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THE AIRE CENTRE
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JUSTICE SYSTEM MONITORING MONTENEGRO

FINAL REPORT ON TRIAL MONITORING FOR THE PERIOD 01 APRIL 2011 – 31 JULY 2012

Foreword

The justice system reform is undoubtedly one of the most important political, legal and social tasks of Montenegro. Without an efficient judicial system, it is not possible to establish rule of law in its entirety, nor is it possible to implement necessary economic reforms. Besides, the success of this reform makes a conditio sine qua non for accession of Montenegro to the European Union. Monitoring of legislative practice and case law is one of the ways to contribute to more successful reforms and faster fulfilment of the EU membership criteria. The report that you have in front of yourselves is a key result of the project "Justice System Monitoring" which aims to encourage establishment of an accountable, efficient and transparent justice system in Montenegro. The project is funded by the European Union and managed by the Delegation of the European Union to Montenegro. On the basis of the fact that function of a trial, which involves application of the law to the specific case, is inherently the central part the justice system reform, monitoring included more than a hundred criminal proceedings conducted before the Montenegrin courts in the past sixteen months. In fact, we opted for criminal legislation since its implementation illustrates almost all the challenges and limitations of the reform process and enables resolving of some of the critical issues that should lead to the fulfilment of visible results in the justice system.

Given the complexity and the number of the monitored cases, dynamics of the work in courts and circumstances in which the law was applied, it was not easy to use a single methodology for the trial monitoring task and, particularly, to ensure that it did not impair independence of the courts. In doing so, we were guided by the fact that the role of civil society in trial monitoring may be observed only in the framework of procedural rules and that comments may be given in respect of the monitored cases only after an enforceable decision has been rendered for them. However, monitoring of individual cases makes it possible to create a certain picture of indicators of a fair trial and functioning of the justice system since application of the law must be founded on the rule of law principle and it must also correspond to the legitimate expectations of parties on which the law is applied. In that regard, even a benign breach of procedural rules may arouse a feeling of legal uncertainty on the side of parties and contribute to a negative perception of the work of courts. This report was prepared with the aim to identify main problems and challenges regarding implementation of innovated criminal legislation. In addition to a potential identification of bias and corruption which are nowadays most frequently referred to in commenting judicial proceedings in public discourse, our aim was also to draw attention of the public to the other, equally important matters such as resources and technical equipment in courts and accountability of other stakeholders for the quality of trials. The report also contains recommendations regarding certain amendments to the legislative framework and its implementation in practice, which we deem necessary in order for the envisaged reform of the justice system to be a source of stable and prosperous social community.

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Introduction

In the past fifteen years, Montenegro has invested significant efforts in the field of justice system reform. The latest comprehensive reform implemented in 1999-2000 aimed to transform administration and local government to a citizen oriented service; it also aimed to create an independent justice system as a guarantee of the rule of law and intended for these two segments, together with the legislative power, to become an effective and efficient legislative and organisational framework for economic, social and other processes in Montenegro. The reform which began in 2000 was intensified after the restoration of independence in 2006. The 2007 Constitution reinforced independent position of the justice system and the state prosecutor` s office. The Strategy for the Reform of the Judiciary 2007-2012 was adopted, along with the Action Plan for its implementation and numerous legal amendments concerning institutional set-up of the justice system, mutual relations and powers of office holders in the justice system. The main organisational regulation in the field of justice system, which was adopted in 2000 and which is in still force after being subject to certain amendments, is the Law on Courts. In addition, the Law on Judicial Council and the Criminal Procedure Code were also adopted, along with some novelties in the Criminal Code.

Despite the efforts that have been invested, the planned outcomes of the reform have not been completely achieved which was also noted in the European Commission` s Progress Reports for 2009 and 2010, European Commission` s Opinion on Montenegro`s Application for Membership of the European Union and reports of the Council of Europe Monitoring Missions. In fact, the court funding system is still under the strong influence of executive and legislative authorities; objectively speaking, conditions in which the courts and judges work do not guarantee independent position which leads to the brain drain of judicial staff to the other professions, while the system for permanent training of the new staff has not developed yet, particularly in regard to new regulations. Besides, the justice system in Montenegro is facing particularly serious challenges such as organised crime, corruption, terrorism and war crimes, as well as the unresolved social problems and the growing economic crisis.

On the other hand, condition in the justice system has never been given so much space in public media, while interest of international and domestic public in the issues in law application has never been as intensive as it is now. Additional ground for such findings is also reflected in the fact that the justice system has been increasingly subject to open attacks and criticism and other, more subtle, forms of interference in its independence. Despite formal endeavours in the field of the justice system reform, interests of political parties are frequently conflicted with the position of independent justice system. The parties often act in a way which challenges the constitutional principle of the division of powers, while autonomy of judicial power is called into question. Particularly worrying is the fact that it is impossible to reach political consensus regarding necessary constitutional amendments which are to contribute to strengthening of independent position of the justice system in relation to the other branches of power. Despite increasing influence of the civil sector, which is reflected in the number of criminal charges brought by NGO and reactions of courts and prosecution offices to the initiatives for criminal prosecution, the influence of civil sector has still not increased to the extent in which it might produce more significant effect on resolving the problems mentioned above. In fact, the social scene lacks capable non-party bodies or non-governmental organisations that would continuously work on promotion of the independent justice system and would have the capacity to monitor state of play in the justice system; and which would also propose reform projects and participate in preparation of relevant regulations.

The flaws in functioning of the justice system mentioned above certainly go back further to the past and may also be identified as a result of the former bureaucratic and hierarchical model of the justice system set-up, but also as a result of political and economic turmoil that marked the development of democracy in the region. In such constellation of relations, the

justice system did not have the influence it was entitled to, since a majority of social problems were resolved outside the institutions of the system, through party mechanisms and other channels outside the institutions. A large number of inherited backlog cases; state of war and semi state of war in the surrounding countries which caused institutional crisis and affected quality and efficiency of the judicial system, as well as an endeavour to establish an autonomous judicial legitimacy in the conditions involving interaction between several centres of power are only some of the factors which had a critical impact on the achieved results.

On the basis of the above mentioned, it may be noted that the justice system reform in Montenegro has never been as dynamic as it is now, while the task of any individual judge who has been entrusted with the power to adjudicate (*iurisdictio est etiam iudicis dandi licentia*) and provide guarantees for the lawful and fair trial has become even more complex. Recent decision of the European Union to open and conclude negotiations with chapters 23 and 24 highlights importance of the justice system reform for accession of Montenegro to the European Union. That is why the trial monitoring presents a special challenge, not only for policy makers in the justice system and judicial officials, but also for the other stakeholders in society, primarily media and civil society organisations engaged in democratisation and human rights.

The report prepared under the project "Justice System Monitoring Project - Montenegro" includes findings about the criminal cases observed in the light of Article 6 of the European Convention on Human Rights which was incorporated in domestic legislation and which inherently represents a recognised professional standard. However, this report does not deal with all the matters that are relevant for functioning of the criminal legislation in accordance with the standards set out in the European Convention (such as the enforcement of court decisions), nor does it seek to provide an assessment of independence, impartiality, efficiency and transparency of the overall justice system. Purpose of the report is to contribute to establishing such system by identifying certain normative and factual barriers that affect full respect of the right to a fair trial and definition of recommendations for their elimination. In fact, the report is based on the methodology that involves direct presence at the trials, which inherently has some limitations since it is partly founded on the established facts and partly on subjective assessments/perceptions and information presented by very parties to proceedings during project activities. Taking into account the fact that findings and assessments of the monitors may also become subject to political and other types of assessments, monitoring was primarily directed towards objective indicators and results instead of the personalities of judges and other stakeholders in proceedings.

The report also includes an overview of relevant case law of the European Court for Human Rights which serve in a way, to draw a parallel between the Montenegrin legislative framework and case law and European standards concerning the right to a fair trial. Given that there are no universal solutions which will be applied automatically on all the cases in practice, the judgments of the European Court for Human Rights are important as they provide additional interpretations of provisions of the European Convention. Finally, the case law of the European Court for Human Rights, in addition to the legal weight, also has political weight because of the ECHR jurisdiction and right to individual applications filed by the Council of Europe member states which accepted jurisdiction of this court and which enable comparison of the quality and scope of the respect of human rights in their national justice systems.

BASIC REMARKS CONCERNING THE PROJECT

The project "Justice System Monitoring – Montenegro" was funded by the European Union through the European Union Delegation to Montenegro and was implemented by the Centre for Democracy and Human Rights (CEDEM) in partnership with AIRE Centre

from London in the period from 01 February 2011 until 31 July 2012.
The following were the main project goals:
1. Build capacity of civil society organisations for monitoring criminal proceedings and initiating changes;
2. Influence judicial policy and case law by collecting, analysing and distributing updated, highly reliable information about the criminal case law with the aim of identifying the field of reform, including recommendations for changes;
3. Support painless transition to the new system established under the 2009 Criminal Procedure Code by analysing and monitoring the activities undertaken so far;
4. Serve as a platform for cooperation between the Government and civil society with the aim of facilitating and supporting the justice system reform.
Since there is still a certain lack of public confidence in justice and prosecuting systems in the Montenegrin society, the project also aimed to contribute to a higher level of information among the public regarding the work in courts, on the basis of the premise that the possibilities for the potential influence on judicial officials decrease as the social awareness of its importance raises.
Monitoring was entrusted with the monitoring team selected by CEDEM, which included the following members:
Vladan Đuranović, head of the team (for the period from 01 April -31 September 2011)
Daliborka Knežević, head of the team (for the period from 01 October 2011-31 July 2012)
Marija Vuksanović, member
Andrej Popović, member
Trial monitoring began on 01 April 2011. Memoranda of understanding had been signed earlier with the following:
- Supreme Court of Montenegro;
- Supreme State Prosecutor` s Office;
- Ministry of Justice of the Government of Montenegro;
Monitoring included all the participants in proceedings:
- first instance courts in which proceedings are conducted, for a specific case: high courts in Podgorica and Bijelo Polje, including special divisions, and Basic Courts in Podgorica, Bijelo Polje, Rožaje, Bar and Kotor;
- prosecutors representing bills of indictment, including the special prosecutor;
- Police Directorate, regarding the complaints of their work brought in the course of proceedings and regarding offences that involve overstepping the powers and failure to respect human rights, for which the bill of indictment has been brought.
- defence attorneys of the accused;
- proxies representing the aggrieved parties;
- expert witnesses;
- media reporting on trials.
We also note that monitoring included the control of application of certain mechanisms from the Criminal Procedure Code in practice and assessment of certain legal norms. Opinions on these matters are included in recommendations.
Monitoring is conducted in relation to the actions of the court, in the phase from bringing the bill of indictment until adopting the first instance decision.

Subject of monitoring

Under Article 6 of the European Convention on Human Rights and Fundamental Freedoms, monitoring was conducted in relation to the respect of the following rights:
1. Right to an independent court
2. Right to an impartial judge
3. Right to a public hearing
4. Access to court
5. Right to use the language one understands
6. Presumption of innocence
7. Right to an efficient defence
8. Right to a trial within a reasonable time
9. Equality of arms
In addition to the above mentioned rights, monitoring also included the following:
1. Illegally obtained evidence
2. Respect of the rights of the aggrieved – victims, and their families

LEGISLATION

The following are relevant pieces of regulations in the criminal justice field:

1. Constitution of Montenegro
2. Criminal Code
3. Criminal Procedure Code
4. Law on Liability of Legal Persons for Criminal Offences
5. Law on Witness Protection
6. Law on Courts
7. Law on Expert Witnesses
8. Law on the State Prosecutor` s Office
9. Law on Attorney Practice
10. Law on Protection of the Right to a Trial within a Reasonable Time
11. Law on Judicial Council
12. Law on Managing Seized and Confiscated Assets

Judicial function is performed by the Supreme Court, Appellate Court, two high courts, 15 basic courts, Administrative Court and Commercial Court. Criminal proceedings are conducted before the basic courts which act as first instance courts in all the cases, while the high courts decide on appeals against the judgments passed by these courts. High courts are first and second instance courts. The Appellate Court decides on the appeals against the judgments passed by these courts, where they act as the first instance courts. The Supreme Court decides on extraordinary legal remedies in the criminal proceedings and always acts as the court of last resort. Since the subject of monitoring includes criminal proceedings, we will now elaborate the Criminal Procedure Code to the extent needed for understanding the monitoring activities.

The criminal procedure is governed by the Criminal Procedure Code (Official Gazette of Montenegro 57/09 of 18 August 2009, 49/10 of 13 August 2010) which entered into force in its entirety on 01 August 2011. Since assessment of this code is not the subject of monitoring, we will now focus on several major characteristics.

The main difference from previous regulations which governed the criminal procedure is reflected in the fact that investigation (Article 275) has now been entrusted with the state prosecutor, instead of the court as it was prescribed before entry of this Code into force. On the basis of the fact that the investigation has significant influence on further course of the proceedings, we should now highlight several circumstances:

a) transferring investigation to the competence of the prosecutor essentially means that the state authority which is not independent (under Article 134 of the Constitution, the prosecution office is a unique and autonomous authority, while the Law on State Prosecutor` s Office stipulates in which situations the prosecutor is not independent) may significantly limit rights and freedoms of citizens since being under investigation, even without being imposed detention, is a significant limitation on rights and freedoms. Under the previous Code, the decision on conducting investigation used to be made by the judge, independently and on the basis of the fulfilment of requirements for conducting the investigation. Now, the investigation is ordered by the prosecutor, therefore an authority arranged in hierarchy in which (under Article 110 of the Law on State Prosecutor` s Office) the high prosecutors give mandatory work instructions to the lower ranking prosecutors. This means that the Supreme State Prosecutor may ultimately always decide whether the investigation will be conducted – therefore, instead of independence there is a hierarchical arrangement. Under CPC, the investigation is initiated by the prosecutor` s order which may not be appealed. It is unclear why the appeal is not allowed. Earlier regulations allowed appeal against the decision on initiating investigation rendered by the investigative judge, while now such appeal is not allowed. The intention was probably to improve efficiency of investigation and to accelerate its course which is essentially positive. There is also a valid argument according to which if the investigation is entrusted with the state prosecutor which is a strictly arranged hierarchical authority, it makes no sense to lodge an appeal against the order on initiating investigation, except where such appeal would not be lodged with the court which would then call into question powers of the prosecutor who conducts investigation – the investigation would not be conducted even though the prosecutor believes it should be. Finally, since the investigation is conducted in order for the prosecutor to determine whether

to bring an indictment or not (Article 274), there are reasons to completely entrust the prosecutor with that phase of the proceedings. The practice will certainly demonstrate advantages and disadvantages of this mechanism; however we believe that the court should have been included in the initiation of investigation, at least for a certain period of time. Another important matter is detention, since the detention requirements that had not been laid down in the previous Code (from 2003) were put in place again. This resulted in an illogical situation where the existing Code which emphasises exceptional character of the detention allows more possibilities for imposing it, if compared to the previous one. Furthermore, there is a question from the perspective of human rights protection as to whether such a significant limitation on human rights should be allowed without the court decision.

b) In addition, it is not clear why the right of the accused to file complaint against the bill of indictment was abolished. According to the existing provisions, the suspects may not intervene in relation to whether the investigation will be ordered, nor may they intervene in relation to the bill of indictment that has been brought, at least not in the scope they could have done it earlier. Let us note the following: according to the earlier legal provisions, the accused was entitled to file complaint against the bill of indictment for a number reasons defined in Article 282 of the previous Code: in terms of whether the prosecuted act constituted a criminal offence; whether there were circumstances that excluded guilt; whether there had been a statute of limitations, abolition, pardon; whether there was evidence justifying suspicion which was sufficient for bringing an indictment. According to the existing provisions (Articles 293, 294, 296 and 297), where the three-judge panel (Article 24 paragraph 7) has found that the court has jurisdiction to conduct the trial on the basis of a specific bill of indictment (Article 293 paragraph 4) and where it has found that there are no conditions to dismiss the bill of indictment (Article 294 paragraph 1) it renders decisions to confirm the bill of indictment. The accused may appeal against such decision only for the reason involving lack of jurisdiction of the court (Article 293 paragraph 4), while the state prosecutor and the aggrieved party acting as the prosecutor may appeal in accordance with all the sub-paragraphs of Article 294 paragraph 1. Therefore, the accused that have no legal remedy at their disposal during investigation may appeal against the bill of indictment only for the reason involving lack of jurisdiction – which means that the trial should not be conducted by that court, but by the other one. The reason for this is also the fact that their rights are limited after the bill of indictment becomes legally effective to a higher extent compared to the investigation phase – let us just mention the impossibility to apply for a number of jobs. On the other hand, the state prosecutor and the aggrieved party acting as the prosecutor may challenge the decision on dismissal for the reasons related to content and bring about confirmation of the bill of indictment even though the bill of indictment has been dismissed by the first instance panel. Therefore, the accused are placed at a disadvantage since they have no effective legal remedy against the bill of indictment at their disposal.

Decision on punishment without conducting the main hearing is possible for the offences punishable by three years of imprisonment or less, a fine and other more lenient criminal sanctions and as such it represents a novelty in the criminal procedure.

Finally, an important novelty is plea bargaining (Articles 300 through 303 of CPC). In the case of criminal offences for which imprisonment of up to 10 years is prescribed, the accused or the state prosecutor may propose that a plea bargain be entered into in a way that, should the plea agreement be reached, the court passes judgment in accordance with that plea. This is a completely new mechanism in our case law. The court virtually only states that the plea exists and is obligated to pass the judgment in accordance with that plea. Therefore, the judgment is basically passed by the accused and the prosecutor.

