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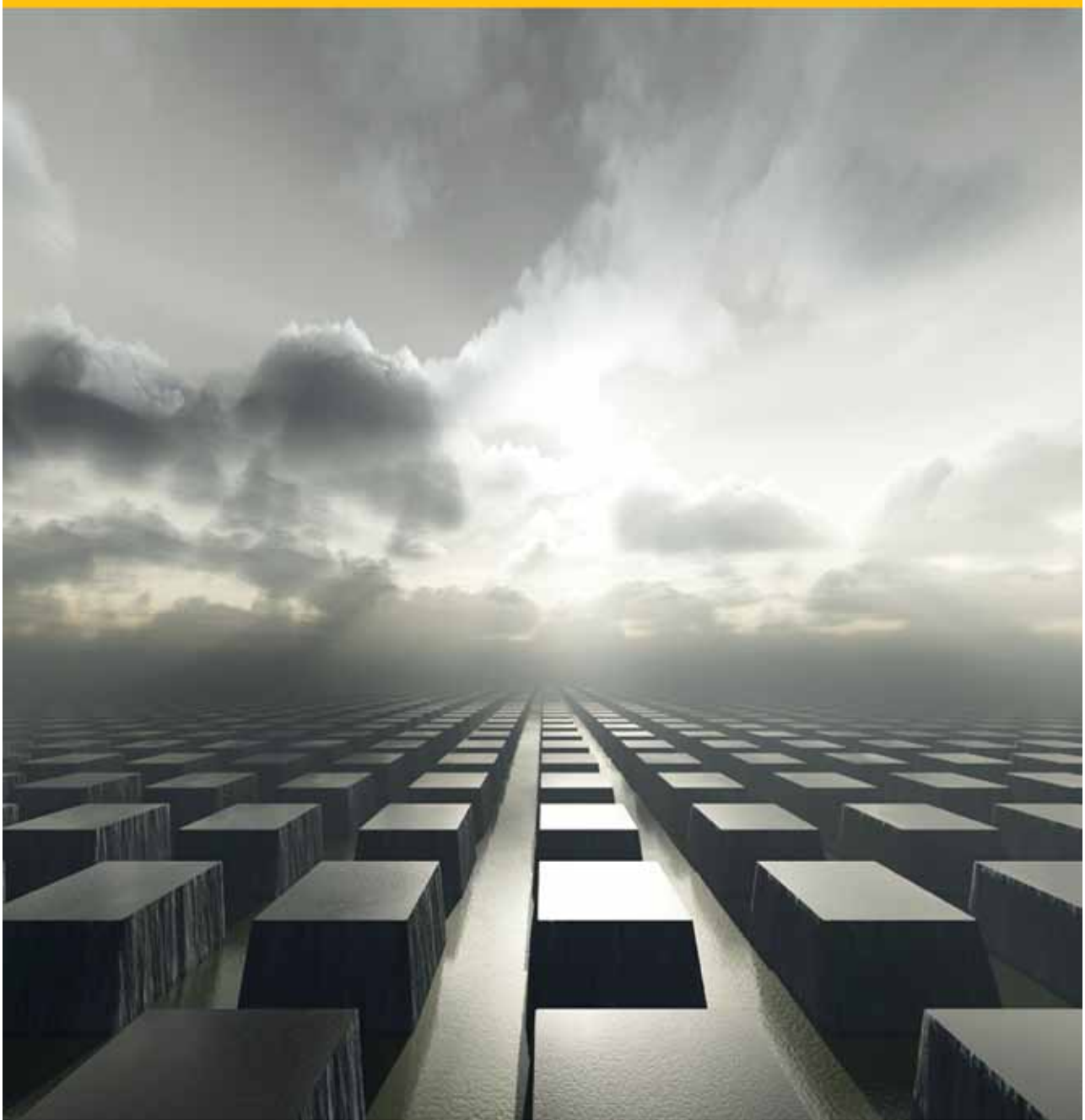

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THE AIRE CENTRE
Advice on Individual Rights in Europe

JUSTICE SYSTEM MONITORING - MONTENEGRO

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

CONCLUSIONS AND RECOMMENDATIONS

In the forthcoming period, Montenegro is expected to work on raising general efficiency criteria and the quality of the justice system, in order to ensure full application of the constitutional framework and international standards. The establishing of independent judiciary is certainly a complex and multidirectional process, since it is not sufficient for judiciary to be independent in the sense of regulations, even if these are ideal. Even the European Commission for the Efficiency of Justice (CEPEJ) underlies that there are no straightforward nor unified solutions when talking about the establishing of the rule of law at the political, social and economic plane, and that there should be a consensus of all key actors when one system is to be changed. Therefore, besides the strengthening of capacities, it is necessary to work on the establishing of a broad dialogue within the legal profession, but also the dialogue between the legal profession and other social entities.

Some of the challenges stated in this report can be overcome through joint efforts of all stakeholders, including the legislative, executive and judicial authority, but also of the professional associations of judges and prosecutors, media and civil society organizations. However, since the issue of the success of the reforms in Montenegro is not only the organizational, professional and cultural issue, but above all the issue of political will, the Report is aimed at pointing out to the decision makers the key aspects of the application of the criminal legislation decisive for the observance of the European standards of the right to fair trial and for the overall judicial reform, on the basis of the facts established in the monitoring process.

With this in mind, the monitoring team has defined certain recommendations related to the continuation of the legislative and organizational reform, intensified training of judges and the future judicial personnel, improvement of material conditions, as well as to devising measures for retaining the personnel. One part of the recommendations is related to the improvement of communication with the courts in the region and wider, with the purpose of finding the best solutions and their application, with the remark that these are already known examples of good practice that are being implemented more or less.

Besides general recommendations, the monitoring team suggests several measures the implementation of which is not linked to great difficulties and expenses, which seem useful to us, following the implementation of the monitoring process.

1. By means of the appropriate solutions of the CPC, establish the obligation for all the documents read as evidence, including the minutes on certain evidence presenting actions and the minutes with the statements of the accused, of the witnesses and other participants to the proceedings to be mandatorily delivered to the parties, upon their request. We also consider that the entire documentation which the indictment is based on should be delivered to the defence immediately upon the indictment coming into effect.
2. Also, by means of the appropriate legislative solutions, it should be arranged for

everything said to be entered into the minutes, including the questions, since this is the only way to avoid the discussions on who said what and whether something was said, thus it is necessary to provide LCDs where all the parties to the proceedings could follow the minutes being made during the main hearing.

3. Make it possible for the parties, before the answer to certain question is given, to express their view on the permissibility of such question and for the question and the objection of the party to be entered into the minutes. We reiterate that this does not mean nor should it mean the discussion between the court and the party – the court should listen to the party and make a decision upon the proposal of the same.

4. Improve the delivery and strengthen the position of the court towards other public authorities and determine adequate sanctions for the failure to follow the court orders. In that part we consider that the activities should be initiated again on establishing the so called judicial police (this was already mentioned in the reform of the judiciary from the year 1999) the main tasks of which will be: keeping order in in court buildings, servicing writs and bringing people who failed to comply with the subpoena. Besides practical importance, the existence of the judicial police would be an additional contribution to the independence of courts – in these activities courts would not be dependent of other authorities. It should be particularly stressed here that either court courier, or a postman must establish the identity of the person whom the subpoena or other writ is to be serviced.

5. Attempt to resolve the problems related to inadequate infrastructure, at least temporarily and in certain cases, by leasing adequate space in case of trials with a large number of the accused, witnesses or defence counsels, notwithstanding the fact that even such solutions are linked with certain difficulties. We think that such behaviour in such cases would be far more beneficial than harmful. We point out again to the need for the executive power to become engaged a lot more on resolving these problems and in general on the improvement of the material position of the courts. Essentially, the executive branch should be thinking exclusively as to how to contribute to the independent judiciary and through appropriate programmes and strategies to establish the procedure and the manner for the creation of such infrastructure and such material conditions which will guarantee to the greatest possible extent independent performance of judicial office.

6. Amend the Penal Code, i.e. supplement and render it more precise in the part related to the seizure of proceeds of crime, or enact a special law - lex specialis.

7. Amend the Law on Court Experts, i.e. supplement and render it more precise, or enact a new law harmonized with the valid standards.

8. Good practice of Podgorica Basic Court related to the publicity of work to be implemented in all courts.

9. Work permanently on the training of judges and regular familiarization with the European Court case law.

10. Work on the training of media representatives for the purpose of higher quality reporting on the work of courts and preventing the violation of the presumption of innocence, which comprises specialization of journalists for a specific area.

11. The problem of architectural barriers should be resolved in all courts.

ADDENDUM I

Overview of criminal acts in the monitoring process

CRIMINAL ACT	NUMBER
War crime against civilians from the Article 142, paragraph 1 of the PC of the FRY	2
War crime against the prisoners of war from the Article 144 of the PC of the FRY	
Torture from the Article 167, paragraph 3 in relation to the paragraph 2 of the PC of MNE	3
Abuse of office from the Article 416, paragraph 5 of the PC of MNE	12
Smuggling from the Article 265, paragraph 1 in relation to the Article 23, paragraph 2 of the PC of MNE	2

Special cases of forging a document from the Article 413, paragraph 1 item 5 in relation to the Article 412, paragraph 2 in relation to the paragraph 1, related to the Article 49 of the PC of MNE	1
Embezzlement from the Article 420 of the PC of MNE	
Receiving bribe, offering bribe from the Article 424 of the PC of MNE	2
Criminal association from the Article401, paragraph 2 of the PC of MNE	4
Taking part in the group which perpetrates a criminal act from the Article 404 paragraph 1 of the PC of MNE	1
Creation of a criminal organization from the Article 401a of the PC of MNE	2
Violence in family or in family community from the Article 220, paragraph 11 of the PC of MNE	8
Robbery from the Article 242, paragraph 1 in relation to the Article 23 of the PC of MNE	8
Unauthorized possession of arms and explosive devices from the Article 403, paragraph 1 of the PC of MNE	5
Negligent performance of duty from the Article 417 paragraph 1 of the PC of MNE	1
Failure to report a criminal act and the perpetrator from the Article 386 paragraph 2 of the PC of MNE	1
Failure to report the preparation of a criminal act from the Article 385, paragraph 1 of the PC of MNE	2
Assistance to perpetrator after the perpetration of the criminal offence from the Article 387, paragraph 2 in relation to the paragraph 1 of the PC of MNE	2
Unauthorized use from the Article 421 of the PC of MNE	1
Fraud from the Article 244, paragraph 3, in relation to the paragraph 1 of the PC of MNE	2
Agreement to perpetrate criminal offence from the Article 400 of the PC of MNE	1
Endangering security from the Article 168 of the PC of MNE	3
Preventing the official in the performance of the official action from the Article 375 of the PC of MNE	1
Violent behaviour from the Article 399 of the PC of MNE	3
Attack on the official who performs his duty from the Article 376 of the PC of MNE	1
Abuse of duty in commercial operations from the Article 272 paragraph 1	1
Abuse of authorities in commerce from the Article 276 of the PC of MNE	4
Evasion of taxes and contributions from the Article 264 of the PC of MNE	1
Defamation from the Article 196 of the PC of MNE	5
Insult from the Article 195 of the PC of MNE	6
Negligent performance of duty from the Article 417, paragraph 1 of the PC of MNE	1
Illegal collection and payment from the Article 418, paragraph 1 of the PC of MNE	1
Ill-treatment from the Article 166 of the PC of MNE	1
Theft from the Article 239 of the PC of MNE	7
Serious offences against general security from the Article 388 paragraph 1 of the PC of MNE	1
Aggravated theft from the Article 240 of the PC of MNE	4
Causing general danger from the Article 327, paragraph 1 of the PC of MNE	3
Extortion from the Article 250, paragraph 1 of the PC of MNE	2
Light bodily injury from the Article 152 of the PC of MNE	3
Serious bodily injury from the Article 151 of the PC of MNE	4
Attempted murder from the Article 30 paragraph 2 item 6 of the PC of the RMNE in relation to the Article 19 of the PC of the FRY	1
Murder from the Article 143 in relation to the Article 20, paragraph 3 of the PC of MNE	7
First degree murder from the Article 144 of the PC of MNE	12
First degree murder from the Article 30 of the PC of the FRY	1

