 34 in 2022 and 33 in 2023.

166. The picture emerging between 2022 and 2023 as regards the outcomes of appeals against the imposition of preventive arrest is not entirely consistent.

C. Appeals (Recourses) Against or For Preventive Arrest in 2022/2023

Type of Recourse	Number of Recourses in 2022/2023	Number Accepted in 2022/2023	% Accepted in 2022/2023
Prosecutors' appeals (when judges refused the arrest request)	98/66	21/5	21.4%/7.5%
Accused appeals (against imposed preventive arrest)	360/488	24/16	6.6%/3.2%

167. Thus, the success rate of appeals by prosecutors showed a clear decline in 2023 as compared to 2022 but there was also a decline in the success rate for appeals by the accused.

168. The success rate for accused appeals in 2023 is actually the worst recorded in the period 2017-2023, as can be seen in the table below;

D. Accused appeal acceptance rate

Year	Rate
2017	5.4%
2018	4.3%
2019	7.7%
2020	13.6%
2021	8.6%
2022	6.6%
2023	3.2%

169. Of the total number of persons who, at the investigation stage, were either placed in preventive arrest or arrested in absentia – 1,326 (of whom 1,292 in preventive arrest and 34 in absentia) in 2022, and 1,117 (of whom 1,084 in preventive arrest and 33 in absentia) in 2023 – the distribution by severity of the alleged offences, and by whether an indictment followed while the person remained deprived of liberty, was as follows:

E. Preventive arrest and arrest in absentia[123]

Category of Offence	2022: Number of persons subject to preventive arrest/indicted while so subject	2023: Number of persons subject to preventive arrest/indicted while so subject
Exceptionally serious offences	121/94	118/86
Particularly serious offences	384/178	319/141
Serious offences	643/285	501/264
Other categories of offences	178/79	179/87

170. The above figures cannot disclose whether the persons subject to preventive arrest were indicted for a less serious offence than the one for which they were made subject to it. Nonetheless, it is probable that in at least some instances there was ultimately no basis for bringing a prosecution even if there had been some basis for initially imposing this preventive measure.

171. The figures for the imposition of house arrest in 2022 and 2023 were as follows:

F. House Arrest

1. Placement and overall outcome	2022 (Number of persons)	2023 (Number of persons)
Total persons placed under house arrest	260	183
- On a prosecutor's request	61	61
- On decision of an appeal court	12	6
Persons indicted while on house arrest	88	73

2. „Indicted while under arrest", broken down by severity	2022 (Number of persons)	2023 (Number of Persons)
Exceptionally serious offences	6	4
Particularly serious offences	28	14
Serious offences	45	51
Other categories of offences	9	4

172. Again, it is probable that in at least some instances there was ultimately no basis for bringing a prosecution even if there had been some basis for initially imposing this preventive measure.

173. Certainly, as compared with the beginning of the period 2017-2023, there has been a decline in the number of requests by prosecutors for the imposition of preventive arrest as well as in the total number of persons subject to such a measure and in the last two years of this period of house arrest being imposed.

123 Table E combines persons in preventive arrest with those arrested in absentia because the GPO offence-severity statistics (GPO Annual Reports 2022, pp. 65-67; 2023, pp. 54-57) are reported only in aggregate form. Table B, by contrast, reflects preventive-arrest figures alone (1,292 in 2022; 1,084 in 2023). The disaggregated breakdown will be inserted when the underlying data become available.

174. However, the sense of a possible improvement in compliance with requirements by the European Court relating to the imposition of preventive measures is not entirely positive.

175. Thus, there was in 2023 a weakening in the rate of refusal of requests to impose preventive arrest as compared with 2022. Moreover, although there was a clear decline in 2023 as compared to 2022 in the success rate of appeals by prosecutors against rulings on the imposition of preventive measures, there was also a decline in the success rate for appeals by the accused.

176. Nonetheless, these year-on-year shifts cannot be interpreted in isolation.

177. The statistical tables do not reveal the qualitative profile of the underlying cases—such as the gravity of the alleged offences, the strength of the evidence, or the individual risk factors advanced under Article 5 § 3. Without that contextual detail it remains unclear whether the 2023 ratios reflect a substantive change in judicial practice, a different caseload composition or ordinary statistical variability. Any firm conclusion on compliance trends would therefore require a granular, case-by-case analysis rather than reliance on aggregate percentages alone. However, as the analysis of the submissions by prosecutors and the decisions of investigating judges and appellate courts suggests, there continue to be various shortcomings as regards the imposition of preventive measures entailing a deprivation of liberty which may mean that it is not always warranted.

F. ANALYSIS OF RESEARCH RESULTS

178. Drawing on the statistical analysis, the present section of the Report renders, in a more narrative form that is topic-based, an analysis of the checklists completed in respect of individual cases from prosecutorial submissions through investigating judge decisions to appellate decisions (if any).

179. This analysis endeavours to reveal whether there has been any evolution in the approach to reasoning, whether positive or negative, and where the particular focus of any remedial measures that might be required should be placed. The conclusions in this regard will be drawn together in the final section of the Report.

180. The percentage breakdown of the relative seriousness of the offences involved in the case files for which the checklists was as follows:

Nature of offence	Percentage
Minor	1.0%
Less serious	12.1%
Serious	51.6%
Particularly serious	25.5%
Exceptionally serious	9.9%

181. A consolidated statistical table for the responses to all the checklists is in the first Annex to the Report.

Checklist 1: Initial submissions of prosecutors for the imposition of preventive measures

182. The accused was *legally represented* in almost all of the cases (99.7%) in which submissions were made by prosecutors concerning the imposition on them of preventive measures.

183. In the *initial submissions* of prosecutors for the imposition of preventive measures, the only measures considered appropriate by them were ones that entailed depriving the persons concerned of their liberty, whether in the form of preventive arrest or of house arrest. Indeed, in the vast majority of cases (93.6%), preventive arrest was the measure sought.

184. It was only in a very few cases (0.6%) that the prosecutors failed to address the *existence of a reasonable suspicion* that the accused had committed an offence. However, the substantiation of the existence of such a suspicion was found not to have been in a manner consistent with the case law of the European Court in a significant number of cases (10.6%). Both of these shortcomings could be relevant for satisfactory compliance with the court's responsibility to determine whether the particular imposition of a preventive measure involving a deprivation of liberty would be

compatible with the requirement under Article 5(3) of the European Convention for such a suspicion actually to exist before imposing such a measure.[124]

185. Nonetheless, in all cases the submissions asserted that there were one or more *specific grounds* consistent with that case law of the European Court for the imposition of preventive measures, with two or more of them being cited in the majority of cases. Indeed, in the overwhelming majority of them, the grounds were both the risk of hiding from the criminal investigation (cited in 98.7% of cases) and the risk of destroying or damaging evidence (cited in 93% of cases). However, in very many cases (72.6%), there was also said to be a risk of the accused committing other crimes and, in many others (50.3%), there was claimed to be a risk of the accused exerting pressure on witnesses, while it was less frequent – just in 10.5% of the cases – for it to be claimed that there was a risk of the accused's release causing public disorder.

186. Apart from the grounds recognised by the European Court as justifying the use of preventive measures, certain other reasons were additionally cited as requiring their imposition.

187. Thus, the seriousness of the crime was invoked in very many cases (62.4%), while there was claimed to be a need to carry out additional investigation in many others (28.3%) and reference was made to the strength of the evidence in a significant number of them (11.5%). Less frequent additional reasons invoked were concerns about the duration of the procedure (5.1%), the refusal of the accused to plead guilty (3.2%), ensuring the execution of the sentence (0.6%), the crime being committed within a period of probation (0.3%) and problems that would ensue in establishing guilt or applying the criminal penalty (0.3%).

188. These reasons are not considered by the European Court to be justified for the purpose of imposing preventive measures involving deprivation of liberty and the invocation of certain of them – especially the emphasis on the seriousness of the crime – could well be prejudicial to the accused, especially given the evidential failing noted in the following paragraph.

189. Thus, notwithstanding the different grounds invoked for the imposition of preventive measures, there was a failure in very many cases (63.7%) to provide any *evidence that substantiated them*, which would reflect a systematic weakness in complying with a fundamental requirement under Article 5(3) of the European Convention. Moreover, in many cases (22.8%), the evidence referred to was not consistent with the case law of the European Court.

190. Although the submissions always sought the deprivation of liberty of the accused, the prosecutors **did not** state in the overwhelming majority of cases (86%) that they had restricted their consideration to the imposition of this form of preventive measure as a way of handling the case. Moreover, in the overwhelming majority of the cases where there was such consideration about how they should be handled (95.6%), the submissions did give some specific reason for not *imposing preventive measures other than preventive arrest/house arrest* (i.e., non-custodial ones such as bail, electronic monitoring or travel restrictions).

191. Despite such consideration, non-custodial measures were stated not to be appropriate in the cases concerned in the overwhelming majority of cases on account of a risk that the person concerned would either hide (84.4%) or destroy or damage evidence (79.3%), or, in very many of them commit, other crimes (64.1%). Moreover, while in many of them this was said to be because there was a risk of pressure being exerted on witnesses (43.7%) and in a significant number of them such measures were said not to be appropriate as there was considered to be a risk of release causing public disorder (11.9%). However, in 45.6% of all these cases, there was no actual evaluation of the risks that were considered to arise in the event of preventive arrest/house arrest not being imposed. Furthermore, in those cases where there was such an evaluation, it was only substantiated in 11.9% of them with specific examples or past behaviour.

---

[124] See paras. 10-11 above.

192. In the overwhelming majority of cases (86.3%), the submissions of the prosecutors did address the *proportionality of imposing preventive arrest/house arres*t in relation to the severity of the alleged offence and the expected penalty if convicted. However, in only 13.7% of cases was the assessment of proportionality in line with principles established by the European Court.

193. In almost all cases, there was no reference to *statements/submissions either by the accused* (98.1%) *or their lawyers* (99.7%). Where there was some such reference, it was stated to be either irrelevant in the overwhelming majority of cases (80%) or to be unfounded in very many of them (60%). However, there was no substantiation for either assertion about those submissions/statements in very many of the cases (66.6%), which could well handicap the ability of the investigating judge to make any assessment of them.[125]

194. In many cases (51%), there was consideration in the *submissions regarding specific conditions of the accused* (such as age, state of health, disability, sexual orientation) or other grounds of vulnerability but in only some of those cases (35%) were any reasons given as to why those factors were not relevant for the preventive measure being sought. Of the latter ones, the reasons given were not assessed in 78.6% of the cases concerned as being in accordance with the case law of the European Court.

195. Hardly ever did the prosecutors' submissions have any regard to the impact of preventive arrest/house arrest on the accused's family or dependants (just in 1.6% of cases). However, where there was such a regard to the possible impact of such measures, there was an attempt to justify it in all cases and this justification was in line with the principles established by the European Court in the vast majority of cases (80%) but – as only 5 cases were involved – this is not particularly significant.

196. The accused were only *foreign nationals* in a very small percentage of cases (2.5%) but in none of them was there any reference to considerations such as consular access or potential language barriers and thus no proposals were made as to how such issues should be addressed.

197. In only a few cases (7.3%) was there any reference to *international human rights standards or guidelines* other than the European Convention or the case law of the European Court.[126] Where there was such a reference it was primarily to Recommendation Rec R (80) 11 (in 21 out of 314 cases) and hardly any to either Recommendation Rec(2006)13 para. 7(a) (just 2 cases).

198. In many of the cases (63.1%), the assessment of the researchers was that the approaches seen in the submissions of prosecutors included *copy-pasting* in their motivation/formulation.

199. The *key problems* disclosed from the analysis of the submissions relate to:

- the absence of any substantiation in many instances of the key elements involved in the imposition of preventive measures, namely, the existence of a reasonable suspicion, the grounds for imposing such measures and the alleged risks of not imposing ones that involve a deprivation of liberty;
- the emphasis placed at times on grounds for imposing preventive measures not considered relevant by the European Court;
- the flawed assessment of the proportionality of imposing preventive measures involving a deprivation of liberty in many cases and the failure in some cases to even consider this;
- the failure to consider the relevance of the accused's condition in proposing that they be imposed; and the continued reliance placed on a reference to a Recommendation of the

125 See the observation of the European Court in *Sarban v. Moldova*, no. 3456/05, 4 October 2005 that "the domestic courts devoted no consideration to any of these arguments in their relevant decisions, apparently treating them as irrelevant to the question of the lawfulness of the applicant's detention on remand, even though they were obliged to consider such factors under Article 176 § 3 of the Code of Criminal Procedure" (at para. 101).

126 See fn. 4 above.

Committee of Ministers of the Council of Europe (Recommendation Rec R (80) 11) that has been replaced by a more recent one, Recommendation Rec(2006)13).

200. The submissions analysed demonstrated a familiarity with the requirements under the Criminal Procedure Code and the European Convention for imposing preventive measures involving a deprivation of liberty but their application was often unduly formalistic and unlikely to provide the necessary assistance for the decisions to be taken by the investigating judges in the cases concerned. Moreover, the impression of insufficient attention to the specific circumstances of individual cases is reinforced by the copy-pasting of material included in in the submissions of prosecutors.

Checklist 2: Initial decisions of investigating judges for the imposition of preventive measures

201. In a significant number of cases, the investigating judges **did not** *accept the submissions of prosecutors as to the need for preventive arrest/house arrest* to be imposed as a preventive measure. Thus, they ordered house arrest in 16.3% of cases compared to the 6.4% of ones for which prosecutors considered this appropriate, which meant that – taken together with the very small number of cases (1.9%) in which they actually ordered provisional release under judicial control – that preventive arrest was ordered in 81.2% of cases rather than in the 93.6% of them for which it had been sought.

202. Although there was a check by the investigating judges as to whether the accused was *legally represented* in almost all of the cases (99.7%) in which they dealt with submissions concerning the imposition on them of preventive measures, the absence or existence of legal representation was only seen as having importance for the decision reached in a very small number of cases (1.3%).

203. The decisions of the investigating judges *referred to the specific provisions of the Criminal Procedure Code* authorising the imposition of preventive measures in all cases.

204. In a sizeable number of the cases (31.3%), the decisions in their reasoning part referred only to *submissions by prosecutors* but, where there was reference to other submissions, these were overwhelmingly those made by the defence (99.5%).

205. Furthermore, in the overwhelming majority of cases (98.7%), the decisions of the investigating judges addressed the issue of *whether there was a reasonable suspicion* that the accused had committed the offence concerned. This was only slightly less than seen in the prosecutors' submission (99.4%). However, there were many cases (21.4%) in which the basis for the finding that there was a reasonable suspicion was not consistent with the case law of the European Court, which was at a rate twice greater than seen in the prosecutors' submissions (10.6%) and a deterioration in the level of compliance with the requirement under Article 5(3) of the European Convention which is hard to fathom.

206. On the other hand, unlike the prosecutors, the investigating judges **did not** find established in all cases the applicability of one or more *specific grounds* for the imposition of preventive measures that were consistent with the case law of the European Court. The small number of cases in which this was not considered to have been established (5.1%) is not, however, explained by the decision to order provisional release but – as will be seen – with the acceptance by the courts in some cases that the imposition of preventive arrest/house arrest was warranted on grounds other than those recognised as justified by the European Court.

207. In the overwhelming majority of the cases (94.9%), the decisions of the investigating judges found that there were one or more specific grounds consistent with that case law of the European Court

for the imposition of preventive measures. However, this was in contrast to the 100% seen in the submissions of the prosecutor.

208. Moreover, also in contrast to those submissions, the extent to which those grounds were invoked by the investigating judges was at a lesser rate but, in most instances, this difference was not particularly significant:

Relevant ground	Prosecutors' submissions	Investigating judges' rulings
Hiding from investigation	98.7%	92.3%
Destroying/damaging evidence	93%	91.9%
Committing other crimes	72.6%	61.6%
Exerting pressure on witnesses	50.3%	47.1%
Release causing public disorder	10.5%	9.1%

209. Generally, there was also a downward variation compared with prosecutors' submissions with regard to the citing by the investigating judges in their decisions of grounds other than those recognised by the European Court as justifying the imposition of preventive measures.

210. The exceptions were the claimed need to carry out additional investigation (in 30% rather than the 28.3% of cases) and the taking of the same view as the prosecutors of cases on account of the crime being committed within a period of probation (0.3%).

211. Otherwise, the difference in the assessments by the investigating judges of other grounds justifying the imposition of preventive measures as compared to those in the submissions made by the prosecutors was as follows:

Ground	Investigating judges' decisions	Prosecutors' submissions
Seriousness of the crime	57.9%	62.4%
Strength of the evidence	3.0%	11.5%
Duration of the procedure	4.4%	5.1%
Need to conduct further investigation	30.0%	28.3%
Refusal to plead guilty	1.0%	3.2%
Problems related to the establishment of guilt	0.0%	0.3%
Committing the crime during the probationary period	0.3%	0.3%
Ensuring execution of the sentence	0.3%	0.6%

212. Regardless of the different grounds invoked for the imposition of preventive measures, there was an even greater failure by the courts than prosecutors to rely upon any *evidence that substantiated them* (75.7% of cases rather 63.7% of them). However, where there was substantiation, the percentages of cases in which this was not consistent with the case law of the European Court was slightly less than in the submissions of prosecutors; 19.7% rather than 22.8% of the cases concerned.

213. In the decisions of the investigating judges, the percentage of cases in which consideration had been restricted only to deprivation of liberty as a preventive measure was slightly greater than that seen in the submissions of prosecutors; 17.9% rather than 14.0% of cases. However, in the 82.1% of cases where consideration was not so restricted, the decisions did address *the possibility of imposing preventive measures other than preventive arrest/house arrest* (i.e., non-custodial ones such as bail, electronic monitoring or travel restrictions) at a slightly greater rate than prosecutors; 98.1% rather than 95.6%.

214. Despite such consideration, there was not a great variation in the view of the investigating judges compared with that of the prosecutors as to why non-custodial measures were stated not to be appropriate in the cases concerned, with specific reasons being given for this in 98.1% of cases (as compared to 95.6% of cases in the submissions of prosecutors).

215. On the other hand, the courts were slightly less convinced than prosecutors that many of the risks existed in the cases concerned, as can be seen in the table:

Risk	Investigating judges' decisions	Prosecutors' submissions
Hiding	82.9%	84.4%
Committing other crimes	55.0%	11.5%
Pressure on witnesses	41.2%	43.7%
Causing public disorder	8.8%	11.9%

However, they took the view more often than prosecutors that one risk existed, namely, the accused destroying or damaging evidence (83.7% instead of 79.3%).

216. There was an evaluation of the risk involved of not imposing preventive arrest/house arrest in 56.4% of cases which was very similar to the rate in the submissions by prosecutors (54.4%) but there was a slightly greater rate of substantiation for the evaluation concerned (13.6% as opposed to 11.9%). However, neither rates would be consistent with the approach expected by the European Court.

217. As with the prosecutors' submissions, the decisions of the investigating judges did – in the overwhelming majority of cases – address the *proportionality of imposing preventive arrest/house arrest* in relation to the severity of the alleged offence and the expected penalty if convicted cases. However, this was to a slightly lesser extent than in the prosecutor's submissions; 80.21% instead of 86.3%. Nonetheless, the extent to which this assessment of proportionality was in line with principles established by the European Court was somewhat greater than seen in the prosecutors' submissions; 17.9% of cases instead of 13.7% of them but, in both instances, this is clearly inadequate and reflects a shortcoming noted in cases determined by the European Court.[127]

218. As compared with prosecutors' submissions, there was a vast increase in the extent to which the decisions of the investigating judges referred to *statements/submissions either by the accused* (45.9% instead of 1.9%) *or their lawyers* (72.2% instead of 0.3%). Moreover, where there was some such reference, the extent to which these were stated to be irrelevant was significantly different as compared with that found in prosecutors' submissions (1.8% of cases instead 20%).