General principles of the Criminal Procedure Code

General provisions of the Code, Title I and Basic Rules define the goal of the Code and the principles underlying criminal procedure. We emphasise the principles that are directly connected with the contents of this report:

a) Subject and goal of the Code:
The main goal of the Code is to ensure that no innocent person is convicted and that an adequate criminal sanction is imposed on an offender (Article 1).

b) Principle of legality:
A criminal sanction may be imposed only by the court of appropriate jurisdiction in the proceedings conducted in compliance with this Code (Article 2).

c) Presumption of innocence and *in dubio pro reo*:
All persons are considered innocent until their guilt has been established by an enforceable court decision[1]. Everyone, and public figures and media in particular, is obligated to observe the presumption of innocence (Article 3).

d) Rights of suspects and the accused:
Information about the criminal offence and the grounds for suspicion is provided at the first hearing. They are also informed that they are not obligated to make any statements, and are afforded the opportunity to make a statement regarding the evidence incriminating them and to present the evidence in their favour (Article 4).

e) Rights of persons deprived of liberty:
Information in a language they understand about grounds for deprivation of liberty, right to a defence attorney, right to inform their family, diplomatic or consular mission if they are foreign nationals or to inform relevant organisations, obligation to bring them before the state prosecutor (Article 5);

f) Prohibition of retrial (*ne bis in idem*):

No person may be tried again for the same criminal offence, but reopening the proceedings in compliance with this Code is allowed (Article 6).

g) Official language in criminal proceedings:
Montenegrin language is official language, while in the areas where a minority nation constitutes majority the language of the minority is also used. Parties to proceedings use their language or the language they understand and if that is not possible they will be provided with an interpreter. Written communication is in Montenegrin language, while detainees may use their language or the language they understand, while calls and decisions are also provided to them in that language (Articles 7, 8 and 9).

h) Prohibition of use of violence and extortion of a confession:

Prohibition of violence and extortion, and prohibition for the court judgment to be based on the statement obtained by the use of violence and extortion (Article 11).

i) Right to defence:
It includes the right of the accused persons to defend themselves in person or with the assistance of a defence attorney of their own choice, the right to agree with the defence attorney on the manner of defence, the warning that any statements they make may be used against them as the evidence, the ex officio defence attorney is appointed in accordance with the Code (Article 12).

j) Right to rehabilitation and award of damages:
Person who has been unjustifiably convicted has the right to the award of damages and other rights in accordance with the law (Article 13).

k) Instruction on the Rights of the Accused or other Participants in Proceedings:

All the state authorities participating in proceedings are obligated to inform the accused about their rights in order for them not to fail to exercise their right or not to omit to perform an action, while they are also obligated to inform them about consequences of the failure to act (Article 14).

l) Right to a prompt trial:
The right of the accused to be brought before the court in the shortest possible time, to be tried without delays, and the prohibition

1 Judgment is enforceable once it has become impossible to lodge a regular legal remedy against it.

to abuse the right for the purpose of delay. Detention must be reduced to the shortest possible time (Article 15).

m) Principles of truth and fairness, including equality of arms:

The court and other state authorities participating in proceedings are obligated to assess conscientiously all the evidence and to assess, with equal attention, the pieces of evidence that incriminate the accused persons and the ones in their favour. The court is obligated to provide equal conditions for the defence attorney of the accused in terms of proposing, accessing and presenting the evidence (Article 16).

n) Free assessment of evidence and illegally obtained evidence:

The existence or non-existence of facts is determined on the basis of free assessment by the judge (there are no formal evidentiary rules) and the judgment may not be grounded on the evidence that has been obtained by violations of human rights, constitutional norms and provisions of the criminal procedure.

MONITORING

General remarks

Monitoring is conducted in a way that involves direct presence of monitors at the trials. Pursuant to the agreement with presidents of the courts, the monitors announce their presence and it may be said that, besides temporary lack of technical understanding, the monitors did not face any serious problems during their presence at the trials. In performing their role, the monitors record their findings, communicate with all the participants in proceedings, while they also refrain from giving any comments. In parallel with trial monitoring, they monitor media reporting on trials as well. Furthermore, reports on trials are submitted to CEDEM and AIRE Centre once a week, while analytical reports are submitted once a month.

Data on the trials are obtained from different sources: weekly schedules of trials in the courts included in the project; media; direct findings about the trials.

Cases are selected in accordance with instructions given by the project management team; priority is given to the cases involving organised crime and corruption; criminal offences against humanity and international law; and other cases involving elements of overstepping the power, particularly those with the elements of torture, domestic violence cases, criminal offences against honour and reputation, cases against foreign nationals, while cases involving so-called classic crime, such as the criminal offences against property and criminal offences against life and limb, were also monitored.

A majority of the monitored criminal offences were criminal offences against official duty, which includes criminal offences with the elements of corruption and organised crime. In addition to the criminal offences from this group, the criminal offences with elements of organised crime were monitored in additional 17 cases (criminal association, smuggling, agreement to commit a criminal offence, drug trade).

Two proceedings concerning criminal offences against humanity and international law were also monitored – these were the only proceedings for criminal offences from this group which were conducted in the reporting period.

Criminal offences against payment transactions and business operations were monitored in 10 cases as follows: abuse of authority in economy, abuse of office in business operations, money laundering and evasion of taxes and contributions.

Criminal offences involving torture and ill-treatment were monitored in four cases, while one case involved attack on a person in official capacity during discharge of an official duty.

Criminal offences involving insult and defamation were monitored in 11 cases in the early stage of monitoring, to be more precise up until the criminal offences became decriminalised, while in these cases it was

not the journalists who were charged.
Criminal offence involving domestic violence and violence in a domestic unit were monitored in eight cases.
The other monitored cases included so-called classic criminal offences such as murder, grievous bodily injury, violent behaviour, theft.
In the reporting period, the monitoring team attended a total of 240 hearings, while 124 cases were monitored.

OBSERVATIONS OF THE MONITORING TEAM

This part of the report includes key findings of the monitoring team regarding certain aspects of respect of the right to a fair trial in accordance with the European Convention on Human Rights and Fundamental Freedoms which provides guarantees to everyone charged with a criminal offence that their rights and freedoms in the course of criminal proceedings will be protected. Court proceedings may not achieve required quality without existence of these fundamental guarantees. Findings mentioned above refer to the principle of publicity, that is publicity of trials, and publicity of the work in courts; principle of trial within a reasonable time; respect of the presumption of innocence; equality of parties in proceedings (so-called equality of arms); right to an efficient defence; right to use the language which parties understand; right to an independent and impartial court; access to court and other matters relevant for trials, such as informing about the rights and transparency of the work in courts. Due to the fact that the judgments were not drafted in the proceedings monitored by the monitoring team, except in five cases, and that the decisions are not enforceable in these cases, free assessment of evidence will be analysed in the forthcoming period. Any further comments on the proceedings for which enforceable decisions were not rendered would constitute interference in an independent work of the courts. For the same reasons that are valid for free assessment of evidence, illegally obtained evidence will be subject of a separate analysis in the forthcoming period given that the issue involving illegally obtained evidence was often raised during the main hearings, particularly in relation to application of the covert surveillance measures.

PRINCIPLE OF PUBLICITY

Principle of the publicity of trials

In the case **M. R. and others, Podgorica Higher Court, K.br.162/11**,[2] the main hearing was held in the presiding judge's office, which was not large enough to accommodate the interested public, so that the sister of the accused could not be present during the trial.

The same problem was noticed in the case **D.R. and others, Podgorica basic Court, K.br. 904/11**,[3] where the persons interested in monitoring the trial had no place to sit, and a journalist of a daily newspaper was allowed to stand in order to be able to follow the course of the main hearing.
The main hearing in the case of the accused **Z.D., Podgorica Higher Court, K.br.140/95**,[4] according to the trial schedule of Podgorica Higher Court, was not published on the website "Sudovi Crne Gore" (Courts of Montenegro), which is still under construction. This practice can be noticed in the example of other courts, which also publish partially this kind of information for certain number of trials.

In the case **B.V. and others, Podgorica Higher Court, Ks.br.29/11**,[5] the main hearing was held in the presiding judge's office, which was not large enough to

2 Criminal act; Attempted unauthorized production, possession and circulation of stupefying drugs from the Article 300 paragraph 2 in relation to the paragraph 1 of the Article 20 of the PC of MNE – Criminal acts against human health
3 Criminal act: Torture and ill-treatment from the Article 167 paragraph 3 in relation to the paragraph 2 related to the Article 25 of the PC
4 Criminal act; Attempted murder from the Article 30 paragraph 2 item 6 of the PC of the Republic of Montenegro related to the Article 19 of the PC of the FRY – Criminal acts against life and body
5 Criminal act: Criminal association from the Article 401 paragraph 2 of the PC of MNE – Criminal acts against public order and peace

accommodate the interested public, so that the mother of one of the accused could not be present, the reason being the fact that the large courtroom was occupied because of another criminal proceeding which had lasted longer than originally foreseen. The presiding judge asked the parties to the proceeding whether they agreed for the main hearing to be held in the office, and since there were no objections the main hearing was held there.

The main hearing in the case **K.br. 416/11**,[6] before Kotor Basic Court, was held one day earlier in relation to the trial schedule announced on the official website www.sudovi.me. Such discrepancy, that the information from the trial schedule announced on the official Internet site www.sudovi.me do not correspond to the trial schedule held by the presiding judges, was noticed in the examples of other courts, not only with Kotor Basic Court.

As regards the requests for the exclusion of public, there were two such requests during the observed period. In the case **I.R., Podgorica Higher Court, K.br.28/12,**[7] the agents of damaged families suggested for public to be excluded from the main hearing, justifying the proposal by the need to protect the rights and the interests of juvenile children of the victims, the late R. and D. The agents stated in their justification that the procedure was being conducted under public scrutiny and that it was very unlikely that they would be "spared" the allegations on the manner and the motifs for the perpetration of the subject criminal act. They particularly invoked the Article 6 of the European Convention according to which the press and public may be excluded from all or part of the trial, inter alia, in the interests of juveniles or the protection of the private life of the parties. After the recess, the Panel decided to exclude the public from the rest of the proceeding, after which all the present, apart from the parties to the proceeding, left the courtroom**.** Several days later, the court passed a formal decision to reject the proposal of the defence for the exclusion of the public. With the fact that the trial panel excludes the public when it assesses that there exists some of the alternatively prescribed reasons in the CPC and that that decision must contain concrete explanations on specific reasons or specific reason, the question is raised on which fact the court based the decision to exclude the public and with what explanation, or rather which of these facts changed or have occurred causing the proposal to be rejected only a couple of days later.

In the case **K.Z., Podgorica Higher Court, br. K.br.86/11**[8]**,** the agent of the family of the victim addressed the court with the proposal for the public to be excluded from the trial, with the explanation that he was dissatisfied with media reporting. Due to the fact that the agent of the victim, in procedural sense, may not lodge such proposal, the court asked the same to explain his proposal in more details at the subsequently scheduled hearing. The court will then consider the same and make a decision ex officio. Since the agent of the damaged family failed to appear at the scheduled hearing, and did not repeat the proposal for the exclusion of the public from the rest of the proceeding, the court was not considering this issue.

Principle of the publicity of the work of courts

During the observation period, several amendments were being noted which

6 Kotor Basic Court, the case was registered under the register number K.br.416/11

7 Criminal act: First degree murder from the Article 144,paragraph 1, item 8 of the PC of MNE – Criminal acts against life and body

8 Criminal act: Murder from the Article 143, paragraph 1, item of the PC of MNE – Criminal acts against life and body

essentially enhance the publicity of the work of Podgorica Basic and Higher Court. They are primarily related to the LCDs placed in pairs, in the entrance hall of the ground floor and on all the floors of the courts, in order to broadcast the hearing schedule in civil, on one LCD, and the main hearings in criminal proceedings, on the other. Also, in the entrance hall on the ground floor visibly placed there are: civil department notice board, court experts, interpreters and mediators notice board, criminal department notice board and the enforcement department notice board. Podgorica Basic Court was selected to be the pilot court for the project aimed at increasing the degree of publicity of the work of the court and given the results to be achieved it should become the model for the publicity of work of all Montenegrin courts.

RIGHT TO TRIAL WITHIN REASONABLE TIME

In the case **P. S. and others, Bijelo Polje Higher Court**[9] first of all we would like to state that the trial was not conducted within the legal deadline, that the accused who had been detained were released since the 3 year deadline had elapsed without the termination of the proceeding. Not entering into the justification of detention, we point out to the violation of the right to trial within reasonable time irrespective of all the complexity of the case and the number of evidence produced. This is particularly so with regards to the facts that the provisions of the CPC, especially of the Article 15 dealing with the urgency of the procedure when the accused are detained, are clear.

In the case **L. R. and others, Podgorica Basic Court,**[10] it was noticed that four consecutively scheduled hearings had been held since procedural assumptions had not been met. Namely, the first hearing was not held because of the absence of the accused Đ.D, whose subpoena for the main hearing had been improperly serviced, as well as of his defence counsel, who had been dully subpoenaed. The second hearing was not held because the judge attended a seminar, and the accused and one defence counsel appeared at the new hearing while the second defence counsel informed the judge of his having a trial before another court. Since the accused Đ. D. refused to present his defence without the presence of his defence counsel, new hearing was scheduled where the accused L. R, his defence counsel and the defence counsel of the second accused appeared, but not the accused Đ.D. The last of these four hearings was not held because the agent of the prosecution had altered the factual description of the indictment and the legal qualification of the act. The main hearing was thus adjourned since the accused used their legal right to prepare themselves for the final speeches, due to the fact that the indictment had been altered.

During the interview, after the adjourned hearing, with the defence counsel of the accused in the case **R. D. Podgorica Basic Court,**[11] it was pointed out that in the given criminal matter Podgorica Basic Court had been acting as the first instance court since 31st December 2004, when due to the amendment of the law, the case was handed over to the competence of Podgorica Basic Court following the investigation procedure conducted by Podgorica Higher Court. In this multiannual procedure being conducted

9 War crime against civilians from the Article 142 paragraph 2 of the PC of FRY

10 Criminal act: Abuse of office from the Article 416 paragraph 5 of the PC of MNE

11 Criminal act: Abuse of office from the Article 416 paragraph 5 in relation to the paragraphs 4 and 1 of the PC of MNE

before Podgorica Basic Court since then, several presiding judges have been changed, but the procedure has not yet been terminated. Furthermore, the actions on the perpetration of the criminal act which the accused is charged with in the indictment, according to his defence counsel, date back to the period from 1998 to 2003.

In the case **D. V. and others, Podgorica Higher Court[12],** the hearing has been adjourned on two occasions because of the failure of the Police Directorate to act upon the order for the bringing of the witnesses before the court, at which the Police Directorate fails to inform the court about the reasons for the inaction. Also, this is not the case of unjustified adjournment since there are simply no reasons for the failure to act upon the order.

In the case **A.M. and others, Podgorica Higher Court[13],** the main hearing was adjourned because certain evidence had been delivered to the defence counsels one day before the hearing notwithstanding the fact that on several occasions the court urged the Police Directorate for the evidence to be delivered. As it has been pointed out, the cause for the previous adjournment had been the inaction of another public authority and unjustified as such, no matter that the court had had to adjourn the hearing.

In the case **D.A and others, Podgorica Higher Court,[14]** we point out to the adjournment due to the absence of defence counsel who had been engaged in another case, at which the court reacted properly by informing the accused of the inappropriateness of such reason. The stated case is considered interesting also because of the fact that similar issues are discussed in civil procedure which, according to the claims of the defence counsels goes in favour of the accused. The observation team will continue monitoring this case, especially with the purpose of seeing the reaction of the participants in the procedure to possible decisions of litigation courts which might challenge the rationale of the indictment, and to the possible situations where two public authorities act differently upon the same issue.

The hearing in the case **C. N. and others, Kotor Basic Court[15],** was adjourned because the defence counsel had been engaged at the congress of the political party which he is a member of. According to the opinion of the monitoring team, such adjournment is unacceptable.

In the case **B. M. and others, Bar Basic Court[16],** we point out to the fact that the accused failed to appear before the court because they had forgotten of the trial. The judge ordered for them to be brought before the court. We would like to emphasize here the extreme case of the contempt of the court and that such behaviour should be sanctioned in a stricter way.

12 Criminal acts of the abuse of office and embezzlement from the group of criminal acts against office Article 416, paragraphs 1-3 and the Article 420 of the PC of MNE
13 Criminal acts of receiving bribe, offering bribe and abuse of office from the group of criminal acts against office Article 416, Article 423, paragraphs 1-3 and Article 424, paragraphs 1 and 2 of the PC of MNE
14 Criminal act – Attempted or instigated abuse of office in commerce from the Article 276 paragraph 2 in relation to the paragraph 1 item 5 related to the Articles 20 and 24 of the PC of MNE
15 Criminal acts against office: Criminal act: Unauthorized use from the Article 421 of the PC and the criminal act: Embezzlement from the Article 244 paragraph 3 in relation to the paragraph 1 of the PC of MNE
16 Criminal acts against marriage and family - Criminal act domestic violence from the Article 220 in relation to the paragraph 1 of the PC coupled with the criminal act of threatening security from the Article 168 paragraph 2 in relation to the paragraph 1 of the PC, as well as the criminal act of preventing an official in performing official duty from the Article 375 paragraph 3 in relation to the paragraphs 2 and paragraph 1 of the PC of MNE

In the case **V.N. Podgorica Basic Court,**[17] the court passed the decision by means of which the criminal procedure against V.N. for the criminal act of violent behaviour from the Article 399 of the PC is separated from the others, because it is procedurally not sustainable for the same person in the same case be examined both in the capacity of the victim and the accused. In "V.N." theft fell within the statute of limitations.

The annulment of the judgement in the case **D. V. and others, Podgorica Higher Court, K.br.7/10,**[18] and failure to pass the decision, or the delay of the court to decide upon the requests of the accused and of the defence, can affect the trial within reasonable time, especially with the fact that it concerns a 2006 case, that the evidence are mostly in the possession of the public authorities or institutions, all the accused appear regularly at the main hearing, the witnesses are accessible to the court, thus the measures that the court undertakes pursuant to the CPC are justified, in order for the criminal proceeding to be more efficient.