Endangering public transportation from the Article 339 paragraph 3 of the PC of MNE	2
Serious offences against public transportation safety from the Article 348, paragraph 2 of the PC of MNE	5
Serious offences against human health from the Article 302 paragraph 2 in relation to the Article 290 paragraph 1 of the PC of MNE	1
Unauthorized production, possession and circulation of stupefying drugs from the Article 300 of the PC of MNE	10
Issuing cheque and non-cash payment means without cover from the Article 263 paragraph 3 of the PC of MNE	1
Forging and abuse of credit cards and non-cash payment cards from the Article 260 paragraph 2 of the PC of MNE	1
Forging of documents from the Article 412, paragraph 2 in relation to the paragraph 1 of the PC of MNE	2
Illegal fishing from the Article 326 of the PC of MNE	1
Timber theft from the Article 324 paragraph 2 in relation to the paragraph 1 related to the Article 49 of the PC of MNE	1
Destruction and damage of other person's object from the Article 253 paragraph 2 in relation to the paragraph 1 of the PC of MNE	1
Money laundering from the Article 268 of the PC of MNE	3

ADDENDUM II

Overview of cases per court

Court	*Number of cases*
Podgorica Higher Court	42
Bijelo Polje Higher Court	13
Podgorica Basic Court	36
Bijelo Polje Basic Court	5
Rožaje Basic Court	8
Bar Basic Court	9
Kotor Basic Court	11

ADDENDUM III

European Court of Human Rights Case Law based on the Article 6 of the European Convention on Human Rights

During the course of a trial, the proceedings and/or the conduct of the parties may engage a number of provisions of the European Course of Human Rights, in particular Article 8 (the right to respect for private and family life), Article 10 (freedom of expression), Article 13 (right to an effective remedy) and most importantly, Article 6 (the right to a fair trial). The purpose of this guide is to address problematic issues and incidents identified by the CEDEM Court Monitors as potentially raising violations of the ECHR, by setting out the relevant principles and jurisprudence in relation to the identified discrete areas as they concern Article 6. Consequently, this guide is not a comprehensive overview of Article 6, but rather should be used as a tool on which to build. Although trials such as those observed by CEDEM Court Monitors often raise issues in relation to Article 8 (in particular in relation to the admissibility of evidence) and Article 10 (when it comes to media reporting on trials), this guide will deal primarily with the "criminal" aspects of Article 6.

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;(b) to have adequate time and facilities for the preparation of his defence;(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Introduction to Article 6

Article 6 guarantees the right to a fair trial and occupies a central role in the Convention system owing to its fundamental importance in a democratic society. It enshrines the principle of the rule of law, upon which such a society is built and reflects part of the

common heritage of the Contracting States. The importance of this right is evidenced by the large volume of applications and jurisprudence that it has attracted; in fact Article 6 is the provision most frequently invoked by applicants before the European Court of Human Rights (ECtHR). Article 6 has a wide field of application and covers appellate as well as trial and some pre-trial proceedings. It also applies to certain disciplinary and other proceedings before special tribunals. The Court has stressed that the Convention is a 'living instrument' and should be interpreted in the light of present-day conditions. As such, Article 6 jurisprudence has evolved over the years to include a wide variety of legal proceedings; indeed, the Court has previously stated that there is no justification for interpreting Article 6(1) restrictively.

Article 6 has been interpreted as providing a procedural, not a substantive, guarantee of the rights of parties to civil proceedings and the rights of the accused in criminal proceedings. This means that the Court's role is to consider whether the domestic proceedings, taken as a whole, complied with the standards of fairness set out by Article 6. It is a requirement of *process*, rather than a requirement of *result*. Generally, the Court is not concerned whether the legal findings of the domestic courts were compatible with the provisions of the substantive criminal law of the Contracting State, or whether the conviction or sentence was appropriate. The Court has made it clear that it should not be seen simply as a higher instance in the ordinary appeal procedure, and therefore it will not address errors of fact or the merits of a particular judgment.
Similar to other provisions of the Convention, many of the terms used in Article 6(1) bear "autonomous" meaning and require interpretation which may differ from that given by the domestic law or the national authorities. In particular, the concepts "criminal charge" and "civil rights and obligations" are both autonomous. This means that the definition attached by domestic

law is not determinative of the issue and it will be for the Court to decide, according its own established criteria, whether particular proceedings are to be considered "criminal" or concern "civil rights and obligations". There is also a difference in procedural protection in criminal and civil cases. While Article 6(2) and (3) contain specific provisions setting out additional procedural standards applicable only in criminal cases, Article 6(1) applies both to "civil" and "criminal" proceedings.

General Principles of Article 6

Perceived problems
In their observations, CEDEM court monitors identified several evidentiary issues related to:
Official declarations of guilt before guilt is proven according to law
Articles appearing in newspapers which described the accused as guilty.
The conduct of expert witnesses appearing on behalf of the prosecution.
The prosecution having access to relevant information which was not available to the defence.
The length of proceedings
The publication of trial information
Public access to the trial

This paper will now move on to examine if and how these issues are regulated by Article 6 of the Convention.

Introduction

As explained above, the principles enshrined in Article 6 relate to both criminal cases and the determination of 'civil rights and obligations'. This report will primarily cover the principles which apply to criminal cases. Article 6 contains a number of rights which are fundamental to the fairness of criminal proceedings. These include the substantive rights under Article 6(1), commonly referred to as 'general principles of fairness' or 'implied elements of a fair trial'. These are the right to access to court; independent and impartial tribunal established by law; fairness of proceedings; and trial within a reasonable time. In addition there is the presumption of innocence, enshrined in Article 6(2), which essentially disallows premature declarations of guilt. The following section shall address these general principles in turn.

Presumption of Innocence

A person subject to a "criminal charge" should be considered innocent until proved guilty of a criminal offence.
In determining whether this right has been violated, the Court will be required to consider the ways in which the domestic proceedings dealt with factual presumptions and the evidentiary burden of proof; the manner in which defendants are penalised in costs or issue qualified acquittals; and the prohibition of declaration of guilt by public officials. The term "criminal charge" has the same autonomous meaning as elsewhere in Article 6. It does not apply to an individual who is under suspicion of having committed an offence, but is not yet subject to a 'criminal charge'. In *Allenet de Ribemont v France*[1], the applicant was described by a senior police officer as one of the 'instigators' of a murder. Although not yet charged under French law when the remark was made, the applicant had been arrested and was in police custody. The Court held that the applicant was "charged" for the purposes of Article 6 and that the presumption of innocence had been violated. The principle applies to "criminal" proceedings in their entirety, irrespective of their stage or even their outcome. It may also apply to some kinds of civil cases, such as professional disciplinary proceedings or compensation claims by former criminal suspects or defendants provided that those civil actions are a consequence of or concomitant with the prior criminal proceedings.
Although rules which impose presumptions of law and fact that shift the burden on the defendant to rebut them do not automatically violate the presumption of innocence, the Court will consider whether the trial court retained a genuine freedom of assessment in determining the defendant's guilt. In

1 Allenet de Ribemont v France, February 10, 1995

Salabiaku v France[2], the applicant was subject to a presumption of responsibility after he took delivery of a locked truck which proved to contain drugs. The Court nevertheless found no violation since the domestic court did not automatically rely on the presumption and instead maintained a freedom of assessment and gave sufficient attention to the facts of the case.

Statements made by judges on the termination of proceedings or following acquittal which express the view that the applicant is guilty will violate the presumption of innocence. In *Minelli v Switzerland*[3], a private prosecution against the applicant was discontinued because it had become statute-barred. The national court then ordered the applicant to pay part of the private prosecutor's and court costs on the basis that the applicant would 'very probably' have been convicted had the case gone to trial. A violation was found as the statement indicated the applicant's guilt even though there was no formal decision as to guilt. The European Court in the case *Matijasevic v. Serbia*[4], stated that the presumption of innocence under Article 6(2) of the Convention will be violated if a judicial decision, or even a public official's statement in relation to the defendant, reflects an opinion that he is guilty before he is proven guilty according to law. The Court has interpreted "public official" quite broadly to include not only judges, prosecutors and the police, but also well known public and political figures. However, the Court has emphasised that the context as well as the meaning of a particular statement, and not only its wording, should be taken into account in establishing whether it violates the presumption of innocence. In *Daktaras v Lithuania*[5], the defence lawyer had asserted that the evidence in the case-file failed to "prove" his client's guilt and requested that the criminal proceedings against the applicant be discontinued on the ground of lack of evidence. The prosecutor replied in writing that the applicant's "guilt was proved" by the evidence collected in the course of the pre-trial investigation. In finding that there had not been a violation the Court noted that the statement was not made in an independent and public context such as a press conference, but as part of a reasoned decision at the preliminary stage of the criminal proceedings.

2 Salabiaku v France, October 7, 1988
3 Minelli v Switzerland, March 25, 1983
4 Matijasevic v. Serbia, September 19, 2006
5 Daktaras v Lithuania, October 10, 2000

Right to access to court

An individual must be able to have a matter brought before a court for determination without any improper legal or practical obstacles being placed in his or her way.

The right of access to a court is not expressly stated in Article 6, but according to the Court's interpretation its protection can be inferred from the text. The right to a court is not absolute and takes different forms in the criminal and civil spheres. Although a State may regulate access to a court, the limitations it applies must not restrict access to the extent that the very essence of the right is impaired.[6] Furthermore, any limitations must pursue a legitimate aim and comply with the principle of proportionality.