219. However, although the percentage in cases in which these decisions considered the statements/submissions not to be irrelevant is not vastly different from that for prosecutors' submissions (70% instead of 80%), no data was available in 28.2% of the cases. On the other hand, the percentage of cases in which the statements/submissions were considered to be unfounded was greater in the decisions of the courts than in the prosecutors' submissions (76% of cases instead of 40%, with no data being available 0.9% of cases). However, there was a greater rate of substantiation for either finding about those submissions/statements in very many of the cases (51.1% instead of 33.3%, with no data being available for 22.2% of them).

220. The decisions of the investigating judges gave less consideration than the prosecutors' submissions to *specific conditions of the accused* (such as age, state of health, disability, sexual orientation) or other

127 See, e.g., its observation *in Buzadji v. Republic of Moldova* [GC], no. 23755/07, 5 July 2016 that: "the reasons invoked by the domestic courts for ordering and prolonging the applicant's detention were stereotyped and abstract. Their decisions cited the grounds for detention without any attempt to show how they applied concretely to the specific circumstances of the applicant's case" (at para. 122).

grounds of vulnerability (35.1% rather than 51.0% of cases) but in more of those cases (50.9% rather than 35.0%) were reasons given as to why those factors were not relevant for the preventive measure being sought. Of the latter ones, the reasons given were more often found than with the prosecutors' submissions to be in accordance with the case law of the European Court (in 37.5% rather 21.4% of the cases).

221. In only slightly more instances than the prosecutors' submissions (3.8% as opposed to 1.6% of cases) did the decisions of the investigating judges have any regard to the *impact of preventive arrest/house arrest on the accused's family or dependants*. However, where there was such a regard to the possible impact of such measures, there was a lesser attempt to justify it (in 66.7% as opposed to 100% of cases) and this justification was slightly less in line with the principles established by the European Court (75.0% rather than 80.0% of cases).

222. There was a miniscule difference between the decisions of the investigating judges and the prosecutors' submissions as to the finding whether the accused was a *foreign national* (2.6% rather than 2.5% of cases) but, as with the prosecutors' submission, in none of them was there any reference to considerations such as consular access or potential language barriers and thus no proposals were made as to how such issues should be addressed.

223. In slightly fewer cases than the prosecutors' submissions (5.4% as opposed to 7.3% of cases) was there any reference by the investigating judges to *international human rights standards or guidelines* other than the European Convention or the case law of the European Court.[128] Where was such a reference, this was to a lesser extent than in the prosecutors' submissions, namely, in 16 as opposed to 21 cases in respect of Recommendation Rec R (80) 11 (21%) and in 1 rather than 2 of cases in respect of Recommendation Rec(2006)13, para. 7(a).

224. To a slightly greater extent than with regard to prosecutors' submissions (70.6% as opposed to 63.1% of cases), the assessment of the researchers was that the approaches seen in the decisions of the investigating judges included *copy-pasting* in their motivation/formulation.

225. Although the investigating judges were more ready than prosecutors to consider preventive measures other than preventive arrest, there were still significant shortcomings in the substantiation of the grounds for doing so and in their approach to the evaluation of risks of not imposing a preventive measure involving deprivation of liberty. Moreover, their approach to determining the existence of a reasonable suspicion and to the grounds that could justify a preventive measure involving deprivation of liberty was not always consistent with the case law of the European Court. Furthermore, the high rate of the incidence of copy-pasting in decisions again suggests that there was insufficient attention to the specific circumstances of the cases being determined.

226. The greater readiness to refer to defence submissions and not to consider them irrelevant seems a positive development. However, this was offset by the increased rate of treating such submissions as unfounded and the very low rate in which was considered both that the accused was vulnerable and that the imposition of preventive arrest/house arrest had no impact on their family or dependants. It is unclear whether these low rates of consideration are to be attributed to shortcomings on the part of defence lawyers or the investigating judges. At least some of the latter – like the prosecutors – seem strangely unaware of the more recent Committee of Ministers Recommendation and were not always conversant with the approach of the European Court in this matter.

---

128 See fn. 4 above.

Checklist 3: Subsequent submissions of prosecutors for the imposition of preventive measures

227. As compared with the initial submissions of prosecutors concerning the imposition of preventive measures, there was *greater variety in the approach proposed* in the subsequent submissions of prosecutors.

228. Thus, there was now a readiness for the accused to be released under judicial control in some instances (5.2% of cases) and even for the preventive measure previously imposed to be revoked in a few instances (0.7% of cases), while the criminal case was terminated due to the reconciliation of the parties in a few others (0.4% of cases). Moreover, there was a significant reduction in the instances where preventive arrest was sought (64.9% as opposed to 93.6% of cases) and a corresponding increase in the instances for which house arrest was sought (28.7% as opposed to 6.4% of cases).

229. The *existence of a reasonable suspicion* that the accused had committed an offence was addressed in the prosecutors' submissions where this was relevant, i.e. in all cases except those where the case had been terminated due to the parties' reconciliation, whereas this had not been addressed in the previous submissions in 0.6% of cases.

230. However, the substantiation of the existence of such a suspicion was again found – in even more instances than in the initial submissions (11.2% as opposed to 10.6% of cases) – **not** to have been in a manner consistent with the case law of the European Court. Nonetheless, where there was substantiation, this was provided in the overwhelming number of instances, albeit at a slightly lower rate than in the previous submissions (i.e., in 88.8% of cases as opposed to 89.4% of them). Furthermore, this substantiation was based on the same evidence as was relied upon in the previous submission in most cases (91.8% of them).

231. Unlike the previous submissions, the subsequent prosecutors' submissions **did not** assert in all cases that there were one or more *specific grounds* consistent with the case law of the European Court for the imposition of preventive measures (97.8% as opposed to 100%).

232. Two or more such grounds were cited in the majority of cases. In the overwhelming majority of them, with only a minor change from the previous submissions, namely:

Relevant ground	Initial submissions	Subsequent submissions
Hiding from investigation	98.7%	97.3%
Destroying/damaging evidence	93.0%	90.8%
Committing other crimes	72.6%	72.0%
Exerting pressure on witnesses	50.3%	49.0%
Release causing public disorder	10.5%	10.0%

233. As with the previous submissions, certain other reasons other than the grounds recognised by the European Court were also cited as requiring the imposition of preventive measures. Again, there was very little variation from the approach of the previous submissions in this regard and this was seen in only some cases (9.1% of them). The variation was as follows:

Ground	Initial submissions	Subsequent submissions
Seriousness of the crime	62.4%	60.5%
Strength of the evidence	11.5%	10.0%
Concerns about the duration of the procedure	5.1%	3.1%
Need to conduct further investigation	28.3%	30.7%
Refusal to plead guilty	3.2%	1.9%
Problems related to the establishment of guilt	0.3%	0.0%
Committing the crime during the probationary period	0.3%	0.4%
Ensuring execution of the sentence	0.6%	0.0%

234. However, while there was no reference to ensuring the execution of the sentence or to problems that would ensue in establishing guilt or applying the criminal penalty, there was an entirely new reason, namely, the resonance of the criminal case and the fact that the person was under investigation for other serious crimes (in 0.4% of cases).

235. Notwithstanding the different grounds invoked – whether those under the European Convention or the other reasons invoked – there was an even greater failure than in the initial submissions to provide *any evidence that substantiated them* (77.7% as opposed to 63.7% of cases), which is seriously inconsistent with the approach that would expected to ensure compliance with the requirement under Article 5(3) of the European Convention.

236. However, where some evidence was referred to in the submissions by prosecutors, this was not the same as that in their previous ones in just over half of the cases (50.8%). This new evidence related to the ground(s) previously invoked in the overwhelming majority of cases (90%).

237. Of the submissions in which the deprivation of liberty of the accused was sought, the prosecutors **did not** state in the overwhelming majority of cases (84.5%) that they had restricted their consideration to the imposition of this form of preventive measure as a way of handling the case. However, where there was such consideration, the submissions did give *some specific reason for not imposing preventive measures other than preventive arrest/house arrest* (i.e., non-custodial ones such as bail, electronic monitoring or travel restrictions) but this was at a slightly lower rate than in the initial submissions (93.7% rather 95.6%), although no data was available in 2.2% of the cases concerned.

238. The reasons in the subsequent submissions of prosecutors for rejecting the suitability of preventive measures of a non-custodial nature were *in most cases the same as those in the previous submissions* (86.6%) but no data regarding this was available in some cases (6.9%). In many of the cases (68.5%) there was an evaluation of the risk involved of not imposing preventive arrest/house arrest but again no data regarding this was available in some cases (9.7%).

239. However, where there was such an evaluation, it was not substantiated with specific examples or past behaviour in very many cases (67.9%), although no data regarding this was available in some cases (20.0%). Moreover, where there was such an evaluation, it was only substantiated with specific examples of past behaviour in 12.1% of cases, although no data was available in a further 20.0% of them. The limited extent to which there was substantiation for rejecting the suitability of preventive measures of a non-custodial nature would thus have given the courts concerned no satisfactory basis for taking their decisions on this issue.

240. In almost all cases (98.9%) alternative measures had not previously been applied so that there was no account taken of the need now to apply preventive arrest/house arrest. However, in the very few cases where they had been applied (1.1%), there was no consideration of this issue.

241. In no cases was there any reference in the submissions of prosecutors to *new statements/submissions made by the accused* (compared with such a failure in 98.1% of the previous submissions). There was, however, a slightly greater rate of reference to *new statements/submissions by the lawyers* of the accused (0.8% as opposed to 0.3% of cases. Nonetheless, this is hardly significant. Moreover, there was a much greater rate of rejection of those submissions as irrelevant and/or unfounded, namely in all cases concerned as opposed to the view of prosecutors in their initial submissions that 20% of them were irrelevant and 40.0% were unfounded. Nonetheless, there was substantiation for the response given in somewhat more instances (50% as opposed to 33.3%).

242. In many of the prosecutors' submissions (67.9%), no information was provided to the court as to the *steps taken in connection with the investigation since the previous court ruling* on preventive measures. Moreover, in the overwhelming majority of cases, these submissions **did not** address the

length of the accused's preventive arrest/house arrest (94.0% of cases) or why this length was either consistent with national law (95.8% of cases) or the case law of the European Court (99.2% of cases). Furthermore, also in the overwhelming majority of cases (94.8%), there was no evaluation in them of the current behaviour and conduct of the accused while under preventive measures. However, where there was such an evaluation, concrete examples of compliance or non-compliance with those measures was provided in the vast majority of the cases concerned (85.7%).

243. In only a few instances (2.3% of cases) did the submissions assess any new developments in the *accused's personal circumstances* – such as changes in family status, employment or health – which might impact the necessity or appropriateness of preventive arrest/house arrest. However, where there was such an assessment, the changes were considered significant in the decision-making process in many of the cases concerned (66.7%).

244. Furthermore, the prosecutors' submissions **did not** provide an *updated assessment of the proportionality* of the imposition of preventive arrest/house arrest in the light of the elapsed time in most cases (88.7%). Moreover, where there was such an assessment, this was consistent with the case law of the European Court in less than half of the cases concerned (44.1%). Also, in the overwhelming majority of cases (96.2%),the prosecutors' submissions **did not** provide information about any changes in the severity or nature of the alleged offence.

245. In addition, the submissions **did not** in the overwhelming majority of cases (97.8%) have regard to the *impact of preventive arrest/house arrest on the accused's family or dependant*s. However, in the few cases where there was such regard, the prosecutors did try to justify this impact in the vast majority of cases (83.3%) and that justification was consistent with the case law of the European Court in very many of the cases concerned (80.0%).

246. The accused was only a *foreign national* in a very small percentage of cases (3%) but in none of them was there any reference to considerations such as consular access or potential language barriers and thus no proposals were made as to how such issues should be addressed.

247. In only a few cases (6.7%) was there any reference to *international human rights standards or guidelines* other than the European Convention or the case law of the European Court.[129]

248. Where there was such a reference it was primarily to Recommendation Rec R (80) 11 (in 17 cases) and only to Recommendation Rec (2006)13 7(a) in just 1 case.

249. In the vast majority of the cases (81.3%), the assessment of the researchers was that the approach seen in the submissions of prosecutors included *copy-pasting* in their motivation/formulation, although there was no comment on that in 13.4% of their responses.

250. Although there was a greater readiness to consider less draconian forms of preventive measures, there was a continuing problem in substantiating the various submissions made with respect to the existence of a reasonable suspicion and the basis or justification for the imposition of preventive measures. This problem concerned not only the absence in many instances of any substantiation at all but also, where it was provided, to do so in a manner consistent with the case law of the European Court. In addition, the grounds relied upon were not always consistent with that case law.

251. Moreover, the issue of updating the court about the progress of the investigation was not always dealt with and there was also a failure to consider the length of deprivation of liberty already endured.

252. There was also a continued reliance on an outdated Recommendation of the Committee of Ministers.

[129] See fn. 4 above.

253. Finally, the heavy reliance on copy-pasting again points to insufficient attention to the specific circumstances of individual cases.

254. Overall, the submissions of the prosecutors can hardly be regarded as providing a satisfactory basis for the decision-making by investigating judges in many cases.

Checklist 4: Subsequent decisions by investigating judges for the imposition of preventive measures

255. There was no significant difference between the number of cases in which the investigating judges had imposed house arrest and this preventive measure had been sought by prosecutors (27.8% as opposed to 28.7% of cases).

256. However, *the refusal to accede to the submissions of prosecutor*s that preventive arrest be imposed was more pronounced. Thus, the courts imposed it in 52.9% of cases as opposed to the 64.9% of cases in which this had been sought. There was also a marked increase in provisional release under judicial control (17.9% of cases as opposed to the 5.2% of cases in which this had been sought by prosecutors). In none of the cases was there a revocation of the preventive measure or the termination of the case due to reconciliation of the parties but in a very small number of cases (0.4%) provisional release under caution was ordered.

257. There was a check by the investigating judges as to whether the accused was *legally represented* in all of the cases but its absence or existence was only seen as having importance for the decision reached in a very small number of cases (0.4%).

258. The decisions of the investigating judges referred to the s*pecific provisions of the Criminal Procedure Cod*e authorising the imposition of preventive measures in virtually all cases (99.2% of them).

259. In somewhat fewer instances than in the initial decisions, the investigating judges referred in the reasoning part of their decisions only to *submissions by prosecutors* (27.4% as opposed to 31.3%) and, where there was reference to other submissions, these were overwhelmingly those made by the defence, albeit at a rate slightly less than in the initial decision(96.3% as opposed to 99.5%).

260. Moreover, in the overwhelming majority of cases (97.7%), the decisions of the investigating judges addressed the issue of whether there *continued to be a reasonable suspicion* that the accused had committed the offence concerned. This was only slightly less than seen in the initial decision (98.7%). However, there were slightly fewer instances than in the initial decisions (16.7% as opposed to 21.4%) in which the basis for the finding that there was a reasonable suspicion was not consistent with the case law of the European Court. Moreover, the finding that there continued to be a reasonable suspicion was mostly based on the same evidence as a previous ruling (88.6%) while in some instances it was based on new evidence as well as the previous evidence relied upon (16.3%).

261. The investigating judges found established in slightly fewer instances than the prosecutors the applicability of one or more *specific grounds* for the imposition of preventive measures that were consistent with the case law of the European Court (86.3% as opposed to 97.8%). The instances in which this was not considered to have been established (13.7% of cases) is not, however, entirely explained by the decision to order provisional release which occurred in 18.3% of cases. The explanation for the discrepancy would seem to be that, although the investigating judges acknowledged the existence of valid ground under the European Convention in some of the latter cases, they still opted for a non-custodial option on the basis that they considered the risk could be mitigated by a less exacting preventive measure.

262. In all the cases for which the decisions of the investigating judges found that there were one or more specific grounds consistent with that case law for the imposition of preventive measures, this was not to the same extent as seen in the initial decisions of the investigating judges (86.3% as opposed to 94.9%). Moreover, as regards the specific grounds invoked, this was always at a lesser rate than that seen in the submissions of the prosecutors, although this was not always particularly significant, as can be seen in the table below:

Relevant ground	Initial decision	Subsequent decision
Hiding from investigation	92.3%	87.7%
Destroying/damaging evidence	91.9%	86.9%
Committing other crimes	61.6%	53.7%
Exerting pressure on witnesses	47.1%	43.6%
Release causing public disorder	9.1%	6.1%

263. Again, there was generally a downward variation compared with the initial decisions of the investigating judges with regard to the citing by decisions of grounds other than those recognised by the European Court as justifying the imposition of preventive measures.

264. The exceptions were the claimed need to carry out additional investigation (in 30.8% rather than the 30.0% of cases), the strength of the evidence (4.0% rather than 3.0% of cases) and ensuring the execution of the sentence 3.1% rather than 0.3% of cases). Otherwise, the assessments were as follows:

Ground	Initial decisions	Subsequent decisions
Seriousness of the crime	57.9%	54.6%
Duration of the procedure	4.4%	0.4%
Refusal to plead guilty	1.0%	0.0%
Committing the crime during the probationary period	0.3%	0.4%

265. Unlike in the initial decisions, there was no reference to the crime being committed during a probationary period.

266. Regardless of the different grounds invoked for the imposition of preventive measures, there was an even greater failure of the courts in the subsequent decisions than in the initial ones to rely upon *any evidence that substantiated them* (82.9% of cases rather 75.7% of them). Moreover, where there was substantiation, the percentages of cases in which this was not consistent with the case law of the European Court was somewhat less than in the initial decisions (22.2% rather than 19.7% of them). However, where there was substantiation, the evidence relied upon was not the same as in a previous decision in over half the cases (57.8%).

267. In respect of cases for which preventive arrest/house arrest had previously been imposed, the decisions **did not** only consider *the need for this to be continued* in the overwhelming majority of cases (84.0%). Moreover, in almost all of the instances in which this was so, the possibility of now imposing other preventive measures was addressed (97.3% of them), while giving a specific reason for not doing so in the majority of cases (65.2%) which, in very many of them (61.5%), was the same as one previously given in that regard.

268. Of the cases in which alternative measures had previously been imposed, there appeared to have been no decisions in respect of them in which it was accepted that there was *a need to impose preventive arrest/house arrest*, although there was no data on this point for 97.9% of the cases.

269. In the vast majority of decisions of investigating judges (86.3%), there was *no evaluation of the current behaviour and conduct of the accused* while under preventive measures. However, where there was such an evaluation, there was reference to concrete examples of compliance or non-compliance with the measures in many cases, albeit at a lower rate than in the prosecutors' submissions (72.2% rather than 85.7%). On the other hand, there was a greater assessment of new developments in the accused's personal circumstances, such as changes in family status, employment or health, which might impact the necessity or appropriateness of continued preventive arrest/house arrest but this was only in some cases (10.3% rather 2.3%). These changes were considered significant in 66.6% of the cases concerned.

270. It was only in some instances (19.0% of cases) that there was any consideration in the decisions of investigating judges as to whether *sufficient steps had been taken in connection with the investigation* since the previous ruling. However, in those cases where there was such consideration, the steps taken were regarded as adequate in many of the cases (66.7%).

271. Moreover, only to a slightly greater extent than the prosecutors' submissions did these decisions of investigating judges *address the length of the accused's preventive arrest/house arrest* (20.5% as opposed to 6.0% of cases), why this length was either consistent with national law (15.6% as opposed to 4.2% of cases) or the case law of the European Court (4.9% as opposed to 0.8% of cases). Furthermore, in none of the decisions was there any assessment of the impact of any changes in the legal representation of the accused, such as a change of lawyer or the level of legal support provided.

