

CEDEM

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Centar za demokratiju
i ljudska prava

Center for Democracy
and Human Rights

George Washington Boulevard 51, 3/48

81000 Podgorica, Montenegro

phone: ++382 81 234 114, fax: ++382 81 234 368

e-mail: cedem.web@cg.yu, www.cedem.cg.yu

NEWSLETTER

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democracy¹ index

1. RULE OF LAW

Democratic reforms in East and South-east Europe assumed in the last period a constitutional proclamation of the principle of the rule of law. Experience has however shown that this is not enough and that it is possible to have undemocratic regimes behind such politically correct constitutional texts. In the light of these facts the reasons for including the rule of law and laws in our Index are quite obvious. There is no modern society and no free individual without positive law and the laws based on it. Destruction of legality is the most traumatic experience a political community can go through. When legality of a political body is destroyed, members of the political community are in the condition characterized not only by general uncertainty but also by the absence of clear landmarks which make it possible for people to route their individual and collective experience (Weber). This sentence presents in the best possible way the importance that the rule of law has for a society, and Montenegrin society is no exception in that respect. Montenegro has done a lot on establishment of this basic democratic principle if we compare the current situation with the situation in real-socialism, where the principles of equality before the law and rule of law were often underappreciated. However, this is at the same time a field that Montenegro still has

to work hard on in order to achieve certain standard and align its legislation to the European legislation, which is one of the key requirements for joining EU.

Practice in Montenegro has shown that passing of laws is probably the easier part of the task and that the lack of implementation of the laws is much more serious problem, which is a significant obstacle for development of the society and for its overall democratization.

Equally significant problem in Montenegro today is (dis)respecting the autonomy of judiciary, since it is hard to break the inherited ties between the structures in power and judges. Among serious problems there are also the limitation in terms of professionalism of officers of all levels employed in judiciary.

Just like in the case of democratic quality of political processes we divided this field to several dimensions and within each dimension we defined a number of indicators that were the final cells of measurement. Dimensions in this area are:

- Equality before the law
- Availability of legal protection
- Autonomy of judiciary
- Efficiency and professionalism of judiciary
- Control and transparency of the operation of judiciary

2.1 Equality before the law

We can say that in a way equality of people before the law is a synonym for the rule of law, i.e. equal obligation for everybody to comply with the laws and absolute exclu-

¹ DEMOCRACY INDEX represents method of measuring the level of democratic process, achieved in one society. By the language of numbers and through the analyses of specific indicators, INDEX demonstrates to what level do citizens percept the presence of democracy within their society. The rule of law is one of five areas which were the subject of our measurement. The complete report is available on the web page (www.cedem.cg.yu). The project is supported by NED.

sion of every possibility that anybody can or should be above the law. This means that it is only law that truly rules and that consistent compliance with the law is expected from everybody. Only the situation in which the condition of equality of everybody before the law is fulfilled can provide for order and stability in the society. Implementation of this basic democratic principle is particularly important for the societies as Montenegrin, which are in the transition from a state of pre-political and traditional-party into the state of political and civic, the foundation of which is civil society.

A significant number of citizens think that the principle of equality before the law does not exist in Montenegro.

Also, having in mind the multi-national nature of Montenegrin society, we posed the question of equality of citizens before the law, regardless of their national or ethnical affiliations. In this segment of the Index, from the methodological point of view, this indicator was one of our control variables since the status of national minorities was a

separate item of our measurement.