There may be a possible violation of Article 6 where procedural or practical impediments operate to bar effective access to a court. The Court has held that the refusal of permission to a prisoner to contact his solicitor to initiate libel proceedings against a prison officer violated this right.[7] It did not matter that the interference was with his right to access a solicitor, not the court. The right is a right of 'effective access' and may include legal assistance.

The 'right to a court' also entails the right to legal certainty and the timely enforcement of court decisions. Legal certainty requires effective court decisions. This means that once a civil judgment or a criminal acquittal has become final and binding, there should be no risk of its being overturned. This problem may arise where a State's procedural code contains a power enabling a public official, such as a prosecutor, to intervene by way of special or extraordinary appeal, after the normal time limits for appeal have passed. In *Bujnita v Moldova*[8], the Court found a violation of the right to a fair trial where an

6 Ashingdane v United Kingdom , May 28, 1985
7 Golder v United Kingdom, February 21 , 1975
8 Bujnita v Moldova, January 16, 2007

acquittal that has been appealed and became final, was later quashed upon a request by the prosecutor, without any new evidence being presented. The Court considered that the most appropriate form of redress would be for the applicant's final acquittal to be confirmed by the authorities and for his conviction to be erased with effect from that date.

Another fundamental aspect of this right is that a final court judgment should be executed. The Court found a violation of this right in *Kyrtatos v Greece*[9] where the national authorities had refrained for more than seven years from taking the necessary measures to comply with the final, enforceable judicial decisions. It is important to note that the Court will examine any delay in the enforcement of judgments under the heading of 'right to a court' and not as a complaint about length of proceedings (see 2.6 below). When assessing the appropriateness of a delay in execution of a court decision the Court will consider the complexity of the case and the behaviour of the parties. Furthermore, the guarantee of a right to a court is autonomous from the requirements of domestic law since a breach of domestic time limits for enforcement does not necessarily mean a breach of Article 6. Delay in enforcement may be acceptable provided it does not impair the very essence of the right to a court.[10] In *Jasiuniene and Others v Lithuania*[11], the Court found a violation where the executive authorities had failed to execute a domestic court judgment obliging them to make compensation in land to the applicant under the special domestic legislation for restitution of property rights after more than eight years from the date of the court decision.

In *Stojanovski v Former Yugoslav Republic of Madeconia*[12], the applicant was a Macedonian national who complained about the fact that no decision had ever been taken concerning his compensation claim brought in the course of criminal proceedings. The Court held that the failure of the national criminal court to deal with the applicant's claim constituted a denial of access to court as regulated by Article 6(1). In *Garzičić v. Montenegro*[13], the Court found a violation of the right to access to court because the Supreme Court in Montenegro had unreasonably refused to consider the applicant's request for review of the lower court's decision. Two recent cases, *Delvina v. Albania*[14] and *Eltari v. Albania,* concerned the non-enforcement of final court decisions in the applicants' favour. The Court held that both applicants' right to access to a court had been infringed.

Independent and Impartial Tribunal

Criminal cases and cases which concern 'civil rights and obligations' must be heard by an independent and impartial tribunal established by law.

Although they are distinct concepts, there is a close relationship between the guarantees of an 'independent' and an 'impartial' tribunal. In fact the Court frequently considers both notions together. The phrase 'tribunal established by law' refers to a body whose function is to determine matters within its competence, following proceedings conducted in a prescribed manner.[15] Although members of the body do not necessarily have to be lawyers or qualified judges, the tribunal must have the competence to take legally binding decisions which cannot be altered by a non-judicial authority. It will not be sufficient if the body only has the capacity to make recommendations or give advice. The fact that a body has other functions, besides a judicial function, does not necessarily mean that it is not a "tribunal".[16] Bodies found to be a "tribunal established by law" include professional disciplinary bodies[17]; military and prison disciplinary bodies[18]; and administrative bodies dealing with land reform questions.[19]

An "independent" tribunal is one that is independent of the executive, the parties and also of the legislature or Parliament.

9 Kyrtatos v Greece, May 22, 2003
10 Burdov v Russia
11 Jasiuniene and others v Lithuania, March 6, 2003
12 Boris Stojanovski v. The former Yugoslav Republic of Macedonia, May 6, 2010
13 Garzičić v. Montenegro, September 21, 2010
14 Delvina v. Albania, March 8, 2011 and Eltari v. Albania, March 8, 2011
15 Belilos v Switzerland, April 29, 1988
16 H. v Belgium, November 30, 1987
17 Ibid.
18 Engel and others v Netherlands, June 8 , 1976
19 Ettl and others v Austria, April 23, 1987

In considering whether the tribunal is "independent", the Court will have regard to the manner of appointment of the members, their terms of office, the existence of guarantees against outside pressure and the question whether the body presents an appearance of independence. It is important to note that appointments made by the Executive will not violate Article 6 if the appointees are not subject to any instructions from the Minister in their adjudicatory role, or if they are under a legal obligation to act independently.

"Impartiality" requires a tribunal to act in a manner which is not biased or prejudicial towards the parties. The impartiality test exists in two forms: subjective and objective. This means the Court will consider whether the tribunal is subjectively impartial in the sense that its members are free from personal bias, and whether, from an objective point of view, there is a sufficient appearance of impartiality and whether the guarantees of impartiality in a given situation are such as to exclude any legitimate doubt on the matter. It is generally very difficult for an individual to prove personal bias of a judge and personal impartiality must be assumed unless there is proof to the contrary. In *Kyprianou v Cyprus*[20], judges who tried an applicant for contempt of court expressly stated that they were "deeply insulted as persons" by the applicant's behaviour in court, which was ruled to amount to the offence of contempt. The wording of the judges' statements in the applicant's conviction, coupled with the speed with which the proceedings were carried out, showed lack of impartiality under the subjective test.

Compared to the subjective test, the Court has had many more occasions to deal with the objective test of impartiality. The Court has placed great emphasis on the importance of appearances, having regard to the confidence which the courts in a democratic society must inspire in the public and, as far as criminal proceedings are concerned, in the accused. The objective test of impartiality necessitates a less serious burden of proof for the applicant. An appearance of bias or a legitimate doubt as to the lack of bias is sufficient from the point of view of an ordinary reasonable observer.[21] Legitimate doubt may arise in a number of ways. For example, in situations where the same judge intervenes at different stages of the same proceedings; as a result of previous employment of a judge with one of the parties; or where there has been the intertwining of prosecutorial and judicial functions. However, the mere affiliation by the member of the tribunal to a certain social group or association – such as belonging to the same political party or religious confession as one of the parties in the case – is not sufficient to sustain legitimate doubt under the objective test.

Meaning of fairness and equality of arms

The requirement of "fairness" covers proceedings as a whole and is separate from the question whether the tribunal's decision is "correct" or "wrong". The principle of equality of arms requires that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent.

The question whether a person has had a "fair" trial is looked at by way of cumulative analysis of all the stages, not merely of a particular incident. This means that a procedural defect at one level may be put right at a later stage. The notion of "fairness" is also autonomous from the way the domestic procedure construes a breach of the relevant rules and codes, with the result that a procedural defect amounting to a violation of the domestic procedure – even a flagrant one – may not in itself result in an "unfair" trial. Similarly a violation under Article 6 can be found even where the domestic law was complied with. However, in *Barberà, Messegué and Jabardo v. Spain*[22], the domestic proceedings were in violation of Article 6 because of the cumulative effect of various procedural defects – despite the fact that each defect, taken alone, would not have convinced the Court that the proceedings were "unfair".

While it is for the national law to lay down

20 Kyprianou v. Cyprus (GC), December 15, 2005

21 Piersack v Belgium, October 1, 1982

22 Barberà, Messegué and Jabardo v Spain, December 6 , 1988

the rules on admissibility of evidence and it is for the national courts to assess evidence, the requirements of the adversarial principle means that the nature of the evidence admitted and the way in which it is handled by the domestic courts are relevant under Article 6. In this context, "adversarial" means that the relevant material or evidence is made available to both parties. There is a significant degree of overlap between the adversarial principle and equality of arms. "Equality of arms" also requires a fair balance between the parties and essentially denotes equal procedural ability to state the case. The principle applies to both civil and criminal cases. There must be adequate procedural safeguards appropriate to the nature of the case including, where appropriate, adequate opportunity to adduce evidence, to challenge hostile evidence, and to present argument on the matters at issue.[23] For more on this, see Section 3 below.

Personal Presence and publicity

The right to a "public hearing" derives from the wording of Article 6, but cases in this category are usually looked at under the more general heading of "fairness". This element of "fairness" consists of four implied rights: (1) right to an oral hearing and personal presence by a civil litigant or criminal defendant before the court; (2) right to effective participation; (3) the right for the applicant to claim that third parties and media be allowed to attend the hearing (publicity); (4) right to publication of the court decision.

The presence requirement at first instance is close to absolute, though it has been stated hypothetically that it may be justifiably dispensed with in "exceptional circumstances".[24] Although presence presupposes an oral hearing, not every oral hearing must be public. Presence before an appeal court will be required where it deals both with questions of fact and law and where it is fully empowered to quash or amend the lower decision. In *Ekbatani v. Sweden*[25], the Court held that the absence of the defendant in a criminal case before an appeal court dealing with both questions of fact and law violated the presence requirement. However in *Kremzow v. Austria*[26], the Court found there was no violation where the defendant in a criminal case was not present in person (but represented by a lawyer) during appeal hearing of his plea of nullity. Trials in absentia will only be allowed as long as the authorities made best efforts to track down the accused and inform them of forthcoming hearings. In any event, the accused retains the right to full re-trial in the event of their re-appearance.

In *Stanford v. the United Kingdom*[27], the Court held that a civil litigant or criminal defendant must be able to participate effectively in a court hearing, which must be organised to take account of his physical and mental state, age and other personal characteristics. In the same case it was held that that assistance by a lawyer may counter-balance the applicant's personal inability to participate effectively.