272. However, in only some decisions of the investigating judges (21.7%) was there an evaluation of the current effectiveness and adequacy of any previously imposed preventive measures. Where this occurred, specific reasons for their continued effectiveness or the need for their modification were given in the overwhelming majority of cases (91.2%).

273. The decisions of investigating judges did, in very many cases (74.9%), *address the proportionality of imposing preventive arrest/house* arrest in relation to the severity of the alleged offence and the expected penalty if convicted cases. However, only in some cases (24.4%) was this assessment of proportionality in line with principles established by the European Court.

274. The decisions of investigating judges referred in some cases to *new statements/submissions either by the accused* (35.4%) *or their lawyers* (56.7%). Where there was some such reference, these statements/submissions were stated to be irrelevant in a few instances (3.1% of cases) but in many instances they were regarded as unfounded (55.2% of cases). There was also substantiation for the views of the courts regarding those statements/submissions in many instances (62.0%).

275. None of the decisions of investigating judges addressed the issue of *potential prejudice to the accused's defence capabilities* due to the prolonged preventive arrest or house arrest. Furthermore, only in 3.0% of cases did the decisions consider the cumulative impact of the duration of preventive arrest/house arrest on the accused's overall situation, including personal, family and professional aspects. Where there was such consideration, the impact was said to be justifiable in very many instances (62.5% of cases).

276. Similarly to the prosecutors' submissions, there were only a few instances (2.3% as opposed to 2.2% of cases) in which there was any *consideration of the impact of preventive arrest/house arrest on the accused's family or dependants*. However, unlike those submissions, the decisions of investigating judges did purport to justify this impact in all cases (for the submissions this occurred in 83.3% of cases). However, the extent to which this justification was in line with the principles established by the European Court was less than for the prosecutors' submissions (33.3% rather than 80.0% of cases).

277. The percentage of cases in which a *foreign national* was involved remained the same as for the prosecutors' submissions (3.0%) but there was greater reference to considerations such as consular access or potential language barriers (12.5% rather than 0.0%) and proposals were made as to how these should be addressed at the same percentage rate.

278. In slightly more instances than in the prosecutors' submissions (7.6% as opposed to 6.7% of cases) was there any reference to *international human rights standards or guidelines* other than the European Convention or the case law of the European Court.[130] Where was such a reference, this was in two more instances than in the prosecutors' submissions, namely, in 20 as opposed to 18 cases. 17 of the references were to Recommendation Rec (80) 11 (21%), and 2 to Recommendation CM/Rec(2014)4 and 1 to the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse[131].

279. The decisions of investigating judges examined *the implications of continued preventive arrest/house arrest for the right to liberty and security of the person and the presumption of innocence* only in some instances (16.0% of cases) and this examination was seen as only influencing the decisions in fewer instances (11.9%).

280. In very many instances, but somewhat fewer than those in the prosecutors' submissions (70.7% as opposed to 81.3% of cases), the assessment of the researchers was that the approach seen in the decisions of investigating judges included *copy-pasting* in their motivation/formulation. However, this issue was not mentioned in respect of 12.9% of cases. The rate of supposed copy-pasting **did not** differ materially in the subsequent decisions of investigating judges as opposed to their initial ones (in which this was said to occur in 70.6% of cases, with no mention for 10.9% of them).

281. The investigating judges were more ready to resist the submissions of prosecutors but there was still a significant problem of substantiating particular aspects of their decisions, evaluating relevant circumstances and of acting in accordance with the case law of the European Court. Moreover, the appropriateness of the length of the deprivation of liberty endured by the accused in particular cases and the handling of the investigation were often not addressed. The high level of copy-pasting also continued to be problematic.

Checklist 5: Decisions by appellate courts for the imposition of preventive measures

282. In the decisions of appellate courts dealing with challenges to the imposition of preventive measures, there were no *instances of provisional release* under bail or of revocation of preventive measures previously imposed and only a few ones involving provisional release under judicial control (1.4% of cases). The rate of imposition of house arrest was lower than that seen in subsequent first instance court decisions (16.9% as opposed to 27.8%) but it was much higher than the imposition of preventive arrest (81.7% as opposed to 52.9%).

283. There was a check by the court as to whether the accused was *legally represented* in almost all of the cases (99.5%) but its absence or existence was only seen as having importance for the decision reached in a very small number of cases (1.0%).

284. In all cases, the decisions of the appellate courts referred to the *specific provisions of the Criminal Procedure Code* authorising the imposition of preventive measures but not to any other legal basis for doing so.

---

130 See fn. 4 above.

131 The Convention does not deal specifically with the use of preventive measures but it does require that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child and do not aggravate the trauma experienced by the child, as well as requiring protection for victims and their families and witnesses on their behalf from intimidation, retaliation and repeat victimisation.

285. In almost all instances, the decisions **did not** just refer to the *submissions of the prosecutors* (95.2% of cases) but also referred to the submissions of the defence (99.5% of cases).

286. In the majority of instances (58.9% of cases), the appellate *decisions endorsed those of the investigating judges* without any further reasoning.

287. All the appellate decisions addressed the *continued existence of a reasonable suspicion* that the accused had committed an offence. In the vast majority of cases (86.5% of them), the finding that there was a reasonable suspicion was consistent with the case law of the European Court. This finding was mostly based on the same evidence as that in a previous ruling (89.9%), solely on new evidence in a few instances (2.4%) and a mix of previous and new evidence in slightly more cases (7.7%). There were no instances in which the decision relied upon different reasoning from the decision being appealed against.

288. In all the cases for which the decisions found that there were one or more *specific grounds* consistent with that case law of the European Court for the imposition of preventive measures, this was at a greater rate than in the preceding decisions of the investigating judges (94.2% as opposed to 86.3%) but still not in all cases. There was also a variation in the rate for each of the grounds, sometimes higher and sometimes lower but not particularly significant:

Relevant ground	Investigating judges' decisions	Appellate court decisions
Hiding from investigation	87.7%	92.9%
Destroying/damaging evidence	86.9%	92.9%
Committing other crimes	53.7%	51.5%
Exerting pressure on witnesses	43.6%	42.3%
Release causing public disorder	6.1%	8.2%

289. Again, there was some – but not always significant – variation between the appellate decisions and the subsequent decisions of investigating judges with regard to the citing of grounds other than those recognised by the European Court as justifying the imposition of preventive measures. The exception was the refusal of the accused to plead guilty, for which the rate remained 0.0%.

290. Otherwise, the assessments were as follows:

Ground	Investigating judges' decisions	Appellate court decisions
Seriousness of the crime	54.6%	56.4%
Strength of the evidence	4.0%	1.5%
Duration of the procedure	0.4%	1.5%
Need to conduct further investigation	30.8%	22.1%

291. Unlike the investigating judges' decisions, there was no reference to ensuring the execution of the sentence or the crime being committed during the probationary period (the former having cited these grounds respectively in 3.1% and 0.4% of cases) but the appellate courts were the only ones to invoke the fact that release would negatively influence the citizens' perception of the fight against drugs (in 0.5% of cases).

292. Regardless of the different grounds invoked for the imposition of preventive measures, there was an even greater failure in the decisions of the appellate courts than the subsequent investigating courts' decisions to rely upon *any evidence that substantiated them* (86.5% rather than 82.9% of cases). However, where there was substantiation, the percentages of cases in which this was not consistent with the case law of the European Court was considerably less; 10.7% rather 22.2% of

the cases concerned. In the overwhelming majority of cases, where there was substantiation, the evidence relied upon was the same as in a previous decision (92.6%).

293. In respect of cases for which preventive arrest/house arrest had previously been imposed, the decisions **did not** only consider the need for this to be continued in the overwhelming majority of cases (89.7% of cases, an increase on 84% seen in the subsequent investigating judges' decisions). Moreover, in almost all of the instances (98.9%) in which this was so, the possibility of now imposing other preventive measures was addressed, while giving a specific reason for not doing so in the majority of cases (79.1%) which was an increase on the percentages for the subsequent investigating courts' decisions; 97.3% and 65.2% respectively. In more than in the subsequent investigating courts' decisions (73.3% rather than 61.5%), these reasons were the same as one previously given in that regard and in only 15.0% of cases was there any elaboration of the reasoning of the investigating judges concerned.

294. Of the cases in which alternative measures had previously been imposed, there were no decisions in respect of them in which it was accepted that there was a need to impose preventive arrest/ house arrest, albeit that there was no data concerning this for 72.0% of the cases and only 28.0% of cases in which there was a definitive "No" to the question of whether there was such acceptance.

295. In the overwhelming majority of cases (96.6%), there was no *evaluation of the current behaviour and conduct of the accused* while under preventive measures. However, where there was such an evaluation, there was reference to concrete examples of compliance or non-compliance in many cases, albeit at a lower rate than in the investigating courts' decisions (28,6% rather than 72.2%).

296. Similarly, there was a lesser assessment of new developments in the *accused's personal circumstances*, such as changes in family status, employment or health, which might impact the necessity or appropriateness of continued preventive arrest/house arrest but this was only in some cases (5.8% rather 10.3%). These changes were considered significant in the decision-making process in half the cases (50.0%, which was a lower rate than in the investigating court (66.7% of cases).

297. It was only in a few instances (6.3% of cases) that there was any consideration in the appellate decisions of whether *sufficient steps had been taken in connection with the investigation* since the previous ruling (in which the percentage was 19.0%). However, in those cases where there was such consideration, the steps taken were regarded as adequate in the overwhelming majority of the cases (92.3% as compared to 66.7% in the investigating court).

298. However, only to a much lesser extent than the investigating courts' decisions did these appellate decisions address the *length of the accused's preventive arrest/house arrest* (8.2% rather than 20.5% of cases), why this length was either consistent with national law (5.3% rather than 15.6% of cases) or the case law of the European Court (1.0% rather than 4.9% of cases). Furthermore, only in very few instances (0.5% as opposed to 0.0% in the investigating courts), did the decisions make any assessment of the *impact of any changes in the legal representation of the accused*, such as a change of lawyer or the level of legal support provided. However, in the single case where there was such an assessment, the relevant changes were considered significant in it.

299. It was only in very few cases (7.6% as opposed to 21.7% in the investigating courts) that there was an evaluation of the *current effectiveness and adequacy of any previously imposed preventive measures*. Where this occurred, specific reasons for their continued effectiveness or the need for their modification were given in the vast majority of cases (81.3 % as compared with 91.2% in the investigating courts).

300. The decisions did – in vast majority of cases (83.1% as compared with 74.9% in the investigating courts) – address the *proportionality of imposing preventive arrest/house arrest* in relation to the severity of the alleged offence and the expected penalty if convicted cases. However, only in

some cases (11.6% as compared with 24.4% in the investigating courts) was this assessment of proportionality in line with principles established by the European Court.

301. The appellate decisions referred *to new statements/submissions either by the accused* (35.3%) *or their lawyers* (72.9%), with only the latter rate differing to any real extent from those one in the investigating courts, which were respectively 35.4% and 56.7%. Where there was some such reference, these were stated to be irrelevant in a few instances (3.9% of cases) but in many instances they were regarded as unfounded (61.8% of cases). There was also substantiation for those views in many instances (49.3%). Only the latter percentage was materially different from that in the investigating courts, where it was 62.0%.

302. As in the investigating courts, none of the appellate decisions addressed the issue of *potential prejudice to the accused's defence capabilities* due to the prolonged preventive arrest or house arrest. Furthermore, only in 1.4% of cases (as opposed to 3.0% in the investigating courts) did the decisions consider the cumulative impact of the duration of preventive arrest/house arrest on *the accused's overall situation*, including personal, family and professional aspects. Where there was such consideration, the impact was said to be justifiable in 33.3% of the very small number of cases concerned (as opposed to 62.5% of the cases considered by the investigating courts). Moreover, the justification was said to be consistent with the case law of the European Court in 33.3% of that very small group of cases.

303. Similarly to the decisions in the investigating courts, there were only a few instances (1.4% as opposed to 2.3% of cases) in which there was any consideration in the appellate decisions of the *impact of preventive arrest/house arrest on the accused's family or dependants*. However, whereas the investigating courts sought to justify this impact in all cases, this only occurred in 33.3% of the cases considered by the appellate courts. The extent to which this justification was in line with the principles established by the European Court was the same as in the investigating courts, i.e., in 33.3% of cases.

304. The percentage of cases in which a *foreign national* was involved was very slightly higher than in the investigating courts (3.4% rather than 3.0%) but there was greater reference to considerations such as consular access or potential language barriers (14.3% rather than 12.5%), with proposals as to how these should be addressed being made in slightly more instances (in 14.3% rather than 12.5% of cases).

305. In slightly more instances than in the investigating courts (12.1% rather than 7.6% of cases) was there any reference to *international human rights standards or guidelines* other than the European Convention or the case law of the European Court.[132] Thus, there 25 rather than 20 such references; 22 to Recommendation Rec (80) 11, 1 to Recommendation Rec(2006)13, 1 to the Universal Declaration of Human Rights and 1 to Protocol 4 to the European Convention.

306. The decisions examined the implications of continued preventive arrest/house arrest for *the right to liberty and security of the person and the presumption of innocence* in more instances than in the investigating courts (28.0% rather than 16.0% of cases) but this examination was seen as only influencing the decisions in fewer instances than in those courts (5.2% rather than 11.9% of cases).

307. There were just a few instances in which the decisions of the appellate courts were said to have *identified and corrected oversights or errors* by the investigating judges (4.3% of cases). Thus, there were just individual instances of the following oversights or errors that were identified: arguments of the first court not being plausible and not justifying preventive arrest; calculation of the period of arrest; grounds for the application of preventive detention not being found; presentation of the risks/reasons; preventive arrest being applied without evidentiary support; and the risks being rejected as unproven and erroneously interpreted.

---

[132] See fn. 4 above.

308. In very many instances but comparable to those in the investigating courts (71.5% rather than 70.7%), the assessment of the researchers was that the approach seen in the decisions included *copy-pasting* in their motivation/formulation. However, this issue was not mentioned in respect of a higher percentage of cases (15.5% rather than 12.9%).

309. There was a greater reluctance in the appellate courts to apply less draconian preventive measures than preventive arrest. Also, they rarely employed different reasoning than that in the decisions of the investigating judges when assessing the existence of a reasonable suspicion, even when new evidence had been adduced. Moreover, there was an even greater failure by appellate courts than investigating judges to rely on evidence that substantiated the grounds invoked to impose preventive measures involving deprivation of liberty.

310. Furthermore, familiarity with the case law of the European Court or readiness to act in accordance with it was not always evident. In addition, there was limited consideration of the adequacy of the steps taken in the investigation, the length of the deprivation of liberty already endured and developments of an accused's personal circumstances. Also, the reliance by some courts on Recommendation Rec (80) 11 was surprising, as was the high rate of copy-pasting in the motivation/formulation of appellate decisions.

Checklist 6: Decisions by appellate courts for the extension of preventive measures

311. In the decisions of appellate courts dealing with *extensions to the imposition of preventive measures*, there were hardly any instances of provisional release on bail (0.8% of cases) but a fair number of ones involving provisional release under judicial control (16.4% of cases). On the other hand, the rate of imposition of house arrest was much higher than that seen in earlier appellate court decisions (25.4% as opposed to 16.9%) but much lower than the extension of preventive arrest (54.1% as opposed to 97.7%) in those decisions. In addition, the preventive measure previously imposed was revoked in 2.5% of cases and also the accused in 2.5% of cases were made subject to an obligation not to leave the community.

312. There was a check by the court as to whether the accused was *legally represented* in all of the cases but its absence or existence was also not seen as having importance for the decision reached in any of the cases.

313. In all cases, the decisions of the appellate courts *referred to the specific provisions of the Criminal Procedure Code* authorising the imposition of preventive measures and not to another legal basis for doing so.

314. In almost all instances, the decisions of the appellate courts **did not** just refer to the *submissions of the prosecutors* (94.3% of cases as compared to 95.2% of ones in earlier appellate decisions) but referred to the *submissions of the defence* (94.7% of cases as compared to 99.5% of ones in earlier appellate decisions).

315. In the majority of instances (61.5% of cases), the *appellate decisions endorsed those of the investigating judges without any further reasonin*g.

316. All the appellate decisions addressed the *continued existence of a reasonable suspicion* that the accused had committed an offence. In the vast majority of cases (80.3% of cases), the finding that there was a reasonable suspicion was consistent with the case law of the European Court. This finding was mostly based on the same evidence as that in a previous appellate ruling (90.2%), while in a few instances it was based on new evidence (4.1%). There were no instances in which the decision relied upon different reasoning from the decision being appealed against.

317. In all the cases for which the decisions of the appellate courts found that there were one or more *specific grounds* consistent with the case law of the European Court for the imposition of preventive measures, this was at a lesser rate than in the preceding decisions of the appellate courts (85.2% as opposed to 94.2%).

318. There was also some variation in the rate for each of the grounds, always lower and often significantly so:

Relevant ground	Appellate court (imposition) decisions	Appellate court (extension) decisions
Hiding from investigation	92.9%	79.5%
Destroying/damaging evidence	92.9%	73.8%
Committing other crimes	51.5%	36.9%
Exerting pressure on witnesses	42.3%	41.0%
Release causing public disorder	8.2%	4.1%

319. There was not much variation between the decisions of appellate courts extending the imposition of preventive measures and those upholding their imposition with regard to the citing by decisions of grounds other than those recognised by the European Court as justifying the imposition of preventive measures. Thus, the assessments were as follows:

Ground	Appellate court (imposition) decisions	Appellate court (extension) decisions
Seriousness of the crime	56.4%	61.0%
Strength of the evidence	1.5%	1.6%
Duration of the procedure	1.5%	0.8%
Need to conduct further investigation	22.1%	24.6%
Refusal to plead guilty	0.0%	0.0%

However, there was no reference to the fact that release would negatively influence the citizens' perception of the fight against drugs.

320. Regardless of the different grounds invoked for the imposition of preventive measures, there was an even greater failure of the courts than in the previous appellate ruling to rely upon *any evidence that substantiated them* (91.8% of cases rather 86.5% of them). Moreover, where there was substantiation, the percentages of cases in which this was not consistent with the case law of the European Court was considerably greater than in the earlier appellate court decisions (20% rather than 10.7% of the cases concerned). Where there was substantiation, the evidence relied upon was the same as in a previous decision in 90% of the cases concerned.

321. In respect of cases for which the imposition of preventive arrest/house arrest had previously been upheld, the decisions **did not** *only consider the need for this to be continued in the overwhelming majority of cases* (91.8% of cases, a slight increase on the 89.7% seen in previous appellate decisions). Moreover, in almost all of the instances (99.1%) in which this was so, the possibility of now imposing other preventive measures was addressed, while giving a specific reason for not doing so in the majority of cases (69.8%) which was a decrease in the percentage for the previous appellate courts' decision (79.1%). In more than in those previous appellate courts' decisions, these reasons were the same as one previously given in that regard (77.0% rather than 73.35%) but there was slightly more elaboration of the reasoning given (17.1% as opposed to 15.0% of the cases concerned).

322. Of the cases in which alternative measures had previously been imposed, there were a few cases (2.5%) in which it was accepted that *there was now a need to impose preventive arrest/house arrest*. However, although this was said not to be accepted in 23.8% of cases, there was no data for 73.8% of cases. Moreover, where the need to impose preventive arrest/house arrest was now accepted, the grounds identified were not consistent with the case law of the European Court in a third of them (33.3%) and there was no evidence substantiating the grounds that were consistent with that case law.