The results we got show that the highest score was given to the legality of the processes of passing laws in the interest of all citizens, regardless of differences in their material and social status and regardless of their national, ethnic, religious and political affiliations (2.85). This indicator is followed by the one indicating to the equality in the process of law enforcement for all the citizens regardless of their ethnic, national or religious origin (2.74). It can be noted that the first two indicators got significantly higher scores than the other three indicators, which shows that the citizens think the best result in the process of democratization of Montenegrin society has been achieved in this field. In the middle of the table there is the indicator of equality in the process of law enforcement regardless of the material status of individuals (2.43). And in the end, the citizens gave the lowest score to the equality in the process of law enforcement regardless of political, ideological or party affiliations of citizens (2.42) and equality before the law when it comes to individuals from within the ruling structures (2.23). The low values that we

Table 6. Equality before the law – presentation of all indicators

Indicators	N	A.S.
Legality of the processes of passing laws in the interest of all citizens, regardless of differences in their material and social status and regardless of their national, ethnic, religious and political affiliations	889	2.85
Equality in the process of law enforcement for all the citizens regardless of their ethnic, national or religious origin	892	2.74
Equality in the process of law enforcement regardless of the material status of individuals	903	2.43
Equality in the process of law enforcement regardless of political, ideological or party affiliations of citizens	899	2.42
Equality before the law when it comes to individuals from within the ruling structures	889	1.23

recorded for these two indicators are in a way supporting the above statement about the existence of powerful individuals that have an influence on the ruling structures and indirectly on the judiciary, which makes the existence of the very principle of equality before the law questionable.

2.2 Availability of legal protection

The rule of law and possibility of having legal protection for everybody and under the same conditions provides citizens with the necessary feeling of predictability and certainty. This is one of the extremely important questions from the aspect of measuring this specific field. We measured the perception of citizens of the availability of legal protection having in mind the differences in material status, national and religious affiliations and differences from the aspect of political and party affiliations. These are the necessary criteria having in mind the specific characteristics of the transition process in Montenegro. The results show that the indicators range between 2.45 and 2.77. According to these results the highest level of protection is achieved in the field of protection of national and religious minorities (2.77). The second highest value is recorded for the indicator of availability of legal protection for citizens regardless of their political and party affiliations (2.65). And in the end we can see that the availability of legal protection

for citizens of different material status is the most problematic dimension (2.45).

The above finding is rather indicative and it shows again the polarization of Montenegrin society on the basis of material status and party affiliations. Citizens, namely think that some categories of citizens have better access and they exercise their rights at Montenegrin courts significantly faster and more efficiently than other categories of population.

2.3 Autonomy of judiciary

This is one of the issues that are always topical in Montenegro. The fact is that the autonomy of judiciary is significantly endangered both by ruling structures and by individuals that have significant capital. It should be noted that the principles for ensuring autonomy of judiciary are formally in place. However, the matter that arises as a problem in Montenegro in many fields is the inconsistent implementation of such rules in practice. Inertia and lack of capacities for full implementation of the principle of autonomy of judiciary in Montenegro can be identified as causes of such a situation.

The range for this indicator is from 2.21 to 3.34. Such a wide range indicates that there are significant differences between the indicators related to judiciary. The autonomy of judiciary in relation to the influence of

Table 7 Availability of legal protection – presentation of all indicators

Indicators	N	A.S.
Legal protection is ensured equally to all citizens regardless of their material status	897	2.45
Legal protection is ensured equally to all citizens regardless of their national or religious affiliations	873	2.77
Legal protection is ensured equally to all citizens regardless of their political or party affiliations	917	2.65

Table 8 Autonomy of judiciary – presentation of all indicators

Indicators	N	A.S.
Independence of judiciary of the influence of political parties	878	2.33
Independence of judiciary of the influence of the Government and state services	858	2.29
Independence of judiciary of the influence of the Parliament	821	2.54
Independence of judiciary of the influence of powerful and rich individuals and groups	869	2.21
Independence of judiciary of the influence of non-government organizations	773	3.11
Independence of judiciary of the influence of religious organizations and churches	801	3.34
Independence of judiciary of the influence of EU organizations	777	2.90