In the case of the accused **M. M., Podgorica Basic Court, K.br.11/516** [19] the witness – victim E.K. fail to appear at the previous main hearing because of which the same was adjourned. The same witness – victim failed to appear at the newly scheduled hearing, thus the court introduced the measure envisaged by the CPC and issued the order on forceful bringing of the witness – victim in the criminal proceeding before the court.

In the case of the accused **Z.D. and others, Podgorica Higher Court, K.br.140/95,**[20] the main hearing was adjourned because of the absence of the witnesses, but also of the medical court expert. We have the information that Podgorica Higher Court has been acting in the said case as the first instance court since 21st September 1995. In this sixteen-year long proceeding, several presiding judges have been changed, but the proceeding has not yet been terminated. The criminal acts the accused are charged with in the indictment were perpetrated on 22nd July 1995. We would also like to mention that the trial against the accused Z.D. has been conducted in absentia.

The main hearing in the case of the accused **S.M., Podgorica Basic Court, K.br.05/1225,**[21] was adjourned since neither the accused nor the agent of the prosecution appeared before the court at the scheduled time. In relation to the accused, at the previous main hearing the court issued the order for his forceful bringing before the court, and the authorized officers of the Police Directorate – Bijelo Polje Regional Unit, informed the court that they had not found the above accused at the address given. It was concluded that the agent of the prosecution had failed to appear at the main hearing, namely the Deputy Basic Prosecutor – Podgorica. The latter one appeared with some delay justifying his delay by his representing the prosecution in another criminal matter which was being conducted at the same time.

In the case **P.M., Podgorica Higher Court, K.br.97/11,**[22] the witness N.V. failed to appear

17 Criminal act: Abuse Of office from the Article 416 paragraph 5 of the PC of MNE
18 Criminal act: Abuse of office from the Article 416 paragraph 3 of the PC of MNE (Criminal acts against office)
19 Podgorica Basic Court, the case with the register number K.br.11/516
20 Criminal act; Attempted murder from the Article 30 paragraph 2 item 6 PC of the Republic of Montenegro in relation to the Article 19 of the PC of the FRY - Criminal acts against life and body
21 Criminal act: Aggravated theft from the Article 240 paragraph 1 of the PC of MNE - Criminal acts against property
22 Criminal act: First degree murder from the Article 144, paragraph 1, item 1-4 of the PC of MNE - Criminal acts against life and body

at the main hearing at the specified time, for the reason that the Police Directorate had failed to act upon the court order for the witness to be brought before the court, without informing the court thereof, although within the case file there is the evidence of the Police Directorate being duly and timely informed of the subject order.

The main hearing in the case **D.R. and others, Podgorica Basic Court, K.br. 904/11,**[23] was adjourned due to failure to meet procedural assumptions, since the accused R. R. failed to appear despite being duly informed by means of the proclamation of the decision from the preceding main hearing.

The accused **S.H., Podgorica Basic Court, K.br.716/11,**[24] failed to appear at the preceding main hearing at the specified time, and since on the day prior to the second main hearing, he was brought before the court in another criminal matter, he was brought before the presiding judge in order to give his statement in this case.

PRESUMPTION OF INNOCENCE

In the case **A.M. and others, Bijelo Polje Higher Court** (see section "Right to impartial judge"), the marked statements of the judge: "one starts from small things" (from which it results that the accused provides his livelihood through criminal activities) and that the accused not only has the problem with drugs, but also with enabling others to enjoy drugs, constitute violations of the presumption of innocence.

During the trial in the case **M. G. and others, Podgorica Higher Court,**[25] certain media published the following allegations in their own interpretation: That the trial would be terminated "with the satisfaction for victims"; that the case would be conducted in the manner to increase the trust by Croatian society and their judiciary". The above statements can be characterized as a pressure on the court as well as a suggestion of the public for the accused to be sentenced, and the publishing of the same does not favour the observance of the presumption of innocence.

In the case **D.A. and others, Podgorica Higher Court**, the article on the trial published by a newspaper, the heading of which suggests that the accused attempted to earn more than three million euros, constitutes the violation of the presumption of innocence, due to the fact that one can conclude from the article that they had attempted to gain profit in an illegal way.

Generally speaking, media reporting in the case **Š.D. and others, Bijelo Polje Higher Court,**[26] is such that only few media observed the presumption of innocence, especially by bringing in relation the accused and his brother who had not even been charged in this case. Also, on several occasions the defence pointed out to the fact that media reporting was such that it created the image of the guilt of the accused, and that the court could not adjudicate independently under such pressure.

23 Criminal act: Torture and ill-treatment from the Article 167 paragraph 3 in relation to the paragraph 2 related to the Article 25 of the PC

24 Criminal act: Theft from the Article 239 of the PC of MNE - Criminal acts against property

25 Criminal act: War crime against civilians from the Article 142 paragraph 1 of the PC of FRY and war crime against the prisoners of war from the Article 144 of the PC of FRY

26 Criminal acts: Creating criminal organization from the group of criminal acts against public order and peace; unauthorized production, possession and circulation of narcotics from the group of criminal acts against human health and money laundering and the group of criminal acts against payment circulation and commercial operations from the Article 268, paragraph 4 in relation to the Article 49 paragraph 1 of the PC of MNE Article 416, paragraphs 1-5 of the PC of MNE, Article 300 of the PC of MNE and the Article 268, paragraph 4 in relation to the Article 49 paragraph 1of the PC of MNE.

In the case **"M" with the accused B.B., B.J., A.M. and M. F., Podgorica Higher Court** – Special Department for Criminal Acts of Organized Crime, Corruption and War Crimes, this presumption was not observed since the outcome of the proceeding was prejudiced in relation to the accused A.M. In the rationale of the decision on the extension of detention it reads: "it is certain that in the subsequent part of the proceeding he would be convicted for serious criminal acts he had been charged with", which constitutes flagrant violation of the presumption of innocence. In this way, the court "finds" the defendant guilty prior to having his guilt proven in accordance with the law. The stated decision was annulled with the decision of the Constitutional Court of Montenegro Už-III br.464/11 which adopted the constitutional complaint and annulled the decision of Podgorica Higher Court, Kv.br. 573/11, dated 22nd June 2011 and the decision of the Court of Appeals of Montenegro, Kž.br. 497/11, dated 5th July 2011 in relation to the appellant.

The presumption of innocence was also violated in the case D.V. and others, Podgorica Higher Court, K.br.7/10,[27] by the court expert, who on several occasions entered into discussion with the accused after being asked questions by the same, responding that he had written everything in his report and that "everything was clear". Sometime later to the question of the defence if he had given the finding and the opinion on the basis of the original financial documentation, the expert gave a negative answer, saying that in the material he had received in order to compile the finding and give his opinion, there had not been all originals, in fact some examined documents had been copies. Responding to the accused that "everything was clear", with the fact that a part of the examined documentation had not been original, which is beyond the rules of the profession, the expert clearly expressed his view, rather his opinion related to the responsibility of the accused. In one of numerous arguments between the expert and the defence and the accused, he stated that "there was no documentation in the Supreme Court for the entire year, and the same individuals continued working", he said that it was the "same as when one ties a goat to guard cabbage", alluding to the accused D. V. We would like to underline that the stated expert statements were not put into the record, neither a warning was issued to the expert.

In the case **"M"**, **Podgorica Higher Court, Ks.br.33/10**,[28] the media – daily newspapers violated the presumption of innocence by publishing the article on the trial, with the violation of the presumption visible in the heading itself which read "*Civilians and Prisoners of War Ill-treated*".

In the case **M. R. and others, Podgorica Higher Court, K.br.162/11**,[29] the accused R.M. stated at the main hearing that the article in the daily newspapers from 28th February 2012, under the heading: "Smuggled Drugs alongside the Teak Wood", violated the presumption of his innocence.

EQUALITY OF THE PARTIES TO THE PROCEEDING – EQUALITY OF ARMS

In the case **Š.D. and others, Bijelo Polje Higher Court[30],** the defence emphasized

27 Criminal act: Abuse of office from the Article 416 paragraph 3 of the PC of MNE (Criminal acts against office)

28 Criminal act: War crime against civilians from the Article 142 paragraph 1 of the PC of FRY and War crime against the prisoners of war from the Article 144 of the PC of FRY.

29 Criminal act: Attempted unauthorized production, possession and circulation of stupefying drugs from the Article 300 paragraph 2 in relation to the paragraph 1 of the Article 20 of the PC of MNE - Criminal acts against human health

30 Criminal acts: Creation of criminal organization from the group of criminal acts against public order and peace; unauthorized production, possession and circulation of stupefying drugs from the group of criminal acts against human health and money laundering from the group of criminal acts against payment circulation and commercial operations from the Article 268, paragraph 4 in relation to the Article 49 paragraph

several times at the beginning of the trial and during the main hearing the issue of the right to efficient defence and to the equality of arms. At the very beginning, the defence pointed out that they had been serviced a series of evidence in the possession of the prosecution even from the time of the investigation. They also pointed out that the defence counsels were unable to have undisturbed contact with the defendants during the period of detention – that the premises lacked proper conditions, that they were separated from the defendants by means of a glass barrier and that they were unable to have undisturbed contact with the defendants during the trial.

The Panel Chair refused this proposal and started with the proceeding. This decision was mainly based on the statement of the accused D.Š. himself, who responded positively to the question about his readiness to present his defence. When one has in mind total discord between the defence counsels and this accused (the defence counsels claim that the accused is unable to present his defence, and the accused responds positively to such answer) the question of the efficiency of the defence is raised. However, the observation team considers that the justification of the court to initiate the main proceeding is disputable, to say the least. Namely, the accused, who has been already detained for 9 months, can hardly wait for the main hearing to start, and on the other hand, he cannot be familiar with the provisions of the criminal procedure, and it is unlikely that he can be aware of what he states once he starts giving his statement, if his defence counsels are not at least familiar with all the evidence. We think that the court should have instructed the accused to consult his defence counsels, which was its duty pursuant to the Article 14 of the CPC, especially with the view of the fact that in the continuation of the main hearing the Panel Chair informed the defence that it would be possible for them to have undisturbed contact with the accused whilst he is in detention facility, as well as that they would have the evidence serviced which they claimed not to have received, and one part of the evidence was handed over to them at the main hearing, but only following the examination of the accused. In this way, the question is raised of the right to efficient defence and especially the right on the equality of the parties to the proceeding, i.e. the equality of arms.

Furthermore, the Panel Chair addressed the accused on several occasions by using his first name, or often by using his brother's name. When this information was made public, Bijelo Polje Higher Court reacted by issuing the communiqué which sounded strange to say the least. Namely, in the first part of the communiqué (the section concerning the behaviour of the judge) it reads that the judge did nothing to exceed his authorities in the proceeding, nothing that would undermine his professionalism and good behaviour, and that he addressed the accused in the above manner due to the pressure created in the. However, immediately afterwards it reads: "The President of the Supreme Court, immediately upon finding out of the publishing of the recording from the trial in the media, requested from the President of Bijelo Polje Higher Court to talk to the presiding judge and to warn him to use legal terminology in the continuation of the trial, which was done in the concrete case and which suggestion and critique was acknowledged by the judge". Therefore, had there not been the reaction of the President of the Supreme Court, there would have been no criticism either, since

1 of the PC of MNE, Article 416, paragraphs 1-5 of the PC of MNE, Article 300 of the PC of MNE and the Article 268, paragraph 4 in relation to the Article 49 paragraph 1 of the PC of MNE

it is obvious that Bijelo Polje Higher Court considers that the Panel Chair made no mistake whatsoever. Legal terminology, thus also the terms: "accused" and "charged" were established exactly because of the principle of equality and every individual in such position should be addressed using the above terms. Different conclusions can be made out of such behaviour of the judge, as well as in every case the law is not complied with.

Finally, even in this case here was a discussion on the recording the statements into the minutes, and the defence counsels insisted on the questions being put into the minutes, which does have its own logic: how can the appeal refer to the fact that the court allowed the answer to an illegal question, if there is no such question in the minutes (main hearing from 19th July 2011).

The problem was noticed in the case "M", against M. M.G., I. M.G., Špiro S.L., B. M.G., I. D.M. and Z. M.T., Podgorica Higher Court, Ks.br.33/10,[31] where the defence emphasized the abuse of the right by the deputy special prosecutor for organized crime and war crime, which behaviour is contrary to the decision of the Court of Appeals, which annuls the judgement of the Higher Court and returns the case to the first instance court for retrial in the part related to the criminal act of war crime against the prisoners of war. The defence in the stated case considers that the deputy special prosecutor abuses his rights and authorities so as to convict the accused for the criminal act of the war crime against the prisoners of war.

In the case "Z", Podgorica Higher Court, Ks.br. 8/11,[32] the defence emphasized on several occasions that the behaviour of the court put them in an unfavourable position in relation to the indictment, for the reason that almost all the proposed evidence of the defence had been rejected, with the explanation, amongst other things, that the first finding of the financial expert had been compiled upon the proposal of the defence, for the needs of the Higher State Prosecutor and the initiation of the investigation, that the supplementary finding had been compiled upon the proposal of the agent of the victim, and that the proposal of the defence for the finding and the opinion to be prepared by an independent audit institution had been rejected. We considered as purposeful to point out to the allegations of the defence that the subject finding is contradictory. Namely, the balance sheet and the profit and loss account of the D.O.O."Z. I." were not serviced to the expert, although the latter refers exactly to these sources. The stated practice is inadmissible and should be severely sanctioned.

In the same case, the court acquainted the parties with the letter of the investigating judge of Belgrade Higher Court dated 20th March 2012, upon the letter rogatory of Podgorica Higher Court, Ks.br.8/11 dated 31st January 2012, with regards to the examination of the witness S.M., in which letter the investigating judge states that S.M. is not accessible to

31 Criminal act: War crime against civilians from the Article 142 paragraph 1 of the PC of FRY and War crime against the prisoners of war from the Article 144 of the PC of FRY.

32 Criminal acts: against R. K. – the Mayor of Budva Municipality for the criminal act –Abuse of office from the Article 416 paragraph 3 in relation to the paragraph 1 and the Article 416 paragraph 1 of the Penal Code, D. M. – the Vice-Mayor of Budva Municipality, for the criminal act - Abuse of office from the Article 416 paragraph 3 in relation to the paragraph 1 of the PC, Đ. P. – a member of Montenegrin Parliament, D. Ž., S. D., S. V., S. T., N. S., M. K. for the criminal act - Abuse of office through offering assistance from the Article 416 paragraph 3 in relation to the paragraph 1 related to the Article 25 of the PC, D. S., the owner and the executive director of the enterprise "M." DOO Budva, for the criminal act – Abuse of authorities in commerce from the Article 276 paragraph 2 in relation to the paragraph 1 item 5 of the PC, and the criminal act – Abuse of office through instigation from the Article 416 paragraph 1 in relation to the Article 24 of the PC, M. M. for the criminal act – Abuse of office through instigation from the Article 416 paragraph 1 in relation to the Article 24 of the PC and N. P. – the executive director of the enterprise "Z. I." DOO Budva, for the criminal act – Evasion of taxes and contributions from the Article 264 paragraph 3 in relation to the paragraph 1 of the PC

Serbian authorities. In the same case, the defence pointed out to the violation of the right to the equality of the parties – equality of arms, since the prosecution in Moscow had examined three witnesses from the stated case without the presence of the defence counsels. The defence counsels requested for the examination to be done via video link, in order for the defence to have the opportunity to pose questions to the witnesses, which proposal was rejected by the court due to inaccessibility. However, according to the letter of the General Prosecution of the Russian Federation, serviced upon the letter rogatory for the extension of the international legal aid in the subject criminal matter, with regards to the examination of one of the witnesses, V. L., the conclusion is that he is not accessible to Russian authorities. For these reasons, it was decided that in the examination of the witnesses S.M. and V.L. would not be presented as evidence.

In the case **M.G. and others, Podgorica Higher Court** - Special Department for the Criminal Acts of Organized Crime, Corruption and War Crimes, **Ks.br.08/09,**[33] the accused and the victims used their right to pose questions to the witnesses and to object to their statements. On the occasion of the examination of the witness G., the accused N. was warned on two occasions for asking suggestive questions and needed to reformulate the same, since they were related to the subjective attitude of the witness towards the subject facts, and not to his knowledge about the same. After the accused N. had addressed the court wishing to pose another question to the witness, the Panel Chair responded to her that she had no right to ask further questions, that this right had been used in the previous round. The defence counsel of the accused N. objected to this decision of the Panel Chair, with the explanation that the accused might not be denied the right to pose questions, and that the court would decide whether the same would be permitted or not, and whether the answer would be allowed.

In the case **D.V. and others, Podgorica Higher Court, K.br.7/10,**[34] the defence pointed out on several occasions, and submitted evidence that on the occasion of the seizure of the documentation by the police there had been serious omissions, since the documentation had not been clearly specified, thus it was not known which documents had existed there. The fact that there was no list of the subject documentation could open the possibility for the abuse of the same. The accused D.V. stated that three persons had been in the possession of the access code for the system for the approval and withdrawal of money, and not only her, and she asked the court to see into that. The court, however, did not deliberate upon that.

RIGHT TO EFFICIENT DEFENCE

In the case **P. S. and others, Bijelo Polje Higher Court**, the court also refused to put into the minutes *ad litteram* the proposal of the defence counsel for exclusion, and there was also a dispute on inserting the statement of the accused (the main hearing held on 20th May 2011). In all the provisions of the CPC related to compiling minutes, as a rule the persons conducting the interrogation or

33 Criminal act: Abuse of office from the Article 416 of the PC of MNE - Criminal acts against office, against: M. G., the executive director AD L. B., I. T. financial director, Z. O., Trade Union president L. B., A. L., chief road transport dispatching officer, S. J., cashier, M. M., cashier operations officer, Z. V., payment calculation and cashier operations officer, R. P., head of the department for financial operations and payment collection officer in financial sector, Z. N., applications designer, D. P., head of the financial working unit, R. D., cashier

34 Criminal act: Abuse of office from the Article 416 paragraph 3 of the PC of MNE (Criminal acts against office)

examination enters the statements into the minutes. Because of that, there is always a possibility to have discord about what was actually said, especially when long statements are concerned.