323. In the overwhelming majority of cases, there was no *evaluation of the current behaviour and conduct of the accused* while under preventive measures (91.0% of them as compared to 96.6% of cases in previous appellate court decisions). However, where there was such an evaluation, there was reference to concrete examples of compliance or non-compliance in most cases (90.9% as compared to 71.4% of cases in previous appellate court decisions). However, the rate of assessment of new developments in the accused's personal circumstances, such as changes in family status, employment or health, which might impact the necessity or appropriateness of continued preventive arrest/house arrest was only in some cases (10.7% albeit more than the 5.8% in previous appellate decisions). These changes were considered significant in the decision-making process in under half the cases (46.2% as compared to 50.0% of cases in previous appellate court decision).

324. It was only in some instances (13.1% of cases as compared to 6.3% of cases in previous appellate court decision) was there any consideration in the decisions of whether *sufficient steps had been taken in connection with the investigation* since the previous ruling. However, in those cases where there was such consideration, the steps taken were regarded as inadequate in the overwhelming majority of them (86.9% as compared to 7.7% of cases in previous appellate court decision).

325. Moreover, only to a limited extent did these decisions address *the length of the accused's preventive arrest/house arrest* (12.3% of cases as opposed to the 8.2% of them in previous appellate court decisions), as well as why this length was either consistent with national law (9.8% of cases as opposed to the 5.3% of them in previous appellate court decisions) or the case law of the European Court (2.5% of cases as opposed to the 1.0% of them in previous appellate court decisions). Furthermore, in virtually no instances (0.8% as opposed to the 0.5% of them in previous appellate court decisions), did the decisions make any assessment of the impact of any *changes in the legal representation* of the accused, such as a change of lawyer or the level of legal support provided. Nonetheless, in the one case where there was such an assessment the relevant changes were considered significant.

326. In some of the cases (23.0% as opposed to the 7.62% of them in previous appellate court decisions), there was an *evaluation of the current effectiveness and adequacy of any previously imposed preventive measures*. Where this occurred, specific reasons for their continued effectiveness or the need for their modification were given in the vast majority of cases (92.9 % rather than the 81.3% of them in previous appellate court decisions).

327. The decisions did – in vast majority of cases (83.6%) – address *the proportionality of imposing preventive arrest/house arrest* in relation to the severity of the alleged offence and the expected penalty if convicted cases, which was only marginally different from the rate of 83.1% of cases in previous appellate decisions. However, only in some cases (21.4%) was this assessment of proportionality in line with principles established by the European Court (21.4% as compared to11.6% in previous appellate decisions) .

328. The decisions referred to *new statements/submissions either by the accused* in 29.5% of cases *or their lawyers* in 74.6% of cases compared to rates of 35.3% and 72.9% respectively in previous

appellate decisions. Where there was some such reference, these were stated to be irrelevant in a few instances (4.1% of cases) but in many instances (54.9% of cases) they were regarded as unfounded. There was also substantiation for those views in many instances (48.4%). These rates **did not** differ significantly for those for previous appellate decisions, respectively, 3.9%, 61.8% and 49.3%.

329. As with previous appellate decisions, none of the decisions addressed the issue of *potential prejudice to the accused's defence capabilities* due to the prolonged preventive arrest or house arrest. Furthermore, only in 1.6% of cases (rather than 1.4% of them in previous appellate decisions), did the decisions consider the *cumulative impact of the duration of preventive arrest/ house arrest* on the accused's overall situation, including personal, family and professional aspects. Where there was such consideration, the impact was said to be justifiable in only half the cases rather than the 100% rate for previous appellate decisions.

330. As with previous appellate decisions, there were no instances in which there was any consideration of the *impact of preventive arrest/house arrest on the accused's family or dependants*.

331. The percentage of cases in which a *foreign national* was involved remained low (1.9% as compared to the rate of 3.4% in previous appellate decisions) and there was no reference to considerations such as consular access or potential language barriers, with no proposals therefore being mad as to how these should be addressed as compared to rate of 14.3% in respect of both these matters dealt with in previous appellate decisions.

332. In slightly fewer instances than in the earlier appellate court decisions (8.2% rather than 12.1% of cases) was there any reference to *international human rights standards or guidelines*[133] other than the European Convention or the case law of the European Court. Thus, there 10 such references, all to Recommendation Rec (80) 11).

333. There was hardly any difference in the examination of the implications of continued preventive arrest/house arrest for *the right to liberty and security of the person and the presumption of innocence* than in previous appellate court decisions (27.9% rather than 28.0% of cases) but this examination was seen as only influencing the decisions in slightly more instances than in those courts (11.8% rather than 5.2% of cases).

334. There were just a few instances in which the decisions of the appellate courts were said to have *identified and corrected oversights or errors* in previous court rulings (6.6% of cases as compared to the rate of 5.2% in previous appellate decisions). Thus, there were just individual instances of the following oversights or errors that were identified:

- absence of any appreciation of the prosecution's evidence;
- the health assessment;
- the allegations invoked, plus the state of health of the accused, were not proven;
- basic solution was partially unfounded;
- no credible evidence to suspect existence of risk;
- no examination of risks invoked by the prosecution;
- the risks were not proven;
- grounds for applying preventive arrest were not detected; and
- prevention of a violation of Article 5 of the European Convention by changing the preventive measure.

335. In very many instances but slightly less than in previous appellate court decisions (66,4% rather than 71.5%), the assessment of the researchers was that the approach seen in the decisions included

133 See fn. 4 above.

copy-pasting in their motivation/formulation. However, this issue was not mentioned in respect of a lower percentage of cases (12.3% rather than 15.5%).

336. There was greater readiness on the part of the appellate courts, when considering whether to extend the imposition of preventive measures, to impose less draconian ones than preventive arrest and much greater reference to defence submissions. Nonetheless, the reasoning **did not** differ from that in the previous ruling and the lack of substantiation for decisions continued to be a problem in many instances. Moreover, there was often a failure to consider the behaviour of detained accused, their personal circumstances and the length of detention, as well as the adequacy of the investigation. There was also some shortcoming in the extent to which findings were substantiated and continued reliance by some courts on the outdated Recommendation Rec (80) 11. At the same time, some of the appellate decisions confirmed the shortcomings already noted in respect of previous rulings.

G. CONCLUSIONS AND RECOMMENDATIONS

337. Undoubtedly, there has been some move towards achieving greater compliance with the requirements of the European Court relating to the imposition of preventive measures.

338. However, the mixed picture in this regard seen in the national statistics is reflected in the results of the analysis of cases undertaken by the research for this Report.[134]

339. Certainly, in this connection, there was a clear preference for the imposition of preventive arrest and house arrest as preventive measures and there was no great difference between the approach of prosecutors and of investigating judges in terms of resorting to such measures at the stage of the proceedings when these were under consideration:

Relevant measure	Initial prosecutor submissions	Initial investigating judge decisions	Subsequent prosecutor submissions	Subsequent investigating judge decisions
Preventive arrest	93.6%	81.2%	64.9%	52.9%
House arrest	6.4%	16.3%	28.7%	27.8%
Judicial control	N/A	1.9%	5.2%	17.9%

340. There was also not much difference between prosecutors and investigating judges as regards the extent to which their submissions or decisions:

(a) did not refer to any evidence supporting the grounds that they relied upon for the imposition of preventive measures:

Substantiation for ground invoked	Initial prosecutor submissions	Initial investigating judge decisions	Subsequent prosecutor submissions	Subsequent investigating judge decisions
YES	36.3%	24.3%	22.3%	17.1%
NO	63.7%	75.7%	77.7%	82.9%

(b) failed to apply certain key elements involved in the imposition of preventive measures in line with the case law of the European Court:

134 See paras. 160-177.

Element not complying with case law of EctHR	Initial prosecutor submissions	Initial investi-gating judge decisions	Subsequent prosecutor submissions	Subsequent investigating judge decisions
Reasonable suspicion	10.6%	21.4%	11.2%	N/A[135]
Evidence for ground relied upon	22.8%	19.7%	N/A[136]	22.2%
Assessment of proportionality	86.3%	82.1%	55.9%	75.6%
Assessment of specific conditions of accused	78.6%	62.5%	N/A[137]	89.7%
Impact on accused's family or dependants	20%	25%	20%	66.7%

and (c) appeared to rely upon copy-pasted material:

Apparent existence of copy-pasting	Initial prosecutor submissions	Initial investigating judge decisions	Subsequent prosecutor submissions	Subsequent investigating judge decisions
YES	63.1%	70.6 %	81.3 %	70.7%

341. The analysis of the initial submissions of prosecutors, as well as their later ones in the same cases, shows a number of other shortcomings as regards the imposition of preventive measures entailing a deprivation of liberty. These were only slightly mitigated in the later submissions by a greater readiness to consider the less draconian forms of preventive measures.

342. In the first place, there was some tendency also to invoke grounds for imposing preventive measures that are not considered relevant for this purpose by the European Court, namely: the seriousness of the crime; the need to carry out additional investigation; the strength of the evidence; concern for the duration of the procedure; the refusal of the accused to plead guilty; and the crime being committed within a period of probation.

343. Secondly, there was insufficient consideration in some cases of even the issue of the proportionality of imposing preventive measures involving a deprivation of liberty, as well of the potential relevance of the accused's condition in proposing that they be imposed, particularly where this may have changed since the initial decision, and, at the later stage of the proceedings, of the length of deprivation of liberty already endure.

344. Thirdly, the reliance placed in some cases on a reference to Recommendation Rec R (80) 11 reveals a surprising ignorance of the fact that this has long been replaced by Recommendation Rec(2006)13), which not only reflects more fully the case law of the European Court but also, invoking both the presumption of innocence and the presumption in favour of liberty, underlines that the remand in custody of persons suspected of an offence should be the exception rather than the norm.

345. Although the investigating judges were somewhat more ready than prosecutors to consider preventive measures other than preventive arrest and, indeed, slightly to resist submissions by prosecutors,[138] there were still shortcomings in their approach to the substantiation both of the rejection of submissions by the accused or their lawyers (none being provided for the initial

[135] The issue of the continued existence of a reasonable suspicion was addressed in 97.7% of cases, with this being found to exist in 83.3% of them, with this finding being based on the same evidence as the previous decision in 88.6% of cases, The issue of compliance with the European Court's understanding of the reasonable suspicion requirement was not the subject of a question in Checklist 4.

[136] In 49.2% of cases the evidence was the same as in a previous submission but the issue of compliance of new evidence with case law of European Court was not the subject of a question in Checklist 3.

[137] This issue was not the subject of a question in Checklist 3.

[138] See the table at para. 336.

decisions in 26.7% of cases and for subsequent decisions in 385 of them) and, as already noted,[139] of the grounds for imposing such measures.

346. It is unclear whether the finding of investigating judges that defence submissions were irrelevant or unfounded reflects a failing on their part or is an indication of the weakness of those submissions.

347. At the later stage, there was at times a failure by investigating judges to:

- provide specific reasons for imposing preventive measures other than the preventive arrest/house arrest previously imposed (34.8% of cases);
- evaluate the current behaviour and conduct of the accused while under previous preventive measures (86.3% of cases); and
- evaluate the current effectiveness and adequacy of previously imposed preventive measures (78.3% of cases).

348. Moreover, these investigating judges failed both to consider, or at least to demonstrate that they had considered the appropriateness of the length of the deprivation of liberty endured by the accused in particular cases in 79.5% of cases and to address the adequacy of the handling of the investigation in 33.3% of them.

349. Furthermore, at least some of the investigating judges – like the prosecutors – seemed strangely unaware of the more recent Committee of Ministers Recommendation on the issues to be determined by them and, as noted above,[140] they were clearly not always conversant with the approach of the European Court in this matter.

350. The approach changed to some extent at the *appellate stage* as regards the nature of the measures to be imposed, with a greater reluctance in the appellate courts to apply less draconian preventive measures than preventive arrest.

351. However, there remained weaknesses at this stage in the degree of substantiation, the readiness to expect new evidence or to take a fresh approach to the reasoning that underpinned decisions.

352. In addition, familiarity with, or readiness to act in accordance with, the case law of the European Court was still not always evident.

353. Furthermore, there was also limited consideration of the adequacy of the steps taken in the investigation and the length of the deprivation of liberty already endured.

354. Moreover, the reliance by some courts on Recommendation Rec (80) 11 was again surprising.

355. Although overall submissions and decisions were seen in many instances to be consistent with the case law of the European Court, this was still not always the case.

356. It does not seem that the problems seen result from the substance of the legal provisions examined in Section C. Rather, more relevant seems to be the approach of both prosecutors and judges to the handling of cases.

357. Where this falls below the standards that have been clearly elaborated by the European Court, that appears to stem in part from inadequate knowledge of the relevant standards but also from insufficient understanding as to how these should be applied in concrete situations and possibly the lack of real commitment to them. It may also be that workload is a factor in the way submissions are prepared and decisions adopted.

---

139 See the table at para. 337 (a).
140 See para. 337(b).

358. Thus, there is scope for enhancing the reasoning skills of all involved but, in doing so, there is also a need to avoid exacerbating the general problem of copy-pasting seen at all stages of the process.

359. In the first place, there should be a review of the adequacy of the initial training provided to intending judges and prosecutors as to the imposition of preventive measures in accordance with the requirements elaborated by the European Court.

360. Secondly, there is a need to reinforce the continuing training provided to judges and prosecutors with respect to those requirements. In particular, this should be of a practical rather than theoretical nature and should be supported by making available online material setting out guidance as to how those requirements should be applied in concrete situations. In doing this, it will be important to emphasise the importance of ensuring that the circumstances of the case being dealt with are specifically addressed and the need to avoid the use of copy-pasted and unsubstantiated submissions and rulings, with the latter demonstrating a critical assessment of submissions by all parties to the proceedings.

361. Such training could usefully draw upon the experience and perspective of those defence lawyers are well-placed to illustrate, in a constructive manner, the scepticism required when considering the submissions of prosecutors and the factors to take into account when assessing whether the use of a particular preventive measure would be, or has become, disproportionate.

362. Thirdly, the need to make use of all this training should be reinforced by clear direction from the higher courts and this might be facilitated by preparing for judges and prosecutors a reasoning checklist with respect to the elements to be satisfied in order to comply with the requirements of the Criminal Procedure Code, Article 5 of the European Convention and Article 2 of Protocol No. 4, as elaborated in the case law of the European Court, when considering or proposing the imposition of preventive measures.

363. Such a checklist should be formulated in such a way that those using it demonstrate in their submissions or decisions how, if at all, they considered that the relevant elements are fulfilled by the particular circumstances of the case concerned and why submissions by the defence do not require the imposition of less exacting preventive measures than those being proposed or considered, or indeed those submissions that none at all would be appropriate. The design of such a checklist could draw on the schema followed in the research checklists set out in Annex 1 as these sought to elicit whether the structure of submissions by prosecutors and decisions by judges conformed with the requirements elaborated in the case law of the European Court. This checklist could be supported by other checklists that take judges and prosecutors through the different points to be satisfied when determining their conclusions as to whether preventive measures need to be imposed and, if so, which of them should be imposed.

364. Moreover, the elaboration of reasoning and decision-making checklists could then form the basis for developing a digital tool for the preparation of prosecutorial submissions and judicial rulings that would ensure that these rely only on facts, standards and reasoning that are pertinent to the cases with which these submissions and rulings are concerned.

365. Fourthly, as it is not evident that the poor reasoning of rulings that impose preventive measures is something only to be attributed to judges and prosecutors, appropriate training should be provided for existing and intending lawyers not only as to the requirements elaborated by the European Court but also as to how to demonstrate the relevance of them to their cases in submissions made to the courts. Moreover, some research on the content and quality on motions by defence lawyers regarding preventive measures might usefully be undertaken to identify any aspects of the approach in them that could be improved.

366. Fifthly, it would be useful to ensure that the reasoning skills required for the satisfactory application of the European Convention in general and the requirements relating to preventive measures are being effectively inculcated in those studying law at the university level so that those who will become judges, laws and prosecutors already have a good foundation in them before starting their professional careers.

367. In this connection, it would be desirable for it to be emphasised that brevity can be acceptable so long as the decision or submission concerned focuses on the specific matters relating to the case at hand. The need to underline this arises from the general misconception that longer is better, resulting in the resort to copy-pasting which inevitably obscures or fails to identify the matters really pertinent to whether the imposition of a preventive measure is required and, if so, which one would be appropriate.

368. Sixthly, there is a need to monitor on an ongoing basis the decision-making with respect to the imposition of preventive measures. This might be facilitated by establishing a searchable database of such decisions so that the reasoning in them can be examined for compliance with the national legislation and the requirements of the European Convention and particular shortcomings can be addressed in the training and other proposals outlined above.

369. Seventhly, insofar there might be insufficient commitment to applying the relevant standards, consideration should also be given as to how failure to fulfil the requirements of national legislation, as well as those elaborated by the European Court, might be taken into account in career development procedures. In the more extreme cases, and where appropriate and proportionate, such failures could potentially lead to disciplinary proceedings. However, only failures performed intentionally or with gross negligence should give rise to disciplinary actions.

370. Eighthly, having regard to the possibility that the 24-month cumulative limit on non-custodial preventive measures in Article 176(5) of the Criminal Procedure Code could result in such a measure outliving the risk which it was designed to counter, this appears to be a structural defect in the law which should be remedied through appropriate revision of this provision rather than by training.

371. Finally, although the suitability of arrangements for non-custodial preventive measures was not the focus of the present research, the conclusion that they are not capable of allaying relevant risks in many cases may result from a view on the part of judges and prosecutors that they are not fit for purpose. There is a need to check, therefore, whether this view is well-founded and, to the extent that is, for appropriate measures to be taken to ensure that resort to non-custodial preventive measures really will be effective in allaying the relevant risks in many – if not all – cases.