religious organizations and churches is the strongest (3.34). The independence of the influence of non-government sector is on the second position (3,11) and the NGO sector is strong in Montenegro and present in all the aspects of the society. Having in mind the scores we recorded we cannot say that the judiciary is completely independent from the influence of EU organizations (2.90). The middle of the table belongs to the autonomy of judiciary on relation to the Parliament (2.54). This result is certainly something we expected because of the fact that the election of judges has its epilogue in the voting of the Parliament. In the light of this fact it will be very interesting to see what solution the new Constitution of Montenegro will envisage for the issue of election of judges. The measurements done within this dimension confirmed the above statements that political parties have a strong influence on judiciary (2.33) and that there is also a strong influence of Government and state services (2.29). And finally, the lowest score was recorded for the autonomy of judiciary in relation to the influence of powerful and rich individuals and groups (2.21), so we can conclude that it is this

category that degrades and endangers the autonomy of judiciary most seriously.

2.4 Efficiency and professionalism of judiciary

Montenegrin judiciary is extremely inefficient and slow in its work. This is the fact that is frequently emphasized and the genuineness of which is not difficult to confirm. It is sufficient to make an insight into the average amount of time needed for the solution of the simplest dispute. It is also connected to the lack of professionalism in judiciary, which only partly stems from the objective limitations, as well as the lack of expert capacities in judiciary.

The values that we got are very interesting and they range between 2.18 and 2.83. In the opinion of our citizens the least serious problem in this field is professionalism and expert qualifications of judges for more efficient implementation of laws (2.83), while a more serious problem is efficiency and professionalism of judiciary for successful protection of the rights of citizens (2.51). The

Table 9 Efficiency and professionalism of judiciary – presentation of all indicators

Indicators	N	A.S.
Efficiency of judiciary in the process of dispute resolution	898	2.28
Professionalism and expert qualifications of judges for the efficient implementation of the laws	844	2.83
Efficiency and professionalism of judiciary for the successful protection of the rights of citizens	873	2.51
Absence of corruption and working in the interest of influential individuals and groups	878	2.18

lowest scores were given to the efficiency of judiciary in the process of dispute resolution (2.28) and at the very bottom there is the indicator of the absence of corruption and working in the interest of influential individuals and groups (2.18), which fully corresponds to the measurements in the other dimensions. In other words, corruption and certain influential groups and individuals are the most significant obstacle on the road to fast dispute resolutions and the possibility of having judges who are professional in doing their jobs. So, it is the field that limits the efficiency of the

judiciary the most and therefore it deserves the fullest attention.

2.5 Control and transparency of operation of judiciary

Citizens want the courts that are just and fair, that are strong enough to enforce their decisions, that are fast and financially acceptable. In order to achieve this it is necessary that in every democratic society there is a certain control over the work of courts. Thus, the autonomy of judiciary

Table 10 Control and transparency of judiciary – presentation of all indicators

Indicators	N	A.S.
Efficiency of state control of the work of judiciary in the service of protection of law and legality	832	2.67
Transparency of work of courts and the possibility of monitoring by the media	830	2.66
Accessibility of the public to the information relevant for the protection of the rights of citizens	819	2.53
Availability of control and influence of citizens to judiciary through organizations and institutions and in compliance with the law	833	2.35
Existence of the mechanism of parliamentary control of the work of courts	784	2.75
Monitoring of courts by NGO sector	782	2.91

Table 11 Rule of law – summary by dimensions

Dimensions	N	K
Equality before the law	960	50.8
Availability of legal protection	966	52.7
Autonomy of judiciary	949	53.0
Efficiency and professionalism of judiciary	963	49.3
Control and transparency of the work of judiciary	941	53.2

does not mean the lack of every control and transparency of judiciary. It is exactly the opposite. Our intention was to use a larger set of indicators and measure the level and presence of the mechanisms for control of the operation of judiciary, i.e. to establish the level of transparency of operation of courts.