Despite the statement of the witness – victim in the case **S. I. and others, Podgorica Basic Court,**[35] not to join the criminal prosecution, the defence counsel of the accused, without prior consultation with his client, after having been absent from the main hearing for half an hour upon his own request, with the justification that the defence in that criminal matter was not mandatory, starts examining the witness-victim, who states that he wishes to join the criminal prosecution and sets the property claim solely because he was annoyed by the questions posed by the defence counsel.

The ex officio defence counsel in the case **F. M. and others, Bijelo Polje Basic Court** (the main hearing held on 21st June 2011),[36] did not know the identity of the accused he was supposed to defend. Namely, he stated that he was the defence counsel of the accused Ć.G. after which the presiding judge warned him that he was in fact the defence counsel of the accused R.D. and concluded that "the lawyer had obviously come unprepared to the trial and that he did not become familiar with the case for which he had been appointed ex officio defence counsel".

The defence counsel in the case **L.H., Rozaje Basic Court,**[37] during the main hearing used the opportunity to pose questions to the witnesses only once, did not have any objections to the presented evidence, and finally, in the part related to the supplement of the evidence presenting procedure, suggested only one person to be examined as a witness, although he should have known that the same person could not be examined because he/she participated all the time at the main hearing, at the defence of the accused and at the examination of witnesses.

In the case **D.Š., Bijelo Polje Higher Court – Special department for criminal acts of corruption, organized crime, terrorism and war crimes, Ks. br.16/10**,[38] the agent of the prosecution posed one and the same question to the witness on several occasions, the ones which this witness had previously unambiguously responded to. This way of witness examination directed towards obtaining a more favourable response in favour of the prosecution, constitutes an example of bad practice which should be prevented by the court in order to protect the witness which did not happen in the case concerned.

Pointing out to legally invalid evidence

Due to the fact that the issue of legally invalid evidence was raised in a large number of the observed cases, we consider it necessary to pint out to certain views of the defence according to the same:

During the proceeding in the case **M. G. and others, Podgorica Higher Court,**[39] upon the proposal of the defence the court put aside the

35 Criminal act: Torture from the Article 167 paragraph 3 in relation to the paragraph 2 of the PC of MNE
36 Criminal act: Violent behaviour from the Article 399 of the PC of MNE
37 Criminal act: Aggravated theft from the Article 240 paragraph 1 item 1 in relation to the Articles 49 and 23 paragraph 2 of the PC of MNE
38 Criminal acts: Creation of criminal organization - Criminal acts against public order and peace, Unauthorized production, possession and circulation of stupefying drugs - Criminal acts against human health and Money laundering - Criminal acts against payment circulation and commercial operations - PC of MNE
39 Criminal act: War crime against civilians from the Article 142 paragraph 1 of the PC of the FRY and War crime against the prisoners of war from the Article 144 of the PC of the FRY

certified Xerox copies of the minutes on the examination of witnesses before a court in the Republic of Croatia. Acting upon the appeal of the prosecutor, the Court of Appeals reversed the judgement of the presiding panel and decided that these statements could be read and used as evidence in the proceeding. Since the proceeding has not been terminated with an enforceable judgement, the observation team did not enter into the merit of this issue, but it pointed out that the practice would have to be harmonized and the views of lower and higher courts on this issue identical. In the further proceeding, upon the proposal of the defence some documents were taken out of the case file as legally invalid evidence, but the Court of Appeals annulled the decision on setting aside some documents from the case file, i.e. the certified Xerox copies of the statements given in Croatia.

When deciding on the manner of the presentation of evidence in the continuation of the evidence presenting procedure in the case **P. S. and others, Bijelo Polje Higher Court**, when deciding on the proposal for the evidence presenting procedure to be continued with the reading of the witness statements given directly to the minutes at the preceding main hearing and the reading of the expert's report (which evidence had been presented at the previously held main hearing, before a different panel) the court was deliberating on this proposal prior to the examination of all the parties (during the recess in the main hearing so that decision can be made on the proposal for the fining of one of the defence counsels, prior to the examination of the defence counsel of the accused P.S.). Such behaviour is contrary to the Articles 329 and 356 of the CPC, i.e. 317 and 345 of the then effective CPC.

The problem of legally invalid evidence was also emphasized in the case **Z. A. and others, Podgorica Higher Court**. Upon the proposal of the defence, the court decided to set aside one part of the case file compiled in Switzerland, since on the occasion of securing the same legally prescribed procedure had not been observed, by which the effective standards and national regulations in the case concerned were observed.

In the case of the accused **D. R., Podgorica Higher Court, K.br.10/2010**,[40] the minutes were read at the main hearing on the identification of the suspect, which the defence insisted on being set aside from the case file as legally invalid evidence since it had been obtained contrary to the provision of the Article 115 of the CPC. In this specific case, the minutes read that together with the suspect there were employees of the police at the identification. The letter sent by the police confirms these allegations, but that these employees had not been involved in the examination of the suspects or directly connected with the activities in the police. However, the very fact that the accused recognized police officers in the identification line up points out to the violation of the CPC. Because of that, this piece of evidence would have to be set aside from the case file as legally invalid evidence.

Prior to delivering the final speeches in the case "Z", the defence submitted to the court the proposal for the evidence presenting procedure to be supplemented, i.e. the finding and the opinion of the audit house from Belgrade - doo. "P. S.". The Deputy Special Prosecutor objected to the presentation of this

40 Criminal act; First degree murder from the Article 144 paragraph 1 of the PC of MNE and Assistance offered to perpetrator after committing a crime from the Article 387 paragraph 3 of the PC of MNE - Criminal acts against life and body

kind of evidence, for the reason that it had been submitted in the form of a Xerox copy, as well as for the reason that during the procedure a court expert had already been engaged who already presented his finding and the opinion. The court announced half an hour recess in order to inspect the proposed evidence. The court accepted the prosecutor's objection after having inspected the proposed evidence. However, in the case "D.V.", Podgorica Higher Court, the expert gave his finding and opinion on the basis of the documentation which had partly been composed of the copies and not the originals. To the question of the defence counsel of the accused D.V. the expert confirmed these allegations. Pursuant to the abovementioned, we can conclude that the court acts differently in different cases. This raises the issue of the work of court experts, the procedure for their appointment and dismissal, and the harmonization of the laws with the valid standards.

In the case against the accused **J. M. and others**, **Podgorica Higher Court, K.br.2/11**,[41] the Inspector of the Police Directorate Regional Unit – Department for the fight against drugs and smuggling testified at the main hearing, during the continuation of evidence presenting procedure. Namely, he had been the one to interrogate one of the accused, i.e. R. B., in the presence of his ex officio defence counsel. The witness underlined that he had not interrogated the accused S. M., that in the R.B. interrogation minutes had a technical error in the sense that the interrogation had been conducted by the inspector with the similar name, rather with only one letter difference, and that the person with such name, according to the information he had, was not employed by the Police Directorate Regional Unit – Department for the fight against drugs and smuggling. The accused S. M. objected to the witness statement, in the sense that he had interrogated him in the office. The accused R. B. denied his presence in then detention premises, as the minutes read. Instead he said that he had spent two hours in the office and that during the interrogation the inspector never communicated him his rights. The court passed the decision to exclude from the case file the minutes on the interrogation of R. B. as legally invalid evidence and to inspect the notebook which was proposed as a piece of evidence by R. B.

The accused **B. Z., Podgorica Higher Court, K.br.145/11,**[42] submitted a request to the court for the correction of the minutes from the main hearing held on 20th December 2011 in relation to the statement of the witness V. R. The agent of the damaged family considers that due to the fact that 2 months have elapsed, it cannot be precisely determined what the witness V. R. had stated in his statement at the previous main hearing, without it being entered into the minutes. After a recess, the court decided to sustain the request of the accused and of the defence and decided to subpoena the witness V.R. for the extended evidence presenting procedure in order for the same to specify the context and the course of events with regards to his statement. The defence counsel objected to the lack of technical means – LCDs where all the parties to the proceeding would follow the notes from the main hearing being put into the minutes. The defence counsel having submitted new evidence to the court – copies of the Daily Bulletin of the Police Directorate and three official notes, the agent of the

41 Criminal act; Attempted unauthorized production, possession and circulation of stupefying drugs from the Article 300 paragraph 2 of the PC of MNE - Criminal acts against human health

42 Criminal act: Murder from the Article 143 of the PC of MNE - Criminal acts against life and body

damaged family opposed the presentation of these pieces of evidence, considering that the same had been collected contrary to the CPC. Then, the court decided for the proposed evidence to be obtain through official channels for the continuation of the evidence presenting procedure.

In the case **S. B. and others, Ks.br.1/12**[43]**,** the defence also objected to the validity of the listing of telephone calls obtained with the use of secret surveillance measures, with the explanation that the same had been delivered to the defence in 2 different formats and that it could be seen from them that they were up to 4 years "old", as of the perpetration of the subject criminal act. This should not be the case when one has in mind legal provisions that had been in force at the time of the collection of these pieces of evidence, which imposed the obligation upon the mobile operators to keep such data for the period of 2 years at the most.

In the case **I. R., Podgorica Higher Court, K.br.28/12,**[44] the defence stated that it had knowledge of the Panel Chair, outside the main hearing, ordering the investigating action of expert examination of the device with a SIM card, of "BMW" make, which action had not been performed during the prosecution led investigation stage nor proposed in the indictment, which the monitoring team was not able to check until the conclusion of the report.

43 Criminal acts: Murder from the Article 143 of the PC of MNE and the Article 143 in relation to the Article 24 of the PC of MNE, Causing general danger from the Article 327, paragraph 1 of the PC of MNE; Extortion from the Article 250, paragraph 1 of the PC of MNE

44 Criminal act: First degree murder from the Article from the Article 144, paragraph 1, item 8 of the PC of MNE Criminal acts against life and body

RIGHT TO INDEPENDENT AND IMPARTIAL COURT

The observation team did not notice direct evidence of illegal influences on the court except in the case R.K. and others, Podgorica Higher Court[45], where several accused were charged with several criminal acts, mainly from the group of criminal acts against office. Prior to the beginning of the main hearing, the defence counsels informed the court that the Constitutional Court of Montenegro had accepted their initiative and annulled the decisions on the extension of detention against certain accused and they insisted on their immediate release. Not elaborating on the justification of the decision of the Constitutional Court, the question is raised how is it possible for the defence counsels of the accused to get hold of the original of the decision prior to it being delivered to the Court of Appeals, whose decision on detention was abolished, or to Podgorica Higher Court. Every communication in such situations goes through first instance court. The main hearing was interrupted and continued on the next day when the criminal panel pronounced detention against the accused for the same reason as before. During the main hearing, the detention was suspended by the Court of Appeals which acted upon the appeal to the decision of the Higher Court. In the meantime, due to the proposal for the exclusion of the presiding judge and the president of Podgorica Higher Court, the hearing was interrupted and continued after the exclusion

45 Criminal acts against office: Abuse of office from the Article 416 paragraph 3 in relation to the paragraph 1 and the Article 416 paragraph 1 of the Penal Code, Abuse of office Abuse of office from the Article 416 paragraph 3 in relation to the paragraph 1of the PC, Abuse of office through offering assistance from the Article 416 paragraph 3 in relation to the paragraph 1 related to the Article 25 of the PC, Abuse of authorities in commerce from the Article 276 paragraph 2 in relation to the paragraph 1 item 5 of the Penal Code, Abuse of office through instigation from the Article 416 paragraph 1 in relation to the Article 24 of the PC , Evasion of taxes and contributions from the Article 264 paragraph 3 in relation to the paragraph 1 of the PC.

The case **D.V. and others, Podgorica Higher Court, K.br.7/10,**[48] leaves the space for suspicion in the independent and impartial court. It should be particularly stressed that the experts sits in the courtroom, next to the prosecutor, all the time during several hearings. The defence was pointing out to this, however, the explanation of the Court President was that he had to be there in order to be able to respond to the questions and clarify the finding and the opinion given. However, the expert was present in the courtroom even when other pieces of evidence were being presented, and on 30th November 2011 he was present when the witness D. G. gave his testimony, where his presence had not been necessary. All this can raise the issue of the impartiality of the court in the specific case.

ACCESS TO COURT

First of all, it should be underlined that the condition of the buildings and the premises in which trials are held is generally dissatisfying. In Bijelo Polje and Podgorica, the higher courts share the buildings with other courts (in Bijelo Polje with the Basic Court, in Podgorica with the Court of Appeals and the Supreme Court). The trials are mostly held in the offices which are inappropriate and constitute a special form of the restriction of publicity. The majority of courts have no connection with the detention facilities, so that the detainees are brought and conducted through the building accompanied by prison guards and the police. The courts become crowded because, besides the participants to the proceedings there are also other persons present. The behaviour of the court personnel that provide security to the building and control the present persons is inconsistent and varies from the partial absence of the control (for instance, in Bijelo Polje the doormen very often do not ask any question) to very strict control (for instance, in Podgorica Higher Court), at which it should be mentioned that in the communication with the parties they behave professionally. Not in a single court are there special premises for the witnesses and the premises for the persons brought before the court, even if they exist are small and inappropriate. This creates the opportunity for the accused and the witnesses to communicate in the hall, which might raise the issue of the validity of their subsequent testimonies. In certain court buildings the problems of the functionality of the restrooms for the parties, which is unacceptable in the places where great number of people assemble. The infrastructure is particularly bad in Podgorica Basic Courts, or at least particularly visible, since this is the court with the largest number of cases, and by that with the largest number of parties. A number of courtrooms were turned into offices, and a number of offices in which trials are held are inappropriate. Relatively adequate are the courtrooms in Bijelo Polje and Podgorica, but it must be emphasized that, with the exception of Podgorica Higher Court, the maintenance of the courtroom is inadequate. In all the courts, where trials are held in the offices, the conditions are totally inadequate: the participants are squeezed, the agents and the defence counsels hold case files in their laps, the atmosphere is stuffy. The trial schedule is announced in all the courts, either weekly or the monthly one. There are no checkrooms in the courts which creates additional problems, especially in winter conditions in the courts in Bijelo Polje and Rožaje. Also, it is very difficult to find parking space. The observation team is aware that the funds are scarce and that the courts are not to be blamed

48 Criminal act: Abuse of office from the Article 416 paragraph 3 of the PC of MNE (Criminal acts against office)

proposal was rejected. It must be said that all the happenings related to the extension and the suspension of the detention leave an unpleasant picture on the behaviour of public authorities in an exceptionally complex and socially interesting case. The extension of the detention by the Higher Court and its new suspension by the Court of Appeals can lead to the suspicion that the courts had been under influence, especially the Court of Appeals which passes two different decisions on the basis of the completely identical factual situation.

In the case **R.K. and others, Podgorica Higher Court,** there was a discussion as to whether the statements of the participants in the procedure are faithfully recorded into the minutes, there was also a discussion between the prosecutor and the defence as to whether certain evidence can be presented to the accused on the occasion of the interrogation, and there was loud commenting on the questions and answers, interruptions, numerous warnings. The Article 321 of the CPC clearly prescribes the authorities and the duties of the Panel Chair, or presiding judge in the case of the violation of procedural discipline: warning, fine, removal, and it is not clear why the court failed to apply the provisions of this article. One of the defence counsel stated that he was not afraid of the warning pronounced by the court after which, according to the opinion of the observation team, he should have been removed from the courtroom immediately with the denial of the right to reappear in the proceeding, since such a statement means that he will continue to behave in this way, which proved to be so during the proceeding but also without consequences.

In the case **M. G. and others, Podgorica Higher Court - Special Department for Criminal Acts of Organized Crime, Corruption and War Crimes, Ks.br.08/09,**[46] on the occasion of the examination of the witness G., the Secretary to the Financial Director, the defence counsel of the accused T., objected to the questions posed by the Panel Chair, which questions concerned the regime of passing and dispatching decisions covered by the indictment. This is because the defence counsel considered that the witness, although duly acquainted with the rules and duties of the witnesses, and the Article 111 of the CPC, by responding to the questions asked, could have exposed herself to possible criminal responsibility, with the fact that she is legally incompetent, and that she could not assess if she should refrain from responding to the question or not. Following the objection of the defence counsel, the Panel Chair withdrew the question and instructed the witness once again not to testify on certain circumstances and on the conditions under which she can do it. It is important to emphasize that in relation to the above the prosecutor placed no objection.

In the case **V.L. and others, Podgorica Higher Court, K.br.206/11**,[47] the defence pointed out to the decision of the Supreme Court of Montenegro, which acted as the third instance court upon the appeal to the second instance judgement. By the time this report was concluded, the monitoring team was not able to inspect the judgement of the Court of Appeals upon the request for the free access to information.

46 Criminal act: Abuse of office from the Article 416 of the PC of MNE - Criminal acts against office, against: M. G., Executive director of AD L. B., I. T. Financial director, Z. O., Trade Union President L. B., A. L., Chief Road Transport Dispatching Officer, S. J., cashier, M. M., Cashier operations officer, Z. V., Officer for the calculations of wages and cashier operations, R. P., Head of financial operations service and payment collection officer in financial sector, Z. N., applications designer, D. P., Head of the financial working group, R. D., cashier

47 Criminal act: First degree murder from the Article 30 of the PC of the FRY – Criminal acts against life and body

for that, at least not only them. However, all this leaves a picture of unprofessionalism and certainly does not contribute to the reputation of the courts. Besides, this raises the issue of the access to court has certainly been hindered.

The main hearing in the case S. I. and others, Podgorica Basic Court,[49] was conducted in the office which could not accommodate all the participants in the proceeding, so that one prison officer and one witness had to stand during the main hearing. It was not possible to ensure adequate space since construction works were under way in the big courtroom.