ANNEX I: RESEARCH CHECKLISTS

CHECKLIST 1: Initial submissions of prosecutors for the imposition of preventive measures

1	Name and surname of the accused	
2	Case number	
3	Court applied to	
4	Alleged offence(s)	
5	Date of the submission by the prosecutor	
6	Decision sought by the prosecutor from the court	**to be specified**
7	Was the accused legally represented?	**YES/NO**
8a	Did the submissions address the existence of a reasonable suspicion that the accused had committed an offence?	**YES/NO**
8b	If YES, did the submissions substantiate the existence of a reasonable suspicion in a manner consistent with the case law of the European Court?	**YES/NO**
9a	Did the submissions find established the applicability of one or more specific grounds for the imposition of preventive measures that were consistent with the case law of the European Court?	**YES/NO**
9b	If YES, which ground(s): (i) the accused might be able to hide from the prosecuting authority or from court; (ii) the accused might put pressure on witnesses; (iii) the accused might destroy or damage the means evidence or otherwise hinder the establishment of the truth in criminal proceedings; (iv) the accused might commit other offences; (v) the accused's release will cause public disorder.	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO**
9c	Did the submissions make additional reference to the following reasons: (i) the seriousness of the offence; (ii) the strength of the evidence; (iii) concern for the length of the proceedings; (iv) the accused's refusal to plead guilty; (v) the need to conduct further investigations; or (vi) some other reason?	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO** **to be specified**
10a	Did the submissions provide evidence as to why the invocation of specific grounds for the imposition of preventive measures was justified?	**YES/NO**
10b	If YES, was that evidence consistent with the case law of the European Court?	**YES/NO**
11a	Did the submissions only consider the need for preventive arrest/house arrest as a preventive measure?	**YES/NO**
11b	If NO, did the submissions: (i) give some specific reasons for rejecting preventive measures other than preventive arrest/ house arrest (i. e., non-custodial ones such as bail, electronic monitoring, or travel restrictions, etc.); If YES, (ii) were the alternative preventive measures considered insufficient to address the risks in one of the following questions above: (a) 9(b) (i) (b) 9(b) (ii) (c) 9(b) (iii) (d) 9(b) (iv) (e) 9(b) (v) and (iii) did the reasons include an assessment of the risk involved of not imposing preventive arrest/ house arrest? (iv) if there was such an assessment, was it substantiated with specific examples of past behaviour?	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO**

12a	Did the submissions specifically address the issue of the proportionality of imposing preventive arrest/house arrest in relation to the severity of the alleged offence and the expected penalty if convicted?	**YES/NO**
12b	If YES, was this assessment in line with the principles established by the European Court?	**YES/NO**
13a	Did the submissions refer to any statements/submissions by: (i) the accused; and/or (ii) her/his lawyer?	 **YES/NO** **YES/NO**
13b	If YES in either case, was the content of the statements/submissions said: (i) to be irrelevant; or (ii) unfounded; and (iii) if YES in (i) and/or (ii), was there any substantiation for that response?	 **YES/NO** **YES/NO** **YES/NO**
14a	Did the submissions have regard to the potential specific conditions of the accused (such as age, state of health, disability, sexual orientation) or other grounds of vulnerability?	**YES/NO**
14b	If YES, did the submissions provide reasons as to why those conditions were not relevant for the preventive measure being sought?	**YES/NO**
14c	If YES to 14b, were these reasons consistent with the case law of the European Court?	**YES/NO**
15a	Did the submissions have regard to the impact of preventive arrest/house arrest on the accused's family or dependents?	**YES/NO**
15b	If YES, did the submissions seek to justify this impact?	**YES/NO**
15c	If YES, was this justification in line with the principles established by the European Court?	**YES/NO**
16a	Did the case involve a foreign national?	**YES/NO**
16b	If YES, did the submissions: (i) refer to considerations such as consular access or potential language barriers; and (ii) make any proposals as to how these should be addressed?	 **YES/NO** **YES/NO**
17a	Did the submissions refer to international human rights standards or guidelines other than the European Convention and the case law of the European Court?	**YES/NO**
17b	If YES, which standards or guidelines were referred to?	**to be specified**
18	Do you consider that the approaches in these submissions included copy-pasting in their motivation/formulation?	**YES/NO**

CHECKLIST 2: Initial decisions of investigating judges for the imposition of preventive measures

1	Name and surname of the accused	
2	Case number	
3	Court applied to	
4	Alleged offence(s)	
5	Date of decision by the investigating judge	
6	Decision by the investigating judge:	
7a	Did the decision show that there had been a check as to whether the accused was legally represented?	**YES/NO**
7b	If YES, was the absence or existence of legal representation seen as having any importance in the decision?	**YES/NO**
8a	Did the decision refer to the specific provisions in the Criminal Procedure Code authorising the imposition of preventive measures?	**YES/NO**
8b	If NO, did the decision refer to any other legal basis for imposing preventive measures?	**YES/NO**
8c	If YES to 8b, what was this legal basis?	**to be specified**
9a	Did the decision in its reasoning part only refer to submissions by the prosecution?	**YES/NO**
9b	If NO, did the decision in its reasoning part refer to submissions by the defence?	**YES/NO**
10a	Did the decision address the issue of whether was a reasonable suspicion that the accused had committed an offence?	**YES/NO**
10b	If YES, did the decision find established the existence of a reasonable suspicion on a basis consistent with the case law of the European Court?	**YES/NO**
11a	Did the decision find established the applicability of one or more specific grounds for the imposition of preventive measures that were consistent with the case law of the European Court?	**YES/NO**
11b	If YES, which ground(s): (i) the accused might be able to hide from the prosecuting authority or from court; (ii) the accused might put pressure on witnesses; (iii) the accused might destroy or damage the means evidence or otherwise hinder the establishment of the truth in criminal proceedings; (iv) the accused might commit other offences; (v) the accused's release will cause public disorder.	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO**
11c	Did the decision additionally refer to the following reasons for the imposition of preventive measures: (i) the seriousness of the offence; (ii) the strength of the evidence; concern for the length of the proceedings; (iii) the accused's refusal to plead guilty; (iv) the need to conduct further investigations; or (v) some other reason?	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **to be specified**
12a	Did the decision rely upon specific evidence as to why the invocation of specific grounds for the imposition of preventive measures was justified?	**YES/NO**
12b	If YES, was that evidence consistent with the case law of the European Court?	**YES/NO**
13a	Did the decision only consider the need for preventive arrest/house arrest as a preventive measure?	**YES/NO**
13b	If NO, did the decision: (i) give some specific reasons for rejecting preventive measures other than preventive arrest/house arrest (i. e., non-custodial ones such as bail, electronic monitoring, or travel restrictions, etc.); If YES, (ii) were the alternative preventive measures considered insufficient to address the risks in one of the following questions above:	 **YES/NO**

	(a) 11(b) (i) (b) 11(b) (ii) (c) 11(b) (iii) (d) 11(b) (iv) (e) 11(b) (v) and (iii) did they include an assessment of the risk involved of not imposing preventive arrest/ house arrest? (iv) If there was such an assessment, was it substantiated with specific examples or past behaviour?	**YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO**
14a	Did the decision specifically address the issue of proportionality of imposing preventive arrest/house arrest having regard to the severity of the alleged offence and the expected penalty if convicted?	**YES/NO**
14b	If YES, was the assessment in line with the principles established by the European Court?	**YES/NO**
15a	Did the decision in its reasoning part refer to any statements/submissions by: (i) the accused; and/or (ii) her/his lawyer?	 **YES/NO** **YES/NO**
15b	If YES in either case, was the content of the statements/submissions said (i) to be irrelevant; or (ii) unfounded; and (iii) if YES in (i) and/or (ii), was there any substantiation for that response?	 **YES/NO** **YES/NO** **YES/NO**
16a	Did the decision have regard to the potential specific conditions of the accused (such as age, state of health, disability, sexual orientation) or other grounds of vulnerability?	**YES/NO**
16b	If YES, did the decision include reasons as to why those conditions were not relevant for the preventive measure being sought?	**YES/NO**
16c	If YES to 16b, were these reasons consistent with the case law of the European Court?	**YES/NO**
17a	Did the decision have regard to the impact of preventive arrest/house arrest on the accused's family or dependents?	**YES/NO**
17b	If YES, did the decision purport to justify this impact?	**YES/NO**
17c	If YES, was this justification in line with the principles established by the European Court?	**DA/NU**
18a	Did the case involve a foreign national?	**YES/NO**
18b	If YES, did the decision: (i) refer to considerations such as consular access or potential language barriers; and (ii) make any proposals as to how these should be addressed?	 **YES/NO** **YES/NO**
19a	Did the decision refer to international human rights standards or guidelines other than the European Convention and the case law of the European Court?	**YES/NO**
19b	If YES, which standards or guidelines were referred to?	**to be specified**
20	Do you consider that the approaches in these decisions included copy-pasting in their motivation/formulation?	**YES/NO**

CHECKLIST 3: Subsequent submissions of prosecutors for the imposition of preventive measures

1	Name and surname of the accused	
2	Case number	
3	Court applied to	
4	Number of previous submissions	
5	Alleged offence(s)	
6	Date of the submission by the prosecutor	
7	Decision sought by the prosecutor from the court: (i) provisional release under judicial control (ii) house arrest (iii) pre-trial detention (iv) revocation of the preventive measure (v) the criminal case was terminated due to the reconciliation of the parties	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO**
8a	Did the submissions address the continued existence of a reasonable suspicion that the accused had committed an offence?	**YES/NO**
8b	If YES, did the submissions: (i) substantiate the continued existence of a reasonable suspicion in a manner consistent with the case law of the European Court and (ii) was this based on the same evidence as relied upon in a previous submission	 **YES/NO** **YES/NO**
9a	Did the submissions identify the applicability of one or more specific grounds for the imposition of preventive measures that were consistent with the case law of the European Court?	**YES/NO**
9b	If YES, which ground(s): (i) the accused might be able to hide from the prosecuting authority or from court; (ii) accused might put pressure on witnesses; (iii) the accused might destroy or damage the means evidence or otherwise hinder the establishment of the truth in criminal proceedings; (iv) the accused might commit other offences; (v) the accused's release will cause public disorder.	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO**
9c	Did the submissions additionally refer to the following reasons for the imposition of preventive measures: (i) the seriousness of the offence; (ii) the strength of the evidence; (iii) concern for the length of the proceedings; (iv) the accused's refusal to plead guilty; (v) the need to conduct further investigations; or (vi) some other reason?	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO** **to be specified**
9d	Had there been any change in the use of these reasons?	**YES/NO**
10a	Did the submissions provide evidence as to why the invocation of a specific ground/grounds for the imposition of preventive measures that were consistent with the case law of the European Court continued to be justified?	**YES/NO**
10b	If YES, was the evidence the same as in a previous submission?	**YES/NO**
10c	If NO, did the new evidence relate to: (i) the ground previously relied upon or (ii) a different ground?	 **YES/NO** **YES/NO**
11a	Did the submissions only consider the need for preventive arrest/house arrest to be continued as a preventive measure?	**YES/NO**

11b	If NO, did the submissions: (i) give some specific reasons for rejecting preventive measures other than preventive arrest/house arrest (i. e., non-custodial ones such as bail, electronic monitoring, or travel restrictions, etc.) and (ii) give some specific reasons for rejecting their suitability? If YES, (iii) were these the same as previously relied upon for rejecting the suitability of alternative measures (iv) did they include an evaluation of the risk involved of not imposing preventive arrest/house arrest? and (v) if there was such an evaluation, was it substantiated with specific examples or past behaviour?	**YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO**
12a	If alternative measures had previously been imposed, did the submissions now consider the need for preventive arrest/house arrest to be imposed as a preventive measure?	**YES/NO/ Not applicable**
12b	If YES, did the submissions provide: (i) ground(s) as to why this should now be imposed that was consistent with the case law of the European Court and (ii) substantiating evidence for doing so?	**YES/NO** **YES/NO**
13a	Did the submissions refer to any new statements/submissions by: (i) the accused and/or (ii) her/his lawyer?	**YES/NO** **YES/NO**
13b	If YES in either case, was the content of the statements/submissions said (i) to be irrelevant or (ii) unfounded and (iii) if YES in (i) and/or (ii), was there any substantiation for that response?	**YES/NO** **YES/NO** **YES/NO**
14	Did the submissions provide the court with information as to steps taken in connection with the investigation since the previous ruling on preventive measures?	**YES/NO**
15	Did the submissions address: (i) the issue of the length of the accused's preventive arrest/house arrest; (ii) why this length was consistent with national law; and (iii) why this length was also consistent with the case law of the European Court?	**YES/NO** **YES/NO** **YES/NO**
16a	Did the submissions evaluate the current behaviour and conduct of the accused while under previous preventive measures?	**YES/NO**
16b	If YES, did they provide concrete examples of compliance or non-compliance with those measures?	**YES/NO**
17a	Did the submissions assess any new developments in the accused's personal circumstances, such as changes in family status, employment, or health, which might impact the necessity or appropriateness of continued preventive arrest/house arrest?	**YES/NO**
17b	If YES, were these changes considered significant in the decision-making process?	**YES/NO**
18a	Did the submissions provide: (i) an updated assessment of the proportionality of the imposition of preventive arrest/house arrest in light of the elapsed time; and/or (ii) any details of changes in the severity or nature of the alleged offence?	**YES/NO** **YES/NO**
18b	If YES to 18a(i), was this assessment consistent with the case law of the European Court?	**YES/NO**

19a	Did the submissions have regard to the impact of preventive arrest/house arrest on the accused's family or dependents?	**YES/NO**
19b	If YES, (i) did the submissions seek to justify this impact; and, if YES (ii) was this justification consistent with the case law of the European Court?	 **YES/NO** **YES/NO**
20a	Did the case involve a foreign national?	**YES/NO**
20b	If YES, did the submissions refer to considerations such as consular access or potential language barriers?	**YES/NO**
21a	Did the submissions refer to international human rights standards or guidelines other than the European Convention and the case law of the European Court?	**YES/NO**
21b	If YES, which standards or guidelines were referred to?	**YES/NO**
22	Do you consider that these submissions included copy-pasting in their motivation/ formulation?	**YES/NO**

CHECKLIST 4: Subsequent decisions by investigating judges for the imposition of preventive measures

1	Name and surname of the accused	
2	Case number	
3	Court applied to	
4	Number of previous decisions	
5	Alleged offence(s)	
6	Date of decision by the investigating judge	
7	Decision by the investigating judge	**to be specified**
8a	Did the decision show that there had been a check as to whether the accused was legally represented?	**YES/NO**
8b	If YES, was the absence or existence of legal representation seen as having any importance in its decision?	**YES/NO**
9a	Did the decision refer to the specific provisions in the Criminal Procedure Code authorising the imposition of preventive measures?	**YES/NO**
9b	If NO, did the decision refer to any other legal basis for imposing preventive measures?	**YES/NO**
9c	If YES to 9b, what was this legal basis?	**to be specified**
10a	Did the decision only refer to submissions by the prosecution?	**YES/NO**
10b	If NO, did the decision refer to submissions by the defence?	**YES/NO**
11a	Did the decision address the continued existence of a reasonable suspicion that the accused had committed an offence?	**YES/NO**
11b	If YES, did the decision: (i) find established the continued existence of a reasonable suspicion in a manner consistent with the case law of the ECtHR and (ii) base this finding on the same evidence as relied upon in a previous ruling or (iii) new evidence?	 **YES/NO** **YES/NO** **YES/NO**
12a	Did the decision find established the applicability of one or more specific grounds for the imposition of preventive measures that were consistent with the case law of the ECtHR?	**YES/NO**
12b	If YES, which ground(s): (i) the accused might be able to hide from the prosecuting authority or from court; (ii) the accused might put pressure on witnesses; (iii) the accused might destroy or damage the means evidence or otherwise hinder the establishment of the truth in criminal proceedings; (iv) the accused might commit other offences; (v) the accused's release will cause public disorder.	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO**
13a	Did the decision additionally refer to the following reasons for the imposition of preventive measures: (i) the seriousness of the offence; (ii) the strength of the evidence; concern for the length of the proceedings; (iii) the accused's refusal to plead guilty; (iv) the need to conduct further investigations; or (v) some other reason?	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **to be specified**
14a	Did the decision rely upon specific evidence as to why the continued invocation of specific grounds for the imposition of preventive measures was justified?	**YES/NO**
14b	If YES, was that evidence consistent with the case law of the ECtHR?	**YES/NO**
14c	If YES in 14a and/or 14b, was the evidence the same as in a previous decision?	**YES/NO**
15a	If preventive arrest/house arrest had previously been imposed, did the decision only consider the need for this to be continued as a preventive measure?	**YES/NO**

15b	If NO, did the decision: (i) address the possibility of now imposing preventive measures other than preventive arrest/house arrest and (ii) give some specific reasons for rejecting their suitability? and (iii) if YES, were these the same as previously relied upon for rejecting the suitability of alternative measures?	**YES/NO** **YES/NO** **YES/NO**
16a	If alternative measures to preventive arrest/house arrest had previously been imposed, did the decision now accept the need for preventive arrest/house arrest to be imposed as a preventive measure?	**YES/NO**
16b	If YES, did the decision: (i) identify the ground(s) as to why this should now be imposed that was consistent with the case law of the ECtHR and (ii) did the decision specify evidence that substantiated this?	**YES/NO** **YES/NO**
17a	Did the decision evaluate the current behaviour and conduct of the accused while under previous preventive measures?	**YES/NO**
17b	If YES, did it refer to concrete examples of compliance or non-compliance?	**YES/NO**
18a	Did the decision assess any new developments in the accused's personal circumstances, such as changes in family status, employment, or health, which might impact the necessity or appropriateness of continued preventive arrest/house arrest?	**YES/NO**
18b	If YES, were these changes considered significant in the decision-making process?	**YES/NO**
19a	Did the decision address the issue of whether sufficient steps have been taken in connection with the investigation since the previous ruling on preventive measures?	**YES/NO**
19b	If YES, did the decision consider those steps to have been adequate?	**YES/NO**
20	Did the decision address: (i) the issue of the length of the accused's preventive arrest/house arrest and (ii) why this length was consistent with the national law and (iii) why this length was also consistent with the case law of the ECtHR?	**YES/NO** **YES/NO** **YES/NO**
21a	Did the decision assess the impact of any changes in the legal representation of the accused, such as a change of lawyer or the level of legal support provided?	**YES/NO**
21b	If YES, was this change considered significant in the context of the case?	**YES/NO**
22a	Did the decision evaluate the current effectiveness and adequacy of any previously imposed preventive measures?	**YES/NO**
22b	If YES, did the decision provide specific reasons for their continued effectiveness or the need for their modification?	**YES/NO**
23a	Did the decision specifically address the issue of proportionality of imposing preventive arrest/house arrest having regard to the severity of the alleged offence and the expected penalty if convicted?	**YES/NO**
23b	If YES, was the assessment in line with the principles established by the ECtHR?	**YES/NO**
24a	Did the decision refer to any new statements/submissions by: (i) the accused; and/or (ii) her/his lawyer?	**YES/NO** **YES/NO**
24b	If YES in either case, was the content of the statements/submissions said: (i) to be irrelevant;	**YES/NO**

	or (ii) unfounded; and (iii) if YES in (i) and/or (ii), was there any substantiation for that response?	 **YES/NO** **YES/NO**
25a	Did the decision address the issue of potential prejudice to the accused's defence capabilities that might result from the prolonged preventive arrest/house arrest?	**YES/NO**
25b	If YES, how was this issue addressed or mitigated?	**to be specified**
26a	Did the decision consider the cumulative impact of the duration of preventive arrest/ house arrest in custody on the accused's overall situation, including personal, family, and professional aspects?	**YES/NO**
26b	If YES, did the decision consider this impact to be justifiable in the context of the case?	**YES/NO**
27a	Did the decision have regard to the impact of preventive arrest/house arrest on the accused's family or dependents?	**YES/NO**
27b	If YES, (i) did the decision purport to justify this impact and (ii) was this justification in line with the principles established by the ECtHR?	 **YES/NO** **YES/NO**
28a	Did the case involve a foreign national?	**YES/NO**
28b	If YES, did the decision: (i) refer to considerations such as consular access or potential language barriers; and (ii) make any proposals as to how these should be addressed?	 **YES/NO** **YES/NO**
29a	Did the court's decision refer to international human rights standards or guidelines other than the ECHR and the case law of the ECtHR?	**YES/NO**
29b	If YES, which standards or guidelines were referred to?	**to be specified**
30a	Did the decision examine the implications of continued preventive arrest/house arrest for the right to liberty and security of the person and the presumption of innocence?	**YES/NO**
30b	If YES, did they have any substantive influence the court's decision?	**YES/NO**
31	Do you consider that the decision included copy-pasting in its motivation/formulation?	**YES/NO**

CHECKLIST 5: Decisions by appellate courts for the imposition of preventive measures