Our measuring confirmed the statements that NGO sector is extremely important for the process of overall democratization of our society. This is confirmed by the fact that the highest score was given to the indicator of monitoring of courts by NGO sector (2.91). On the basis of the obtained data the Parliament also has efficient mechanisms for the control of work of judiciary (2.75). This data is certainly not surprising since judges are appointed in the Parliament. So, the state controls the work of judiciary in a rather efficient manner in order to provide protection of legality (2.67). When it comes to the possibility of the media to control judiciary, the success is half-way (2.66), but this is certainly a positive result. In the end there is the accessibility of the public to the information relevant for the protection of the rights of citizens (2.53) followed only by the indicator of availability of control and influence of citizens to judiciary, which is unfortunately on the very last position (2.32). In the light of this fact we can identify this indicator as the priority in terms of future

activities that are related to the increase of the possibility of control and transparency of the work of judiciary. The range in this dimension is 2.35 to 2.91.

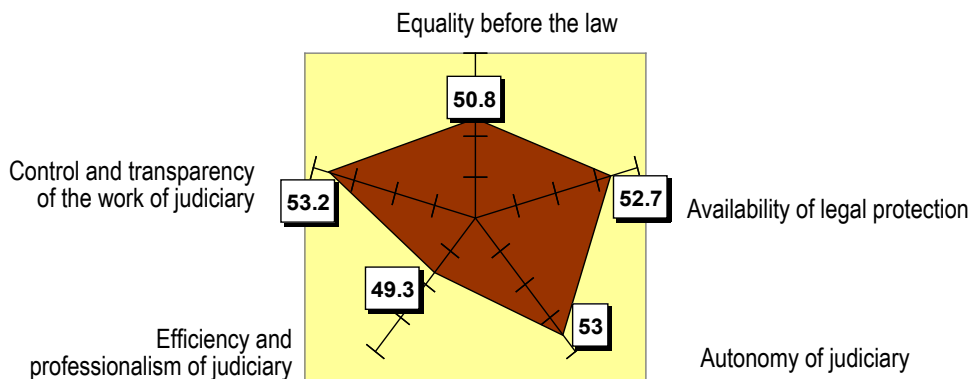
2.6 Summary indicators for the field of the rule of law (Trend)

Table 11 and the graph below give a summary presentation for the field of the rule of law and laws. They are followed by the comparison with the results of the last measurement aimed at noticing the trends in the dimensions in relation to the 2005-2006 Index.

If we summarize the results we obtained we can see that the range between the dimensions we measured is from 49.3 to 53.2, which is extremely low since the maximum value

Dimensions	2005-2006	2006-2007
Equality before the law	49.4	50.8
Availability of legal protection	49.3	52.7
Autonomy of judiciary	52.7	53.0
Efficiency and professionalism of judiciary	48.0	49.3
Control and transparency of the work of judiciary	51.9	53.2

Rule of law



that can be obtained is 100. The opinion of citizens was that the best score in the field of democratization - rule of law should be given to the possibility to control and the transparency of work of judiciary (53.2) but we certainly have to note the negative fact that the availability of control and insight into the work of judiciary is seen as most difficult for citizens. The second best score and at the same time a satisfactory result is recorded for the autonomy of judiciary (53.0) the difference between these two dimensions being insignificant. So, we can say that these are the two dimensions with best achievements.

A slightly lower score (52.7) was recorded for availability of legal protection and equality before the law (50.8). However, democratic quality in this field is strongly endangered by inefficiency and unprofessionalism of judiciary (49.3).

If we look at the trend of the values in this dimension in comparison to the last Index, we can notice certain changes. So, this time instead of the autonomy of judiciary the dimension which has the highest score is the one related to the possibility to control judiciary and the transparency of the work

of judiciary. A slightly better score in comparison to the last Index is now recorded for the availability of legal protection in relation to the equality before the law. And in the end, firmly at the bottom, just like in the last Index, there is the dimension of efficiency and professionalism of courts. We also have to note that there is a slight increase of scores for this dimension, which is certainly a positive trend.