The main hearing in the case **V.N. Podgorica Basic Court,**[50] due to the large number of the participants, was held in the large courtroom which does not have air conditioning, so that the conditions for work were exceptionally difficult, practically at the limit of the possible, due to high temperature in the room. The objections to the conditions of the long lasting work were coming both from the lawyers and the judge himself, who asked the observer to note down the conditions of work. During the main hearing, upon the insisting of the judge, water was served to the parties to the proceeding in order for the conditions to be made bearable to a certain extent. However, it was not allowed for the courtroom door to be kept open, as was requested by the minute keeper who was obviously feeling bad.

Immediately before the beginning of the scheduled main hearing in the case **B.I. and others, Podgorica Higher Court,**[51] the observer tried to get the information from the security officer on the scheduled trials. He was told that he could not have a look into the list of the hearings scheduled till the end of that month (in previous cases this list had been accessible to the observers), with the explanation that such information get be obtained solely for a specific date.

In the first stage of the monitoring process, there was the issue of the architectural barriers in all Montenegrin courts, but during the second stage there was the improvement in the way that two courts, one of which was not subject to monitoring – Nikšić Basic Court, during the month of July secured the access ramp for the persons with moving disabilities, and Podgorica Basic Court has been complying with this legal provision since September this year. It should be emphasized that this shortcoming should be eliminated in all other courts by 2013, pursuant to the provision of the Article 165 of the Law on Spatial Planning and Building of Structures.

RIGHT TO THE USE OF LANGUAGE ONE UNDERSTANDS

The observation team did not notice the violation of this right in the first part of the monitoring report. However, in the second part, in the case **M.P. Podgorica Higher Court,**[52] the defence objected to the testimony of the witness F., asking for the minutes on the examination of that witness to be removed from the case file held with the investigating judge of Bar Basic Court, Ki.br. 125/99, as well as the minutes from the main hearing before Bar Basic Court as legally invalid. The minutes should be removed especially when one has in mind the fact that the statement given at the main hearing was essentially different from the previously given statement, and the fact that while

49 Criminal act: Torture from the Article 167 paragraph 3 in relation to the paragraph 2 of the PC of MNE
50 Criminal act: Abuse of office from the Article 416 paragraph 5 of the PC of MNE
51 Criminal act: Robbery from the Article 242, paragraph 4 of the PC of MNE
52 The accused: G. A., B. S., B. I., B. R., N. J., Đ. G., R. H.

giving previous statements, the witness had not been acquainted with the right to giving his statement in the language he understands. Instead, he gave them in the official language of the court.

PROCEDURAL DISCIPLINE

In the case **S.B. and others, Ks.br.1/12**, due to the violation of the procedural discipline, by interrupting without the approval of the court, the defence counsel had a warning pronounced to the record. Due to the violation of the procedural discipline, in the same case, and following the verbal warning of the Panel Chair, the members of the late victim were removed from the courtroom.

During the main hearing in the case **V.N. Podgorica Basic Court,**[53] the judge was carefully paying attention to the procedural discipline of the parties and warned on several occasions both the witness of the victim, and the defence counsels of the accused and the accused not to communicate directly, but through the court, and he also warned the prosecutor, the defence counsels and the accused not to ask suggestive questions.

BEHAVIOUR OF THE COURT AND OF COURT PERSONNEL[54]

During the monitoring process, it was noticed that outside the courtroom or the office in which trials are held behave within the limits of professionalism and observe the reputation of the court. In principle, the judges do not communicate with the parties in the court corridors, which we consider positive. However, in one number of courts, where trials are held in small offices, there is often *ex parte* communication between the court and the parties, as well as between the parties themselves, which creates the feeling of informality and may have negative impact on the perception of the independence and the impartiality of judiciary. Therefore, priority should be put on the construction of the necessary number of courtrooms capable of accommodating the interested public.

53 Criminal act: Abuse of office from the Article 416 paragraph 5 of the PC of MNE

54 In this part we do not talk about the behaviour of judges during trials, but only in relation to the behaviour in the court buildings.

INFORMATION ON RIGHTS

At the information points in the courts there is sufficient number of brochures for victims and the witnesses of criminal acts, by means of which the same can familiarize themselves with their rights and obligations.

The Access to Information Guide in the possession of Podgorica basic Court is also available, as well as other information in its possession, on the access to information procedure, on the manner of exercising the right to access to information, on resolving upon requests and on legal protection, as well as the information on the costs of procedures.

The brochure on avoiding criminal procedure offers the information to the interested parties as to how to come to the conviction on avoiding criminal procedure in a quick and straightforward manner.

Giving the information on the protection of rights to trial within reasonable time, the brochure clarifies this right, when and under which conditions the complaint is lodged for just satisfaction, deliberating upon the same, the information on constitutional complaint and on the application to the European Court of Human rights.

At the information points in Podgorica Basic Court, the brochure is available on the manner of exercising the right to free legal aid, by which the interested persons are informed about who free legal aid service providers are, under which conditions and in which procedure free legal aid services are approved, in line with the Law on Free Legal Aid.

However, LCDs besides the schedule of trials and hearings, broadcast also the following content: information on the location of the free legal service; information on the brochures available at the info-points; invitation for the presentation of personal view through the suggestion flyer; contact information and working hours of the court and of the court registry.

The court informs the parties and other participants in the procedure on all relevant issues and it makes available to the same the information of various content, like the letters of the Bar Association of Montenegro and similar.

FINAL REMARKS OF THE OBSERVATION TEAM

Through the description of the described observed cases, the observation team has already stated certain remarks concerning the observance of the right to fair trial in these proceedings. Taking into consideration the fact that the monitoring process was being carried out solely for the period from the issuance of the indictment to the termination of the main hearing, and that in the observed cases no enforceable judgements have been passed, the monitoring team will continue to collect information on the appeals and second instance decisions and to inform the public on the relevant facts. In this part, we will point out to certain violations of the right to fair trial, but also to certain tendencies which should be prevented or avoided according to our view.

PRINCIPLE OF PUBLICITY

In relation to the publicity of the proceedings, the observation team noticed no violations. The courts observe the principle of publicity of the main hearing to the extent spatial capacities enable it. It is obvious that the courts have got the problem of spatial capacities in their courtrooms. The number of courtrooms is insufficient and therefore the main hearings are sometimes held in the judges' offices. This problem impacts in certain ways the restriction of the presence of public but also delay in case scheduling, i.e. paying attention to the days when courtrooms are free. In such a situation, the principle of publicity of the main hearing is restricted in some cases despite the fact that the judges try hard to enable the access to the largest possible number of interested persons.

RIGHT TO TRAIL WITHIN REASONABLE TIME

The courts schedule the main hearings within reasonable deadlines, pursuant to the CPC. However, the main hearings are often adjourned due to the lack of discipline of the parties and of the defence.

During the monitoring process it was noticed that the main hearing was adjourned in one case due to the "official busyness" of one of the defence counsels which, according to our opinion is unacceptable, especially in

the cases with several accused and several defence counsels.

The hearing in the case C. N. and others, Kotor Basic Court[55], was adjourned because of the busyness of the defence counsel, i.e. because of his attending his political party congress. Such adjournment, according to the opinion of the monitoring team, is unacceptable. Namely, if the court wants to be impartial, it should then accept every such request, which would mean that political party meetings have priority over the scheduling of trials.

We point out to serious violation of the right to trial within reasonable time, since the judgement for the criminal act of theft was passed because of the absolute statute of limitation which is 10 years. The fact that the procedure could not be terminated within such a long time points out to the irresponsible work of all public authorities that had taken part in the proceeding.

In the second part of the monitoring process, the main hearing was not held because procedural assumptions had not been met, i.e. because the Police Directorate had failed to act upon the order for the forceful bringing of the accused before the court, and because the court had not been informed on the reasons for inaction, thus the court had had to send urgencies in order for the order to be followed. The court is often not informed on the reasons for the failure to follow the order for the bringing before the court – (statistics-Andrej). It was noticed in several cases that the defence counsels had failed to come to the main hearing despite having been duly notified. There were attempts to influence this phenomenon before the beginning of the monitoring, by pronouncing big fines, but this phenomenon still exists to a certain extent. In a large number of cases the witnesses in criminal proceedings fail to appear before the court too despite being duly subpoenaed to testify at the main hearing or notified at the previous hearing. This speaks about the contempt and high degree of irresponsibility which could be overcome by strict sanctioning of all those who do not follow the order, or court subpoena, without having a valid explanation for that.

It is noticeable that in relation to the beginning of the monitoring, in its final stage, the courts issue the order for the forceful bringing before the court immediately when conditions are met, no matter of the capacity they participate in the proceedings.

In one part of the observation period, certain number of the main hearings was not held because of the strike in the courts. The reason for the strike was very bad material situation of the court administration. Throughout the strike, the work in the courts was organized for urgent cases.

During the observation period, certain number of main hearings was not held due to the absence of the accused, despite having been duly notified on the day and the hour of the holding of the same, thus due to the lack of procedural assumptions the main hearing was adjourned. In some cases, after the accused are instructed by the court on their rights, amongst other things also that they may appoint engage defence counsels, the accused then request the adjournment of the main hearing, considering that they need defence counsels. The court always grants such requests of the accused and adjourns the hearing, with the warning that the subsequent

55 Criminal acts against office: Criminal act: Unauthorized use from the Article 421 of the PC and Criminal act: Embezzlement from the Article 244 paragraph 3 in relation to the paragraph 1 of the PC of MNE

main hearing will be held and that they are to appoint defence counsels within the specified deadline.

Sometimes the main hearing gets adjourned for the absence of court experts, who duly inform the court of their inability to attend the main hearing at the scheduled time due to some professional duties.

The defence counsels of the accused in the judicial proceedings requested the adjournment in several monitored cases, mostly due to the obligations in other courts, at other main hearings, which requests of the defence the court mostly accepted. Also, there was a situation where the main hearing was adjourned since neither the accused nor the victims appeared at the main hearing, and in the case file there was no evidence on regular delivery. In several cases (how many) the defence counsels were fined for the failure to appear at the main hearings with the amount of up to € 500,00. In some of these cases the defence counsels duly notified the court of their inability to appear at the scheduled time due to other main hearings and they submitted the proofs of that, however the court pronounced fines to them.

All these reasons, which are sometimes contributed by the accused themselves, impact the total of their rights to trial within reasonable time. In a large number of cases there are frequent unjustified adjournments, i.e. the situations that the hearings are adjourned due to the absence of the parties, the defence counsels, even the judges without any sanction whatsoever. It cannot be accepted that someone should forget his/her trials, that the defence counsels should not appear due to their obligations in other cases, or due to their obligations towards political parties. Therefore, the court must adjourn the hearing in case procedural assumptions are not met for the holding of the same, but appropriate measures must be undertaken for such behaviour to be sanctioned. Here we point out again to the case from Podgorica Basic Court which has been going on for more than eight years so far, as well as the from the same court in which the proceeding has been terminated due to the statute of limitation, as well as the case from the Higher Court in which the decision in the first instance has not been passed for the full 16 years. Such behaviour automatically leads to the violation of the right to trial within reasonable time and if the courts do not act in accordance with the legal authorities, the situation is bound to worsen. Every participant in the proceeding, especially in the proceedings with several accused, victims, defence counsels and witnesses, must be aware that the failure to appear generates huge expenses to say the least and that they will be strictly sanctioned if unjustifiably absent.

PRESUMPTION OF INNOCENCE

The courts observe the presumption of innocence.

In one case the court expert started assessing the evidence and stated his view towards the accused, by which he outstepped the rules of the profession and violated the presumption of innocence in criminal procedure. However, even in the second part of the report by the media the presumption of innocence was not always observed. Such behaviour is unacceptable for any participant in the proceeding, and when this is done by the court expert, who by means of his finding and opinion, based solely on the rules

of profession, should "assist" the court, in order for the factual situation to be properly established, who indisputably violates the presumption of innocence, it is unacceptable. Due to the abovementioned, it is necessary to point out to the media to the obligation to observe the presumption of innocence, and especially to emphasize that a journalist must be familiar with the standards in the area he/she reports about.

EQUALITY OF PARTIES TO THE PROCEEDING – EQUALITY OF ARMS

The equality of parties to the criminal proceeding is the right which was mainly observed in the second part of the observed period by the court which warned the parties to propose evidence at the main hearing. However, there were other situations, too.

In case one party had the possibility denied to present the viewpoint and claims before the court and to challenge the views and the claims of the other side, it comes to the violation of the principle of equality in a direct way, raising the issue of the procedural equality of the parties. **The parties to the dispute or the accused for a criminal act must be put in a considerably worse position in relation to the opposite party.** Pursuant to the Article 282 of the CPC, the prosecutor was obliged to inform the parties to the proceeding in a favourable way about this examination in order for the same to be able to participate and pose questions.

The defence counsels insisted on entering the questions into the minutes, which has its logic behind: how will the appeal state that the court allowed the answer to a forbidden question, if there is no such question in the minutes (main hearing from 19th July 2011).

In the case **S.K., Podgorica Higher Court, K.br.86/11,**[56] the ballistic expert giving his statement on the firearms he had examined (4 firearms and 8 cartridges taken from the crime scene), could not give precise information of the distance from which shots had been fired, their trajectories, and the link between the place where shots had been fired from and the place where cartridges had been found. Because of that, the court ordered additional ballistic expertize, on the basis of the overall case file which will be delivered to the expert. Also, it was decided that graphology and chemistry experts be invited to the main hearing, in order to be able to respond to the questions of the prosecution and the defence. The main hearing was adjourned because the **expert** had not prepared a written form of the finding and the opinion, but dictated the same into the minutes instead upon the request of the prosecutor. The minutes in this case contains additional finding and the opinion of the court expert, thus it is necessary for the parties to the proceeding to become familiar with by producing Xerox copies of the minutes from the main hearing and to give their opinion on the same.

In the case **D.V. and others, Podgorica Higher Court, K.br.7/10,**[57] the defence underlined on several occasions and submitted to the court the evidence that on the occasion of the seizure of the documentation by the police there had been serious omissions, since there was no list of the subject documentation, thus it is not known if all of the documents had actually existed, which could in turn create the possibility for the abuse of the same. The accused D.V. stated that three persons had

56 Criminal act: Murder from the Article 143 of the PC of MNE - Criminal acts against life and body

57 Criminal act: Abuse of office from the Article 416 paragraph 3 of the PC of MNE (Criminal acts against office)

been in the possession of the system access code for the approval and the withdrawal of money, and not only her, and she asked from the court to see into it. However, the court made no decision about it. In this way, by not checking the allegations of the accused and by the failure of the court to give its opinion on the same, the parties to the proceeding can be brought to an unequal position.

In relation to the previous item, particular attention should be paid to the fact that there are constant problems of the defence to make copies of the case file. In most courts special requests need to be lodged for making Xerox copies of the case file, and then it takes time to make the copies, which is particularly difficult (and there are certain costs for the party involved) in complex cases where there are numerous documents. Here, the equality of arms is equally violated as the right to access the court. The same applies for making copies of the minutes, both the one from the investigation and the one from then main hearing. If the law provides for the costs of the procedure to be covered solely by a convicted person, within certain part, it is not clear why he/she has to pay for the making of the copies of the minutes and of other writs that are important for the defence. In this way the right to the equality of arms is violated, as well as the one of the efficient defence, but it also raises the issue of the presumption of innocence. We think that the state does not have the right to subject someone to criminal proceeding, to consider him/her innocent until proven differently, and yet to ask from him/her to bear the expenses for what he/she is entitled to.

RIGHT TO EFFICIENT DEFENCE

The right to defence is observed by the courts. The court leaves enough time for the defence to become familiar with the content of the case file. Therefore, there is a question whether a defence counsel, or a prosecutor, the accused and the victim can intervene, after a question is posed and before answering the same, in the sense that the answer is prohibited. According to our opinion, this can be allowed: it is not strictly forbidden, and the authority of the Panel Chair to decide on that is not challenged. The monitoring team bases its opinion on the principle of equality, which offers the possibility for a party to a criminal proceeding to have the possibility in all stages of the proceeding and in appropriate procedural forms to express his/her views, both in relation to the criminal case, and in relation to all other issues in the criminal proceeding, especially with regards to formally expressed views of the opposing party. Therefore, the court has got the duty to enable for the criminal matter to be deliberated upon, in which way basic purpose is achieved of the criminal procedure, i.e. establishing all relevant facts, although the court is to give the final conclusion.

The Article 350 authorizes the Panel Chair to forbid the answer to a forbidden question. The quality of the defence is directly linked to the observance of the right to fair trial. We point out to these circumstances, both for the reason of the right to fair trial which comprises the effective defence, and for the reason of the unprofessional behaviour of the participants to the proceeding which contributes to the diminishing of the dignity and reputation of the court. For the above reasons, the defence requested from the Panel Chair to be given the right to object in the sense of a forbidden question before the witness answers such question, since otherwise the function of objection is rendered senseless invoking the

Article 318 paragraph 2 of the CPC, where the parties have the right to objection during the presentation of evidence. The court has got the duty to accept and present both the evidence against certain person, as a possible perpetrator of a criminal act, and the one in favour of the same person, since the court must be governed by the principle of substantive truth. The defence counsels of the accused, as well as the accused themselves use the right to pose questions to court experts and to object to their findings and opinions. The court left enough time for the accused in criminal proceedings to prepare their defence.

The issue of the assessment of the evidence and judicial discretion must be mutually connected. The court passed the decision which rejects the stated proposal of the defence for the reason that it concerns the evidence obtained contrary to the provisions of the CPC, and as such is not binding to the court. Thus, the court, set aside one part of the case file, i.e. the evidence proposed by the defence as legally invalid evidence, which had been obtained by breaching the envisaged legislative procedure. We would like to remind that the telephone listings may not have the power of evidence without the content and that judicial decision may not be based on them (see the *Case Khan v. United Kingdom, 12th May 2000, the part related to the Article 6 of the ECHR).*

The courts must build the attitude of equal treatment of the prosecution and the defence, not only through the application of the principle of equality (the defence is entitled to propose evidence, pose questions and object to statements), but also in all forms and actions through which the right to defence is to be exercised.