1	Name and surname of the accused	
2	Case number	
3	Court applied to	
4	Alleged offence(s)	
5	Date of decision by the court	
6	Decision by the court	**to be specified**
7a	Did the decision show that there had been a check as to whether the accused was legally represented?	**YES/NO**
7b	If YES, was the absence or existence of legal representation seen as having any importance in the decision?	**YES/NO**
8a	Did the decision refer to the specific provisions in the Criminal Procedure Code authorising the imposition of preventive measures?	**YES/NO**
8b	If NO, did the decision refer to any other legal basis for imposing preventive measures?	**YES/NO**
8c	If YES to 8b, what was this legal basis?	**to be specified**
9a	Did the decision only refer to submissions by the prosecution?	**YES/NO**
9b	If NO, did the decision refer to submissions by the defence?	**YES/NO**
10	Did the decision endorse the ruling of the investigating judge without any further reasoning?	**YES/NO**
11a	Did the decision address the continued existence of a reasonable suspicion that the accused had committed an offence?	**YES/NO**
11b	If YES, did the decision: (i) find established the continued existence of a reasonable suspicion in a manner consistent with the case law of the European Court and base this finding on (ii) the same evidence as relied upon in the decision of the investigating judge or (iii) new evidence or (iv) different reasoning?	 **YES/NO** **YES/NO** **YES/NO** **YES/NO**
12a	Did the decision find established the applicability of one or more specific grounds for the imposition of preventive measures that were consistent with the case law of the European Court?	**YES/NO**
12b	If Yes, which ground(s): (i) the accused might be able to hide from the prosecuting authority or from court; (ii) the accused might put pressure on witnesses; (iii) the accused might destroy or damage the means evidence or otherwise hinder the establishment of the truth in criminal proceedings; (iv) the accused might commit other offences; (v) the accused's release will cause public disorder.	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO**
12c	Did the decision additionally refer to the following reasons for the imposition of preventive measures: (i) the seriousness of the offence; (ii) the strength of the evidence; concern for the length of the proceedings; (iii) the accused's refusal to plead guilty; (iv) the need to conduct further investigations; or (v) some other reason? and (vi) was this the same reason as given in the decision of the investigating judge?	 **YES/NO** **YES/NO** **YES/NO** **YES/NO** **to be specified**
13a	Did the decision rely upon specific evidence as to why the continued invocation of specific grounds for the imposition of preventive measures was justified?	 **YES/NO**

13b	If YES, was that evidence consistent with the case law of the European Court?	**YES/NO**
13c	If YES in 13a and/or 13b, was the evidence the same as in the decision of the investigating judge?	**YES/NO**
14a	If preventive arrest/house arrest had been imposed by the investigating judge, did the decision only consider the need for this to be continued as a preventive measure?	**YES/NO**
14b	If NO, did the decision: (i) address the possibility of now imposing preventive measures other than preventive arrest/house arrest and (ii) give some specific reasons for rejecting their suitability? and (iii) if YES, were these the same as relied upon by the investigating judge for rejecting the suitability of alternative measures and (iv) was there any elaboration of the reasoning that was given by the investigating judge?	 **YES/NO** **YES/NO** **YES/NO** **YES/NO**
15a	If alternative measures to preventive arrest/house arrest had been imposed by the investigating judge, did the decision now accept the need for preventive arrest/house arrest to be imposed instead as a preventive measure?	**YES/NO**
15b	If YES, did the decision: (i) identify the ground(s) as to why this should now be imposed that was/were consistent with the case law of the European Court and (ii) did the decision specify evidence that substantiated this?	 **YES/NO** **YES/NO**
16a	Did the decision evaluate the current behaviour and conduct of the accused while under previous preventive measures?	**YES/NO**
16b	If YES, did it refer to concrete examples of compliance or non-compliance?	**YES/NO**
17a	Did the decision assess any new developments in the accused's personal circumstances, such as changes in family status, employment, or health, which might impact the necessity or appropriateness of continued preventive arrest/house arrest?	**YES/NO**
17b	If YES, were these changes considered significant in the decision-making process?	**YES/NO**
18a	Did the decision address the issue of whether sufficient steps have been taken in connection with the investigation since the decision of the investigating judge on preventive measures?	**YES/NO**
18b	If YES, did the decision consider those steps to have been adequate?	**YES/NO**
19	Did the decision address: (i) the issue of the length of the accused's preventive arrest/house arrest and (ii) why this length was consistent with the national law and (iii) why this length was also consistent with the case law of the European Court?	 **YES/NO** **YES/NO** **YES/NO**
20a	Did the decision assess the impact of any changes in the legal representation of the accused, such as a change of lawyer or the level of legal support provided?	**YES/NO**
20b	If YES, was this change considered significant in the context of the case?	**YES/NO**
21a	Did the decision evaluate the current effectiveness and adequacy of any previously imposed preventive measures?	**YES/NO**
21b	If YES, did the decision provide specific reasons for their continued effectiveness or the need for their modification?	**YES/NO**
22a	Did the decision specifically address the issue of the proportionality of imposing preventive arrest/house arrest having regard to the severity of the alleged offence and the expected penalty if convicted?	**YES/NO**
22b	If YES, was the assessment in line with the principles established by the European Court?	**YES/NO**

23a	Did the decision refer to any new statements/submissions by: (i) the accused; and/or (ii) her/his lawyer?	 **YES/NO** **YES/NO**
23b	If Yes in either case, was the content of the statements/submissions said: (i) to be irrelevant; or (ii) unfounded; and (iii) if YES in (i) and/or (ii), was there any substantiation for that response?	 **YES/NO** **YES/NO** **YES/NO**
24a	Did the decision address the issue of potential prejudice to the accused's defence capabilities that might result from the prolonged preventive arrest/house arrest?	**YES/NO**
24b	If YES, how was this issue addressed or mitigated?	**to be specified**
25a	Did the decision consider the cumulative impact of the duration of preventive arrest/house arrest on the accused's overall situation, including personal, family, and professional aspects?	**YES/NO**
25b	If YES, did the decision consider this impact to be justifiable in the context of the case?	**YES/NO**
26a	Did the decision have regard to the impact of preventive arrest/house arrest on the accused's family or dependents?	**YES/NO**
26b	If YES, did the decision purport to justify this impact?	**YES/NO**
26c	If YES, was this justification in line with the principles established by the European Court?	**YES/NO**
27a	Did the case involve a foreign national?	**YES/NO**
27b	If YES, did the decision: (i) refer to considerations such as consular access or potential language barriers; and (ii) make any proposals as to how these should be addressed?	 **YES/NO** **YES/NO**
28a	Did the decision refer to international human rights standards or guidelines other than the European Convention and the case law of the European Court?	**YES/NO**
28b	If YES, which standards or guidelines were referred to?	**to be specified**
29a	Did the decision examine the implications of continued preventive arrest/house arrest for the right to liberty and security of the person and the presumption of innocence?	**YES/NO**
29b	If YES, did they have any substantive influence the court's decision?	**YES/NO**
30a	Did the decision identify and correct any oversights or errors by the investigating judge?	**YES/NO**
30b	If YES, what were these oversights or errors?	**to be specified**
31	Do you consider that the decision included copy-pasting in its motivation/formulation?	**YES/NO**

CHECKLIST 6: Decisions by appellate courts for the extension of preventive measures

1	Name and surname of the accused	
2	Case number	
3	Court applied to	
4	Number of previous decisions	
5	Alleged offence(s)	
6	Date of decision by the court	
7	Decision by the court	**to be specified**
8a	Did the decision show that there had been a check as to whether the accused was legally represented?	**YES/NO**
8b	If YES, was the absence or existence of legal representation seen as having any importance in the decision?	**YES/NO**
9a	Did the decision refer to the specific provisions in the Criminal Procedure Code authorising the extension of preventive measures?	**YES/NO**
9b	If NO, did the decision refer to any other legal basis for extending preventive measures?	**YES/NO**
10a	Did the decision only refer to submissions by the prosecution?	**YES/NO**
10b	If NO, did the decision refer to submissions by the defence?	**YES/NO**
11	Did the decision endorse the ruling of the investigating judge without any further reasoning?	**YES/NO**
12a	Did the decision address the continued existence of a reasonable suspicion that the accused had committed an offence?	**YES/NO**
12b	If YES, did the decision: (i) find established the continued existence of a reasonable suspicion in a manner consistent with the case law of the European Court and base this finding on (ii) the same evidence as relied upon in the decision of the investigating judge or (iii) new evidence or (iv) different reasoning?	**YES/NO** **YES/NO** **YES/NO** **YES/NO** **to be specified**
13a	Did the decision find established the applicability of one or more specific grounds for the extension of preventive measures that were consistent with the case law of the European Court?	**YES/NO**
13b	If YES, which ground(s): (i) the accused might be able to hide from the prosecuting authority or from court; (ii) the accused might put pressure on witnesses; (iii) the accused might destroy or damage the means evidence or otherwise hinder the establishment of the truth in criminal proceedings; (iv) the accused might commit other offences; (v) the accused's release will cause public disorder.	**YES/NO** **YES/NO** **YES/NO** **YES/NO** **YES/NO**
13c	If YES to 13b, did the decision make additional reference to the following reasons for the imposition of preventive measures: (i) the seriousness of the offence; (ii) the strength of the evidence; concern for the length of the proceedings; (iii) the accused's refusal to plead guilty; (iv) the need to conduct further investigations; or (v) some other reason?	**YES/NO** **YES/NO** **YES/NO** **YES/NO** **to be specified**
14a	Did the decision rely upon specific evidence as to why the continued invocation of specific grounds for the extension of preventive measures was justified?	**YES/NO**
14b	If YES, was that evidence consistent with the case law of the European Court?	**YES/NO**

14c	If YES in 14a and/or 14b, was the evidence the same as in the decision of the investigating judge?	**YES/NO**
15a	If preventive arrest/house arrest had been imposed by the investigating judge, did the decision only consider the need for this to be continued as a preventive measure?	**YES/NO**
15b	If NO, did the decision: (i) address the possibility of now imposing preventive measures other than preventive arrest/house arrest and (ii) give some specific reasons for rejecting their suitability? and (iii) if YES, were these the same as relied upon by the investigating judge for rejecting the suitability of alternative measures and (iv) was there any elaboration of the reasoning that was given by the investigating judge?	 **YES/NO** **YES/NO** **YES/NO** **YES/NO**
16a	If alternative measures to preventive arrest/ house arrest had been imposed by the investigating judge, did the decision now accept the need for preventive arrest/house arrest to be extended as a preventive measure?	**YES/NO**
16b	If YES, did the decision: (i) identify the ground(s) as to why this should now be imposed that was/were consistent with the case law of the European Court and (ii) did the decision specify evidence that substantiated this?	 **YES/NO** **YES/NO**
17a	Did the decision evaluate the current behaviour and conduct of the accused while under previous preventive measures?	**YES/NO**
17b	If YES, did it refer to concrete examples of compliance or non-compliance?	**YES/NO**
18a	Did the decision assess any new developments in the accused's personal circumstances, such as changes in family status, employment, or health, which might impact the necessity or appropriateness of continued preventive arrest/house arrest?	**YES/NO**
18b	If YES, were these changes considered significant in the decision-making process?	**YES/NO**
19a	Did the decision address the issue of whether sufficient steps have been taken in connection with the investigation since the decision of the investigating judge on preventive measures?	**YES/NO**
19b	If YES, did the decision consider those steps to have been adequate?	**YES/NO**
20	Did the decision address: (i) the issue of the length of the accused's preventive arrest/house arrest and (ii) why this length was consistent with the national law and (iii) why this length was also consistent with the case law of the European Court?	 **YES/NO** **YES/NO** **YES/NO**
21a	Did the decision assess the impact of any changes in the legal representation of the accused, such as a change of lawyer or the level of legal support provided?	**YES/NO**
21b	If YES, was this change considered significant in the context of the case?	**YES/NO**
22a	Did the decision evaluate the current effectiveness and adequacy of any previously imposed preventive measures?	**YES/NO**
22b	If YES, did the decision provide specific reasons for their continued effectiveness or the need for their modification?	**YES/NO**
23a	Did the decision specifically address the issue of the proportionality of imposing preventive arrest/house arrest having regard to the severity of the alleged offence and the expected penalty if convicted?	**YES/NO**
23b	If YES, was the assessment in line with the principles established by the European Court?	**YES/NO**

24a	Did the decision refer in its reasoning part to any new statements/submissions by: (i) the accused; and/or (ii) her/his lawyer?	 **YES/NO** **YES/NO**
24b	If YES in either case, was the content of the statements/submissions said: (i) to be irrelevant; or (ii) unfounded; and (iii) if YES in (i) and/or (ii), was there any substantiation for that response?	 **YES/NO** **YES/NO** **YES/NO**
25a	Did the decision address the issue of potential prejudice to the accused's defence capabilities that might result from the prolonged preventive arrest/house arrest?	**YES/NO**
25b	If YES, how was this issue addressed or mitigated?	**to be specified**
26a	Did the decision consider the cumulative impact of the duration of preventive arrest/house arrest on the accused's overall situation, including personal, family, and professional aspects?	**YES/NO**
26b	If YES, did the decision consider this impact to be justifiable in the context of the case?	**YES/NO**
27a	Did the decision have regard to the impact of preventive arrest/house arrest on the accused's family or dependents?	**YES/NO**
27b	If YES, did the decision purport to justify this impact?	**YES/NO**
27c	If YES, was this justification in line with the principles established by the European Court?	**YES/NO**
28a	Did the case involve a foreign national?	**YES/NO**
28b	If YES, did the decision: (i) refer to considerations such as consular access or potential language barriers; and (ii) make any proposals as to how these should be addressed?	 **YES/NO** **YES/NO**
29a	Did the decision refer to international human rights standards or guidelines other than the European Convention and the case law of the European Court?	**YES/NO**
29b	If YES, which standards or guidelines were referred to?	**to be specified**
30a	Did the decision examine the implications of continued preventive arrest/house arrest for the right to liberty and security of the person and the presumption of innocence?	**YES/NO**
30b	If YES, did they have any substantive influence the court's decision?	**YES/NO**
31a	Did the decision identify and correct any oversights or errors by the investigating judge?	**YES/NO**
31b	If YES, what were these oversights or errors?	**to be specified**
32	Do you consider that this decision included copy-pasting in its motivation/formulation?	**YES/NO**

ANNEX II: RESULTS OF ANALYSIS OF CHECKLISTS[141]

CHECKLIST 1: Initial submissions of prosecutors

Q6: Decision sought by the prosecutor from the court:	
house arrest	6.4%
pre-trial detention	93.6%

N=314

Q7: Was the accused legally represented?	
Yes	99.7%
No	0.3%

N=314

Q8a: Did the submissions address the existence of a reasonable suspicion that the accused had committed an offence?	
Yes	99.4%
No	0.6%

N=314

Q8b: If YES, did the submissions substantiate the existence of a reasonable suspicion in a manner consistent with the case law of the ECtHR?	
Yes	89.4%
No	10.6%

N=312

Q9a: Did the decision find established the applicability of one or more specific grounds for the imposition of preventive measures that were consistent with the case law of the ECtHR?	
Yes	100.0%
No	0.0%

N=315

Q9b: If YES, which ground(s)?	
the accused could hide from the criminal investigation body or the court	98.7%
the accused could exert pressure on the witnesses	50.3%
the accused could destroy or damage the means of evidence or prevent in another way the establishment of the truth in the criminal process	93.0%
the accused could commit other crimes	72.6%
the accused's release will cause public disorder	10.5%

N=314

141 Certain follow-up questions have not been included as the response to the preceding ones made this unnecessary. "ECtHR" refers to the European Court of Human Rights.

Q9c: Did they made additional reference to the following reasons for the imposition of preventive measures?	
the seriousness of the crime	62.4%
the strength of the evidence	11.5%
concern for the duration of the procedures	5.1%
the accused's refusal to plead guilty	3.2%
the need to carry out additional investigations	28.3%
another reason	1.2%
Ensuring the execution of the sentence	0.6%
Not applying the arrest would lead to problems related to the establishment of guilt, the application of the criminal penalty	0.3%
Committing the crime during the probationary period (previously convicted)	0.3%

N=314

Q10a: Did the submissions provide evidence as to why the invocation of specific grounds for the imposition of preventive measures was justified?	
Yes	36.3%
No	63.7%

N=314

Q10b: If YES, was that evidence consistent with the case law of the ECtHR?	
Yes	77.2%
No	22.8%

N=314

Q11a: Did the submissions only consider the need for preventive arrest/house arrest as a preventive measure?	
Yes	14.0%
No	86.0%

N=314

Q11b(i) : If NO, did the submissions give some specific reason for rejecting preventive measures other than preventive arrest/house arrest (i.e., non-custodial ones such as bail, electronic monitoring, or travel restrictions?	
Yes	95.6%
No	4.4%

N=270

Q11(b(ii): If YES, were the alternative preventive measures considered insufficient to address one of the following risks:	
	YES
the accused could hide from the criminal investigation body or from	84.4%
the accused could exert pressure on the witnesses	43.7%

the accused could destroy or damage the means of evidence or to prevent in another way the establishment	79.3%
to commit other crimes	64.1%
the accused's release will cause public disorder	11.9%
the reasons included an assessment of the risk implied by not applying preventive detention/	54.4%
If there was such an assessment, was it substantiated	11.9%

N=270

Q11b(iii): Did the reasons include an assessment of the risk involved of not imposing preventive arrest/house arrest?	
Yes	54.4%
No	45.6%

N=270

Q11b(iv) If there was such an assessment, was it substantiated with specific examples of past behaviour?	
Yes	11.9%
No	88.1%

N=270

Q12a: Did the submissions specifically address the proportionality of preventive arrest/house arrest in relation to the severity of the alleged offence and the expected penalty if convicted?	
Yes	86.3%
No	13.7%

N=314

Q12b: If YES, was this assessment in line with the principles established by the ECtHR?	
Yes	13.7%
No	86.3%

N=271

Q13a(i): Did the submissions respond to any statements/submissions by the accused?	
Yes	1.9%
No	98.1%

N=314

Q13a(ii):) Did the submissions respond to any statements/submissions by her/his lawyer?	
Yes	0.3%
No	99.7%

N=314

Q13b(i): If YES in either case, was the content of the statements/submissions said to be irrelevant?	
Yes	20.0%

No	80.0%
No data	0.0%

N=6

Q13b(i): If YES in either case, was the content of the statements/submissions said to be unfounded?	
Yes	40.0%
No	60.0%

N=6

Q13b(iii): If YES in either case, was there any substantiation for that response?	
Yes	33.3%
No	66.6%

N=3

Q14a: Did the submissions have regard to the specific conditions of the accused (such as age, state of health, disability, sexual orientation) or other grounds of vulnerability?	
Yes	51.0%
No	49.0%

N=314

Q14b: If YES, did the submissions provide reasons as to why those conditions were not relevant for the preventive measure being sought?	
Yes	35.0%
No	65.0%

N=160

Q14c: If YES to Q14b, were these reasons in accordance with ECtHR jurisprudence?	
Yes	21.4%
No	78.6%

N=56

Q15a: Did the submissions have regard to the impact of preventive arrest/house arrest on the accused's family or dependents?	
Yes	1.6%
No	98.4%

N=314

Q15b: If YES, did the submissions seek to justify this impact?	
Yes	100.0%
No	0.0%

N=5

Q15c: If YES, was this justification in line with the principles established by the ECtHR?	
Yes	80.0%
No	20.0%
	N=5

Q16a: Did the case involve a foreign national?	
Yes	2.5%
No	97.5%
	N=314

Q16b (i): If YES, did the submissions refer to considerations such as consular access or potential language barriers;	
Yes	0.0%
No	100.0%
	N=8

Q16b(ii): If YES to 16a, did the submissions make any proposals as to how these should be addressed?	
Yes	0.0%
No	100.0%
	N=8

Q17a: Did the submissions refer to international human rights standards or guidelines other than the ECHR and the case law of the ECtHR?	
Yes	7.3%
No	92.7%
	N=314

Q17b: If YES, which standards or guidelines were referred to?	Number
Recommendation (80) 11	*21*
Recommendation Rec(2006)13, para. 7(a)	*2*
	N=23

Q18: Do you consider that the approaches include copied and pasted parts in their motivation/ formulation?	
Yes	63.1%
No	25.5%
No mention	11.5%
	N=314

CHECKLIST 2. Initial decisions of investigating judges

Q6: Decision by the investigating judge:	
provisional release under judicial control	1.9%
house arrest	16.3%
Preventive arrest	81.2%

N=313

Q7a: Did the decision show that there had been a check as to whether the accused was legally represented?	
Yes	99.7%
No	0.3%