In the end we can conclude that if we want to increase the level of democracy in this region necessary steps have to be undertaken in the aim of increasing efficiency and professionalism of judges, which will indirectly lead to the autonomy of judicial branch of power being fully protected from the structures that can have an influence on judiciary through their connections in the ruling structures and the capital they have at their disposal. All together this would be a strong obstacle to the corruption and the existence of the untouchables in court processes. This task is neither easy nor simple, but it will certainly have to be done if there is any wish to see the overall democratization of Montenegrin society.

Public opinion in Montenegro February 2008

This research was conducted in period 15 – 20th February 2008, using standard CEDEM's twofold stratified sample with random selection of interviewees in final units applied, at the level of 981 interviewees from 9 municipalities (Pljevlja, Berane, Bijelo Polje, Podgorica, Niksic, Cetinje, Herceg Novi, Bar i Ulcinj). Project Political Public Opinion is supported by Foundation Open Society Institute, representative office in Montenegro (OSIM).

Basic characteristics of the sample		Confidence in Institutions (trend)				
Age structure of interviewees	%	confidence coefficient				
18 - 34 years	34.6	Institution	june '07.	sep '07.	feb '08.	
35 - 54 years	37.1	Serbian Orthodox Church	3.40	3.42	3.38	
over 55 years	28.6	President of Montenegro	2.86	2.84	2.90	
Nationality of interviewees	%	Government of Montenegro	2.80	2.72	2.72	
Montenegrins	44.8	Montenegrin Police	2.68	2.60	2.60	
Serbs	33.6	Montenegrin Parliament	2.68	2.66	2.59	
Bosnians	4.2	Montenegrin Judiciary	2.57	2.50	2.31	
Albanians	5.0	Montenegrin Orthodox Church	2.55	2.56	2.41	
Muslims	8.5	Political Parties in Montenegro	2.54	2.36	2.28	
Croats	1.4	Satisfaction With The Government Of Montenegro				
Other	2.5	Answer	Sep '07.	Feb '08.		
The change in the position of Prime Minister and the reconstruction of the Government of Montenegro		Very dissatisfied	16.7	16.0		
Answer	%	Mostly dissatisfied	14.2	15.4		
Good for Montenegro	38.9	Neither satisfied nor dissatisfied	38.7	40.6		
Bad for Montenegro	28.9	Mostly satisfied	22.8	21.3		
It will not change anything	32.2	Very satisfied	7.6	6.7		
Rating of the politician/public figure						
- Trends at the level of entire group of interviewees -						
Politicians / public figures	June 2006	August 2006	February 2007	June 2007	Sep/Oct 2007	February 2008.
Vanja ČALOVIĆ	-	-	-	3.18	3.19	3.16
Milo ĐUKANOVIĆ	3.18	2.98	2.86	3.09	3.01	2.96
Filip VUJANOVIĆ	2.96	2.87	2.82	2.99	3.02	3.06
Željko ŠTURANOVIĆ	-	-	2.99	3.14	3.07	3.36
Nebojša MEDOJEVIĆ	2.79	2.43	2.93	3.10	2.98	2.65

Confidence in Politicians/Public figures

Rating of the politician/ public figure	Average score
1. Željko ŠTURANOVIĆ	3.36
2. Vanja ČALOVIĆ	3.16
3. Filip VUJANOVIĆ	3.06
4. Milo ĐUKANOVIĆ	2.96
5. Gordana ĐUROVIĆ	2.89
6. Nebojša MEDOJEVIĆ	2.65
7. Srđan MILIĆ	2.42
8. Vujica LAZOVIĆ	2.39
9. Ranko KRIVOKAPIĆ	2.36
10. Andrija MANDIĆ	2.30
11. Ranko KADIĆ	2.01
12. Miodrag ŽIVKOVIĆ	1.99
13. Predrag POPOVIĆ	1.94
14. Zoran ŽIŽIĆ	1.93
15. Emilo LABUDOVIĆ	1.88
16. Ferhat DINOŠA	1.85
17. Mehmet BARDHI	1.66
18. Rafet HUSOVIĆ	1.64
19. Vasilj SINIŠTAJ	1.58

In your opinion, is the issue of Kosovo and Metohia important for Montenegro?

Attitude	%
Yes, it's very important issue for Montenegro	39.3
Don't know, can't tell	21.0
No it's not important issue for Montenegro	11.3
It's somewhat important issue for Montenegro	28.4

Electoral preference – Committed voters

Political party	%
DPS	44.5
SDP	3.0
SNP	9.7
SNS	11.2
PZP	18.1
Other	13.5
Turn out	72.2

Perception of valuation of chances that presidential candidates have

Candidate	Chances of candidates %			
	Big chance	Good chance	Small chance	No chance
Andrija MANDIĆ	7.8	15.8	32.6	43.8
Filip VUJANOVIĆ	57.1	29.5	7.4	6.0
Nebojša MEDOJEVIĆ	16.0	32.9	29.8	21.3
Srđan MILIĆ	5.3	17.6	35.7	41.4

**Presidential elections
FIRST ROUND**

Candidate	%
Andrija MANDIĆ	14.8
Filip VUJANOVIĆ	49.5
Nebojša MEDOJEVIĆ	21.2
Srđan MILIĆ	9.9
Neko drugi	4.6
Turn out	71.1

Presidential elections – SECOND ROUND
Simulation no. 1
Simulation no. 2
Simulation no. 3

Candidate	%	Candidate	%	Candidate	%
Nebojša MEDOJEVIĆ	36.8	Andrija MANDIĆ	31.5	Andrija MANDIĆ	32.7
Filip VUJANOVIĆ	63.2	Filip VUJANOVIĆ	68.5	Nebojša MEDOJEVIĆ	67.3
Turn out	62.1	Turn out	62.1	Turn out	62.1

Membership in the European Union (trend)					
	Aug 06	Feb 07	Jun 07	Sep 07	Feb 08
Yes	76.5	74.0	78.3	72.4	72.8
No	5.6	8.4	6.5	9.4	9.2
Doesn't know	17.9	17.6	15.2	18.2	18.0

Membership in NATO (trend)					
	Aug 06	Feb 07	Jun07	Sep 07	Feb 08
Yes	36.9	36.6	32.9	32.4	29.5
No	31.4	34.6	39.7	40.7	44.2
Doesn't know	31.8	28.8	27.4	26.9	26.3

Cooperation with the Hague Tribunal (trend)					
	Aug 06	Feb 07	Jun 07	Sep 07	Feb 08
Da	50.9	45.3	48.2	47.7	49.2
Ne	27.4	32.6	30.6	29.5	29.8
Doesn't know	21.7	22.1	21.2	22.8	21.0

Level of corruption			
Institution / area	Sep'07	Feb'08	
Customs	7.30	7.45	
Judiciary	7.13	7.31	
Health service	7.37	7.28	
Public Prosecutor	7.00	7.24	
Police	7.17	7.20	
Municipality services	7.00	7.08	
State services	7.08	7.04	
High education (University)	6.60	6.29	
Sport	5.44	6.04	
Medias (TV, radio, newspapers)	6.01	5.99	
High school system	5.36	5.38	
Primary school system	4.75	4.65	

Comment: Completed opinion poll results could be found on CEDEM's website: www.cedem.cg.yu

Montenegrin allies in area of foreign policy

	Attitudes				
	Absolutely not	A little	Yes significantly	Yes, absolutely	Can not tell
EU	10.4	17.0	23.1	22.6	26.9
USA	29.1	20.5	12.9	6.5	31.0
RUSSIA	16.5	20.2	17.0	16.2	30.1
SERBIA	15.5	14.7	17.8	22.8	29.2

NOTE: 17.0% of interviewees think that Montenegro should not rely on nobody in area of foreign policy.

We were visited by ...

- **Yves Berteau**, Attaché in the Embassy of Belgium, Belgrade
- **Alma Masic**, Regional Coordinator SEE Programme, Royal Danish Embassy, Sarajevo
- **Patrick Hebert**, Counselor in Canadian Embassy, Belgrade
- **Kenneth Sooley**, Senior Desk Officer, Bosnia-Herzegovina, Serbia, Montenegro, Eastern Europe and Balkans Division (REE)

CEDEM Activities

Seminar:

”The right to respect for property
and the European Convention on Human Rights”

Becici, 10 - 11 November 2007

Seminar for Montenegrin judges, prosecutors and attorneys on the topic: “***The right to respect for property and the European Convention on Human Rights***”, organized by CEDEM, AIRE Center from London and OSCE, supported by Foundation Open Society Institute, UK Foreign Office and Westminster Foundation for Democracy.

Facilitators were: Zvonimir Mataga, lawyer, European Court of Human Rights; Theodora Christou, Barrister and Research Fellow at the British Institute of International and Comparative Law; Draginja Vuksanovic M.A, Assistant at the Law Faculty in Podgorica; Sinisa Bjekovic, Centre for Human Rights, Law Faculty Podgorica, Dragana Djuranovic, judge of the Supreme Court in Podgorica, Zoran Skopelja, judge of the Basic Court in Bar.



Seminar:

”Conflicts of Interest and Pressure Factors in the Montenegrin Judiciary”

Milocer, 07-08 December 2007

Seminar for Montenegrin judges, prosecutors, attorneys, as well as for representatives of the Ministry of Justice, Ombudsman and NGO’s on the topic: ***Conflicts of Interest and Pressure Factors in the Montenegrin Judiciary***, organized by CEDEM and Konrad Adenauer Foundation (Rule of Law Program South East Europe).

Facilitators were: Cristi Danilet, Judge, Cluj Tribunal, Member of the Society for Justice, Romania, Petar Stojanovic, Judge, Supreme Court of Montenegro, Sinisa Bjekovic, Centre for Human Rights, University of Montenegro, M.A. Vesna Ratkovic, Director of Montenegrin Directorate for anti-corruption initiative, Christian Schmitz-Justen, Judge at Cologne Court of Appeals, Germany, Zoran Pazin, President of the Municipal Court of Podgorica, Prof. Nebojsa Vucinic, Law Faculty, Podgorica and Vladan Djuranovic, Legal expert.



Seminar:

”Ban of Discrimination – condition for joining the EU”

Milocer, 22 December 2007

Round table organized by CEDEM, with support of Swedish Helsinki Committee for Human Rights on following topic: ***Ban of Discrimination – condition for joining the EU.***

Representatives of NGO’s, Ministry of Justice, Ombudsman office, attorneys and judges participated in workshop.



International conferences CEDEM’s representatives took part

PhD Srdjan Darmanovic

November 1, 2007 Washington

Conference entitled: “***Montenegro, West Balkans and Trans – Atlantic Integration***”. Organized by the Center for Strategic and International Studies.

Vladan Simonovic,

October 30 – November 02, 2007 Vienna

Seminar organized by IMF, for the representatives of civil society organizations from Albania, Bosnia and Hecegovina, Macedonia, Montenegro and Serbia.

Vladan Simonovic,

December 03 - 05 2007, Prague

Conference with the topic: “***Transformation of the Balkan states concerning Czech presidency over the EU in 2009***”. Organized by the Czech Council for international relations.



MA Nenad Koprivica,

October 29 – November 5 2007, Berlin

International think tank conference on: “***Common Foreign Policy Priorities towards an Open Society***”. The conference organized by PASOS – Policy Association for an Open Society.