In several cases it was concluded that the ex officio defence counsels come to trials unprepared and that they do not treat the defenders conscientiously and with a due attention. Such behaviour should be sanctioned by the Bar Association once notified by the courts.

RIGHT TO INDEPENDENT AND IMPARTIAL COURT

In principle, it can be said that the right to independent and impartial court is observed, of course within the existing legal framework. The court allowed itself entering into discussion with the defence counsels and explaining to the accused why certain decision are passed, which indicates the insecurity in conducting the proceedings and in knowing the evidence in the case. It is to be assumed that the court did that in good faith, but such behaviour is unacceptable, the more so because the presiding judge can abolish the detention at any time. The cases like M.Š. and others, Bijelo Polje Higher Court, do not contribute to the affirmation of the independent and impartial court. The statements of the Panel Chair are of such character that they put a question mark on the entire proceeding both for the reason of the failure to observe the presumption of innocence (Article 3 of the CPC), and from the aspect of the impartiality, or the principle of veracity and fairness (Article 16 of the CPC). Namely, the Panel Chair clearly indicated that he believed in the guilt of the accused even before the end of the proceeding. It concerns two mutually connected statements, so that his attitude created beforehand cannot be questioned. Such a statement must have been objected by the prosecutor and the defence counsels by at least insisting on inserting

such a statement into the minutes. We think that it should not be particularly important to explain that it was their duty. Allowing such behaviour might cause either the suspicion into the impartiality or the suspicion into the security in relation to the knowledge of the norms of criminal procedure. The application of the rules of procedural discipline is the sole responsibility of the presiding judge and he/she is obliged to ensure for this discipline to be observed, even at the expense of the removal of the participants in the procedure, or by undertaking the appropriate measures.

It was noticed during the monitoring process that the courts communicate and explain to the parties and to the defence counsels verbally, and when this is envisaged also by means of a special decision, the decisions passed during the main hearing, in line with the CPC. The party dissatisfied with the decision uses the available legal remedies.

At the beginning of the monitoring process there was a frequent practice of the prosecutors and heir deputies entering the judges' offices, during the trial and prior to being called by the court. However, it was also noticed during the main hearing in the courtroom that the prosecutors and their deputies would enter the offices of the presiding judges prior to the hearing. The lawyers-defence counsels very rarely enter the judges' offices. All this can affect the rights of the accused, who might develop suspicion into the impartiality and the independence of the court, since after the issuance of the indictment, and after it has become effective-confirmed, the prosecutor is a party to the proceeding and needs to have the same treatment as the other party. In the final stage of the monitoring process previously described practice was quite rare.

Both judges and judicial staff must develop completely professional behaviour and communicate with the parties solely in accordance with the regulations. The communication between the court and the parties must be carried out in line with the legal terminology and the authorities of the court. Any kind of intimate and comfortable behaviour must be avoided. The reasons for that are obvious.

ACCESS TO COURT

As one of the principles of the right to fair trial, the access to court in current situation in Montenegro is hindered. Financial resources are the main reason for that, but despite the fact that they are scarce, must not affect the protection of this Convention right. Particularly evident is the lack of spatial capacities in most courts. Technical equipment is at a somewhat better level, but it still needs improvement.

Bad material situation of the employees of judicial administration lead to the strike in the courts at the end of the last and the beginning of this year, but the work on urgent cases had been ensured.

It is necessary to eliminate architectural barriers for the persons with disabilities. During summer, the building of Podgorica Basic Court has been partly reconstructed, the access ramp has been built, but this is still not enough in order for one to conclude that the situation has been significantly improved.

Finally, we consider that the infrastructural conditions do not meet the needs, neither of the courts nor of the parties.

RIGHT TO USE THE LANGUAGE ONE UNDERSTANDS

The courts observe the right to use one's language for all the participants in a criminal procedure.

PROCEDURAL DISCIPLINE

For the purpose of maintaining the procedural discipline, the court reacts in accordance with the CPC when there is a need for that.

During the main hearings, the judges were paying close attention to the procedural disciplines of the parties and on several occasions they warned both the witnesses and the victims, as well as the defence counsels and the accused not to communicate directly, but through the court, and also the prosecutor, the defence counsel and the accused not to ask suggestive questions.

The main hearing was interrupted on several occasions in order for the victims and the witnesses to switch off their cell phones. The Panel Chair warned the public, which followed the main hearing – audience, for talking among themselves during the trial. Due to the behaviour of the parties to the proceeding, and their defence counsels, the court pronounced several warnings, which means that it paid attention to the procedural discipline, and one person from the audience was told to leave the main hearing, after having been warned since the same person had not behaved in accordance with the Code at the preceding hearing.

Special remarks

In a series of cases in which certain violations of the CPC were pointed out, there is the impression that a large number of its provisions are interpreted as a formality. In the commentaries to these cases this was not mentioned for the reason that the proceeding was on-going and because these concerned solely the allegations of the defence. Likewise, in certain cases, the accused stressed that they had been under pressure and exposed to police threats while giving their statements in the preceding procedure. This was also not mentioned in the commentaries to the cases, since it was decided for these allegations to be checked. However, irrespective of the fact whether the claims in these cases are true, we think that there is the ingrained understanding that the first statement of the accused, especially if it charges him/her, is true and that every further alteration is the attempt to avoid criminal responsibility. It is natural that there are such attempts too, but we think that it does not relieve the court from the responsibility to check all these circumstances in the best possible way and after such checks to deliberate on the validity of certain statements. One must start from the fact that the accused is entitled to defend himself/herself in the way he/she deems most appropriate, and that the reasons for the alteration of certain claims can be different. Of course we do not insist here on accepting solely the statements from the main hearing, but when deciding about what statement to accept, we consider that all the circumstances are to be taken into account, without prejudices and decision to be made.

With regards to the representation of indictments by special prosecutors, we remind that special attention should be paid as to whether special prosecutors are equally attentive when it comes to establishing the facts that go in favour of the accused, as they do in relation to the facts that the accused is charged with. The Article 44 paragraph of the CPC, prescribes this duty of the state prosecutor, in disagreement with the double role of the state prosecutor in criminal procedure, where he/she appears not only as a party but also as a public authority with the task to represent public interests. In the light of the new role of the state prosecutor in criminal procedure, we consider as unacceptable the noticed practice of consultations between the state prosecutors and the judges, before and after the main hearing. Following the model of the case law from the comparative law, noticed at the example of Bosnia and Herzegovina, we think that the state prosecutors should attend the main hearing upon the call up of the parties, which would contribute to the

affirmation of the right to the equality of the parties in criminal proceedings.

It was noticed in certain number of cases that the public authorities, especially the Police Directorate, do not follow the court orders. This is related both to the failure to act upon the orders for the bringing before the court, as well as to the lack of explanation as to why an order has not been followed. Since there is no information that an adequate analysis of such relationship has been done, it is hard to come to a conclusion as to why this is so. It is possible that the reason is the lack of personnel, or that the number of people to be forcefully brought before the court is large, or indeed that the delivery services do not operate properly, and there are also possible financial reasons, etc. We would like to emphasize what we consider important from the aspect of the position of the courts. Namely, every public authority, even the Police, is obliged to follow court orders and has no right to evaluate or select the orders to be followed, or not. If there are objective circumstances for some order not to be followed, then the court should be timely notified of such circumstances. The failure to act and the failure to notify indicate insufficient level of respect towards the courts and their requests. Therefore, if the court is to be dependent of the willingness of public authorities to follow certain order or not, then we cannot talk about independent judiciary. Besides the problem related to the forceful bringing before the court, we point out to the fact that the prosecution and the police, in certain number of cases, which is not too big but it concerns complex and complicated cases, despite several urgencies issued by the court, failed to deliver the evidence to the defence in a timely manner (A.M. Podgorica Higher Court – evidence obtained using secret surveillance measures), at least not in a sufficient number of copies. Everything within the case file must be equally accessible to the parties.

When public trust in the work of the courts is considered, proper functioning of the courts and prosecution constitutes it key element. In order to enjoy the public trust, justice system must be transparent. One part of the efforts on the strengthening of the public trust, besides public opinion polls and continuous training for journalists, can include the on-going evaluations of the results of the work of certain public relation offices. Besides that, it is necessary for these offices to cover prosecution offices too, for the purpose of ensuring proper communication between the prosecution on one side and the public and the media on the other. In that way, public will be timely informed and possible abuses will be prevented related to media reports on judicial proceedings. According to the opinion of the monitoring team, judges and prosecutors should be able to respond to media questions, to the extent this does not raise the issue of their impartiality. What is more, it is necessary to continue with the practice of publishing court decisions due to their foreseeability, which is in accordance with the European Court case law.

*More on conclusions and recommendations in the next edition of Newsletter

Monitoring team:

Vladan Đuranović, head of the team (for the period 01 April-31 September 2011)
Daliborka Knežević, head of the team (for the period 01 October 2011-31 July 2012)
Marija Vuksanović, member
Andrej Popović, member

This report was prepared with the support of the European Union. The content of this report is sole responsibility of the Centre for Democracy and Human Rights (CEDEM) and in no way does it reflect the views of the European Union

CEDEM Activities

PRESS CONFERENCE

Initiative for Adoption of the National Action Plan for Roma and Egyptian Female

Podgorica, 27 July 2012

Roma Initiative Centre (CRINK), women's Roma network "PRVA" and the Centre for Democracy and Human Rights (CEDEM) organized a press conference in Podgorica, on the occasion of presenting the initiative for the adoption of the NAP and the Roma and Egyptian 2012-2016. This activity, carried out by the CRINK and PRVA , with technical assistance and support of CEDEM and PGF partners, represents a part of the project "Initiative for the adoption and implementation of the NAP for the Roma and Egyptian" which is funded by Kvinna till Kvinna-e.

Participation of CEDEM and PGF partners is part of the advocacy component of the project "PGF Montenegro" which is supported by the Open Society Foundation from Budapest, through MtM Program.

The initiative aims to bring together representatives of the Roma and Egyptian communities, government institutions, political parties, NGOs and international institutions and stress the importance of adopting a separate document that would address the problems female Roma and Egyptian face. The proposed document is directed towards the implementation of gender equality and the improvement of general living conditions and the rapid inclusion of Roma and Egyptian in all segments of social life, while preserving their own cultural uniqueness and specificity. The plan is based on international and domestic legal sources, strategies and other development documents pertaining to the issue of gender equality.

PRESS RELEASE

Statement regarding distribution of funds by Fund for Minorities in 2012

Podgorica, 03 September 2012

Centre for Democracy and Human Rights (CEDEM) and U.N.O. Libertask asked the competent authorities to immediately investigate the allegations relating to the allocation of Fund for the protection and enforcement of minority rights' funds for this year. CEDEM and U.N.O. Libertask particularly advocate for the potential liability of director and members of the Fund 'Board of Directors to be determined, based on the fact that they represent public officials who have the responsibility to protect the interests of national and ethnic communities.

PRESS RELEASE

Press release regarding Draft Law on Social Care

Podgorica, 11 September 2012

In the last month, Ministry of Sustainable Development and Tourism organized several public hearings and expert debates on the draft Law on Social Housing, which aims to establish measures for the implementation of public housing policy. In addition, by this law, two decades of normative vacuum in this area, which had a particularly severe effect on the position of marginalized social groups, will be overcome.

PRESS RELEASE

Public statement regarding invasion of privacy and misuse of personal data during the election campaign

Podgorica, 28 September 2012

Civic Alliance (CA) and Centre for Democracy and Human Rights (CEDEM) call upon individuals, political parties, media and CSOs to conduct their activities during the election campaign in accordance with the regulations and documents that protect privacy and personal information. These organizations also call upon relevant state institutions to finally process already identified violations of these regulations.

TRAINING:

Training for young interns and associates in the justice system

Becici, 01 October 2012

Centre for Democracy and Human Rights (CEDEM), with the support of the German Foundation "Konrad Adenauer" and the U.S. Embassy in Podgorica organizes a three-day training for young interns and associates in the justice system, on 1/3 October, in hotel "Tara" in Becici. This activity is part of the multi-year program CEDEM implements with the aim to support capacity building of young staff in judiciary, as well as students from Law faculties, and to provide them with additional knowledge on the application of national legislation and standards of the European Convention on Human Rights and thus contribute to the implementation of legal reform in Montenegro. This year's training was attended by representatives of both basic and high courts, the Appellate Court of Montenegro, Supreme State Prosecution Office, misdemeanor courts, as well as students of the Law Faculty of the University of Montenegro. In thematic sense, the training ivolved criminal and administrative law, through the presentation of national legislation and EU human rights standards. Special attention was devoted to practical work in the form of workshops, aimed at acquiring practical knowledge and skills that may be useful in further work of trainees.

WORKSHOP:

Contribution of civil society to the adoption of the EU standards for Chapters 23 and 24

Bečići, 05 October 2012

Geneva Centre for the Democratic Control of Armed Forces (DCAF) and Centre for Democracy and Human Rights (CEDEM) organized regional workshop "Contribution of civil society to the implementation of the EU acquis in the Western Balkans, with a focus on negotiating Chapter 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security)" on 3 - 5 October in Becici.
The workshop brought together representatives of independent research organizations in the country and the region, as well as local and international experts in fields related to Chapters 23 and 24 Speakers at the workshop were: Jan Marinus Viersma, Fellow at Netherlands Institute Klingendael; Christian killed, Director of Centre for European Policy in Romania; Sinisa Bjekovic, coordinator of Center for Human Rights in Podgorica; Gunev Philip, Analyst at Centre for Study of Democracy in Bulgaria; Mark Gašperlin, Assistant Director of Police of Slovenia, and Gordan Bosanac, Project Coordinator of Centre for Peace Studies in Zagreb.
The workshop aimed at encouraging the participation of civil society in the accession negotiations and facilitate sharing of best practices in research and advocacy in Chapters 23 and 24 CEDEM will closely monitor the process of the negotiations in Chapters 23 and 24, especially in the areas of human rights, judicial and police cooperation in order to contribute to ensuring that negotiation process is democratic and transparent, and to provide policy makers with concrete solutions that may affect the decision-making in these areas. In this context, CEDEM invites the institutions to support active cooperation between all stakeholders in order to effectively implement reforms and further progress in European integration.

PRESS RELEASE:

Press release on electoral process

Podgorica, 19 October 2012

CEDEM
CENTAR ZA DEMOKRATIJU I LJUDSKA PRAVA

Civic Alliance and CEDEM informed the public about their assessment of recently held parliamentary elections in Montenegro. We consider that the elections were held in a democratic atmosphere, with respect for fundamental rights and the recommendations and standards of the OSCE and the Council of Europe, but that there are areas in which the electoral law should be further improved in order to build the necessary confidence in the electoral process. These elections have also shown that some political parties continued to show an unwillingness to accept the standards of developed democracies when it comes to the overall electoral process.

CONFERENCE:

Conference on the Presentation of the Final Trial Monitoring Report

Podgorica, 22 October 2012

Centre for Democracy and Human Rights (CEDEM) and AIRE Centre organized a Conference on the Presentation of the Final Trial Monitoring Report. The Conference was held in the hotel "Ramada" in Podgorica and it brought together more than 60 representatives of the international community, the Government and the Parliament of Montenegro, judiciary and prosecution, as well as representatives of media and non-governmental organizations dealing with democratization and human rights.

The Report represents a key outcome of Justice System Monitoring Project which is funded by the European Union and managed by the Delegation of the European Union to Montenegro. The project aimed to contribute to esta

blishment of an accountable, transparent and efficient justice system which will be able to respond to the needs of citizens.Monitoring report contains key findings and evaluation of the monitoring team CEDEM in relation to respecting the right to a fair trial in criminal proceedings that were subject to monitoring over the past sixteen months, before seven courts in Montenegro. The conclusion is that courts in Montenegro generally respect the right to a fair trial, but that there are certain cases of violation of this right, primarily the right to a trial within the reasonable time, the right to an effective defense and the right of access to court. Also, there were certain cases of media reporting in a manner that prejudice the issue of criminal responsibility and violate the presumption of his innocence of the accused. In a number of cases, unjustified delays of trials which have not always been properly sanctioned were observed. In a significant number of organized crime cases, the defense has challenged the legal sufficiency of evidence. In some courts there has been considerable progress in improving communication with the general public. It was also pointed to the problem of inadequate space, material and technical conditions for the work of the courts which therefore affected the access to certain courts.

Recommendations of CEDEM and AIRE Centre relate to the continuation of legislative and organizational reform of the judiciary, to strengthening the training of judicial personnel on the application of Convention standards, as well as the improvement of the existing legislative framework, through the adoption of the new Law on expert witnesses and the adoption of a special law on confiscation of proceeds of crime. Finally, the conference pointed out the necessity of establishing a broad dialogue within the legal profession as well as the dialogue between the legal profession and other social actors, in order to ensure full implementation of the constitutional framework and international standards and ensure successful ongoing negotiations on the accession of Montenegro to the European Union.

ROUND TABLE:

Round table on the presentation of the report: "Human Rights in Montenegro 2011/2012"

Podgorica, 23 October 2012

Centre for Democracy and Human Rights (CEDEM) organised the round table on the presentation of the report "Human Rights in Montenegro 2011/2012" in hotel Crna Gora. This round table represents the closing activity of the project "Active Monitoring of Human Rights in Montenegro" which is funded by the European Union and managed by the Delegation of the European Union to Montenegro.
The aim of the project is to strengthen the capacity of CSOs to monitor the implementation of human rights policies in Montenegro. The report "Human Rights in Montenegro 2010/2011", which was created in cooperation between project team, human rights monitors and state institutions, contains the results of monitoring of human rights in several areas. The project also contains recommendations which are aimed at improving the state of human rights in Montenegro as well as at bringing it in line with European human rights standards.
The purpose of this round table was to bring together key stakeholders and to foster debate around key findings and recommendations contained in the Report. It also tends to initiate a debate on future challenges of legal reform, in light of the accession negotiations in Chapters 23 and 24. In addition to monitors and organizers, round table was attended by representatives of state institutions responsible for the protection and enforcement of human rights as well as national legal experts and representatives of international organizations in Montenegro.

PUBLICATIONS

Final report on trial monitoring for the period 1 April 2011 - 31 July 2012

Podgorica, 23 October 2012

This report is a key result of the project "Justice System Monitoring" which aims to encourage establishment of an accountable, efficient and transparent justice system in Montenegro. The project is funded by the European Union and managed by the Delegation of the European Union to Montenegro.
On the basis of the fact that function of a trial, which involves application of the law to the specific case, is inherently the cent ral part the justie system reform, monitoring included more than a hundred criminal proceedings conducted before the Montenegrin courts in the past sixteen months. In fact, we opted for criminal legislation since its implementation illustrates almost all the challenges and limitations of the reform process and enables resolving of some of the critical issues that should lead to the fulfilment of visible results in the justice system.

Please download the report here: http://cedem.me/en/publications/viewdownload/48-publikacije-eng/351-final-report-on-trial-monitoring-for-the-period-1-april-2011-31-july-2012.html.

PUBLICATIONS

Human Rights in Montenegro

Podgorica, 26 July 2012

Publication "Human Rights in Montenegro" is the final product within the project "Active Monitoring of Human Rights in Montenegro" supported by the Delegation of the European Union to Montenegro and implemented by Centre for Democracy and Human Rights (CEDEM) in cooperation with AIRE Centre in London.
Project was being implemented since 1 February 2011 until 1 August 2012.

Please download the report here: http://cedem.me/en/publications/viewdownload/48-publikacije-eng/345-publication-human-rights-in-montenegro.html.

International activities of CEDEM's representatives

Nenad Koprivica i Dzenita Brcvak Belgrade (Serbia), 19 September 2012

CEDEM's representatives, Nenad Koprivica and Dzenita Brcvak, held meeting with the representatives of Norwegian Research Council within the project "Security transition: To what extent is the security community being built in the Western Balkans", which is implemented by CEDEM and six other organizations from the region in cooperation with Norwegian Institute for International Relations (NUPI) from Oslo.

Dzenita Brcvak, Belgrade (Serbia), 20 - 22 September 2012

CEDEM's representative, Dženita Brcvak, attended the second Belgrade Security Forum. The central theme of this year's forum was "Dealing with the crisis: challenges for democracy and security." The aim of the Forum was to bring together leading strategic thinkers and policy makers together to discuss ways of resolving various security challenges. Belgrade Security Forum is a regional hub for political dialogue that is intended to meaningfully contribute to the development of security community in the Western Balkans, as well as to the current global and European security and foreign policy debate.

Vladan Simonovic, Strasbourge (France), 06 – 12 October 2012

Vladan Simonovic, President of the CEDEM's Steering Committee, participated at the World Forum for Democracy which was held on 06 - 12 October 2012 in Strasbourg. During the Forum, participants had the opportunity to attend a number of panel discussions on topics that plague current political moment in the world. During the stay in Strasbourg, Montenegrin delegation also visited Montenegrin Mission to the Council of Europe, as well as the European Court of Human Rights, where it was hosted by the Montenegrin judge in working in this court, Mr. Nebojsa Vucinic.

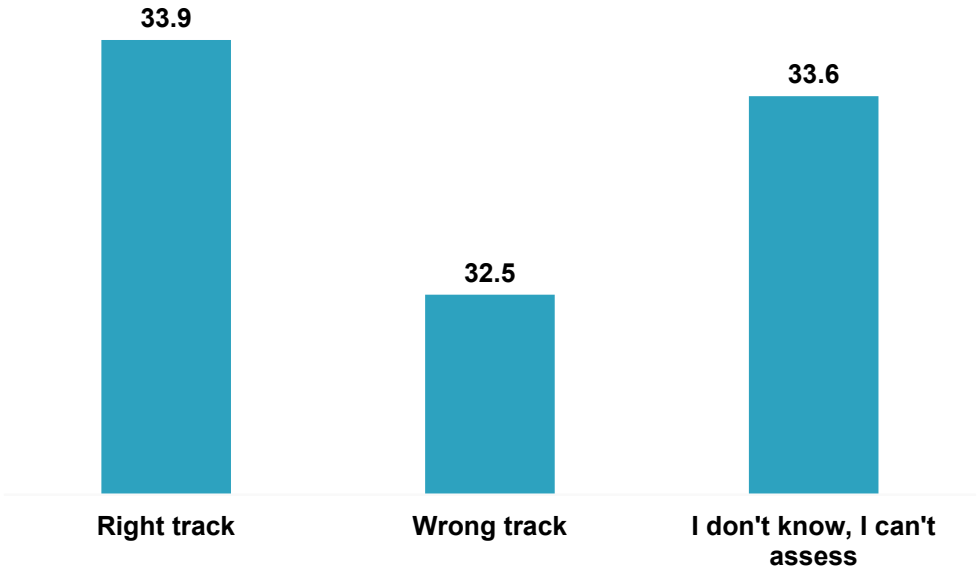
CEDEM - Empirical Research Department

PUBLIC OPINION RESEARCH
September 2012

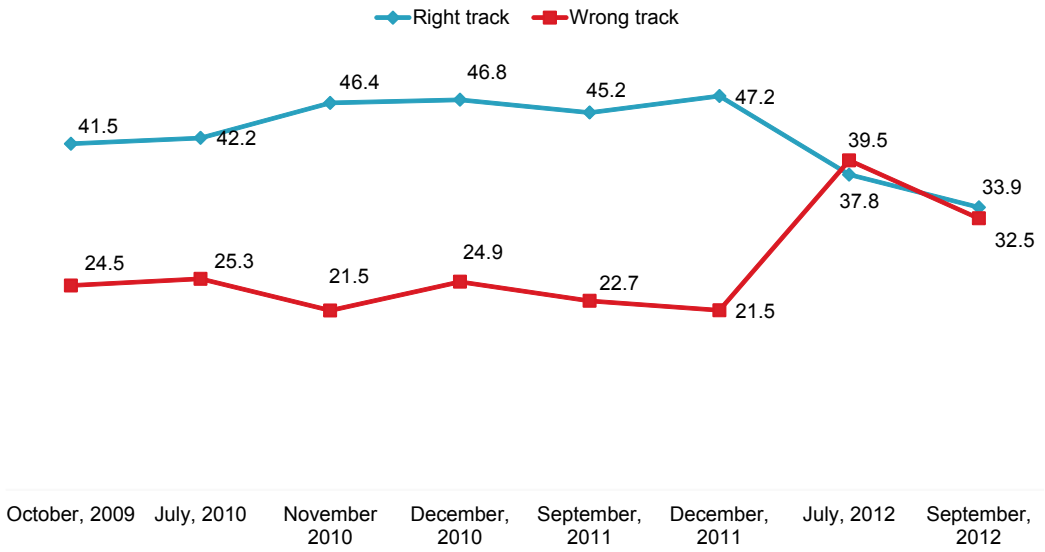
Centre for Democracy and Human Rights (CEDEM) - Department for Empirical Research, has conducted a regular survey of political public opinion in Montenegro.

Main goal of this research is to identify the attitudes of citizens of Montenegro on some key social and political issues, ahead to scheduled parliamentary elections; the specific objective is to continuously monitor trends over a longer period of time - through a standardized research indicators. As a result, a central place in this CEDEM's research, as well as during previous years, have the following indicators: EU and NATO accession, the citizens' trust in state institutions, the Government, political and/or public figures, the rating of political parties. Therefore, the indicators that belong to the corpus of a standard measurement in the domain of public opinion survey in Montenegro. However, this specific research was focused on parliamentary elections in Montenegro which were held on October 14 2012.

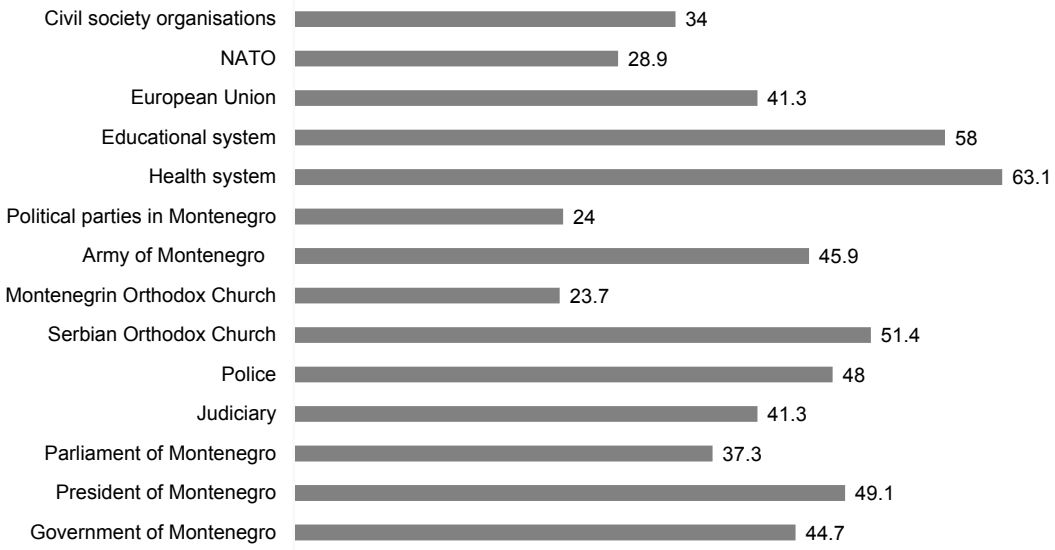
In general, would you say that Montenegro is on the - %



Montenegro is on the: TREND %



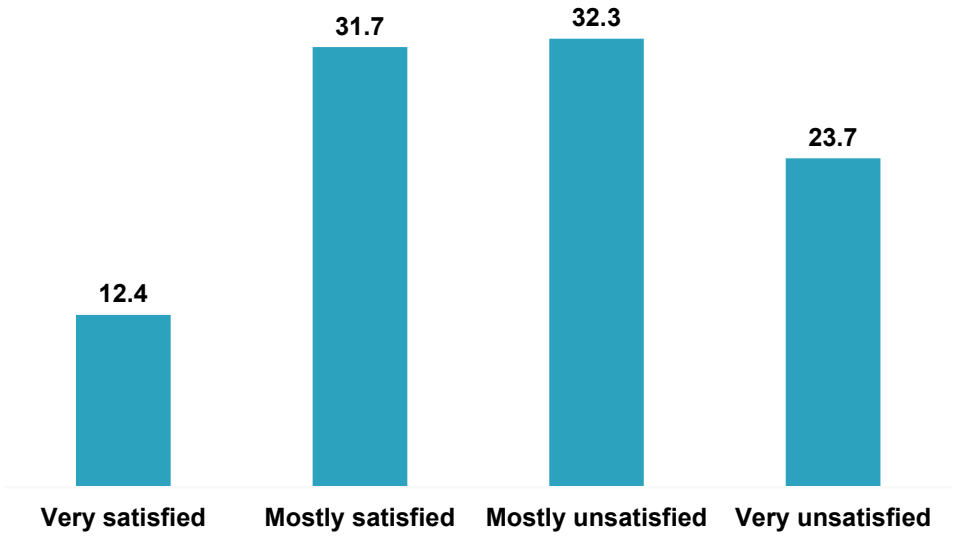
CONFIDENCE IN INSTITUTIONS – SUM high confidence and mostly confidence %



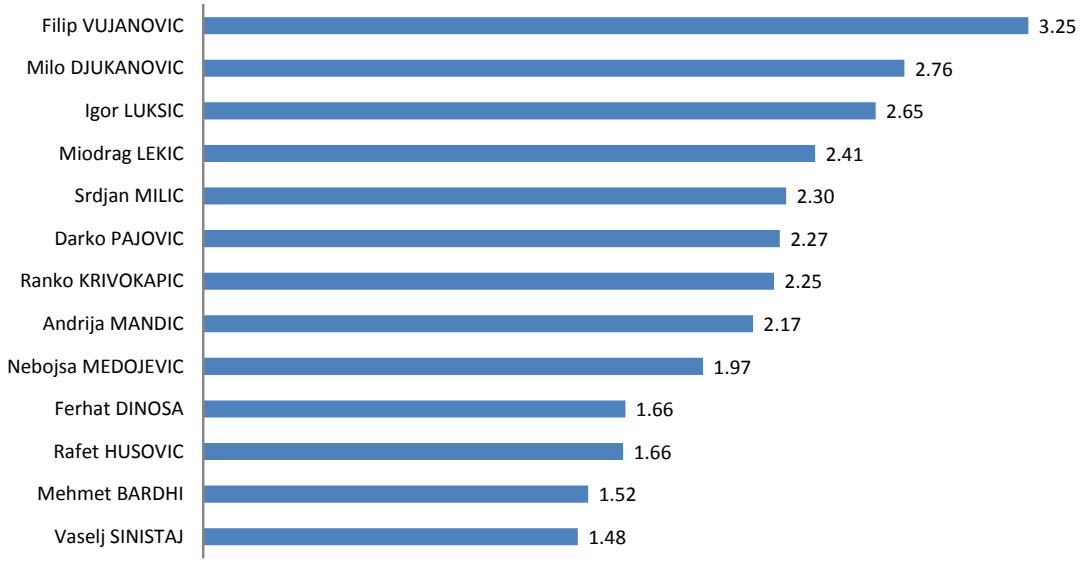
CONFIDENCE IN INSTITUTIONS – TREND %

	November 2010	September 2011	December 2011	July 2012	September 2012
Government of Montenegro	55,2	49,9	52,1	46,7	44,7
President of Montenegro	59,2	56,3	62,2	48,6	49,1
Parliament of Montenegro	48	44,1	43	36,7	37,3
Judiciary	45,5	47,1	44,8	41,8	41,3
Police	52,7	47,7	47,3	46,3	48
Serbian Orthodox Church	52,6	48,9	52,7	55	51,4
Montenegrin Orthodox Church	31,2	28,1	30,2	27,6	23,7
Army of Montenegro	55,4	44,9	46,8	42,4	45,9
Political parties in Montenegro	31,3	30	33,5	32,1	24
Health system	64,6	57,8	64,7	60	63,1
Educational system	66,8	59,7	63,2	59,4	58
European Union	59,5	49,9	53,1	49,5	41,3
NATO	35,8	30,1	33,1	33,3	28,9
Civil society organisations	50,5	50,2	46,7	43,4	34

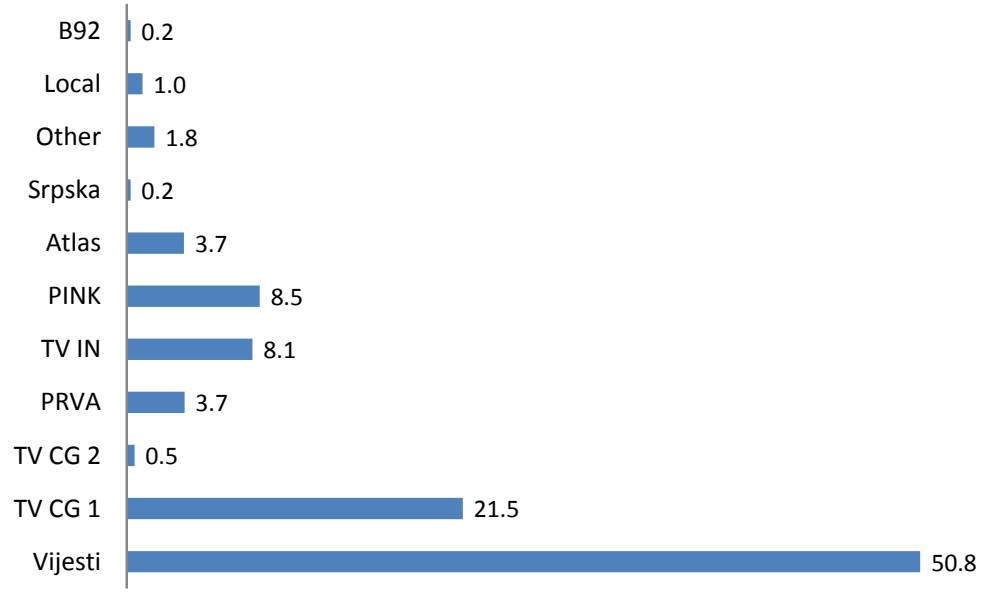
Are you satisfied with Igor Luksic's Government performance so far? - %



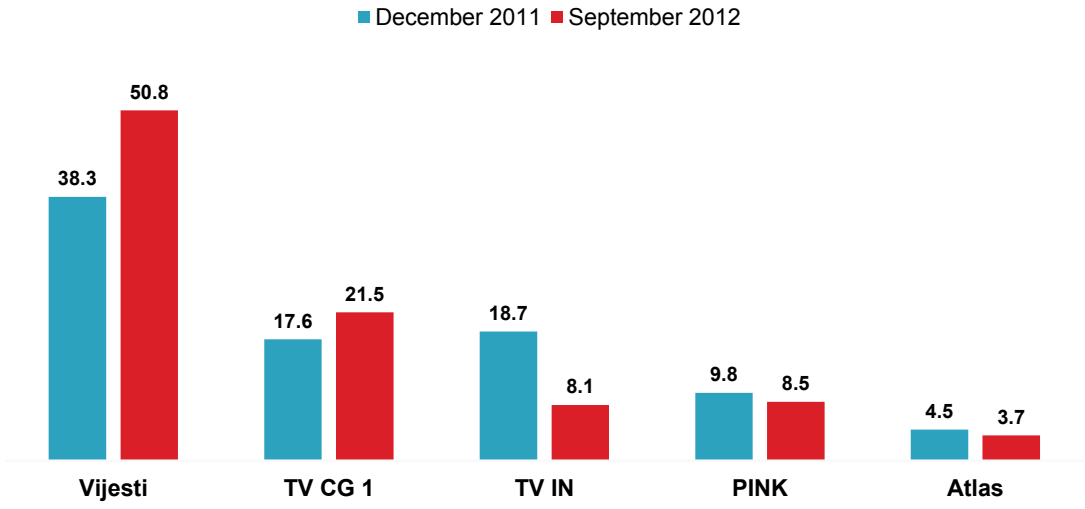
POLITICIANS' POPULARITY



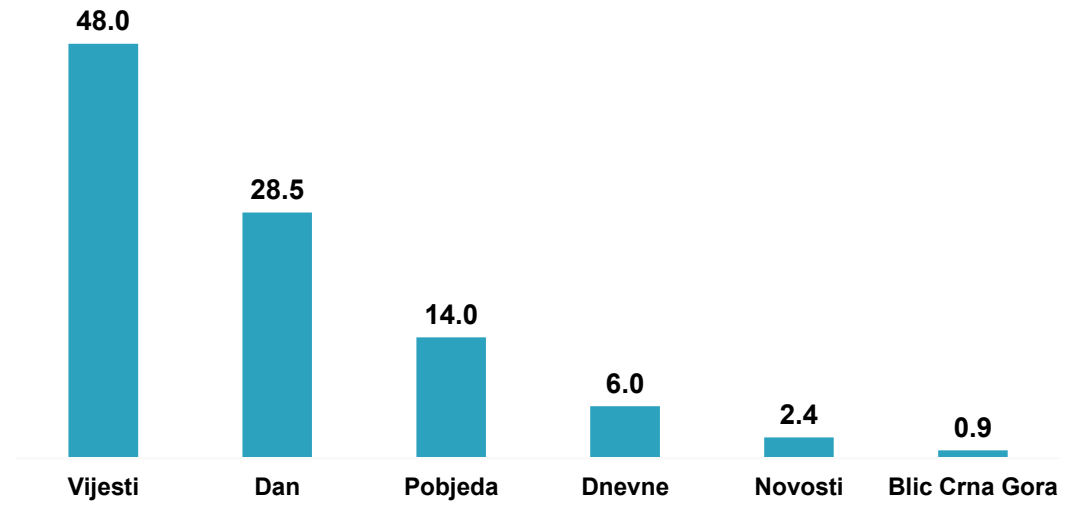
CONFIDENCE IN TV STATIONS - %



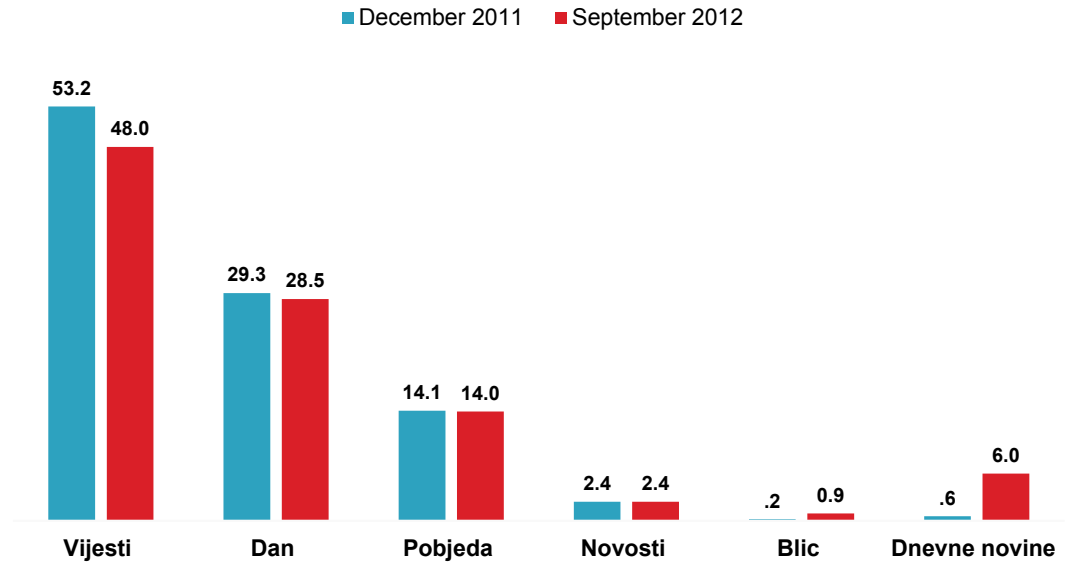
CONFIDENCE IN TV STATIONS – TREND %



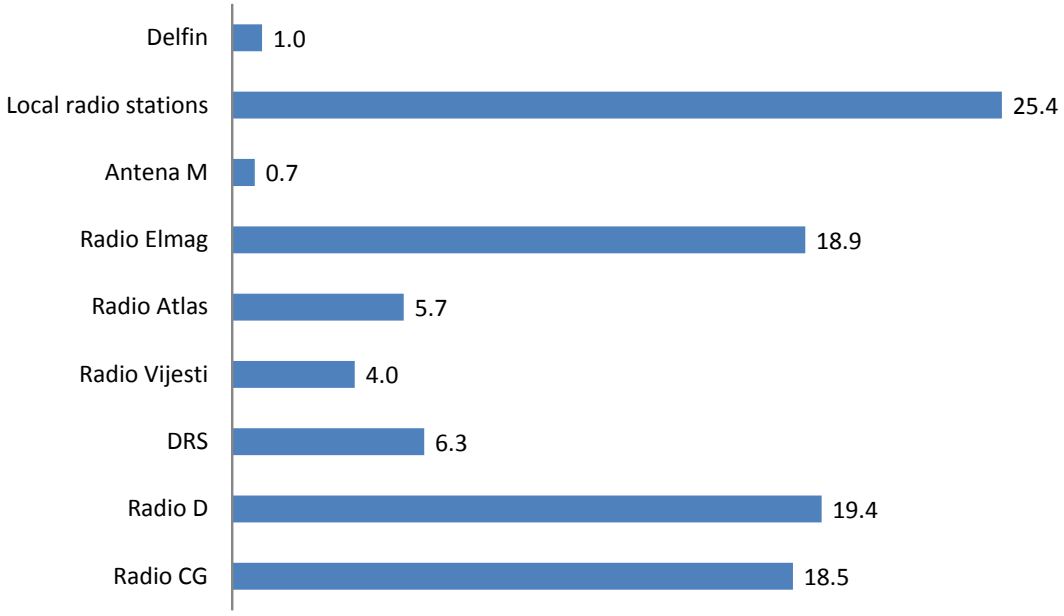
CONFIDENCE IN DAILY PRESS - %



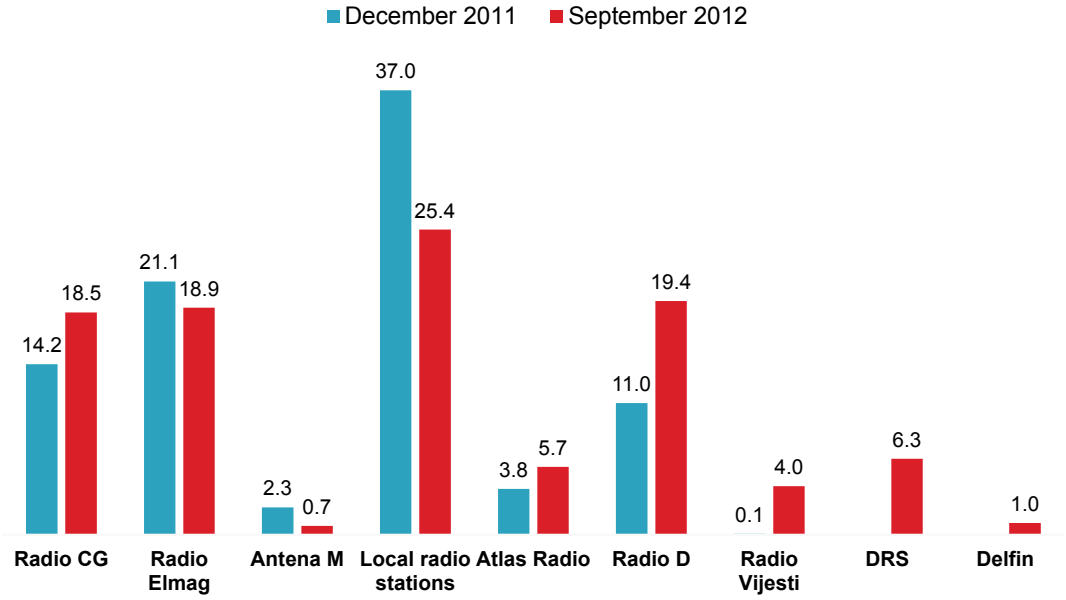
DAILY PRESS: TREND - %



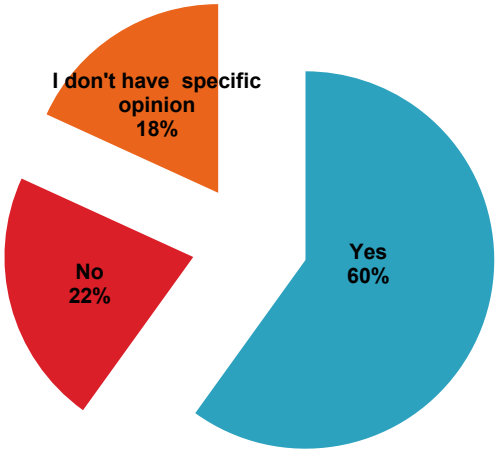
CONFIDENCE IN RADIO STATIONS - %



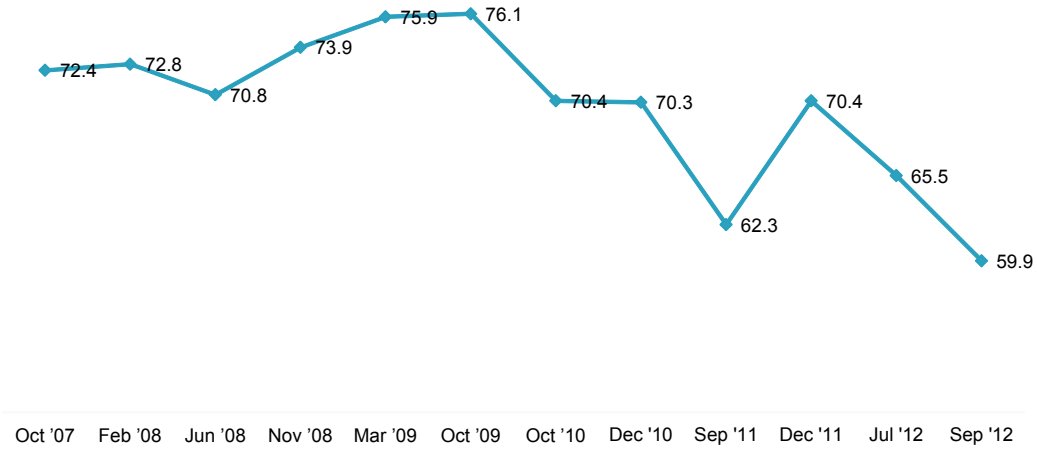
RADIO STATIONS - TREND %



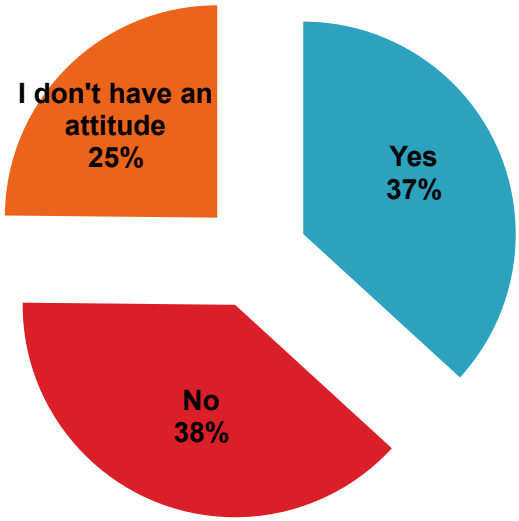
In your opinion, should Montenegro access the European Union? - %



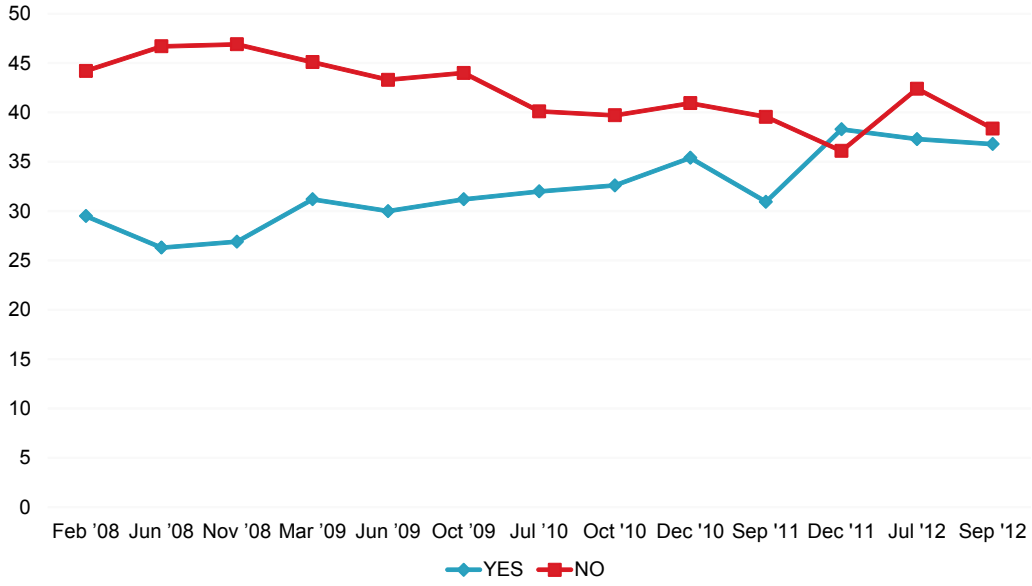
SUPPORT TO THE EU: TREND %



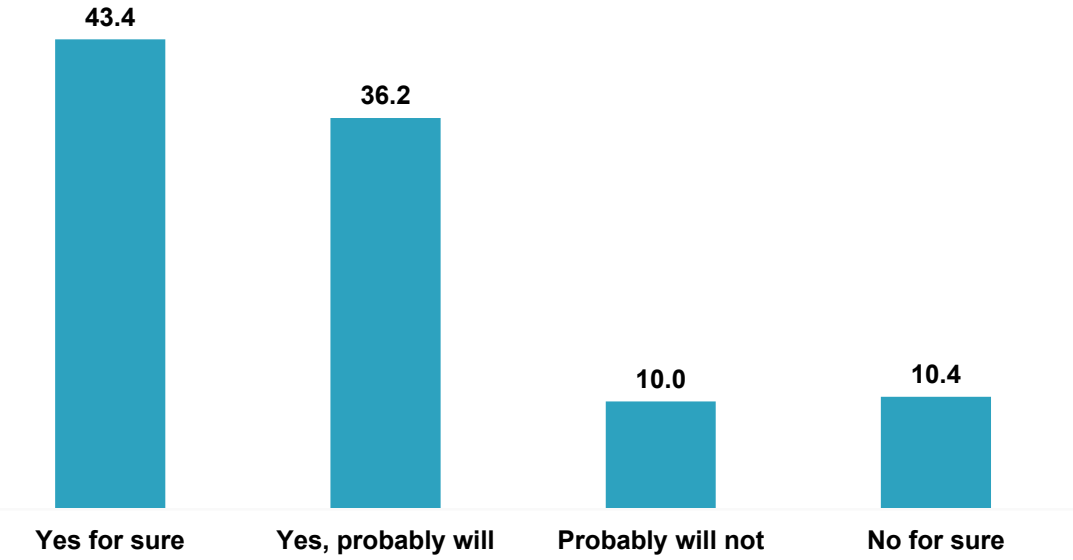
If tomorrow you are to vote on Montenegrin membership in NATO, your answer would be?



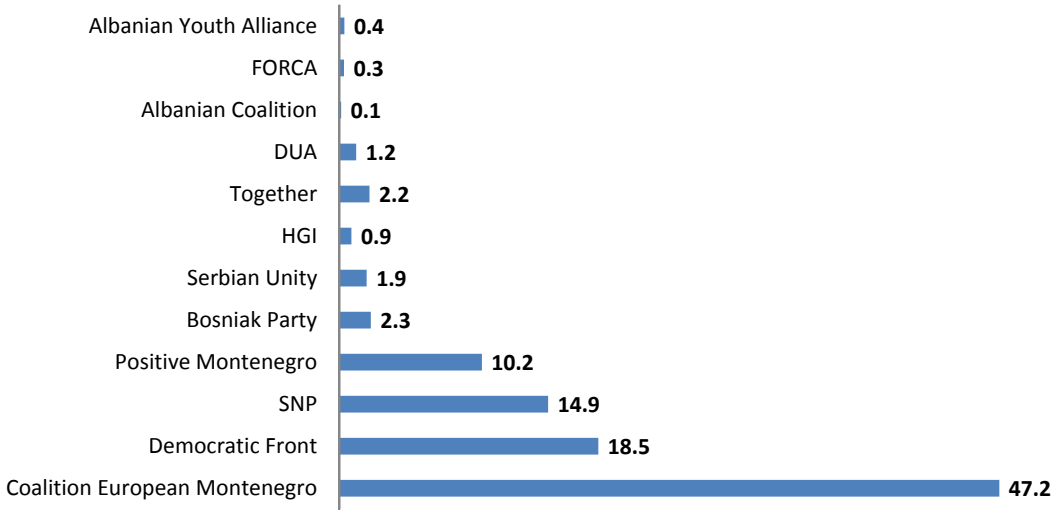
TREND: YES on the referendum IN FAVOUR and AGAINST NATO - %



Parliamentary elections in Montenegro are to be held on 14 October. Will you vote? %



RANKING OF POLITICAL PARTIES
% AFFILIATED VOTERS



** None of the total of 1022 respondents had circled the list Serbian National Alliance*

RANKING OF POLITICAL PARTIES
with confidence interval of 95 %

	FROM %	TO %
Coalition European Montenegro	44,1	50,2
Democratic Front	16,1	20,9
SNP	12,7	17,1
Positive Montenegro	8,3	12,0

Please find the opinion poll on CEDEM website: www.cedem.me