N=313

Q7b: If YES, was the absence or existence of legal representation seen as having any importance in its decision?	
Yes	1.3%
No	98.7%

N=312

Q8a: Did the decision refer to the specific provisions in the Criminal Procedure Code authorising the imposition of preventive measures?	
Yes	99.7%
No	0.3%

N=313

Q8b: If NO, did the decision refer to any other legal basis for imposing preventive measures?	
Yes	0.0%
No	100.0%

N=308

Q9a: Did the decision in its reasoning part only refer to submissions by the prosecution?	
Yes	31.3%
No	68.7%

N=313

Q9b: If NO, did the decision in its reasoning part refer to submissions by the defence?	
Yes	99.5%
No	0.5%

N=215

Q10a: Did the decision address the issue of whether was a reasonable suspicion that the accused had committed an offence?	
Yes	98.7%

No	1.3%

N=313

Q10b: If YES, did the decision find established the existence of a reasonable suspicion on a basis consistent with the case law of the ECtHR?	
Yes	78.6%
No	21.4%

N=308

Q11a: Did the decision find established the applicability of one or more specific grounds for the imposition of preventive measures that were consistent with the case law of the ECtHR?	
Yes	94.9%
No	5.1%

N=313

Q11b: If YES, which ground(s)?	
the accused might be able to hide from the prosecuting authority or from court	92.3%
the accused might put pressure on witnesses	47.1%
the accused might destroy or damage the means of evidence or prevent in another way the establishment of the truth in the criminal process	91.9%
the accused might commit other offences	61.6%
the accused's release will cause public disorder.	9.1%

N=297

Q11c: Did the decision make additional reference to the following reasons for the imposition of preventive measures?	
the seriousness of the offence	57.9%
the strength of the evidence	3.0%
the concern for the length of the procedures	4.4%
the accused's refusal to plead guilty	1.0%
the need to conduct further investigations	30.0%
another reason	0.7%
Ensuring the execution of the sentence	0.3%
Committing the crime during the probationary period (previously convicted)	0.3%

N=297

Q12a: Did the decision rely upon specific evidence as to why the invocation of specific grounds for the imposition of preventive measures was justified?	
Yes	24.3%
No	75.7%

N=313

Q12b: If YES, was that evidence consistent with the case law of the ECtHR?	
Yes	80.3%
No	19.7%

N=76

Q13a: Did the decision only consider the need for preventive arrest/house arrest as a preventive measure?	
Yes	17.9%
No	82.1%

N=313

Q13b(i): If NO, did the decision give some specific reasons for rejecting preventive measures other than preventive arrest/house arrest (i. e., non-custodial ones such as bail, electronic monitoring, or travel restrictions, etc.)?	
Yes	98.1%
No	1.9%

N=257

Q13b(ii): Did the decision additionally refer to the following reasons for the imposition of preventive measures?	YES
the accused might could hide from the criminal investigation body or from	82.9%
the accused might exert pressure on the witnesses	41.2%
the accused might destroy or damage the means of evidence or to prevent in another way the establishment	83.7%
the accused commit other crimes	55.0%
the accused's release will cause public disorder	8.8%

N=257

Q13b(iii): Did the reasons include an assessment of the risk involved of not imposing preventive arrest/house arrest?	
Yes	56.4%
No	45.4%

N=257

Q13b(iv) If there was such an assessment, was it substantiated with specific examples of past behaviour?	
Yes	13.6%
No	86.4%

N=257

Q14a: Did the decision specifically address the issue of proportionality of imposing preventive arrest/house arrest having regard to the severity of the alleged offence and the expected penalty if convicted?	
Yes	80.2%

No	19.8%

N=313

Q14b: If YES, was this assessment in line with the principles established by the ECtHR?	
Yes	17.9%
No	82.1%

N=251

Q15a: Did the decision in its reasoning part refer to any statements/submissions by the accused?	
Yes	45.9%
No	54.1%

N=242

Q15b: Did the decision in its reasoning part refer to any statements/submissions by her/his lawyer?	
Yes	72.2%
No	27.8%

N=302

Q15c(i): If YES in either case, was the content of the statements/submissions said to be irrelevant	
Yes	1.8%
No	70.0%
No data	28.2%

N=220

Q15c(ii): If YES in either case, was the content of the statements/submissions said to be unfounded?	
Yes	76.0%
No	23.1%
No data	0.9%

N=220

Q15c(iii): If YES in either case, was there any substantiation for that response?	
Yes	51.1%
No	26.7%
No data	22.2%

N=220

Q16a: Did the decision have regard to the specific conditions of the accused (such as age, state of health, disability, sexual orientation) or other grounds of vulnerability?	
Yes	35.1%

No	64.9%

N=313

Q16b: If YES, did the decision include reasons as to why those conditions were not relevant for the preventive measure being sought?	
Yes	50.9%
No	49.1%

N=110

Q16c: If YES to Q16b, were these reasons consistent with the case law of the ECtHR?	
Yes	37.5%
No	62.5%

N=56

Q17a: Did the decision have regard to the impact of preventive arrest or house arrest on the accused's family or dependents?	
Yes	3.8%
No	96.2%

N=313

Q17b: If YES, did the decision purport to justify this impact?	
Yes	66.7%
No	33.3%

N=12

Q17c: If YES to Q17b, was this justification in line with the principles established by the ECtHR?	
Yes	75.0%
No	25.0%

N=8

Q18a: Did the case involve a foreign national?	
Yes	2.6%
No	97.4%

N=314 *N=313*

Q18b(i): If YES, did the decision refer to considerations such as consular access or potential language barriers?	
Yes	0.0%
No	100.0%

N=8

Q18b(ii): If YES to Q18(b)(i), make any proposals as to how these should be addressed?	
Yes	0.0%

No	100.0%

N=8

Q19a: Did the decision refer to international human rights standards or guidelines other than the ECHR and the case law of the ECtHR?	
Yes	5.4%
No	94.6%

N=313

Q19b: If YES, which standards or guidelines were referred to?	**Number**
Recommendation (80) 11	*16*
Recommendation Rec(2006)13, para. 7(a)	*1*

N=17

Q18: Do you consider that the approaches include copied and pasted parts in their motivation/ formulation?	
Yes	70.6%
No	18.5%
No mention	10.9%

N=313

CHECKLIST 3. Subsequent submissions of prosecutors

Q7: Decision sought by the prosecutor from the court:	
provisional release under judicial control	5.2%
house arrest	28.7%
pre-trial detention	64.9%
revocation of the preventive measure	0.7%
the criminal case was terminated due to the reconciliation of the parties	0.4%

N=268

Q8a: Did the submissions address the existence of a reasonable suspicion that the accused had committed an offence?	
Yes	99.6%
No	0.0%
Not applicable due to termination of proceedings due to parties' reconciliation	0.4%

N=268

Q8b(i): If YES, did the submissions substantiate the existence of a reasonable suspicion in a manner consistent with the case law of the ECtHR?	
Yes	88.8%
No	11.2%

N=267

Q8b(ii): If YES, were the submissions based on the same evidence as in a previous submission?	
Yes	91.8%
No	8.2%

N=267

Q9a: Did the submissions identify the applicability of one or more specific grounds for the imposition of preventive measures that were consistent with the case law of the ECtHR?	
Yes	97.8%
No	2.2%

N=267

Q9b: If YES, which ground(s)?	
the accused might be able to hide from the prosecuting authority or from court;	97.3%
the accused might to put pressure on witnesses;	49.0%
the accused might destroy or damage the means of evidence or prevent in another way the establishment of the truth in the criminal process	90.8%
the accused might commit other offences;	72.0%
the accused's release will cause public disorder	10.0%

N=261

Q9c: Did the submissions additionally refer to the following reasons for the imposition of preventive measures?	
the seriousness of the crime	60.5%
solidity of the evidence	10.0%
the concern for the duration of the procedures	3.1%
the accused's refusal to plead guilty	1.9%
the need to carry out additional investigations	30.7%
another reason	
Committing the crime within the probationary period	0.4%
The resonance of the criminal case and the fact of being under investigation for a second serious crimes	0.4%
	N=261

Q9d: Had there been any change in the use of these reasons?	
Yes	9.1%
No	90.9%
	N=264

Q10a: Did the submissions provide evidence as to why the invocation of a specific ground/ specific grounds for the application of preventive measures that were in accordance with ECtHR case law continued to be justified?	
Yes	22.3%
No	77.7%
	N=264

Q10b: If YES, was the evidence the same as in a previous submission?	
Yes	49.2%
No	50.8%
	N=59

Q10c(i): If NO, did the new evidence relate to the ground previously relied upon?	
Yes	90.0%
No	10.0%
	N=30

Q10c)ii): If the answer to Q10b is NO, did the new evidence relate to a different ground?	
Yes	23.3%
No	76.7%
	N=30

Q11a: Did the submissions only consider the need for preventive arrest/house arrest to be continued as a preventive measure?	
Yes	15.5%
No	84.5%
	N=264

Q11b(i): If NO, did the submissions give some specific reasons for rejecting preventive measures other than preventive arrest/house arrest (i. e., non-custodial ones such as bail, electronic monitoring, or travel restrictions, etc.)?	
Yes	93.7%
No	4.0%
No data	2.2%
	N=223

Q11b(ii): If NO to Q11a,did the submissions give some specific reasons for rejecting the suitability of such preventive measures?	
Yes	55.6%
No	22.0%
No data	22.4%
	N=216

Q11b(iii), If YES to Q11b(ii), were these the same reasons as previously relied upon for rejecting them?	
Yes	86.6%
No	6.5%
No data	6.9%
	N=216

Q11c(i): If YES to Q11b(ii), did the reasons include an evaluation of the risk involved of not imposing preventive arrest/house arrest?	
Yes	68.5%
No	21.8%
No data	9.7%
	N=216

Q11c(ii): If YES, was this evaluation substantiated with specific examples or past behaviour?	
Yes	12.1%
No	67.9%
No data	20.0%
	N=216

Q12: If alternative measures were previously applied, did the submissions now take into account the need to apply preventive arrest/house arrest as a preventive measure?	
Yes	0.0%
No	1.1%
Not applicable	98.9%
	N=268

Q13a(i): Did the submissions respond to any statements/submissions by the accused?	
Yes	0.0%

No	100.0%

N=268

Q13a(ii): Did the submissions respond to any statements/submissions by her/his lawyer?	
Yes	0.8%
No	99.2%

N=268

Q13b(i): If YES in either case, was the content of the statements/submissions said to be irrelevant?	
Yes	100.0%
No	0.0%
No data	0.0%

N=2

Q13b(ii): If YES in either case, was the content of the statements/submissions said to be unfounded?	
Yes	100.0%
No	0.0%
No data	0.0%

N=2

Q13b(iii): If YES in either case, was there any substantiation for that response?	
Yes	50.0%
No	50.0%
No data	0.0%

N=2

Q14: Did the submissions provide the court with information as to steps taken in connection with the investigation since the previous ruling on preventive measures?	
Yes	32.1%
No	67.9%

N=268

Q15(i): Did the submissions address the issue of the length of the accused's preventive arrest/ house arrest?	
Yes	6.0%
No	94.0%

N=268

Q15(ii): Did the submissions address why this length was consistent with national law?	
Yes	4.2%
No	95.8%

N=268

Q15(iii): Did the submissions address why this length was also consistent with the case law of the ECtHR?	
Yes	0.8%
No	99.2%
	N=268

Q16a: Did the submissions evaluate the current behaviour and conduct of the accused while under previous preventive measures?	
Yes	5.2%
No	94.8%
	N=268

Q16b: If YES, did they provide concrete examples of compliance or non-compliance with those measures?	
Yes	85.7%
No	14.3%
	N=14

Q17a: Did the submissions assess any new developments in the accused's personal circumstances, such as changes in family status, employment, or health, which might impact the necessity or appropriateness of continued preventive arrest/house arrest?	
Yes	2.3%
No	97.7%
	N=268

Q17b: If YES, were these changes considered significant in the decision-making process?	
Yes	66.7%
No	33.3%
	N=4

Q18a(i): Did the submissions provide an updated assessment of the proportionality of the application of preventive arrest/house arrest, in the light of the elapsed time?	
Yes	11.3%
No	88.7%
	N=268

Q18a(ii): Did the submissions provide details of any changes in the severity or nature of the alleged offence?	
Yes	3.8%
No	96.2%
	N=268

Q18b: If YES to Q18a(i), was this assessment consistent with the case law of the ECtHR?	
Yes	44.1%
No	55.9%
	N=34

Q19a: Did the submissions have regard to the impact of preventive arrest/house arrest on the accused's family or dependents?	
Yes	2.2%
No	97.8%

N=268

Q19b(i): If YES, did the submissions try to justify this impact?	
Yes	83.3%
No	16.7%

N=6

Q19b(ii): If YES, was this justification consistent with the case law of the ECtHR?	
Yes	80.0%
No	20.0%

N=5

Q20a: Did the case involve a foreign national?	
Yes	3.0%
No	97.0%

N=268

Q20b: If YES, did the submissions refer to considerations such as consular access or potential language barriers?	
Yes	0.0%
No	100.0%

N=8

Q21a: Did the submissions refer to international human rights standards or guidelines other than the ECHR and the case law of the ECtHR?	
Yes	6.7%
No	93.3%

N=268

Q21b: If YES, which standards or guidelines were referred to?	**Number**
Recommendation (80)11	*17*
Recommendation Rec(2006)13, para. 7(a)	*1*

N=18

Q22: Do you consider that the approaches include copied and pasted parts in their motivation/ formulation?	
Yes	81.3%
No	5.2%
No mention	13.4%

N=268

CHECKLIST 4. Subsequent decisions by investigating judges

Q7: Decision by the investigating judge:	
provisional release under judicial control	17.9%
provisional release under caution	0.4%
house arrest	27.8%
pre-trial detention	52.9%
	N=263

Q8a: Did the decision show that there had been a check as to whether the accused was legally represented?	
Yes	100.0%
No	0.0 %
	N=263

Q8b: If YES, was the absence or existence of legal representation seen as having any importance in its decision?	
Yes	0.4%
No	99.6%
	N=263

Q9a: Did the decision refer to the specific provisions in the Criminal Procedure Code authorising the imposition of preventive measures?	
Yes	99.2%
No	0.8%
	N=263

Q9b: If NO, did the decision refer to any other legal basis for imposing preventive measures?	
Yes	100.0%
No	0.0 %
	N=2

Q10a: Did the decision only refer to submissions by the prosecution?	
Yes	27.4%
No	72.6%
	N=263

Q10b: If N), did the decision refer to submissions by the defence?	
Yes	96.3%
No	3.7%
	N=191

Q11a: Did the decision address the continued existence of a reasonable suspicion that the accused had committed an offence?	
Yes	97.7%
No	2.3%

N=263

Q11b: If YES, did the decision:	YES
(i) find established the continued existence of a reasonable suspicion in a manner consistent with the case law of the ECtHR	83.3%
(ii) base this finding on the same evidence as relied upon in a previous ruling or	88.6%
(iii) on new evidence?	16.3%

N=257

Q12a: Did the decision find established the applicability of one or more specific grounds for the imposition of preventive measures that were consistent with the case law of the ECtHR?	
Yes	86.3%
No	13.7%

N=263

Q12b: If YES, which ground(s)?	
the accused might hide from the criminal investigation body or the court	87.7%
the accused might exert pressure on the witnesses	43.6%
the accused might destroy or damage the means of evidence or prevent in another way the establishment of the truth in the criminal process	86.9%
the accused might commit other crimes	53.7%
the accused's release will cause public disorder	6.1%

N=227

Q13: Did the decision additionally refer to the following reasons for the imposition of preventive measures:	
the seriousness of the offence;	54.6%
the strength of the evidence;	4.0%
concern for the length of the proceedings;	0.4%
the accused's refusal to plead guilty	0.0%
the need to carry out additional investigations	30.8%
another reason	0.4%
Ensuring the execution of the sentence	3.1%
Committing the crime during the probationary period (previously convicted)	0.4%

N=36

Q14a: Did the decision rely upon specific evidence as to why the continued invocation of specific grounds for the imposition of preventive measures was justified?	
Yes	17.1%
No	82.9%

N=263

Q14b: If YES, was that evidence consistent with the case law of the ECtHR?	
Yes	77.8%
No	22.2%

N=45

Q14c: If YES in Q14a and/or Q14b, was the evidence the same as in a previous decision?	
Yes	42.2%
No	57.8%

N=45

Q15a: If preventive arrest/house arrest had previously been imposed, did the decision only consider the need for this to be continued as a preventive measure?	
Yes	16.0%
No	84.0%

N=263

Q15b: If NO, did the decision:	YES
(i) address the possibility of now imposing preventive measures other than preventive arrest/house arrest	97.3%
(ii) give some specific reasons for rejecting its suitability?	65.2%
(iii) if Yes to (ii), were these the same as ones previously relied upon for rejecting the suitability of alternative measures?	61.5%

N=221

Q16: If alternative measures to preventive arrest/house arrest had previously been imposed, did the decision now accept the need for preventive arrest/house arrest to be imposed as a preventive measure?	
Yes	0.0%
No	2.1%
No data	97.9%

N=263

Q17a: Did the decision evaluate the current behaviour and conduct of the accused while under previous preventive measures?	
Yes	13.7%
No	86.3%

N=263

Q17b: If YES, did the decision refer to concrete examples of compliance or non-compliance with those measures?	
Yes	72.2%
No	27.8%

N=36

Q18a: Did the decision assess any new developments in the accused's personal circumstances, such as changes in family status, employment, or health, which might impact the necessity or appropriateness of continued preventive arrest or house arrest?	
Yes	10.3%
No	89.7%

N=263

Q18b: If YES, were these changes considered significant in the decision-making process?	
Yes	66.7%
No	33.3%

N=27

Q19a: Did the decision address the issue of whether sufficient steps had been taken in connection with the investigation since the previous ruling on preventive measures?	
Yes	19.0%
No	81.0%

N=263

Q19b: If YES, did the decision consider those steps to have been adequate?	
Yes	66.7%
No	33.3%

N=50

Q20: Did the decision address:	YES
(i) the issue of the length of the accused's preventive arrest/house arrest	20.5%
(ii) why this length remained within the limits of national law	15.6%
(iii) why this length was consistent with the case law of the ECtHR?	4.9%

N=263

Q21: Did the decision assess the impact of any changes in the legal representation of the accused, such as a change of lawyer or the level of legal support provided?	
Yes	0.0%
No	100.0%

N=263

Q22a: Did the decision evaluate the current effectiveness and adequacy of any previously imposed preventive measures?	
Yes	21.7%
No	78.3%

N=263

Q22b: If YES, did the decision provide specific reasons for their continued effectiveness or the need for their modification?	
Yes	91.2%

No	8.8%

N=57

Q23a: Did the decision address the proportionality of preventive arrest/house arrest in relation to the severity of the alleged offence and the expected penalty if convicted?	
Yes	74.9%
No	25.1%

N=263

Q23b: If YES, was the assessment in line with the principles established by the ECtHR?	
Yes	24.4%
No	75.6%

N=197

Q24a: Did the decision respond to any new statements/submissions by:	
(i) the accused;	35.4%
(ii) her/his lawyer?	56.7%

N=263

Q24b: If YES, was the content of the statements/submissions said:	YES
(i) to be irrelevant;	3.1%
(ii) unfounded;	55.2%
(iii) in either case, was there any substantiation for that response?	62.0%

N=162

Q25: Did the decision address the issue of potential prejudice to the accused's defence capabilities due to the prolonged preventive arrest or house arrest?	
Yes	0.0%
No	100.0%