The rationale of public proceedings is to protect civil litigants and criminal defendants from secret administration of justice and to ensure greater visibility of justice, maintaining the confidence of society in the justice system.[28]Although it is a qualified right, the presumption must always be in favour of a public hearing, and the exclusion must be strictly required by the circumstances of the case. In *Riepan v. Austria*[29], the Court found a violation of the publicity requirement where there had been a closed trial on fresh charges against a convicted prisoner, and no steps were taken by the authorities to inform the public of the date and place of the trial in prison. There is no obligation for a court to read out its full judgment in open court; publishing in writing is sufficient, though the decision must be available for consultation in the court's registry.[30]

Length of proceedings

Civil litigants and criminal defendants should be protected against excessive

23 H. v Belgium, November 30, 1987
24 Allan Jacobsson (No. 2) v Sweden, February 19, 1998
25 Ekbatani v Sweden, May 26, 1988
26 Kremzow v Austria, September 21, 1993
27 Stanford v United Kingdom, February 23, 1994
28 Axen v Germany, December 8, 1983
29 Riepan v Austria, November 14, 2000
30 Pretto and others v Italy, December 8, 1983

delays in legal proceedings.
The reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the cases having regard to the complexity of the case, the conduct of the applicant, the conduct of the authorities and what is at stake for the applicant. A case can be considered complex as a result of legal complexity of the proceedings which may arise, for example, from the task of the domestic courts to apply a fresh piece of legislation. If the Court accepts that the proceedings have been established as complex, it will generally allow a longer period of time for the authorities to finalise the case. Where delays are caused by a litigant or defendant, they are not taken into account for the purposes of calculating reasonableness of the length of proceedings from the point of view of Article 6. However, a defendant cannot be blamed for taking full advantage of the legal avenues afforded by national law in the defence of his interests.[31]
Delays attributable to the authorities in breach of "the reasonable time" requirement have included the following: repeated return of case to investigators on the same grounds for fresh investigations to be carried out[32]; repeated attempts to summon same witnesses at trial[33]; frequent changes in composition of trial court[34]; and delays in sending case from first instance to appeal court[35]. However, in *Zimmerman and Steiner*[36], the Court found that general delays caused occasionally by the courts' case-load may be acceptable as long as they are not prolonged in time, and where reasonable steps are being taken by the authorities to prioritise cases based on their urgency and importance[37].
There is no absolute time limit under the reasonableness requirement. Generally speaking, criminal proceedings will be expected to be pursued more expeditiously than civil matters. The Court will take into account what is 'at stake' for the applicant. In criminal cases the reasonable time guarantee runs from the time that an accused is subject to a formal charge. Criminal proceedings end when the charges are determined or the final sentence is imposed. Civil proceedings commence when court proceedings are initiated, and terminate when the case is finally determined.
In *Majaric v Slovenia*[38] the Court unanimously concluded that there had been a breach of Article 6(1) where the domestic criminal proceedings had lasted for over four years and five months. In *Janković v Croatia*[39], the Court held that civil and enforcement proceedings which lasted in total eight years, five months and six days, constituted an excessively long period, in violation of the 'reasonable period' requirement.

Evidence

Perceived problems
In their observations CEDEM court monitors identified several evidentiary issues related to:
The procedure followed during an identity parade
The acquisition of confessions
The treatment of testimony
The weight of expert evidence

Introduction

Generally it is for domestic courts to determine the admissibility and assessment of evidence. However, the ECtHR will find a violation of the Convention where, considering the circumstances of the case as a whole, an applicant was deprived of an ability to participate effectively in the proceedings or where the position of the defence was significantly impaired.[40] Therefore the use of evidence obtained in breach of domestic rules will not necessarily be contrary to Article 6. Similarly, reliance on evidence obtained in breach of another article of the Convention (for example Article 8, the right to private

31 Kolomiyets v. Russia, February 22, 2007
32 Šleževičius v. Lithuania, November 13, 2011
33 Kuvikas v. Lithuania, June 27, 2006
34 Simonavičius v. Lithuania, 27 June 2006
35 Martins Moreira v Portugal, October 26, 1988
36 Zimmermann and Steiner v Switzerland, July 13, 1983
37 However, this case is now rather out of date and could only be relied on in extraordinary circumstances.
38 Majaric v Slovenia, Feburay 8, 2000
39 Janković v Croatia, March 5, 2009
40 See Dombo Beheer BV v Netherlands, October 27 1993

and family life) does not necessarily infringe fair trial requirements in Article 6. However, evidence obtained in violation of Article 3 (the prohibition against torture, inhuman and degrading treatment) will render proceedings contrary to Article 6 in most cases. Whether the Court will find a violation depends on a number of factors including:
The provision of the Convention that was alleged to be violated (Article 3, 6, 8 etc.)
The role that the evidence played in the proceedings
Whether adequate safeguards existed to ensure judicial oversight of alleged breaches of the Convention
The following section shall address discrete aspects of the admissibility of evidence.

Presentation of evidence

National courts have a duty to ensure evidence is properly and fairly presented.

In practice this means that the Court may be required to rectify inadequate presentation of evidence by either party. *Barbera, Messegue & Jabardo v Spain*[41] involved a case of robbery and murder resulting in sentences of up to 36 years which was examined in a trial lasting one day. Despite the fact that both the prosecution and the defence had waived the oral presentation of documentary evidence at trial, the ECtHR found that that this did not remove the requirement that the Court ensured the trial complied with Article 6.

Several factors are relevant in determining whether the evidence was properly and fairly presented. The failure of either party to object to the presentation of certain evidence is important, but not decisive.[42] Any part of the proceedings that might mitigate or remedy the alleged unfairness will be taken into account. In addition, whether the matter was subject to careful scrutiny on appeal is significant.

Identity Parades

Identity parades must be organised in a way that does not extinguish their evidential value.
National authorities have a duty to ensure that identity parades are carried out without irregularities that may render a trial unfair. For example in *Laska & Lika v Albania*,[43] which involved a conviction based on the results of an identity parade, the ECtHR found the fact that the applicants were made to wear blue and white balaclavas similar to the alleged perpetrators while the other participants wore black masks, did not comply with Article 6. This is because it amounted to pointing "the finger of guilt" at the applicants, and consequently could have no evidential value.

Confession and Coercion

Evidence obtained under compulsion and/ or coercion must not carry a decisive or crucial weight in a conviction.
Incriminating evidence obtained in violation of the Article 3 prohibition against torture should never be relied on as proof of the victim's guilt.[44] However, the Court has left open the question whether evidence obtained under circumstances falling short of torture, but constituting inhuman and degrading treatment, automatically renders a trial unfair.[45] Such cases will depend on the facts of each case, and in their determination the Court will pay particular attention to the role played by the evidence at trial. For evidence to be held unfairly obtained in such circumstances, it must have had a bearing on conviction.

In *Jalloh v Germany,*[46] evidence obtained through the involuntary administration of emetics (drugs to induce vomiting) in order to force the applicant to regurgitate a bag of cocaine, was held to be contrary to Article 6 as well as Article 3. The Court noted that, even if it had not been the authorities' intention to inflict pain and suffering on the applicant,

41 Barbera, Messegue & Jabardo v Spain, December 6 , 1988
42 Karen Reid, A Practitioner's Guide to the European Convention on Human Rights, p150. See for example , X v United Kingdom, 6 October 1976.
43 Laska & Lika v Albania, April 20 , 2010
44 Jalloh v Germany, July 11, 2006
45 Karen Reid, Ibid.
46 Jalloh v Germany, July 11, 2006

the evidence was nevertheless obtained by a measure which breached one of the core rights guaranteed by the Convention. Furthermore, the drugs obtained by the impugned measure proved the decisive element in securing the applicant's conviction. Lastly, the public interest in securing the applicant's conviction could not justify allowing evidence obtained in that way to be used at the trial. Accordingly, the use in evidence of the drugs obtained by the forcible administration of emetics to the applicant had rendered his trial as a whole unfair.

Gäfgen v. Germany involved the kidnap of an 11 year old boy and evidence relating to his whereabouts obtained from the applicant following threats, made by the police during the search, and subsequently categorised as inhuman and degrading treatment. In that case, an example of the 'ticking time-bomb' scenario, the ECtHR noted that Article 6 was not absolute and that a "criminal trial's fairness [is] only at stake if it has been shown that the breach of Article 3 had a bearing on the outcome of the proceedings." In *Gäfgen*, the conviction was based exclusively on the new, full confession made by the applicant at the trial. Therefore, the Court found that the causal link between the threat of torture and the conviction had been broken as "the breach of Article 3 in the investigation proceedings had no bearing on the applicant's confession at the trial". [47]

In circumstances where neither a finding of torture nor inhuman treatment is made, but ill-treatment is alleged, the existence of adequate procedural safeguards enabling the examination of any such claims is relevant in determining whether the evidence was unlawfully obtained. For example in a situation where an applicant, denied access to a lawyer, confessed in circumstances he claimed constituted coercion; the fact that the national court failed to adequately investigate these claims is likely to render the proceedings contrary to Article 6.[48]

47 Gäfgen v. Germany, June 30, 2006
48 See for example Yaremenko v Ukraine, June 12, 2008

3.4 Expert Evidence

There is no absolute right to appoint an expert of one's choosing to testify at trial or the right to appoint a further alternative expert.

Although there is no absolute right to appoint an expert of one's choosing, the ECtHR may find proceedings in violation of Article 6 where the national court fails to properly consider the appropriate evidence in reaching its decision on a crucial medical issue and by doing so, deprives the applicant of a fair hearing. For example in *Sommerfeld v Germany,*[49] which involved access to a child by the non-custodial parent, the court stated "[i]t would be going too far to say that domestic courts are always required to involve a psychological expert on the issue […], but this depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned." However, in another case involving access to a child by the non-custodial parent, the ECtHR found that the failure of a domestic court to order an expert psychological report violated the rights of the parent.[50]

The Court has held that there is no right to neutrality of a court-appointed expert as long as that expert does not enjoy any procedural privileges which are significantly disadvantageous to the applicant.[51] However, where the opinion of an expert plays a determining role in the proceedings, the court has insisted on neutrality of official experts.[52]

Defence Rights

Perceived Problems
In their observations CEDEM court monitors identified several evidentiary issues related to:
An applicant's claim that he was held in an official's office and did not have his procedural rights communicated to him

49 Sommerfeld v Germany, July 8,2003
50 Elsholz v. Germany, July 13, 2000
51 Brandstetter v. Austria, August 28, 1991
52 Sara Lind Eggertsdóttir v. Iceland, July 5, 2007

Scheduled trial dates published on the official website not corresponding to the day trials actually take place.
Self-representation
Cross-examination
Interpretation

Introduction

Persons 'charged with a criminal offence' are guaranteed certain minimum rights that are necessary for the preparation and conduct of the defence and to ensure that accused is able to defend himself on equal terms with the prosecution'. The minimum defence rights in criminal proceedings, set out in Article 6(3), have long been recognised by the Court as specific aspects that form part of the wider concept of the right to a fair trial. Thus the Court has typically examined an alleged violation of one of the Article 6(3) rights together with Article 6(1). Therefore in order to prove a violation of one of his defence rights, an applicant has to also show the effect of the restriction of his defence on the fairness of the criminal proceedings taken as a whole.

4.1. Notification of the charge

The accused must be notified of the charge in order to allow him to prepare and mount a proper defence.

The right to be informed is intended to provide the accused with specific and detailed information of the accusation, which is necessary to prepare and conduct a proper defence at trial. The "cause" in the information required under Article 6(3)(a) relates to the acts allegedly committed, and the "nature" refers to the definition of the offence in domestic law. In *Pellisier and Sassi v France*[53], the Court held that provision of full information of nature and cause of the accusation is an essential prerequisite for ensuring that the proceedings are fair. Written notification is not required, so long as sufficient information is given orally.[54] The Court has however held that the information must be in a language the defendant understands.[55] There is relatively little case law on the right to be informed 'promptly'. Although any relevant information, whether of fact or law, must obviously be given to the accused in sufficient time to enable him to prepare his defence, the Court's approach suggests that this requirement does not mean information must be provided immediately. Nevertheless in *Mattoccia v Italy*[56], the Court held that basic information about the accusation must be submitted at least prior to the first interview with the police. It is important to note that the onus is on the applicant to attempt to obtain information by attending hearings or making relevant requests.[57]

4.2. Adequate time and facilities to prepare a defence

A person subject to a criminal charge should be given sufficient time and facitilites to defend himself during the criminal proceedings.

There is considerable overlap between this right and the right to legal representation, the right to notification of the application, as well as the general principles of fairness within the meaning of Article 6(1). In order to determine compliance with this requirement, it is necessary to have regard to the general situation of the defence, including legal counsel, and not merely the situation of the accused in isolation.[58]

The guarantee of 'adequate time' to prepare a defence begins to run from the moment that a person is subject to a criminal charge. The test of what time is adequate is a subjective one, as various factors regarding the nature and complexity of the case, the stage of the proceedings, and what is at stake for the applicant, have to be taken into account. In *Campbell and Fell v United Kingdom*, the Court considered five days' notice of a prison

53 Pellisier and Sassi v France, March 25,1999

54 Kamasinski v Austria (1989)
55 Brozicek v Italy (1989)
56 Mattoccia v Italy, July 25,2000
57 Campbell and Fell v United Kingdom, June 28, 1984
58 Krempovskij v Lithuania (dec.), April 20, 1999

disciplinary hearing to be adequate because it was a straightforward case.

The "adequate facilities" test is also a subjective one, depending on the particular circumstances and abilities of the applicant. Certain facilities such as the right of the accused to communicate with his lawyer can be regarded as essential; the right to confer with counsel may however be subject to restrictions. For example the ECtHR has held that the national court may override the choice of the person charged with a criminal offence when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice.[59] It is also permissible for national law to lay down even stricter rules for those who wish to defend persons in supreme courts.[60] In addition, the right of the defence to have access to all the information held by the prosecution is not absolute; there may be competing interests. These may include issues of national security or the need to protect witnesses. In such instances, the court must ensure that restrictions of the rights of the defence are strictly necessary in the circumstances of the individual case. "Facilities" which are required by the defence at the trial stage are also covered. As such, the defence counsel must be allowed sufficient time to present the defence, to call expert witnesses, or be allowed an adjournment. Similarly, the applicant must be allowed sufficient facilities to prepare his appeal, which includes the right to know the reasons for the court judgment.[61] The Court's judgment in *Korellis v Cyprus*[62] suggests that the test is not one of 'actual prejudice' to the defence resulting from the state's failure to allow access to "facilities"; instead it is one of 'relevance' to the preparation of the defence.

4.3. Legal representation or defence in person

A person subject to a criminal charge has the right to defend himself or may appoint a lawyer. In certain circumstances there is a right to free legal assistance.

59 Croissant v Germany, 25 September 1992
60 Meftah and Others v France, 26 July 2002
61 Hadjianastassiou v. Greece, December 16, 1992
62 Korellis v Cyprus, January 7, 2003

The right to representation applies at the pre-trial and the trial stage. While this does not confer unlimited access to legal representation, the Court, in *Salduz v Turkey*[63], established the general principle that, save in exceptional circumstances, an accused must be provided with legal assistance from the first interrogation. There is no right, as such, to have access to a lawyer at all times of the proceedings, and restrictions may be placed on the number or duration of meetings, provided the crucial need of access to legal advice is respected immediately after the arrest.[64]

The accused can choose to represent himself so long as the choice is freely made and is not contrary to the interests of justice. However, this right is not absolute, and the State authorities can deny this where domestic law requires that a person be legally represented, particularly where the alleged offence is serious in nature. The State cannot require an accused to defend himself in person; though it is important to note that the right to legal assistance, free or otherwise, does not confer an absolute right to choose counsel. The national court may appoint a defence lawyer which an accused considers unnecessary[65] , but it may not be enough for the competent authorities merely to nominate or allow a lawyer to act. In *Artico v Italy*[66], the Court stated that legal assistance must be "practical and effective" and not merely "theoretical and illusory".[67]

On the question of free legal assistance, the national authorities must take account of the means of the accused as well as the interests of justice. This includes a consideration of the nature and complexity of the alleged offence, the severity of the penalty that might be imposed, and the capacity of the accused to represent himself adequately.[68] If the accused has sufficient means to pay for a lawyer, no consideration of the interests of justice need be undertaken for the purpose of granting him legal aid.[69] The Court has held that the

63 Salduz v. Turkey (GC), November 27, 2008
64 John Murray v United Kingdom, February 2, 1996
65 Croissant v Germany, September 25, 1992
66 Artico v. Italy, May 13, 1980
67 Ibid at 31-38
68 Timergaliyev v Russia, October 14, 2008.
69 Campbell and Fell v United Kingdom, fn54 above

review of the interests of justice must take place at each stage of the proceedings.[70] The State is not responsible for every shortcoming of a defence lawyer, whether under legal aid or not, as the conduct of the defence is essentially a matter between the accused and his counsel. [71] However if a failure by, or inability of, legal aid counsel to provide effective representation is either manifest, or sufficiently brought to the attention of the competent national authorities, there is an obligation on them to intervene.[72]

4.4. Right to examine witnesses73

There must be full equality of arms with regard to the examination of witnesses.
This right applies to the trial and any appeal proceedings and does not generally apply at the pre-trial stage. It is not an absolute right; however any restrictions must be consistent with the principle of "equality of arms". The term "witness" has an autonomous meaning. It is not limited to persons giving live evidence at the trial. It also includes expert witnesses called by the prosecution or the defence (though not a court-appointed expert[74]); a co-accused[75]; and the authors of statements recorded pre-trial and read out at trial[76].
Persons alleging a breach of this right must prove not only that they were not permitted to call a certain witness, but also that hearing the witness was absolutely necessary in order to ascertain the truth, and that the failure to hear the witness prejudiced the rights of the defence and fairness of the proceedings as a whole.[77] Only a key prosecution witness – namely one whose evidence is used in its entirety, or to a decisive or crucial degree to secure a conviction – can be required to be called as of right.[78] In deciding whether or not a particular witness is key, the competent authority may sometimes examine the quality and reliability of other evidence used against the accused.
In exceptional circumstances, such as in cases involving sexual offences like rape, or sexual abuse of a child, the refusal of a key witness to testify can serve as a legitimate ground for using testimony recorded pre-trial without summoning that witness. In *S.N. v Sweden*[79], the Court found no violation of Article 6(3)(d) in respect of conviction of a schoolteacher for sexually assaulting her 10 year-old pupil. Under the domestic law, in such cases child complainants were rarely called to give evidence in court because of the traumatising effect this might have on them and the main piece of evidence was a video-taped interview of the boy with a specially trained police officer. The Court found that it was sufficient for the purposes of Article 6 that the applicant's counsel could have attended the interview of the child or given the police officer any questions which the defence wanted to be put to the boy.

4.5. Free assistance of an interpreter

The accused has the right to free assistance of an interpreter if he cannot adequately understand and speak the language of the court.
This guarantee protects individuals once they are "charged with a criminal offence" and applies to the pre-trial stage of proceedings thereafter. The right also extends to any appeal proceedings. This provision guarantees the right to free interpretation for someone who does not understand the language of court, and not necessarily assistance in the accused's mother tongue.
The right of an accused to free assistance of an interpreter is an absolute one. It does not depend on the accused's means. This means not only that the service should be free to the accused during the trial, but also that the domestic authorities may not reclaim the costs

70 Granger v. the United Kingdom, March 28, 1990
71 Artico v Italy, May 13, 1980
72 Kamasinski v Austria, December 19, 1989
73 There is a certain degree of overlap between this right and the admissibility of evidence discussed in section 3 above
74 Brandstetter v. Austria, August 28, 1991
75 Luca v. Italy, February 27, 2001
76 Kostovski v. the Netherlands, November 20, 1989
77 Butkevičius v. Lithuania, dec. November 28, 2000; judgment March 26, 2002; Krempovskij v. Lithuania, April 20, 1999
78 Vidal v. Belgium, April 22, 1992; Doorson v. the Netherlands, June 23, 1996
79 S.N. v. Sweden, July 2, 2002

at the end of criminal proceedings.[80] This right also covers the translation or interpretation of all those documents or statements in the proceedings instituted against an accused which it is necessary for him to understand or to have rendered into the court's language in order to have the benefit of a fair trial. However, this does not mean that there must be a written translation of all items of written evidence or official documents in the procedure.[81] The onus is on the trial judge to show considerable diligence in ascertaining that the absence of an interpreter would not prejudice the applicant's full involvement in matters of crucial importance for him.[82]

80 Luedicke, Belkacem and Koc v Germany, November 28, 1978
81 Kamasinski v. Austria, December 19, 1989
82 Cuscani v. the United Kingdom, September 24, 2002

CEDEM Activities

PROJECT PRESENTATION

Security Transition in the Western Balkans

Podgorica, 14 November 2012

Centre for Democracy and Human Rights (CEDEM) organized presentation of the project"Security Transitions: To what extent is the security community being built in the Western Balkans?" at the Faculty of Political Science.

The aim of this three-year research project is to explore the transformation process of the Western Balkans conflict formation toward the security community, with particular focus on the cooperation of police services in the region. The survey sought to identify the positive factors affecting the transformation, as well as potential barriers that slow down this process. The end result of the project will be an analysis in the form of a scientific paper, which will be published in an international scientific journal. The presentation was organized with the aim to present the key research findings and to obtain valuable comments that may contribute to making more objective and qualitative analysis.

Besides CEDEM researchers, the speakers at the presentation were a professor of regional security and crisis management, Mr. Mehmedin Tahirović and head of NCB Interpol in Montenegro, Mr. Dejan Djurović. The presentation was also attended by representatives of CSOs, Ministry of Interior, Police Directorate, National Bureau of Interpol, as well as representatives of the academic community (professors, lecturers, teaching assistants).

RESEARCH PRESENTATION

Citizens' Views on Media Freedoms in Montenegro

Podgorica, 26 November 2012

Centre for Democracy and Human Rights in cooperation with the OSCE Mission to Montenegro organized a presentation of the results of the research "Citizens' Views on Media Freedoms in Montenegro". The research has been conducted in July 2012, with support of theOSCE Mission to Montenegro. The presentation was attended by more than 40 representatives of media, public institutions, diplomatic core and international organizations. The Report with key research findings may be found via link: http://cedem.me/en/programmes/empirical-research/other-opinion-polls/viewdownload/41-other-opinion-polls/358-report-citizens-attitudes-towards-media-freedoms-in-montenegro.html

WORKSHOP

European Convention on Human Rights and Criminal Justice

Budva, 28/30 November 2012

Centre for Democracy and Human Rights -CEDEM, in cooperation with AIRE Centre and Judicial Training Centre organized two-day workshop on European Convention on Human Rights and Criminal Justice, with support of US Embassy in Podgorica, OSCE Mission to Montenegro and British Embassy in Podgorica.

The workshop aimed to raise the capacity of Montenegrin judiciary by contributing to complying Montenegrin legislation and practice with the standards of the European Convention on Human Rights. It covered the following topics:prohibition of torture and ill-treatment in law and practice, detention in the law and practice of Montenegro and Serbia, admissibility of evidence and illegally obtained evidence The workshop gathered representatives of judiciary, Ministry of Interior Affairs, Police Department of Montenegro and international legal experts. The lecturers at the workshop were: Mrs. Stojanka Radovic, Deputy Supreme State Prosecutor of Montenegro, Mr. Dusan Ignjatovic, director of the Ombudsman Office of the Republic of Serbia, Mr. Vladan Joksimovic, assistant director of this office, Mr. Navtej Ahluwalia, lawyer, AIRE Centre expert and Mr. Petar Stojanovic, Judge of the Supreme Court of Montenegro.

ANNOUNCEMENT

Project Announcement: Trial Monitoring of Criminal Justice in Montenegro

Podgorica, 12 December 2012

In the period from 15 December 2012 til 15 December 2013, with the support of the Royal Norwegian Embassy in Belgrade, Centre for Democracy and Human Rights (CEDEM) and Youth Initiative for Human Rights in Montenegro will conduct monitoring of criminal proceedings in order to contribute to the establishment of an effective, independent and accountable judiciary in Montenegro.

Monitoring will include trials on criminal acts of corruption and organized crime, proceeded before the High Courts in Podgorica and Bijelo Polje, from the moment of bringing the bill of indictment until the adoption of the first instance decision.

PRESS CONFERENCE

NGO Coalition for Monitoring of Accession Negotiations in Chapter 23

Podgorica, 17 December 2012

NGO Coalition for the monitoring of the accession negotiations in the Chapter 23, recently sent over 200 requests concerning judiciary and fundamental rights to the newly constituted Government of Montenegro.

Requests were sent out with the intention to remind the Government on a number of unrealized measures and recommendations contained in national policy documents, reports of relevant international organizations and reports of members of the Coalition,and the provisions of the domestic law and ratified international treaties as well as to demand their immediate implementation. As a member of the Coalition, CEDEM was involved in defining the requests relating to judicial reform, focusing in particular on the establishment of an independent, effective and accountable judiciary, improvement of the access to justice and fulfillment of material, technical and administrative conditions for the work of judicial authorities. On the occasion of the presentation of the requests, a media conference has been organized and attended by representatives of the CRNVO; CEDEM, Center for Monitoring and Research, Human Rights Action, Alternative Institute, the Center for Women's Rights, Juventas, LGBT Forum Progress; Association of Youth with Disabilities of Montenegro and the Institute for Social Inclusion. In addition to these organizations, the Coalition is also consisted of the following NGOs: Shelter, SOS Hotline for Women and Children Victims of Violence- Niksic, Anima-Center for Women and Peace Studies and the Center for Anti-discrimination EKVISTA.

RESEARCH PRESENTATION

The risk of corruption in the judicial system and in the business sector

Podgorica, 17 December 2012

Centre for Democracy and Human Rights (CEDEM) conducted Annual survey on corruption: The risk of corruption in the judicial system and in the business sector within the Efficient Management Program funded by USAID and implemented by East West Management Institute.

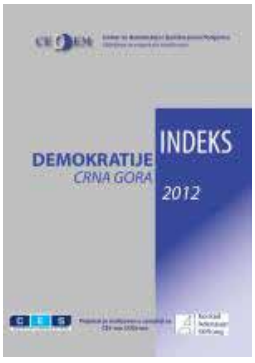
The study consists of three relatively independent, but methodologically related research activities. The first part is a quantitative study on the sample population in Montenegro, the second is a qualitative research based on interviews conducted with judges, lawyers and businessmen, and the third part of the analytical report which places the results in the previous two specific socio-cultural context of the Montenegrin society. Also, this year's survey was focused on the comparative trends in relation to the identical survey conducted in 2011.

Please find analytical report and additional research materials via link: http://cedem.me/en/programmes/empirical-research/other-opinion-polls.html

RESEARCH PRESENTATION

Democracy Index: Montenegro 2012

Podgorica, 18 December 2012



Centre for Democracy and Human Rights presented the findings of the research Democracy Index-Montenegro 2012, which was conducted in cooperation with the Centre for European Studies in Brussels and the German Konrad Adenauer Foundation and funded by the European Parliament.

The research Democracy Index was created in 2006 with the aim to enable measurement of the state of democracy in Montenegro. Since then, CEDEM successively conducted this research in 2007, 2008 and 2009. Research results for 2012 are summarized in the publication which contains an overview of indicator and the analysis of the level of democracy in political processes, rule of law, economic freedoms, education and the media, as well as the state in the field of the protection of rights of ethnic and religious minorities, women and persons with disabilities.

Please find the Democracy Index via link:
http://cedem.me/en/publications/viewdownload/48-publikacije-eng/368-democracy-index.html

MEETING

NGO Coalition for Monitoring of Accession Negotiations in Chapter 23

Podgorica, 25 December 2012

Minister of Justice, Mr. Dusko Markovic, met with representatives of CSOs involved in the area of judiciary: Human Rights Action, Centre for Democracy and Human Rights (CEDEM), Centre for Civic Education, tCentre for Monitoring, European Movement in Montenegro, 4Life, Civic Alliance, Helsinki Committee for Human rights in Montenegro and the Institute Alternative.
On that occasion,a working breakfast dedicated to so far cooperation between the Ministry of Justice and civil society has been organized. In addition, plans and programs which are expected to be implemented in 2013 by both Ministry and CSOs have also been discussed.Minister Markovic used the opportunity to inform CSO representatives about the activities that will be part of the list of priorities of the Ministry for the next year and invited them to take an active role in public policy-making as well as monitoring of their implementation.

TRAINING

UPR Coalition

Podgorica, 26 December 2012

Group of CSOs from Montenegro established the UPR Coalition, a coalition which will be involved in the UPR process in Montenegro. The Coalition gathers the following organizations: CEDEM, Civic Alliance, Centre for Children's Rights of Montenegro, Association of Paraplegics of Montenegro, Centre for Roma Initiatives, Centre for Women's Rights and MogUL.

The coalition was formed under the project Strengthening Civil Society Participation in the UPR process, supported by the Balkan Trust for Democracy. There was also initial training for the coalition members, which included information on the nature and significance of the UPR, the role and modalities of participation of CSOs in this process, and guidelines for alternative coverage within the UR process. On this occasion, the coalition members exchanged information and experiences related to the UPR process. The meeting also served for discussion on the technical details of the project, timing of project activities, and possible opportunities for initiatives, lobbying and advocacy regarding UPR recommendations.

International activities of CEDEM's representatives

Vladan Simonovic, Skopje (Macedonia), 9 – 10 November 2012

Vladan Simonovic, President of the CEDEM Steering Committee, participated at the international conference "Open Government", organised by CRPM and PASOS in Skopje on 9/10 November. On this occasion, CEDEM's representative also attended PASOS Annual Parliamentary session, during which new President of the Steering Committee was chosen. The session also included adopting new decisions on reorganisation and financial and human resource consolidation of this most prestigious association of think - tank organisations in Europe.

Emir Kalac i Dzenita Brcvak, Sarajevo (B&H), 15 – 17 November 2012

Researchers from the department for Security and Defence Policy, Emir Kalač and Dženita Brčvak, attended the sixth workshop within the project "Security Transition in the Western Balkans - from Conflict Zone to Security Community?".

The objectives of the workshop were: 1. to discuss key findings relevant for joint research question and theoretical debates; 2. to consolidate comparative component of research; 3. to agree on dissemination strategies: a. Common publication plan (special section of journal and/or edited book) and individual publications targets; b. Other academic dissemination strategies: academic conferencing, teaching, book reviews, etc; c. Policy impact: mapping context, how to target policy actors and how to reach practitioners (events, media, policy products, e.g. policy briefs, etc).

Dzenita Brcvak, Geneva (Switzerland), 22 – 26 November 2012

Centre for Democracy and Human Rights' researcher, Dzenita Brcvak, attended training program on minority and human rights advocacy, organised by Minority Rights Group International, based in London. The 5-day training was held in Geneva, Switzerland.

CEDEM's researcher, together with 15 representatives from CSOs from throughout the world, passed this extensive and comprehensive training on UN mechanisms for protection of human and minority rights (including UPR, Special Procedures, etc). Training also encompassed practical exercise, media advocacy training, simulation of different meetings and forums within UN. During the training, participants had opportunity to speak of minority issues in their respective countries, but also to exchange experiences on cultural characteristics and differences. The training was preparatory activity for the upcoming UN Forum on Minority Issues to take place in Geneva on 27/28 November 2012.

Dzenita Brcvak, Geneva (Switzerland), 22 – 26 November 2012

CEDEM's representative, Dzenita Brcvak, attended 5th UN Minority Forum on Minority Issues, which was held on 27/28 November in Geneva, Switzerland.

Međunarodne aktivnosti predstavnika CEDEM-a

This year's Forum was dedicated to 20thAnniversary of UN Declaration on Rights Belonging to National or Ethnic, Religious and Linguistic Minorities.

CEDEM's representative spoke on the Forum's agenda item # 5 relating to difficulties in the practical implementation of the Declaration. In that regard, she spoke about social exclusion of Roma and Egyptians in Montenegro, challenges this population faces daily, and finally, gave recommendations which can foster the process of social exclusion of RE community.

Marija Vuksanovic, Belgrade (Serbia), 11 December 2012

Marija Vuksanovic, representative of CEDEM's Department Rule of Law participated at a working meeting which was organized on 11 December 2012 by the Royal Norwegian Embassy in Belgrade. The meeting was organized with the occasion of signing contracts with civil society organizations which were donated funds by the Embassy in 2012. The meeting included a presentation of the results of projects carried out during 201, as well as presentation of new projects whose implementation is expected during the 2013. CEDEM's representative presented the project: Support to Montenegro's Integration into the European Union - Support to Judicial Reform, which aims to encourage the development of an accountable, transparent and efficient judicial system in Montenegro.

Emir Kalac, Zagreb (Croatia), 11 – 13 December 2012

Researcher within CEDEM's department for Security and Defence Policy, Emir Kalac, took part in the second workshop within the regional education program "Young Faces", which sponsors the Centre for the Democratic Control of Armed Forces from Geneva. The central theme of this year's "YF" is an "Intelligence Governance".

It is a program with regional participation (SEE), which involved representatives of state institutions and independent research organizations from civil society. The main objective of this program is training on different areas of the security sector reform.

Dzenita Brcvak, Pristine (Kosovo), 11 December 2012

The EU Office/EUSR organised a workshop Enhancing Regional Cooperation in the Western Balkans on 11 December in Pristine. CEDEM's representative,Dzenita Brcvak, was one of the panelists at the workshop. The event gathered EU officials, officials from Kosovo institutions, researchers working in the field of regional cooperation and representatives from some selected regional initiatives who are active in the field of rule of law (MARRI, SELEC and RAI).

The representatives of regional initiatives and researchers presented their views regarding the state of play in regional cooperation in the Western Balkans and exchanged views on how to ensure inclusive and functional regional cooperation.

DEMOCRACY INDEX: MONTENEGRO 2012

Podgorica, December 2012

The research Democracy Index was created in 2006 with the aim to enable measurement of the state of democracy in Montenegro. Since then, CEDEM successively conducted this research in 2007, 2008 and 2009.

Research results for 2012 are summarized in the publication which contains an overview of indicator and the analysis of the level of democracy in political processes, rule of law, economic freedoms, education and the media, as well as the state in the field of the protection of rights of ethnic and religious minorities, women and persons with disabilities. Research was conducted in cooperation with the Centre for European Studies in Brussels and the German Konrad Adenauer Foundation and funded by the European Parliament.

In this newsletter, we present the research part on democracy of political processes, while full text can be found via link: http://cedem.me/en/publications/finish/48-publikacije-eng/368-democracy-index.html

1. DEMOCRATICITY OF POLITICAL PROCESSES

When we talk about political structure of a society, on the basis of analytical apparatus application reflecting itself in the aspects we have talked about, we identified four key dimensions which comprise this area and they are:

- Control and legality of authorities
- Transparency (publicity) of authorities
- Responsibility and changeability of authorities
- Proffesionalism in government bodies' activities

Therefore, each of the dimensions was a subject of a separate survey by means of indicator network. In the following part we will show a review for every area as well as indicators taken as units of measurement for given areas.

1.1. Control and Legality of the Authorities

Democratic and civil control of chosen representatives of the citizens, who have to act within a legal frame, represent *conditio sine qua non* of a democratic society. We were of the opinion that it was necessary to find out how Montenegrin citizens evaluated the possibility of conducting control, and also, in their opinion, to which extent Montenegrin government was legitimate in its work. Data show (Table 1) that when we talk about this segment, we register mostly positive trends for individual items. We observe a positive trend for the efficiency of civil control of state authorities (2.79 versus 2.45) as well as for the efficiency of local authorities control (2.82 versus 2.49). Also when we talk about public control of secret service and security service, a trend is positive (2.87 versus 2.73). On the other hand, when we talk about lawfulness of authority bodies' work, absence of corruption and crime in state and municipal authorities, the surveyed values are on the level of 2008, thus, we cannot claim there was any progress. Finally, when we talk about presence/absence of corruption and crime in state authority (2.45 versus 2.07), as well as about presence/absence of corruption and crime in local authorities (2.55 versus 2.24), we measure positive trends, although there was

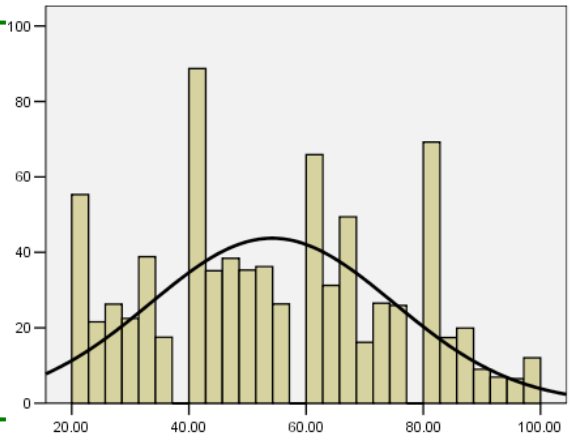
no progress in those two aspects in the period 2008 – 2009. However, regardless of the trend, we cannot be satisfied with the values in this dimension, or in other words, **it still remains that corruption in work of state and local authorities are the two aspects we must insist on in the following period.**

Table 1 – Control and lawfulness of authorities –survey of all indicators

INDICATORS	2006	2007	2008	2009	2012	SD
Efficiency of civil control of state authority	2.18	2,25	2,35	2,45	2,79	1,25
Efficiency of civil control of local (municipal) authority	2.26	2,23	2,38	2,49	2,82	1,29
Public and governmental control of secret services and security police	2.32	2,43	2,62	2,73	2,87	1,26
Legality in authority bodies'activities	2.46	2,59	2,68	2,66	2,81	1,27
Absence of corruption and crime in state authority	1.95	1,99	2,08	2,07	2,45	1,21
Absence of corruption and crime in local (municipal) authority	2.04	2,12	2,21	2,24	2,55	1,23

Table 1.1 – Control and lawfulness of authorities - SCORE

Parametres		Statistics
Arithmetic mean		54,2116
95% Confidence intrerval	TO	52,7665
		55,6567
Median		53,3333
Variance		432,685
Standard deviation		20,8011
Minimum		20,00
Maximum		100,00
Range		80,00



1.2. Transparency (Publicity) of the Authorities

Transparency of activities is the very characteristic which clearly distinguishes an authoritarian (as the socialist one was) from a democratic society. This issue is exceptionally important, especially if we take into account the fact that the population of Montenegro is around 650 000 citizens and that alternative channels of communication are gaining in importantance a lot, and this very often leads to disavowal of the public and announcing wrong information of all kinds. The results we have been obtaining for a longer period indicate that there has been a positive step out about this issue in comparison to the socialist period, but

it is still far from a satisfying result. Thus, a lot of work is still necessary in order to achieve transparency of authorities in a sense which developed Western democracies have.

At this point a special emphasis should be put on roles of NGOs and media, and their influence is crucial in this sense. NGO sector is rather strong in Montenegro and its contribution to the overall democratization of the society was really big, first of all by inviting the authorities to be much more public in their work. However, both media and NGO sector have to put much more effort into significant improvement of the situation in this area.

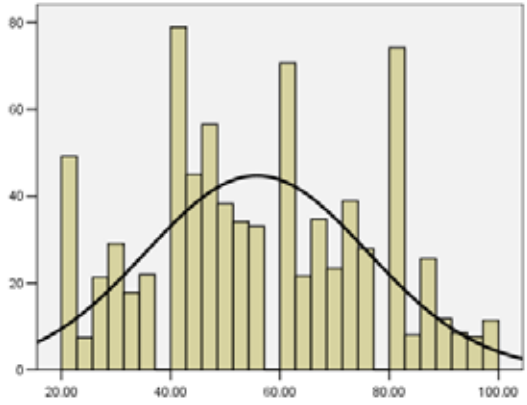
When we talk about this dimension (Table 2), we can see that in comparison to 2009, there is either slight progress or stagnation with most of the indicators. Transparency in work of state and also local authorities recorded slight progress, and we measured **a negative trend for objectivity of media about following activities of the Government and the Parliament.** The value of this indicator returned to a low level from 2008. What is especially interesting is that this indicator, although we meaure a regressive trend, has the highest mean value in comparison with all other indicators. Comparatively, inside the dimension itself, it is obvious that in the following period additional effort is necessary in order to improve publicity of work of state and local authorities, and this includes also the need to improve mechanisms of enabling citizens to have the insight into activities of authorities.

Table 2 – Transparency (publicity)of authorities – survey of all indicators

Indicators	2006	2007	2008	2009	2012	SD
Publicity of governmental authorities' activity	2.49	2,53	2,73	2,74	2,78	1,204
Publicity of local authorities' activity	2.51	2,59	2,76	2,79	2,82	1,218
Media objectivity in following activities of the government and the Parliament	2.81	2,85	2,97	3,05	2,96	1,192
Possibility that citizens have an insight into the process and making of important political decisions	2.39	2,46	2,66	2,65	2,77	1,218
Availability of information from legal authorities and services to journalists	2.60	2,58	2,77	2,75	2,79	1,202
Availability of information from legal authorities and services to citizens	2.37	2,32	2,50	2,52	2,67	1,178

Table 2.1 – Transparency (publicity) of authorities - SCORE

Parameters		Statistisc
Arithmetic mean		55,7674
95% Confidence interval	TO	54,3560
		57,1788
Median		53,3333
Variance		411,700
Standard deviation		20,2904
Minimum		20,00
Maximum		100,00
Range		80,00



1.3. Accountability and changeability of the Government

A responsible government is the one which puts interests of the state and its citizens on the first place, and not interests of governing individuals or those close to them. A democratic society has to create effective and efficient mechanisms which will guarantee that elected authorities will also be responsible to the citizens who in the end are the source of its legitimacy. A vast majority of postsocialist societies had or still has problems of this kind, so it was very important to see how citizens of Montenegro perceive this issue.

Changeability of authorities is a very important issue in Montenegrin context. A fact that, since democratic changes at the beginning of the nineties until today, one party has won all the elections, is a reason good enough for us to see what Montenegrin citizens think of it. Apart from this, we should bear in mind that changeability of authorities is a principle of a democratic society, but as a principle it does not imply that the authority in question has to be de facto changed on some elections, but that democratic mechanisms have to provide changeability of authorities. Therefore, in this respect we should distinguish between a possibility (changeability), which should be provided by the political system, and facticity (change) as a consequence which is not necessary.

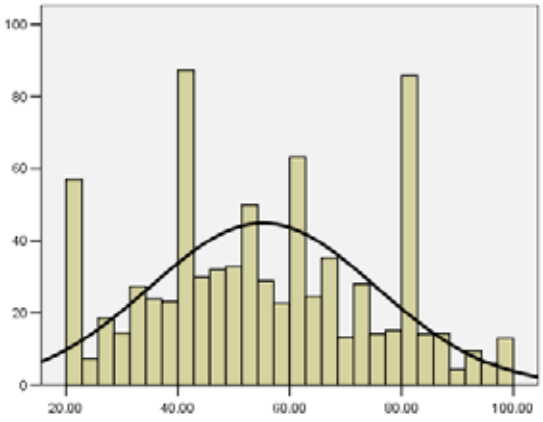
When we talk about results of surveying this dimension (table 3), in comparison to the previous research, first of all it is clear that we have negative trends in several aspects. Firstly, there is **changeability of authorities both on state and local levels**, and also **responsibility of ministers and ministries.** In these three aspects, the surveyed values are even lower than the values we measured in 2008, therefore, we have a distinct negative trend. Also when we talk about legitimacy of authorities and responsibility of authorities, trends are negative, also below the level from 2009, but above the level from 2008. Therefore, these are the four aspects which should be insisted on in the following period. When we talk about other aspects, we have slight improvement, which in some cases does not go above the line of statistical significance in comparison with 2009.

Table 3 – Responsibility and changeability of authorities – survey of all indicators

Indicators	2006	2007	2008	2009	2012	SD
Governmental authority as citizens' service	2.35	2,39	2,58	2,57	2,62	1,221
Local authority as citizens' service	2.46	2,48	2,66	2,66	2,68	1,195
Responsibility and conscientiousness of state administration as citizens' service	2.44	2,47	2,71	2,68	2,72	1,148
Responsibility and conscientiousness of local administration as citizens' service	2.53	2,54	2,73	2,71	2,81	1,169
Responsibility and conscientiousness of members of the Parliament	2.26	2,32	2,49	2,47	2,68	1,165
Responsibility and conscientiousness of ministries and ministers	2.43	2,44	2,67	2,73	2,66	1,171
Changeability of governmental authorities on the elections and in compliance with democratic procedures	2.71	2,77	2,87	2,89	2,80	1,292
Changeability of local authorities on the elections and in compliance with democratic procedures	2.89	2,88	3,08	3,06	2,93	1,295
Legitimacy of authorities	2.91	3,12	3,33	3,29	3,01	1,322
Responsibility of authorities and citizens' interests protection	2.30	2,32	2,60	2,55	2,76	1,264

Table 3.1. – Responsibility and changeability of authorities – SCORE

Parametres		Statistics
Arithmetic mean		55,2233
95% Confidence interval	FROM	53,8163
	TO	56,6303
Median		54,0000
Variance		409,305
Standard deviation		20,2313
Minimum		20,00
Maximum		100,00
Range		80,00



1.4. Professionalism in the Work of Government Bodies

Democracy today to a great extent, in fact represents rule of technocracy. Knowledge and professionalism are the basis of efficient functioning of democratic institutions. Consequently, professionalism at work and vocational training of individuals who are on ruling positions, are necessary for a society in order to function in the appropriate way. It implies that the main principle for filling certain positions is, first of all, the result and degree of education, and not nepotism or some other personal interest. Therefore, we were of the opinion that it would be good to see what Montenegrin citizens thought of this issue. Additionally, an integral part of this dimension is the attitude of majority towards minority when we come to the issue of skills and competence.

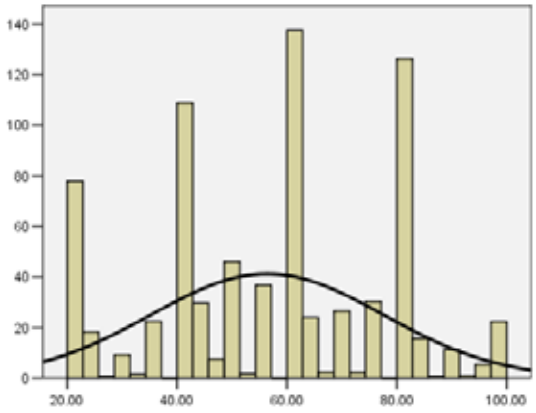
Results of a survey of this dimension **unambiguously show that there are negative trends in every single aspect.** Therefore, citizens of Montenegro think that the situation is worse in every single aspect than it was in 2009, and the situation is even worse if we notice that mean values are lower than in 2008. Thus, we have a long-term negative trend, **so that in the following period special attention should be paid to strenghtening all the aspects which would strenghten professionalism at work of the authorities on all levels.**

Table 4. Professionalism in authority bodies' work - survey of all indicators

Indicators	2006	2007	2008	2009	2012	SD
Professionalism and vocational skills of the officials in governmental services and ministries	2.74	2,88	2,94	3,00	2,87	1,188
Professionalism and vocational skills of the officials in local authorities	2.65	2,73	2,88	2,85	2,83	1,182
Professionalism and vocational skills of the officials in the Parliament and its bodies	2.69	2,80	2,86	2,94	2,85	1,170
Respect of minorities by majority at all levels of authority	2.44	2,53	2,67	2,69	2,74	1,184

Table 4.1 Professionalism in authority bodies work – SCORE

Parametres		Statistics
Mean		56,3975
95% Confidence interval	FROM	54,8964
	TO	57,8987
Median		60,0000
Variance		448,629
Standard deviation		21,1809
Minimum		20,00
Maximum		100,00
Range		80,00



1.5. Summary Indicators in Area of Democraticity of Political Processes

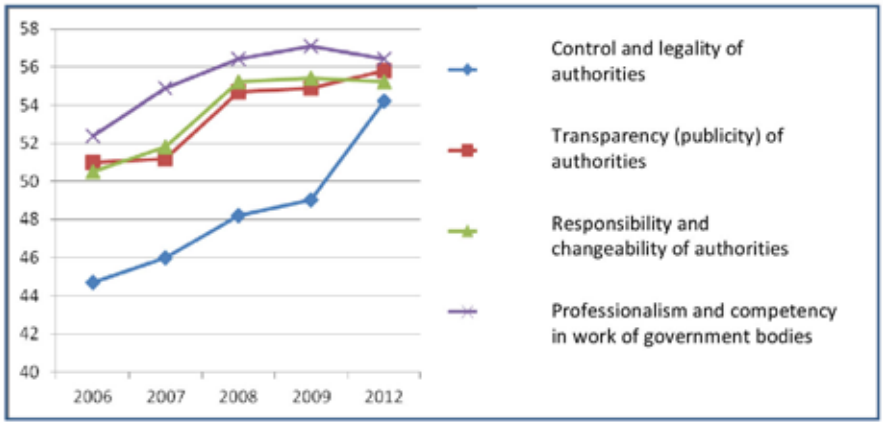
There is a comparative review of all dimensions in table 5[1], as well as of a trend in comparison to the previous research surveys. The results show that the only progress was made with control and legitimacy of authorities, whereas in all other dimensions we surveyed stagnation. From this point of view, differences which can be noticed numerically cannot be qualified as statistically significant. Therefore, what remains is to **put additionl effort in strenghtening control, transparency, responsibility and professionalism at work of the authorities.**

Table 5. Politics and authority – summary by dimensions

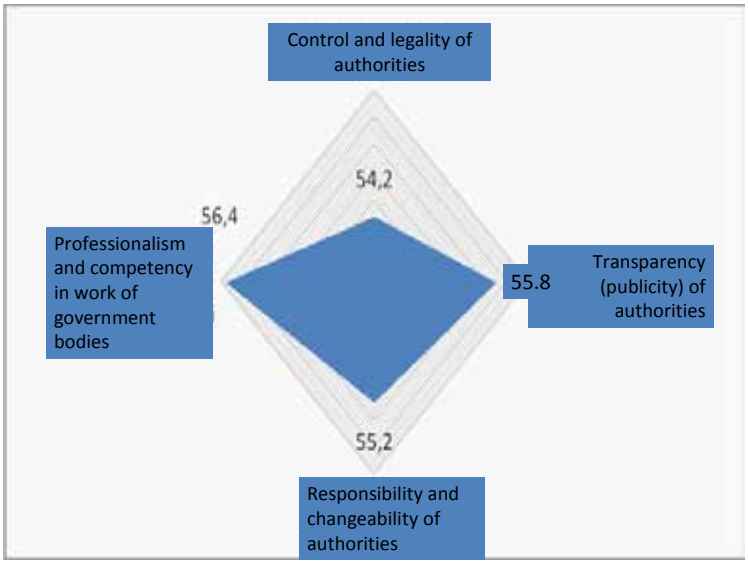
Dimensions	2006	2007	2008	2009	2012	t stat.
Control and legality of authorities	44,7	46,0	48,2	49,0	54,2	**7,08; p<0,01**
Transparency (publicity) of authority	51,0	51,2	54,7	54,9	55,8	1,21; p>0,05
Responsibility and changeability of authority	50,5	51,8	55,2	55,4	55,2	0,03; p>0,05
Professionalism and competence in authority bodies' work	52,4	54,9	56,4	57,1	56,4	0,92; p>0,05

1 Cummulative scores are always given within the range from 20 – 100, where 100 is a maximal value

Graph 5.1 Democraticity of political processes–TREND



Graph 5.2 Democraticity of political processes



Finally, if we analyse scores by dimensions (graph. 5.2) within the scope of democraticity of political processes, we can see that, although there is the largest progress in this aspect in comparison with 2009, **the biggest problem is the issue of control and legality of authorities.** Therefore, a conclusion still remains that in this respect crucial progress has to be achieved, in order to raise overall democratic capacity of Montenegrin society in the aspect of political process.

PUBLICATIONS

Guide through law on prohibition of discrimination

Podgorica, 6 December 2012

In order to raise awarness of citizens of Montenegro, who may be either potential perpetrators or/and victims of discriminatory acts, of social and concrete danger these acts inflict, it is necessary for citizens to adopt more coherent knowledge on discrimination, its causes and consequences. Drawing on concrete exapmles from practice, Guide here presented will provide you with coherent and practical knowledge and guidelines on how to cope with and prevent discriminatory beahviour.
Guide is available in Montenegrin and Albanian language via link: http://cedem.me/en/publications/viewdownload/48-publikacije-eng/360-guide-e-ligjit-mbi-ndalimin-e-diskriminimit.html

Roma Inclusion in Europe - Good practice in Montenegro

Podgorica, 28 December 2012

Within the project Roma Inclusion in Europe - Good practice in Montenegro, CEDEM prepared the publication which aims at encouraging and promoting the examples of good practice in Roma inclusion at the local level. The publication has been prepared with the support of the Open Society Foundations from Budapest, through Mayors Making the Most on EU funds for Roma Program (MERI). The publication represents the result of the joint work of civil society organizations and local authorities in municipalities Berane, Bijelo Polje, Niksic, Tivat, Kotor, Budva and Herceg Novi. The project aimed to contribute to strengthening Roma integration at the local level, but also to greater enrollment of of local authorities in the implementation of inclusion policies. It contains examples of good practice on Roma inclusion in the areas of housing, education, employment, social protection, local community development and support to the development of Roma civil society.
Please find the publication via following link:
http://cedem.me/en/publications/viewdownload/48-publikacije-eng/370-roma-inclusion-in-europe-good-practice-in-montenegro.html