N=263

Q26a: Did the decision consider the cumulative impact of the duration of preventive arrest or house arrest in custody on the accused's overall situation, including personal, family, and professional aspects?	
Yes	3.0%
No	97.0%

N=263

Q26b: If YES, did the decision consider this impact to be justifiable in the context of the case?	
Yes	62.5%
No	37.5%

N=8

Q27a: Did the decision refer to the impact of preventive arrest/house arrest on the accused's family or the persons dependent on him?	
Yes	2.3%
No	97.7%

N=263

Q27b(i): If YES, did the measures try to justify this impact?	
Yes	100.0%
No	0.0%

N=6

Q27b(ii): If YES to Q27b(i), was this justification in accordance with ECtHR jurisprudence?	
Yes	33.3%
No	66.7%

N=6

Q28a: Did the case involve a foreign national?	
Yes	3.0%
No	97.0%

N=263

Q28b(i): If YES, did the decision refer to considerations such as consular access or potential language barriers?	
Yes	12.5%
No	87.5%

N=8

Q28b(ii): If YES to Q28b(i), make any proposals as to how these should be addressed?	
Yes	12.5%
No	87.5%

N=8

Q29a: Did the court's decision refer to international human rights standards or guidelines other than the ECHR and the case law of the ECtHR?	
Yes	7.6%
No	92.4%

N=263

Q29b: If YES, which standards or guidelines were referred to?	**Number**
Recommendation (80)11	*17*
Recommendations CM/Rec(2014) of the Committee of Ministers to member states on electronic monitoring	*2*
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	*1*

N=20

Q30a: Did the decision examine the implications of continued preventive arrest or house arrest for the right to liberty and security of the person and the presumption of innocence?	
Yes	16.0%
No	84.0%

N=263

Q30b: If YES, did they have any substantive influence the court's decision?	
Yes	11.9%
No	88.1%

N=42

Q31: Do you consider that the approaches in the decisions included copied and pasted parts in their motivation/formulation?	
Yes	70.7%
No	16.3%
No mention	12.9%

N=263

CHECKLIST 5. Decisions by appellate courts for the imposition of preventive measures

Q6: Decision by the court	
provisional release under judicial control	1.4%
house arrest	16.9%
pre-trial detention	81.7%

Q7a: Did the decision show that there had been a check as to whether the accused was legally represented?	
Yes	99.5%
No	0.5%

N=207

Q7b: If YES, was the absence or existence of legal representation seen as having any importance in its decision?	
Yes	1.0%
No	99.0%

N=207

Q8: Did the decision refer to the specific provisions in the Criminal Procedure Code authorising the imposition of preventive measures?	
Yes	100.0%
No	0.0%

N=207

Q9a: Did the decision only refer to submissions by the prosecution ?	
Yes	4.8%
No	95.2%

N=207

Q9b: If NO, did the decision refer to submissions by the defence?	
Yes	99.5%
No	0.5%

N=197

Q10: Did the decision endorse the ruling of the investigating judge without any further reasoning?	
Yes	58.9%
No	41.1%

N=207

Q11a: Did the decision address the continued existence of a reasonable suspicion that the accused had committed an offence?	
Yes	100.0%
No	0.0%

N=207

Q11b: If YES, did the decision:	YES
(i) find established the continued existence of a reasonable suspicion in a manner consistent with the case law of the ECtHR	86.5%
(ii) base this finding on the same evidence as relied upon in a previous ruling	89.9%
(iii) base this finding on new evidence?	2.4%
(iv) rely on different reasoning	0.0%

N=207

Q12a: Did the decision find established the applicability of one or more specific grounds for the imposition of preventive measures that were consistent with the case law of the ECtHR?	
Yes	94.2%
No	5.8%

N=207

Q12b: If YES, which ground(s)?	
the accused might hide from the criminal investigation body or the court	92.9%
the accused might exert pressure on the witnesses	42.3%
the accused might destroy or damage the means of evidence or prevent in another way the establishment of the truth in the criminal process	92.9%
the accused might commit other crimes	51.5%
the accused's release will cause public disorder	8.2%

N=195

Q12c: The decision made additional reference to the following reasons for the imposition of preventive measures:	
the seriousness of the crime	56.4%
strength of the evidence	1.5%
concern for the duration of the procedures	1.5%
the accused's refusal to plead guilty	0.0%
the need to carry out additional investigations	22.1%
was this the same reason as given in the decision of the investigating judge?	2.1%
another reason	1.0%
Release would negatively influence the citizens' perception of the fight against drugs	0.5%

N=207

Q13a: Did the decision rely upon specific evidence as to why the continued invocation of specific grounds for the imposition of preventive measures was justified?	
Yes	13.5%
No	86.5%

Q13b: If YES, was that evidence consistent with the case law of the ECtHR?	
Yes	89.3%

No	10.7%

N=28

Q13c: If YES to Q13a and or Q13b, was the evidence the same as in the decision of the investigating judge?	
Yes	92.6%
No	7.4%

N=25

Q14a: If preventive arrest/house arrest had previously been imposed, did the decision only consider the need for this to be continued as a preventive measure?	
Yes	10.3%
No	89.7%

N=203

Q14b: If NO, did the decision:	YES
(i) address the possibility of now imposing preventive measures other than preventive arrest or house arrest	98.9%
(ii) give some specific reasons for rejecting its suitability?	79.1%

N=182

Q14c: If YES to Q14b(ii):	YES
(i) were these the same as the ones relied upon by the investigating judge for rejecting the suitability of alternative measures	73.3%
(ii) was there any elaboration of the reasoning of the investigating judge?	15.0%

N=180

Q15: If alternative measures to preventive arrest/house arrest had previously been imposed, did the decision now accept the need for preventive arrest or house arrest to be imposed as a preventive measure?	
Yes	0.0%
No	28.0%
No data	72.0%

N=207

Q16a: Did the decision evaluate the current behaviour and conduct of the accused while under previous preventive measures?	
Yes	3.4%
No	96.6%

N=207

Q16b: If YES, did the decision provide concrete examples of compliance or non-compliance?	
Yes	28.6%
No	71.4%

N=7

Q17a: Did the decision assess any new developments in the accused's personal circumstances, such as changes in family status, employment, or health, which might impact the necessity or appropriateness of continued preventive arrest or house arrest?	
Yes	5.8%
No	94.2%

N=207

Q17b: If YES, were these changes considered significant in the decision-making process?	
Yes	50.0%
No	50.0%

N=12

Q18a: Did the decision address the issue of whether sufficient steps have been taken in connection with the investigation since the previous ruling on preventive measures?	
Yes	6.3%
No	93.7%

N=207

Q18b: If YES, did the decision consider those steps to have been adequate?	
Yes	92.3%
No	7.7%

N=12

Q19: Did the decision address:	YES
(i) the issue of the length of the accused's preventive arrest or house arrest	8.2%
(ii) why this length remained within the limits of national law	5.3%
(iii) why this length was consistent with the case law of the ECtHR?	1.0%

N=207

Q20a: Did the decision assess the impact of any changes in the legal representation of the accused, such as a change of lawyer or the level of legal support provided?	
Yes	0.5%
No	99.5%

N=207

Q20b: If YESs, was this change considered significant in the context of the case?	
Yes	100.0%
No	0.0%

N=1

Q21a: Did the decision evaluate the current effectiveness and adequacy of any previously imposed preventive measures?	
Yes	7.6%

No	92.4%

N=207

Q21b: If YES, did the decision provide specific reasons for their continued effectiveness or the need for their modification?	
Yes	81.3%
No	18.8%

N=16

Q22a: Did the decision address the proportionality of preventive arrest/house arrest in relation to the severity of the alleged offence and the expected penalty if convicted?	
Yes	83.1%
No	16.9%

N=207

Q22b: If YES, was the assessment in line with the principles established by the ECtHR?	
Yes	11.6%
No	88.4%

N=172

Q23a: Did the decision respond to any new statements/submissions by:	YES
(i) the accused;	35.3%
(ii) her/his lawyer?	72.9%

N=207

Q23b: If YES, was the content of the statements/submissions said:	YES
(i) to be irrelevant;	3.9%
(ii) unfounded;	61.8%
(iii) in either case was there any substantiation for that response?	49.3%

N=156

Q24: Did the decision address the issue of potential prejudice to the accused's defence capabilities due to the prolonged preventive arrest or house arrest?	
Yes	0.0%
No	100.0%

N=207

Q25a: Did the decision consider the cumulative impact of the duration of preventive arrest or house arrest in custody on the accused's overall situation, including personal, family, and professional aspects?	
Yes	1.4%
No	98.6%

N=207

Q25b: If YES, did the decision consider this impact to be justifiable in the context of the case?	
Yes	0.0%
No	100.0%

N=3

Q26a: Did the decision refer to the impact of preventive arrest/house arrest on the accused's family or the persons dependent on him?	
Yes	1.4%
No	98.6%

N=207

Q26b: If YES, did the measures try to justify this impact?	
Yes	33.3%
No	66.7%

N=3

Q26c: If YES to Q26b, was this justification in accordance with the case law of the ECtHR?	
Yes	33.3%
No	66.7%

N=3

Q27a: Did the case involve a foreign national?	
Yes	3.4%
No	96.6%

N=207

Q27b: If YES, did the decision refer to considerations such as consular access or potential language barriers?	
Yes	14.3%
No	85.7%

N=7

Q27c: If YES to Q27b, did the decision make any proposals as to how these should be addressed?	
Yes	14.3%
No	85.7%

N=7

Q28a: Did the submissions refer to international human rights standards or guidelines other than the ECHR and the case law of the ECtHR?	
Yes	12.1%
No	87.9%

N=207

Q28b: If YES, which standards or guidelines were referred to?	Number
Recommendation Rec (80) 11	*22*
Pct.7 lit.a), Recommendation Rec (2006)13, para. 7(a)	*1*
Universal Declaration of Human Rights	*1*
Protocol 4 to the ECHR	*1*

N=25

Q29a: Did the decision examine the implications of continued preventive arrest/house arrest for the right to liberty and security of the person and the presumption of innocence?	
Yes	28.0%
No	72.0%

N=207

Q29b: If YES, did they have any substantive influence on the court's decision?	
Yes	5.2%
No	94.8%

N=58

Q30a: Did the decision identify and correct any oversights or errors by the investigating judge?	
Yes	4.3%
No	95.7%

N=207

Q30b: If Yes, what were these errors or oversights?	Number
The arguments of the first court were not plausible and do not justify preventive arrest	*1*
Application of preventive detention without evidentiary support and unjustified	*1*
Calculation of the period of arrest	*1*
Grounds for the application of preventive detention not being found	*1*
Presentation of the risks/reasons	*1*
Preventive arrest being applied without evidentiary support	*1*
The risks being unproven and erroneously interpreted	*1*

N=7

Q31: Do you consider that the approaches in the decisions included copied and pasted parts in their motivation/formulation?	
Yes	71.5%
No	13.0%
No mention	15.5%

N=207

CHECKLIST 6. Decision/submissions by appellate courts for the extension of preventive measures

Q7: Decision/submission of the court	
provisional release under judicial control	16.4%
provisional release under caution	0.8%
house arrest	25.4%
pre-trial detention	54.1%
revocation of the preventive measure	2.5%
obligation do not leave the community	2.5%

N=122

Q8a: Did the decision show that there had been a check as to whether the accused was legally represented?	
Yes	100.0%
No	0.0%
Not applicable	

N=122

Q8b: If YES, was the absence or existence of legal representation seen as having any importance in its decision/submission?	
Yes	0.0%
No	100.0%

N=122

Q9: Did the decision/submission refer to the specific provisions in the Criminal Procedure Code authorising the extension of preventive measures?	
Yes	100.0%
No	0.0%

N=122

Q10a: Did the decision/submission only refer to submissions by the prosecution?	
Yes	5.7%
No	94.3%

N=122

Q10b: If NO, did the decision/submission refer to submissions by the defence?	
Yes	94.7%
No	5.3%

N=115

Q11: Did the decision endorse the ruling of the investigating judge without any further reasoning?	
Yes	61.5%

No	38.5%

N=122

Q12a: Did the decision address the continued existence of a reasonable suspicion that the accused had committed an offence?	
Yes	100.0%
No	0.0%

N=122

Q12b: If YES, did the decision/submission:	YES
find established the continued existence of a reasonable suspicion in a manner consistent with the case law of the ECtHR	80.3%
base this finding on the same evidence as relied upon in a previous ruling	90.2%
base this finding on new evidence	4.1%
base this finding on different reasoning	0.0%

N=122

Q13a: Did the decision/submission find established the applicability of one or more specific grounds for the imposition of preventive measures that were consistent with the case law of the ECtHR?	
Yes	85.2%
No	14.8%

N=122

Q13b: If YES, which ground(s)?	
the accused might hide from the criminal investigation body or the court	79.5%
the accused might exert pressure on the witnesses	41.0%
the accused might destroy or damage the means of evidence or prevent in another way the establishment of the truth in the criminal process	73.8%
the accused might commit other crimes	36.9%
the accused's release will cause public disorder	4.1%

N=122

Q13c: Did the decision made additional reference to the following reasons for the imposition of preventive measures:	
the seriousness of the crime	61.0%
strength of the evidence	1.6%
the concern for the duration of the procedures	0.8%
the accused's refusal to plead guilty	0.0%
the need to carry out additional investigations	24.6%
was this the same reason as given in the decision/submission of the investigating judge?	0.0%

N=122

Q14a: Did the decision rely upon specific evidence as to why the continued invocation of specific grounds for the imposition of preventive measures was justified?	
Yes	8.2%
No	91.8%

N=122

Q14b: If YES, was that evidence consistent with the case law of the ECtHR?	
Yes	80.0%
No	20.0%

N=10

Q14c: If YES to Q14a and/or Q14b, was that evidence the same as in the decision of the investigating judge?	
Yes	90.0%
No	10.0%

N=10

Q15a: If preventive arrest/house arrest had previously been imposed, did the decision/submission only consider the need for this to be continued as a preventive measure?	
Yes	8.2%
No	91.8%

N=122

Q15b: If NO, did the decision:	YES
(i) address the possibility of now imposing preventive measures other than preventive arrest or house arrest	99.1%
(ii) give some specific reasons for rejecting its suitability?	69.8%

N=122

Q15c: If YES to Q15b(ii):	YES
were these the same as relied upon by the investigating judge for rejecting the suitability of alternative measures	77.0%
was there any elaboration of the reasoning of the investigating judge?	17.1%

N=112

Q16a: If alternative measures to preventive arrest/house arrest had previously been imposed, did the decision/submission now accept the need for preventive arrest/house arrest to be imposed as a preventive measure?	
Yes	2.5%
No	23.8%
No data	73.8%

N=122

Q16b(i): If YES, did the decision identify the ground(s) as to why this should now be imposed that was/were consistent with the case law of the ECtHR?	
Yes	66.7%
No	33.3%

N=3

Q16b(ii): If YES to Q16a, did the decision specify evidence that substantiated this?	
Yes	0.0%
No	100.0%

N=3

Q17a: Did the decision evaluate the current behaviour and conduct of the accused while under previous preventive measures?	
Yes	9.0%
No	91.0%

N=122

Q17b: If YES, did they provide concrete examples of compliance or non-compliance?	
Yes	90.9%
No	9.1%

N=11

Q18a: Did the decision assess any new developments in the accused's personal circumstances, such as changes in family status, employment, or health, which might impact the necessity or appropriateness of continued preventive arrest or house arrest?	
Yes	10.7%
No	89.3%

N=122

Q18b: If YES, were these changes considered significant in the decision/submission-making process?	
Yes	46.2%
No	53.8%

N=13

Q19a: Did the decision address the issue of whether sufficient steps had been taken in connection with the investigation since the previous ruling on preventive measures?	
Yes	13.1%
No	86.9%

N=122

Q19b: If YES, did the decision consider those steps to have been adequate?	
Yes	13.1%

No	86.9%

N=16

Q20: Did the decision address:	YES
(i) the issue of the length of the accused's preventive arrest/house arrest	12.3%
(ii) why this length remained within the limits of national law	9.8%
(iii) why this length was consistent with the case law of the ECtHR?	2.5%

N=122

Q21a: Did the decision assess the impact of any changes in the legal representation of the accused, such as a change of lawyer or the level of legal support provided?	
Yes	0.8%
No	99.2%

N=122

Q21b: If YES, was this change considered significant in the context of the case?	
Yes	0.0%
No	100.0%

N=1

Q22a: Did the decision evaluate the current effectiveness and adequacy of any previously imposed preventive measures?	
Yes	23.0%
No	77.0%

N=122

Q22b: If YES, did the decision provide specific reasons for their continued effectiveness or the need for their modification?	
Yes	92.9%
No	7.1%

N=28

Q23a: Did the decision/submission address the proportionality of preventive arrest/house arrest in relation to the severity of the alleged offence and the expected penalty if convicted?	
Yes	83.6%
No	16.4%

N=122

Q23b: If YES, was the assessment in line with the principles established by the ECtHR?	
Yes	21.6%
No	78.4%

N=102

Q24a: Did the decision respond to any new statements/submissions by:	
(i) the accused;	29.5%
(ii) her/his lawyer?	74.6%

N=122

Q24b: If YES, was the content of the statements/submissions said:	YES
(i) to be irrelevant;	4.1%
(ii) unfounded;	54.9%
(iii) in either case was there any substantiation for that response?	48.4%

N=122

Q25: Did the decision address the issue of potential prejudice to the accused's defence capabilities due to the prolonged preventive arrest or house arrest?	
Yes	0.0%
No	100.0%

N=122

Q26a: Did the decision consider the cumulative impact of the duration of preventive arrest/ house arrest in custody on the accused's overall situation, including personal, family, and professional aspects?	
Yes	1.6%
No	98.4%

N=120

Q26b: If YES, did the decision consider this impact to be justifiable in the context of the case?	
Yes	50.0%
No	50.0%

N=2

Q27: Did the decision have regard to the impact of preventive arrest/house arrest on the accused's family or dependents?	
Yes	0.0%
No	100.0%

N=122

Q28a: Did the case involve a foreign national?	
Yes	1.9%
No	98.4%

N=314 *N=122*

Q28b: If YES, refer to considerations such as consular access or potential language barriers;	
Yes	0.0%
No	100.0%

N=2

Q29a: Did the decision refer to international human rights standards or guidelines other than the ECHR and the case law of the ECtHR?	
Yes	8.2%

No	91.8%

N=122

Q29b: If YES, which standards or guidelines were referred to?	**Number**
Recommendation Rec (80)11	*10*

N=10

Q30a: Did the decision examine the implications of continued preventive arrest/house arrest for the right to liberty and security of the person and the presumption of innocence?	YES
Yes	27.9%
No	72.1%

N=122

Q30b: If YES did they have any substantive influence on the court's decision?	
Yes	11.8%
No	88.2%

N=34

Q31a: Did the decision identify and correct any oversights or errors by the investigating judge?	
Yes	6.6%
No	93.4%

N=122

Q31b: If YES, wat were these oversights or errors?	**Number**
Absence of any appreciation of the prosecution's evidence	*1*
The health assessment	*1*
The allegations invoked, plus the state of health of the accused, were not proved	*1*
The trial court did not give any appreciation to the prosecution's evidence	*1*
The allegations invoked, plus the state of health of the defendant, were not proven	*1*
The risks were not proven	*1*
The basic solution was partially unfounded	*1*
The grounds for applying preventive arrest were not detected	*1*
Prevention of a violation of Article 5 of the ECHR by changing the preventive measure	*1*
There was no examination of the risks invoked by the prosecution	*1*

Q32: Do you consider that the approaches in the decisions included copied and pasted parts in their motivation/formulation?	
Yes	66.4%
No	21.3%
No mention	12.3%

N=122

ENG

www.coe.int

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE