YIHR
YOUTH INITIATIVE FOR HUMAN RIGHTS
INICIJATIVA MLADIH ZA LJUDSKA PRAVA
INISHMA E TË RINJVE PËR TË DREJTAT E NJERIUT

Građanska alijansa
Civic Alliance – Aleanca qytetare

COURT MONITORING

- ACCESS TO COURTS, EQUALITY, PUBLICITY, TRANSPARENCY, EFFICIENCY -

- REPORT -

Podgorica, November 2011

USAID | MONTENEGRO
FROM THE AMERICAN PEOPLE

Youth Initiative for Human Rights, Montenegro
November 2011

Publisher
Boris Raonić

Authors
Siniša Bjeković

Monitoring team
Boris Raonić
Maja Velimirović
Milan Radović
Siniša Bjeković

Proofreading
Sanja Rašović

Translation
Ana Kadović

Design and prepress
Aleksandar Pajević

Print
AP print, Podgorica
300 copies

Development of the Report has been supported by the people of United States of America through Agency for International Development (USAID), especially through the Good Governance Activity in Montenegro. Standpoints expressed in this Report represent standpoints of YIHR and do not have to express opinion of donor that supported the project.

CIP – **Каталогизација у публикацији**
Централна народна библиотека Црне Горе, Цетиње

ISBN 978-9940-9015-9-2
COBISS.CG-ID 19031568

CONTENT

Introduction

The Report you read represents the result of activities conducted in the frame of project "Court monitoring" implemented by Youth Initiative for Human Rights (YIHR) during the period from February to September 2011, owing to donation provided by Good Governance Activity in Montenegro.

General goal of the project was to contribute to increasing efficiency and transparency of the court system in Montenegro through targeted collection of data and their analysis, directed towards defining key problems and their consideration, and providing recommendations that would influence on achieving changes.

In order to achieve the above mentioned goals, the project was directed towards following elements:

- General court practice in a view of access of public and interaction of courts and citizens;
- Efficiency of court procedure and functioning of judicial authority;
- Services of court administration related to facilitating access to courts and the needs of citizens and legal persons;
- Transparency of procedures and operability of court administration in providing information necessary to the public, wider public and stakeholders.

In that sense, in the frame of the project were implemented activities as follows:

- Analysis of the legal framework of functioning of judicial authority functioning, its effectiveness and success;
- Empirical researching of arguments in direct contact with judicial institutions: interviews and visits to courts;
- Surveying of judges;
- Surveying of users of services of court administration and parties in court proceedings, including citizens, parties, lawyers, trade unions, and associations;
- Analysis of condition through using indicators provided by civil sector and already published reports;

- Analysis of statistical data on work of courts contained within the frame of legal analysis and in the frame of other components of the Project;
- Provision of proposals and suggestions on improving conditions of functioning judicial authority and its understanding by general, professional public and stakeholders.

In this surveying participated 18 lawyers from Podgorica, Kotor and Bijelo Polje, with various professional backgrounds, while 70 citizens participated at the survey in these three courts. Unfortunately, besides several attempts we did not manage to contact representatives of Bar Association in order to access institutionally to surveying of their members.

Time of implementation of the Project, and affordable resources provided selection of courts that were included in project activities. On the one hand, selected courts represent overall complexity of the subject and complexity of affairs of judicial administration, and at the same time depicts informal territorial division on northern, central and southern part of Montenegro, which is well-established in explication of similar projects and researches. Therefore, Administrative court, two Higher courts and three Basic courts in Podgorica, Kotor and Bijelo Polje were selected.

The Report is composed of two analytical parts. The first one is related to the review of legislation framework and the second part represents findings of empirical research. The end of the Report provides conclusions and recommendations, which, we hope, shall encourage discussion of all relevant actors and contribute to improvement of functioning of judicial system in Montenegro.

Essentially, "Court monitoring" project is one of the public reflections through which, in certain manner, the control of judicial authority is being exercised. In addition, the project provides incentive to the internal dynamics of judiciary itself and their efforts to reiterate the legitimacy of their role to prevent misuses and illegal actions in all spheres of social life.

Unlike many other professions, judicial function has always been faced with huge challenge, to safeguard justice and law from all attacks that might harm democratic order and the principle of the rule of law. Simply, judicial failures are more visible than any others, and consequences in a very politicized and vulnerable post-transition society are usually enlarged, whether for justified and stable reasons, whether they are product of law and justice of opposite, sometimes unstable and unjustified expectations. We should not forget that in large number of judicial procedures, one party is never satisfied because that party is the one that loses dispute on right and/or facts. However, before the court receives the opportunity and authorization to decide publicly and legally on any legal matter, it is firstly important to provide to that party access to court, equally as the right of public to find out more about the essence and form of the procedure before the court, except in cases prescribed by the Law.

Except the very court procedures, confidence of public is being attained through adequate relationship of courts and media, civil sector and other actors of civil society. This access may not become its opposite by turning courts into administration machines that, besides its basic function, spends the largest part of time in responding all questions public is interested in, or the one who requires information from judicial body. This does not imply misuse of judicial institutions and violation of rights to free access of information, because without this, court would be privileged and abolished from responsibility to exercise the function for the benefit of those who have right to know in which manner the function is being exercised.

Strategy of the reform of judiciary, as the key instrument of development of judicial power, caused important changes in its institutional and operational structure. Basic lines of acting have been directed towards strengthening judicial independence and its position in the society, efficiency and exercising of justice timely, encouraging responsibility and creating conditions for professional development in accordance which as more possible objective criteria based on expertise and professionalism, or transparency of process of election of bearers of judicial functions.

The above mentioned principles may be viewed from different social aspects: from the level of profession, or the level of wider professional and science public, and even from the perspective of the ones who have directly been involved in court procedures or who put the basis of their status at the society and the state on (dis)trust towards certain authorities, specifically judicial. In regards of the latter, average citizen has the strongest interest that his rights would be qualitatively and efficiently protected through a proceeding that provides all procedural guarantees of fair, timely, and consistent trial. At the same time it should also fulfill criteria of equal treatment in public debate, before independent and impartial court, with full respect of dignity of the party and the very judges.

Finally, it should be emphasized that the project has been conceived as the project that would pass the phase of exchange of experiences with representatives of judicial authority and Association of judges, before publishing of the project results, as the precondition of better, more precise, and comprehensive consideration of overall problematic and strengthening of dialogue between bearers of judicial functions and civil society, or final users.

1. Legislation framework[1]

1.1. The Constitution and relevant international standards

The place and the role of judicial authority in constitutional and legal order of Montenegro have been defined by provisions of the Constitution. Besides, specific elements of the character of judicial authority arise from international treaties which refer to general framework or the quality of judicial bodies (tribunals) important for decision making on rights and obligations of all persons under jurisdiction of the state of Montenegro. Formal and legal set up of judicial authority is not closely regulated by provisions of international treaties, whereas the implementation of international standards (even those related to judicial authority) has been rendered to discretionary competencies of the state and its legal tradition. Such unique principles of organization of judiciary have not been provided at global and regional level which may largely be explained by existence of different legal systems and legal traditions in comparative law. In the sphere of international law of human rights, this principle has been additionally justified by the right of the state to define independently the system of protection of human rights and freedoms (and in that manner organization of judicial institutions) in the manner that would provide their full implementation. Organization of judiciary has been conditioned by different national economic, social, geographic, and cultural factors, which are in function of easier access to exercise of justice. Obligations of the state in a view of creation of conditions under which the justice and respect of human rights find the basis in international treaties and other sources of international rights are apostrophized in the Preamble of the Charter of United Nations[2] and in provisions of the Universal Declaration on Human

[1] Elaborate legal analysis of legislative framework may find here http://www.yihr.me/wp-content/uploads/2010/03/Monitoring-sudova-pravna-analiza-.pdf

[2] United Nations Charter signed on 26 June 1945 in San Francisco, and came into force on 24 October 1945. Its constituent part is the Statute of International Court of Justice.

Rights[3] and other international documents.

Principles of organization of judiciary in Montenegro are defined by the Constitution and the special legal regulations on court system organization. Besides, one part of judicial authority organization is defined by other regulations such as Law on civil servants, Law on labor, which are subsidiary applied on servant relations and the work of servants in judicial bodies. The Constitution prescribes principle division of authority by which judiciary belongs to courts, legislative authority belongs to the Parliament and executive belongs to the Government of Montenegro.

As supreme principles, the Constitution guarantees independence and autonomy of judiciary (Article 118.), prescribes the principle of gathering in trial (Article 119.), principle of public trial (Article 120.), principle of permanency of judicial function (Article 121.) and functional immunity of judicial function bearers (Article 122.) and the principle of incompatibility of judicial function or prohibition of executing the function of MP and other public function, or executing other activities. Obligation of providing unique implementation of law by courts (Article 124 of the Constitution) as the part of functional and process guarantees for the qualitative, efficient and timely work of courts has been prescribed for the highest court instance (Supreme court), except the obligation of achieving and maintaining constitutional guarantees. Special effect in the last constitutional and legal reform has been made within the framework of competencies and functioning of Judicial Council, as the highest body of judicial power in Montenegro. Namely, competencies the Constitution prescribes for this body, are functions of supreme judicial authority that are related to electing, deposing, termination of function, and the issue of immunity of judges, which provides formal and legal position of independency in comparison with other branches of authority.[4] These

[3] O. Racic, B. Milinkovic, M. Paunovic, Human Rights, International politics / NIU "Official Gazette", Belgrade, 1998, page 125-127

[4] *The Constitution of Montenegro, "Official Gazette of Montenegro" number 01/07, Article 128*

constitutional principles are elaborated through appropriate provisions of special laws, which closely define the system of judicial authority. Composition of the highest body of judicial authority comprises the status of the president who is at the same time the President of Supreme court of Montenegro and the membership of four members from the line of judges, two members from the line of MPs (each one from the authority and opposition) who are elected and dismissed by the Parliament of Montenegro, two lawyers of good reputation, elected and dismissed by the President of Montenegro, Minister of justice, with the accent that the last one does not vote when issues on disciplinary responsibility of judges are on the agenda (Article 128 of the Constitution). Therefore, the Judicial Council is composed of the President and nine members with the collective mandate which lasts for four years.

In a view of functional guarantees in the work of courts the Constitution states that the authority has been limited by the Constitution and law (including the provision on supremacy of international law from Article 9 of the Constitution when the legislation defines some relations otherwise than confirmed and published international treaties), while the relations with other branches of authority is based on the balance and mutual control. Provision of the Article 16 of the Constitution prescribes that the manner of exercising human and minority rights, or the manner of establishing, organizing and competencies of bodies of authority and the procedures before these bodies, if it is important for their functioning, would be prescribed by the law.

Principle of equality before the law, as the one of comprehensive postulates of legal state and the rule of law, has been prescribed by Article 17 of the Constitution and has a wider meaning than the concept based on the meaning of legal norms, i.e. it is related to the concept of equality in internal legal order that may not be contrary to the international law. In that sense, wider meaning of this principle implies equality before the court and before other public bodies in the procedure of protecting human rights and freedoms of citizens (Article 19 of the Constitution).

In that procedure the Constitution guarantees **the right to legal remedy** against decision on its right or on the interest based on the law. International standard

of legal remedy guaranteed by the Constitution indicates that it has to be available, effective, and efficient legal mean, but not theoretical or illusory understanding of this institute. According to the practice of the European Court for Human Rights efficiency implies primarily the existence of such a legal remedy by which the decision of executive authority would be the subject of independent examination of facts in decision making process of authority, in order to establish the balance between the public interest and rights of individuals. Efficiency of legal remedy presumes that available remedy may stop execution of measures which is contrary to the Convention if the consequences of such a measure would be irreversible.[5] Legal remedy has to keep indicated characteristics in practice and in law, and at the same time it has to contain the requirement of efficiency as one of the detailed prerogatives of exercising right to legal remedy in general. Establishing the concept of effectiveness, European Court for Human Rights emphasized in several cases emphasized that its implementation in practice should be considered as one of the manners of proving the effectiveness of legal remedy.[6]

Right to legal remedy of specific quality is related to providing and exercising right guaranteed by *the European Convention for protection of human rights and fundamental freedoms*, and has often been considered in procedures initiated by and related to exercising right to fair trial. Each disruption of balance and limitation of access to legal means in exercising subjective rights has to be based on law and express the need of democratic society for such a limitations, whether it is performed it by the act of bodies of public administration (when the possibility of court protection exists) whether by the court decision that may not be attacked in internal law. These restrictions may not limit or diminish the possibility of individuals to access to justice in such a manner or in measure that would disrupt the essence of that right. Therefore, the court has to guarantee effective right to access to courts to the parties in the procedure, in

[5] D. Gomien, Short guide through the European Convention on Human Rights; Council of Europe, 2007, page 166

[6] Bijelic against Serbia and Montenegro, verdict of European Court from 28 April 2009, Paragraph 76; Parizov against former Yugoslav Republic Macedonia, verdict from 7 February 2008, Paragraph 46

order to establish their "civil rights and duties".[7] Summarizing right to access to court in comparison to international standards, it should be emphasized that the right is not absolute. However, in a view of limiting that right, there has to be legitimate goal and reasonable relationship of used means and goals to which is being strived.[8] Limitations that are being introduced may be related to the character of parties, type of the procedure, participants in the procedure, issues of the immunity, limited competencies of national courts, and execution of verdicts, which is the final goal of each court procedure which executes materialization of law.

One more mechanism of protection in exercising process rights and equalities before the law, guaranteed by the Constitution, is the institute of legal aid, which also guarantees right to free legal aid in cases defined by the law (Article 21). Equality of parties before the court that is provided by free legal aid is based on objective criteria, independently from the right of party to defend itself at court procedures. Criteria for defining whether interests of justice/fairness require provision of free legal aid to a person include the nature of accusations against the submitter and the need for preparation of all arguments for participation in the procedure related to complicated legal issues.

International Pact on civil and political rights in Article 14, Paragraph 3, indent d, prescribes guarantee to each person to defend itself or with the assistance of legal representative they choose. If a person does not have legal representative he/she should be introduced with their right to have legal representative and, whenever the interest of justice requires, defense attorney by official duty should be awarded to them, without any costs if they do not have finances to pay for it.

International Pact on economic, social, and cultural rights does not explicitly prescribe this guarantee, but through the General comment number 7 of the

[7] European Court for Human Rights, Garzicic against Montenegro, verdict from 21 September 2010, Paragraph 31, 32
[8] European Court for Human Rights, Golder against United Kingdom, verdict from 21 February 1975, Paragraph 35

Committee for economic, social, and cultural rights related to Article 11 of the Pact[9] indicated on the institute of legal aid as the positive and legal obligation of the state in creating conditions for implementation of rights of each person to appropriate standards of living and improvement of life conditions.

Although set of rights from Article 6, Paragraph 3 of the *European Convention for protection of human rights and fundamental freedoms* is primarily focused at the criminal legal aspect, practice of the European Court for Human Rights directed protection of procedural equality on civil cases. Montenegro has recently received system law which defines the concept of providing legal aid. Until nowadays, this issue has been partially solved by establishing services for legal aid at the local level [10] which did not satisfy criteria of efficient and effective representation of parties in the state of need of this institute, or the ones who present its defense at court procedures. Nevertheless, new Law on free legal aid [11] or its implementation has been postponed, considering that its implementation shall start next year. Therefore, assessment of its eventual efficiency in a view of results of its implementation may not be given, and the projection of efficiency in exercising rights of persons who have right to free legal aid. This is primarily related to certain categories of providers of service of free legal aid that have not been covered by the law but would have the possibility or the interest to do this (trade unions, NGOs). Another problem might be high tariffs of free legal aid services, although it makes only half of the prescribed lawyer's tariffs, only because the projection of possible number of users does not exist, nor it is possible to define the budget position for these purposes, furthermore we are facing one more global economic crisis.

Essential understanding of legal aid term is related to representation by legal representative or other qualified person, without compensation or significantly reduced costs of representation, for the benefit of person who needs to be represented in the procedure before public authority. Therefore, there is clear

[9] Body established by the UN International Pact on economic, social and cultural rights
[10] Services were established in the frame of bodies of local self-government, but they provide legal aid for more municipalities, analysis of legal practice in providing free legal aid in Montenegro, Center for legal aid, Podgorica, 2008, page 9-11
[11] "Official Gazette of Montenegro", number 20/2011

distinction of term "representative" in a sense of professional person who fulfilled formal conditions for legal representation and practice which says that legal aid may be provided by other legal persons with previous fulfillment of some procedural and administrative conditions, which is appreciated in specific administrative procedure in each concrete country.

Besides, procedural laws have elements of providing legal aid to persons who are not able, for material or other reasons, to engage defense attorneys or legal representatives in procedures before courts. Except this, even the court has the right and is obliged to warn the party on lack of professional knowledge which may harm its interests in achieving justice and indicate on consequences of failing to engage qualified legal representative (Article 12 of Law on civil proceeding, Article 4 and 5 of the Criminal Procedure Code).

In the part about **exercising human rights and freedoms**, the Constitution defines two comprehensive principles: right to fair and public trial (Article 32), presumption of innocence, or the principle *in dubio pro reo,* which stipulates that in the cases of suspicion on the account of guilt, court is obliged to interpret that situation in favor of accused party (Art.35). The later is consequently the integral part of fair trial concept, when it comes to the treatment and rights of persons in criminal matters.

Although Article 118 of the Constitution of Montenegro indicated **independence and autonomy of court**s as the principles of judiciary, i.e. set material and legal framework of trial which is related to the Constitution, internal legislation and confirmed and published international treaties, it is clear that remaining provisions of the Constitutions, in chapter 5. (Court) have power of constitutional principles in regards to organization of judicial authority and functioning of judicial bodies. Besides, in its acting, the court has the right and obligation to respect **the principle of impartiality** that is one of the principles contained in the *European Convention for protection of human rights and fundamental freedoms,* which is constituent part of Montenegrin legal order. For that matter, principle of impartiality found its position in legislative framework of organization of judicial authority in Montenegro, through Law on courts. Besides the principle of independence and autonomy in comparison

to other public bodies, European Court for Human Rights provides the definition of principle of impartiality in the case *Pirsak against Belgium*.

"[…] according to the rule, impartiality defines absence of prejudices or inclination, its existence in terms of Article 6, Paragraph 1 of the Convention may be tested in different manners. In that sense, it is possible to make difference between subjective access, which defines personal conviction of the judge in the actual case, and objective access which defines whether the judge offered guarantees sufficient for exclusion of each legitimate suspicious in that view."

Subjective test of impartiality of court and judge is reflected through the fact that it is assumption that is difficult to refute, which demands concrete evidence in each, individually specified case.

Objective test is contained in the verdict *Fej against Austria*, where the European Court for Human Rights concluded that:

"…according to the test of objectivity, it has to be defined, fully separated from the personal acting of judge, whether there were verifiable facts that may cause suspicious in its impartiality. In that view, even the impression that judge makes, may have certain significance. What is important here is the trust that court in democratic society provide to public and above all, when criminal proceedings come in issue, the trust they give to the very defendant. It means that in making decisions on justifiable reasons for fear that certain judge is not impartial in some concrete case; the standpoint of defendant is important, but is not decisive. What is decisive is that such a fear may be considered as objectively justified." [12]

Bangalore principles on executing judicial function indicate that impartiality of judge is required not only in comparison to the final decision but is required in the manner of conducting the proceeding as a whole. [13]

---

[12] N. Mol, K. Harbi, Right to fair trial, Council of Europe – Belgrade, 2007, Quotations from the Manual, page 62, 62

[13] Strengthening basic principles of judicial conduct, ECOSOC 2006/23

1.2. Legislation framework in Montenegro

Organization of judicial authority in Montenegro is grounded on two key laws – Law on Judicial Council and Law on courts, and bylaws adopted in accordance with the above mentioned laws. Besides, important role in organization and functioning of courts have regulations which define the position and the role of experts and other participants at the court proceedings, education in judicial bodies, principles of organization, and conduction of inspection in the domain of executing affairs of judicial administration, etc. It is evident that these regulations have direct and indirect impact on the efficiency of court proceedings, personal capacity, and the quality of bearers of judicial functions, and even on functioning of judicial administration, as an important factor of organization and work of judicial authority. In a view of organization of affairs in judicial bodies special significance has the Judicial Rulebook which closely prescribes rules related to functioning of courts, judicial administration, and the manner of their work. Structure and content of Judicial Rulebook indicates to the fact that specific provisions of this act overcome its character and hierarchical position in the system of legal acts which define the system of judicial authority, and it would be useful to prepare special analysis on it.

Law on Judicial Council, in legal and factual sense, represents the expression of emancipation of judicial authority and separation from other branches of power, in terms of its prerogatives in the domain of election of judges, its progressing, disciplinary responsibility and dismissing. Namely, according to the Law on Judicial Council, requirement for autonomy and independence of judicial authority has become institutional and legal concept of decision making process and responsibility within it, which, at the same time, has represented systematic resolution, or presumption for elimination of any impact (including the political) on creation of staff and their independence and impartiality in conducting court proceedings and decision making, in the same manner as for defining the responsibility of bearers of judicial functions. [14]

[14] Article 3 of Law on Judicial Council: "Judicial Council provides independence, autonomy, responsibility and professionalism of courts and judges, in accordance with the Constitution and the Law".

Judicial Council is collegial body that makes decisions at the sessions by majority of votes of all its members, and in basis has the competences defined by the Constitution of Montenegro:

1) Elects and dismisses judge, President of court and assistant judge;
2) Defines the termination of function of judge;
3) Defines the number of judges and assistant judges at the court;
4) Considers the report on the work of courts, applications, and complaints on the work of court and takes standpoints on them;
5) Makes decisions on the immunity of judge;
6) Proposes to the Government the amount of finances for the work of courts;
7) Executes other affairs defined by law.

Except competencies defined by the Constitution, competencies of Judicial Council prescribed by the law are as follows:

1) Executes the control of work of courts and judges;
2) Makes decision on disciplinary responsibility of judges;
3) Provides opinions on drafts of laws, and bylaws from the area of judiciary and initiates adoption of relevant laws and other regulations in this area;
4) Provides implementation, sustainability and uniform of Judicial information system in the part related to courts;
5) Takes care on education of bearers of judicial functions in cooperation with Prosecutorial Council;
6) Administer data registry on judges;
7) Considers the complaints of judges and takes standpoints related to endangering their independence and autonomy;
8) Proposes orientation criteria on specific number of judges and other servants in courts;
9) Defines methodology for development of reports on the work of courts and annual task distribution;
10) Defines the proposal of ethical code, adopted by the Conference of judges;
11) Executes other affairs defined by law.

It is obvious that Judicial Council has all competencies (except the financial) which makes it dominant in realization of the role of judicial authority, although lack of financial competencies (proposing of budget allocations and available budget) may often be unequivocally set under the criteria dependence of executive authority (of the Government which defines budget proposal).

The procedure of election of judges and presidents of the court, which is under competencies of Judicial Council is closely defined by the *Rulebook on work of this body*. Although criteria for elections were nominally counted, major objections were related to measurability of indicators, or objectifying of criteria, their transparency and legal foundation. Amendments of Law on Judicial Council, which were set in the middle of this year, additionally strengthen (corrected) guarantees of neutrality and objectiveness in electing members of Judicial Council and therefore directly the election of bearers of judicial functions.

Also, the last amendments of Law updated the frame of criteria for election of bearers of judicial functions by attempting to objectify standards and conditions for their election as for the first time, so as in the process of their career progressing. For that purpose it is closely the procedure of conducting register data on bearers of judicial functions. At the same time innovation of the Law provided intervention in a view of conditions for sending into another judicial body, defining disciplinary responsibility or deposing of judges and presidents of courts.

It appears that the move has been objectively made in planning closer regulation of criteria and establishing mechanisms based on law, although they may never be ideal sample nor partial subjective impression on the candidate may be excluded, as the criteria based on the estimation of members of the Council and their discrete competence in a view of qualitative indicators of characteristics of persons that would be elected for functions at courts. If this would be the case, (for example, simple overtaking of assessments of working characteristics and abilities), the procedure of electing candidate would become electoral system based on estimations of many other institutions, not only the

one which is exclusively responsible for election of judges. Therefore, it is important to establish transparent and rational process of electing judges, and make legal remedies more available and efficient in the procedure of protecting rights of participants at the competition for election instead of 'idealization' of profile and normative 'perfectionism' of personality as the substitute to requirement of reference and authority, at least when it is related to qualitative characteristics of a person.

Furthermore, realistically the question what may be the subject of the dispute in the proceeding upon legal remedies in the protection of subjective rights of candidates for the election for judicial function? May judicial body (Administrative court), which conducts the proceeding of protecting the rights of candidate, competently decide on both facts and rights? To what extent is possible to make the proceeding objective before the court where, the election for judicial functions executes the body that made attacked decision? It is obvious that this process opens lot of issues that may hardly find unique legislative and legal answer, therefore, in that sense, transparency and opening of the procedure towards wider, laic, and professional public seem as the best criteria of the control of work of Judicial Council. Thus, public is not the principle that should be immanent only to courts in executing their major function, but judicial authority as a whole (see above M. Dik, principle of equality). Finally, public work of Judicial Council as the principle or the rule has been confirmed by Article 5 of Law on Judicial Council.

The Law prescribes the procedure of sending judges to work in other courts, which has normatively been harmonized with international standards of independency of judges (only with its consent, except in case of reorganization or abolishing the number of judicial positions). This institute has been used in the last two years in Montenegro, and for the final conclusion on its contribution to achieving excellent updating in the work of courts compared with the previous period, comprehensive analysis is necessary, that should surely be realized periodically at the level of competencies of Judicial Council and data (exact and empiric) received by courts. By the same principle, the procedure of defining important number of judges at courts in Montenegro is

being generated, which is also under competencies of Judicial Council (Article 24 of the Law).

Especially subtle part of competencies of Judicial Council is related to disciplinary procedure, or responsibility and disciplinary measures, and even the proceeding of deposing judges. As we have already indicated, the last report of Judicial Council, represents the visible progress in a view of transparency and publicity of work, and even in a view of responsibility of judges.

Logically, judicial authority is deprived of legislative initiative, considering that in this way concept of division of authority would be called into question. From empirical data of this project, the lack of minimum of coordination of judicial bodies with legislative structures is clearly noted, which clearly states that experiences of judiciary have not been largely taken into account during innovation of the existing and adopting of new laws. The lack of serious normative analysis from the judicial aspect caused large number of administrative acts that are being canceled or revoked in court proceedings and sent back for retrial. This is mainly related to the experience of administrative disputes, and other procedures, which engage the resources of civil courts to resolve prejudicial (previous) issues in the proceedings (such as restitution). In this way, the entire judicial apparatus is being initiated many times, and in some cases it seems that it may be a systemic problem (the issue of the final judgment in administrative dispute points to a possible systemic problem related to a reasonable time for trial).

At the end of May 2011, has been adopted and in June 2011, came into force new Judicial Rulebook (Official Gazette of Montenegro, no.26/2011). Although the day of adoption is related to the period after development of legal analysis, which makes the basis of this document, and coincides with the time after visiting courts covered by the Project, this legal act essentially does not change conclusions on the conditions that were found and were related to the time before its adoption. For that reason it was not additionally analyzed as the case of legal analysis.

2. Results of the empirical research[15]

2.1. Access to the court

Access to court is one of the principles of the right to fair trial. In the domain of national legislation it was narrowly understood than the concept of content that has been created through the practice of the European Court of Human Rights. In terms of Convention standards, access to court implies the process, material and financial resources that provides a person unfettered access to court to protect their individual rights (in accordance with Article 5 of the Law on courts).

Lack of funding is certainly one of the serious disturbances related to exercise of procedural justice. **The current system of support to parties through services for one or more municipalities showed a lot of shortcomings**, both in terms of quality of services and in terms of the circle of persons who had the right to use free legal aid. The new law determines holders of rights and obligations in a view of providing services of free (subsidized) legal aid, but for donors it significantly narrows the circle, leaving the dilemma of **sustainability of such a system**, especially if one takes into account the current and announced economic situation in the country and the region. This is confirmed by the fact that Montenegro, only on basis of financial status has about 15,000 potential beneficiaries of the rights (users of financial support of their family and incomes below the ones prescribed by law).

The existing law authorizes a person to ask for a free legal assistance in court proceedings or in the proceeding before the court, but an open question remains – what about the parties that previously submitted a request for exercising right before the administrative body, which is the prerequisite for the conduction of litigation? Does the failure to provide legal assistance in the administrative proceeding in this way violate the right to access to court? We

[15] Elaborate analysis of empirical research may find here http://www.yihr.me/wp-content/uploads/2010/03/Monitoring-sudova-empirijski-podaci-.pdf

would like to remind on the decision of the European Court in the case of Golder v. the United Kingdom, verdict from 21 February 1975, Paragraph 35, according to which: "... According to the Court, it would be inconceivable that Article 6, paragraph 1, describes in details procedural guarantees available to the parties in the proceeding, and if the first does not protect which really provides the benefit of these guarantees, that is, access to court. Fairness, transparency and promptness of court proceedings have no value if the trial does not exist."

At the same level are included expenses important for the conduction of dispute or the amount of taxes and legal representatives' services that may not represent unjustifiable burden which eliminates the party before the court decides on dispute. The fact is that in Montenegro has been done additional effort through introduction of **relatively accessible court taxes** and efficient principles of civil proceedings, where no more exist both endless delays and tactical acts, which result in increased court expenses. **New legal measures made more severe institutes in function of the process discipline which are valid for all participants at the proceeding, and the proceeding itself made more efficient and to some extent cheaper.**

Material conditions in which the judiciary operates in general, and particularly the courts, causes difficulties in access to the courts, both from the standpoint of costs that are necessary in order to come to the building of the court, and from the point of access and movement within the facility.

The example that was mentioned during conversation about this project, and concerns the delegation of non-resident courts (from the territory of another territorial jurisdiction), authorizes a party to the complaint, and judicial authorities to gauge procedural fairness when sending the party to the court of another territorial jurisdiction for the purpose of increasing the efficiency of the courts as a whole. **The costs that have occurred on this occasion may be taken as an aggravating circumstance in terms of exercising the right to access to court.** Now the institute is less or almost is not used and is substituted by the institute of referring judges to work in another court with their consent.

Architectural barriers in access to the courts are more than evident and this has to be taken into account if one bears in mind the deadline for the elimination of this failure (2013) on all public buildings and facilities for public use, pursuant to the provision of Article 165 of Law on Spatial Planning and Construction.

Also, type of obstructing of access to the courts by **persons with reduced mobility represents the lack of adequate facilities** in which they can communicate with attorneys, as well as adaptive sanitary facilities.

2.2. Equipment, premises, and services of court administration

Material resources of the court may not be subsumed under the basic assumption of a functional and efficient judicial process, but surely make a fundamental condition for regular functioning of courts and quality of the courts.

When it concerns spatial capacities, it is certain that none of the courts covered by the Project, except to some extent the Administrative Court, **does not meet the spatial and technical conditions that would satisfy the required standards of judicial proceedings**. It is interesting that not even in terms of construction was possible to find an adequate standard of constructing and equipping of the courthouses, which is the basic need which requires the design of such facilities. The specificity of the Montenegrin judiciary in a view of the composition of the court, parties and other participants in the proceedings, means that the court, premises where the trial takes place and premises where the trials is being awaited according to the schedule, **has to be so equipped to provide comfort and proper communication between the party and its attorney or should prevent contact/communication between the parties and other participants in the proceedings before the trial begins.**

Courts in Bijelo Polje and Podgorica, as an example reflect the entire complexity of the problem, which is not the conclusion only of this project team, but the majority of the parties, judges, other participants involved in the proceeding, and citizens, who for various reasons and different occasions stay

at the courts. There is an interesting observation obtained through empirical research pointing that the very appearance of the court and the court room may largely be the reason for the perception of the court and its authority by laic and professional public.

Offices where the trial takes place, particularly offices in Basic Court in Podgorica do not fulfill the minimum of criteria for the access of parties and other participants to the proceedings. Generally, all courts and citizens have one single conclusion that these facilities has to be brought to the desired level for several reasons, and one of the major reasons is respect of all elements of a fair trial, which, under these conditions, simply is not possible to respect. As a result and not surprisingly, almost **70% of questioned judges consider that existing facilities and offices did not have conditions for the efficient and transparent trial**, particularly in terms of presence of public, while almost 80% of questioned judges expressed dissatisfaction with the infrastructure (access roads, parking, building access, etc..) and the conditions in facilities expressed.

Dissatisfaction with the condition of facilities, conditions of communication with parties within the court (the lowest rated aspect in the assessment of work of courts) and equipment of courtrooms expressed lawyers (score of 1.82 or 1.94 on a scale from 1 to 6, while the importance of this aspect of work of courts in comparison to the activity of legal profession which is assessed by the price above the average).

The assumption of efficiency and quality of court proceedings and judgments rendered in these proceedings is the constant updating of knowledge and skills of judges who should follow the current trends in society.

According to data obtained from the study, **over 55% questioned judges were on different formal and informal types of education more than ten times**, and 36.7% of them less than five times. **Only 6.3% have not visited around these types of training.**

According to the data obtained through the project it has been concluded that the capacity of judicial library (except the one in Basic court in Kotor and partly in Administrative court), although the provision of Article 25-28 of the Court

Rulebook (Official Gazette of the Republic of Montenegro no.36/04) prescribes containing professional books and journals, official papers, publications of the case law and other professional publications, as well as their electronic issues, was mostly **reduced to electronic or hard copy editions of official papers.** According to stories of representatives of judicial authority, judges independently engage themselves and often using their own capacities they find the necessary professional literature and publications. Providing appropriate **premises for the library and the care of bibliographic is out of question**, especially since courts can hardly keep up with the requirements for holding records of closed cases in trust, for which has been required, like the example of court in Kotor shows, seeking of special accommodations outside the court facilities until permanent solution occurs.

In such a situation, problem of using case law from the period of some twenty years ago becomes clear and distinctive, because **such decisions come hard and with considerable efforts to find such material in the archive files**. At the same time, Article 30 of Law on courts provides that the courts keep records of case law in the manner and under the procedure established by court rulebook, which inevitably produces an obligation of providing such a practice as available after the requirement of a party or the public.

After the recent verdicts of European Court, case law particularly gained prominence after several cases in which the inconsistency of court decisions, in the same or similar legal and factual situations, was valued as the violation of right to fair trials (Rakic and others against Serbia, 2010; Vinčić and others against Serbia, 2009; Tudor Tudor v. Romania, 2009). Lawyers expressed availability of earlier case law as the particular problem in communication with courts (score 1.94 on a scale from 1 to 6, but in terms of importance for executing their work this problem was assessed by the grade 4.47).

Judges expressed their opinion on the spatial capacities and bibliographic capacities of library and **half of them considered they were inadequate, and another 38% said that would have to be better, while only 11% considered that capacities were sufficient**. If responses of judges from Administrative

court and Basic court in Kotor are excluded, then the situation is certainly more problematic.

Existing urban locations of court facilities do not seem as a particular problem, as this opinion have lawyers and citizens. However, when it comes to getting around inside the premises of the court, there are conflicting standpoints of the general public and court administration: **the majority of surveyed citizens (almost 62% of respondents at the level of all courts covered by the project) said that it was not easy to find the required facilities within the courts**. Out of this number, the largest discrepancy was observed in courts in Podgorica (Basic court) and Bijelo Polje, while majority of citizens in Kotor easily found their target in the court building. Signaling and orientation in the court building, according to the poll, did not represent a problem for lawyers, nor was it a matter of great importance for their work.

Since these tests were conducted several months ago, and the project team had a chance to see the changes in Basic court in Podgorica, it should be emphasized that the **qualitative changes were evident** (table with information were placed on each floor, and flyers with information were placed on points that cover the trajectory of movement of parties within the court building).

Problem of lack of identification plates for officers within courts has been recorded, which could reduce the level of citizens' lack of information and reduce unnecessary communication of citizens with officers who are not of large importance for resolving their requirements. According to data provided by the courts there is a very solid number of officers and employees who have daily communication with citizens (especially in the registry office and receptions), as well as officers authorized to act on complaints and applications, and control claims. These are usually secretary of courts and/or employees for public relations, and their authority is executed upon powers and duties of the President of courts contained in the Law on courts (Article 83 and 84) and the Court Rulebook (Article 7-17) on regulating businesses of the court in accordance with mentioned regulations. This year, at the end of July, special Commission acting upon complaints, suggestions and praises has been established in Basic court in Podgorica.

Information system (PRIS) has started functioning in all courts with smaller or larger capacities. Reviewing the content of the web-page www.sudovi.me is being noticed that the page of Administrative court and Basic court in Podgorica has improved content (updated information) but also other courts did great efforts for this project to start operating fully. What is very important is the accessibility of adequate number of information on work of courts and case law that has been published at pages of all courts.

Such informatical equipment currently does not go well with the level of use of computer technology by judges, because it is still very small. This is very important from the aspect of access to practice of international inspection bodies which represents obligatory material and legal source of trial.

2.3. Organization of affairs of court administration

According to the current decision[16] number of judges at courts in Montenegro is defined as follows:

- Supreme court of Montenegro – President of court and 17 judges
- Administrative court of Montenegro – President of court and nine judges
- Appellate court of Montenegro – President of court and 12 judges
- Higher court in Bijelo Polje - President of court and 18 judges
- Higher court in Podgorica - President of court and35 judges
- Commercial court in Bijelo Polje - President of court and three judges
- Commercial court in Podgorica - President of court and 12 judges
- Basic court in Bar - President of court and ten judges
- Basic court in Bijelo Polje - President of court and 12 judges
- Basic court in Danilovgrad - President of court and three judges
- Basic court in Zabljak - President of court and two judges

[16] Decision on number of judges at courts in Montenegro (Official Gazette of Montenegro, no. 78/09, from 27 November 2009, 11/11 from 18 February 2011)

- Basic court in Berane - President of court and nine judges
- Basic court in Kolasin - President of court and three judges
- Basic court in Kotor - President of court and 13 judges
- Basic court in Niksic - President of court and 16 judges
- Basic court in Plav - President of court and two judges
- Basic court in Pljevlja - President of court and seven judges
- Basic court in Rozaje - President of court and four judges
- Basic court in Podgorica - President of court and 37 judges
- Basic court in Ulcinj - President of court and five judges
- Basic court in Herceg Novi - President of court and six judges
- Basic court in Cetinje - President of court and four judges

Based on this indicator and according to the structure and needs, courts in Podgorica, Bijelo Polje, Niksic, and Kotor, are clearly emphasized, and objectively are the largest and courts with the largest burden in the state, which confirms annual reports on work of courts.

Rulebook on orientation measures for defining important number of judges and other employees at court [17] prescribes that the number of servants – executors and number of servants on verifications is being determined according to the number of cases in the following manner-one servant is awarded on each of 1000 executed cases and one servant is awarded for each of 15.000 verifications.

Number of servants for executing material and financial and accounting affairs, and number of servants for executing assisting jobs (driver, secretary, office messenger, deliverymen, hygienist, etc.) is determined according to the real needs of court. Courts that have court library have librarian and courts with larger volume of job may have councilors who works at the affairs of recording case law.

Number of councilors in Basic court is defined according to the number of judges where two judges have one councilor, and the number of typists at Basic

[17] Official Gazette, no. 76/08 from 12 December 2008

court is defined according to the number of judges, where each judge has one typist. For the affairs of judicial administration is being determined one typist. Furthermore, one typist is determined for two councilors.

Number of councilors at Higher court is determined according to number of judges, where one judge has one councilor. One typist is provided for each judge at the first instance and investigation judge, while for the second instance is provided one typist for each two judges, and on each three councilors one typist for the affairs of judicial administration.

2.3.1. Review of the condition at Administrative court

According to data from March 2011, President and eight judges have been executing the function at Administrative court, but according to the amendments of the Decision on number of judges, election of one more judge was prescribed, who should be elected as soon as possible. For the affairs of judicial administration were 19 positions for servants but currently, job position for a driver has not been fulfilled. Therefore, bearing in mind the existing orientation norm for the purpose of defining the number of executors, this court needs engagement of three more councilors.

At court were three interns on their professional development, and the reception of the fourth one was in the procedure. Overall number of employees at court is 38, and six councilors and the secretary of the Court have been engaged for the trial logistic.

Communication with parties and public is being performed by the President and the Secretary of court. The same persons act upon applications, complaints, and control claims. In the frame of work of the archive, four officers have direct communication with parties, but at the reception of the court for the needs of reception of parties is being engaged one officer of the Court and one representative of the Police Directorate.

General impression states this is one of the most organized judicial institutions in Montenegro. Equipment of premises and offices is satisfactory but this is the

institution that uses these capacities according to the rent of business premises. Control of visits and reception of parties is at the highest level which does not diminish the possibility of successful communication of public with this court. Except general technical equipment of premises, this Court is at the very high informatical level, and its web page at the time of visit was far more ahead other judicial institutions, equipped by large number of information and case law, legal standpoints and professional works.

Administrative court has partially equipped professional library which, according to the statements of President of the Court surely has to be updated from different sources, considering that court budget does not leave enough space for such allocations.

2.3.2. Review of the condition at Higher court in Podgorica

Higher court in Podgorica has 154 employees. Out of this number, 35 are judges, including the president of the Court (condition at 16 March 2011). Nine judges from the Supreme court are temporarily engaged and one judge from the Appellate court, depending from increasing number of cases. Professional affairs from the domain of logistics of trial (for the needs of judges) perform 21 councilors while administration of the Court has 27 servants.

Besides the President of the Court, one servant is authorized for public communication.

At the affairs related to complaints, applications, and control claims is engaged the Secretary of the court. Archive has ten employees in direct contact and communication with parties, while two servants work at the reception.

2.3.3. Review of the condition at Higher court in Bijelo Polje

At Higher court in Bijelo Polje are employed 73 executers and out of this number, at the court managing positions and trial, President and 16 judges. At the time of conducting the research (March 2011) two judges have been sent to

work at this Court. The overall number of councilors is seven and all of them have been directly engaged at the logistic of trial although their number is under the number prescribed by the Rulebook.

Court administration has 41 employed persons (without councilors and interns) and at the position for qualifying for independent job were ten persons. One person was engaged for public communication and one person was also engaged for the work on applications, complaints and control claims. Three employees at the archive have been engaged for the needs of communication and work with parties and one person at the reception has been responsible for the reception of parties.

2.3.4. Review of the condition at Basic court in Bijelo Polje

Basic court in Bijelo Polje has 12 judges and the President of the court. Internal systematization presumes 20 positions for servants with 60 executors, or seven officers and 52 servants.

According to the Annual schedule at the Court have been engaged three councilors (one uses pregnancy leave) and 51 servants, six judges-interns and three interns-volunteers. President, a judge, and the Secretary of the Court are responsible for communication with parties and public, and the Secretary of the Court is responsible for acting upon applications, complaints, and control requirements. Head of the court archive, chief of the archive department for executorial cases and officers at the archive directly communicate with parties and the work of the Court guard at the reception executes one servant. **Number of councilors is far below the number prescribed by the Rulebook.**

2.3.5. Review of the condition at the Basic court in Kotor

Basic court in Kotor has 78 employed persons. Out of this number, 13 of them are judges and the President of the Court. There are no temporarily positioned judges. Four councilors are engaged in direct logistic of a trial (less than

prescribed orientation norm) while one councilor is engaged at the position of court administration.

Almost 40 officers, or servants, are employed at the administration of the Court, and at the same time 18 judges-interns are engaged as well. President is responsible for public communication and the Secretary of the Court as the PR.

Reception of complaints, applications and control claims executes Technical Secretary of the Court and resolutions upon complaints, applications, and control claims execute both President and the Secretary of the Court.

Four registry clerks at Court are responsible for direct communication with parties, and at the reception, for the purpose of reception of parties, is being positioned one servant.

2.3.6. Review of the condition at the Basic court in Podgorica

Overall number of employees at the Court is 245. Out of this number 37 are judges and the President of the Court. The Court engaged 19 councilors (which is close to the norm) and the Secretary of the Court. Mentioned servants are engaged on development of decisions and the work with parties. The Secretary of the Court coordinates affairs of court administration while at the administration are engaged 133 state employees. Current number of interns is 54.

One councilor is engaged for the affairs of public communication. President of the Court acts upon applications, complaints, and control claims. Communication with parties is contained at the description of work of 20 registry clerks. Court safeguard is composed of four employees who The same time communicate with parties about reception issues.

2.3.7. Analysis of organization of court administration affairs

On 31 December 2010, out of 260 systematized judge positions in Montenegro, 254 positions were fulfilled which was 97,68% of fulfillment in comparison to the full number prescribed by the act – Decision on number of judges made by the Judicial Council.[18]

According to the Report on work of courts for 2010, it has been noted that on 31 December 2010, **all 260 systematized positions were fulfilled**, in the manner of electing and re-electing six candidates for president functions, and 34 candidates on judge functions, out of 154 candidates who applied.

According to statistical data from 2008, Montenegro had population of 627,478 inhabitants[19], which means that **averagely one judge (including the Presidents of courts) was engaged on 2.470 inhabitants of Montenegro**, at the end of 2009. This data is often being used as the relevant one for the studies related to the access to justice and satisfying of principles of trial in reasonable time, or completion of court cases in reasonable time including the execution of court decision. **This leads to the conclusion that Montenegro belongs to the group of states which have very high number of bearers of judicial functions** in comparison to the number of inhabitants, or precisely, among member states of Council of Europe, only Slovenia, Croatia, San Marino and Monaco are states with larger number of judges in comparison to the number of inhabitants.[20]

Logistic support to the work of courts provided 854 civil servants and state employees. Out of this number, 102 were in direct function of support to professional work of judges and exercising functions and 15 in exercising administrative affairs and affairs of court administration. Within the same period (2008), 175 interns were engaged at trainings for independent work in

---

[18] Annual Report of Judicial Council for 2009, Publisher Judicial Council of Montenegro – Podgorica, page 32

[19] Montenegro in figures – MONSTAT – Podgorica, 2009, page 5

[20] CEPEJ, European judicial system, Edition 2010 (data 2008): Efficiency and quality of justice, page 117

courts, who were not covered by above mentioned statistics (the same source, page 129). In a view of organization of courts in comparison to demographic characteristics, Montenegro has institutional infrastructure. According to this infrastructure, courts have been organized so that one first instance court of general jurisdiction covers the average number of 36.910 inhabitants.
According to our estimation, **conclusion on "surplus" of number of judges in comparison to the number of inhabitants would come too early,** especially if bearing in mind the current organization of logistic of a trial and particularly efficiency, equipment, and professional skills of court administration.
Namely, in more states, judicial function is factually based on "cardinal cut", focusing solely on trials of judges, who does not have to exercise administrative and professional preparation of trial, or develops the draft of decision.

Besides, the current situation has the whole range of other factors influencing on exercising tasks timely, and even are not in connection with direct role and execution of function of a trial. Reasonable deadlines for trials require efficiency, and the quality of work of judges and judicial institutions, and it has no understanding for organizational and logistic problems, including barriers of administrative or other character. **Thus, achieving appropriate model of proportional number of judges in comparison to the number of inhabitants has to be followed by development of proper trial logistic, by encouraging the concept of legal culture[21], culture of trial, and respect of judicial function and court orders, and significantly improved promotion of judicial institutions in public.[22]** The last domain covers provision of information to wider public on functions of judicial institutions and barriers to optimal functioning of courts, and not only spreading of information related to critics on work of courts.

---

[21] More about this:
- Ali Acar, The Concept of Legal Culture – With Particular Attention to the Turkish Case, Ankara Law Review (Winter 2006), Vol. 3, No.2, page 147, 148
- J.L. Gibson, G.A. Caldeira, The Legal Cultures of Europe Law & Society Review, 1996, Vol. 30, No. 1, page 55-86

[22] The conclusion has been made according to results of empirical research you may view at YIHR website, and press which often recognizes lack of understanding of the role of court or its role in some phases of the proceeding.

Except in the essence of a trial, **the problem occurs in motivating court administration which is very poorly paid, according to surveys, and neglected** in comparison to similar vital administrative systems. This is not related only to extremely small incomes, but the overall social and economic status of this category of civil servants who exercise very complex and responsible job.

Considering the current situation, **the question of engaging important number of servants for exercising affairs of trial logistic and affairs of court administration, clearly occurs.** As already known, at the beginning of next year, new framework shall be created that should include affairs of court administration in the domain of free legal aid and it is obvious that departments of case law shall be created (as prescribed by Judicial Rulebook, only as an option in comparison to other courts[23], while case law department at the Supreme court is the institute established by law).[24] This should be particularly taken into account, given that current structure of trial logistics, i.e. engagements of councilors, has not reached the level prescribed by the Rulebook on orientation criteria.

In comparison to the **education of holders of judicial functions and court administration servants, it is evident that it is being obviously organized continuously.** As stated in receiving empirical data, this process sometimes is not properly planned (when related to informal forms of education and cooperation with civil sector), therefore, **human resources are used without previous strategy and agenda,** which sometimes make the position of those for whom this education is organized, difficult. This is especially related to the "small" courts where practically every week a number of judges take the absence for some type of professional development. It is estimated that would be more efficient if some forms of such education would take place **at courts,**

[23] Article 10, paragraph 2 of Judicial Rulebook: "The court may establish case law department, managed by the President of the department, determined by annual distribution of tasks."

[24] Article 99, paragraph 1 of Law on courts: "Courts establish court departments depending on number of judges, caseload, and type of case, in:…6) Supreme court – civil, criminal, administrative, and department for case law.

which would contribute to the increased efficiency in terms of time and human resources.

According to received information, **segment of training of court administration (state employees) is not at the level of other employees at courts**, while the training for councilors is being conducted, except through the **Center for education of bearers of judicial functions** (initial training), via temporary participation in seminars and through **cooperation with civil sector** (the example of CEDEM's training in the area of the convention law for councilors and interns in judiciary).

2.4. Efficiency of court proceeding

Article 32 of the Constitution of Montenegro prescribes that each person has the right to fair and public trial in reasonable time, before independent, impartial court, and the court established by law. Law on courts confirmed this principle through provision of Article 7 that prescribes that each person has the right to impartial trial in reasonable time. Article 50 of Law on Judicial Council prescribes that a judge shall be disciplinary responsible for irregular exercising of their function or for offending reputation of judicial function in cases prescribed by law.

Article 8 of the *Rulebook on orientation criteria for defining important number of judges and other employees at court*, established orientation norm towards the type and the number of cases in basic courts during the year as follows:

Type of case [25]	Number of cases
Criminal (K)	230
Criminal juvenile (Km)	230
Investigation (Ki) and preparatory proceeding towards juveniles (Kim)	300

[25] In brackets are given marks for the type of case according to the register conducted towards Judiciary Rulebook

Investigation actions (Kri)	400
Criminal out of trial (Kv, Kr, Kp)	800
Civil case (P)	300
Civil case of small value (P. mal)	500
Inheritance (O)	800
Complex non-contentious case (Rs)	300
Other non- contentious (R)	800
Executorial (I)	400
Executorial based on valid document (Iv)	5.000
Amnesty (Pom)	1.000

Article 9 of the Rulebook prescribes reduction of orientation norm on the account of management duties of presidents of basic courts from 30 to 70%, depending on the number of judges in courts where these are heads.

Orientation norm for the work in higher courts is:

Type of case	Annually
Criminal of the first instance (K)	60
Criminal juvenile of the first instance (Km)	60
Investigation (Ki) or preparatory proceeding against juvenile (Kim)	140
Investigation actions (Kri)	350
Criminal of the second instance (Kz and Kzm)	300
Criminal out of main hearing (Kv, Kr, Kp, and Pom I)	700
Civil case of the second instance (Gz)	250

Criteria for defining the number judges in specialized department for trial for criminal acts of organized crime, corruption, terrorism, and war crimes at higher court were given separately in comparison to remaining cases and amounts:

Type of case	Annually
Criminal of the first instance for criminal offenses of organized crime, terrorism, and war crimes	5
Criminal of the first instance for criminal offenses with elements of corruption	60
Investigation for criminal offenses of organized crime, terrorism and war crimes	10
Investigation for criminal offenses with elements of corruption	130
Investigation actions for criminal offenses from the competencies of this department	170

For these courts, Rulebook provided reduction of norm for heads of these bodies in percentages; one councilor is foreseen for the work at one judge. One typist is foreseen for each judge in the first instance and investigation judge, while for the second instance is being distributed one typist for the each two judges, one typist for each three councilors and a typist for court administration affairs.

For Administrative court orientation norm is:

Type of case	Annually
Administrative dispute (U)	250
Claim for extraordinary examination of final decision on misdemeanor	300
Claim for the protection of legality in misdemeanor proceeding	300

In 2009, courts in Montenegro noted overall number of 157.016 open cases. Out of this number, 48.399 cases were from previous years.[26] According to the same source, overall number of open cases before basic courts in Montenegro was 96.513 and out of this number, 41.040 in Basic court in Podgorica, 9.083 at court in Kotor, and 7.287 at court in Bijelo Polje.[27]

[26] Judicial Council, Annual Report for 2009, page 65
[27] Courts covered by this Project.

Inflow in all forms of cases was 22.981 in Podgorica, 5.081 in Kotor, and 6.154 in Bijelo Polje. Average case load per judge was 727.28 cases, out of which judges finished averagely 495 cases. According to the type of case, their largest number was related to civil cases, and according to their complexity, largest part of cases were related to civil proceedings. Thus, overall number of civil proceedings at basic courts for mentioned period of reporting was 27.527, out of which 9.393 at the court in Podgorica, 3.040 at court in Kotor, and 1.892 at Basic court in Bijelo Polje.

If bearing in mind the fact that in these cases exists large number of complex civil cases, and that results of judges largely exceed prescribed orientation norm, then we might speak about the **visible progress and moves in resolving cases before courts in Montenegro.** Especially given that the **number of abolished criminal first instance decisions does not exceed 23% of number of solved ones, which is, according to numerous indicators also good result**, indicating that faster resolving of cases has not caused fall of the quality.

In comparison to basic courts that were covered by the Project, this percentage is more than 23%. **For civil proceedings, average of revoked first instance decisions in all basic courts is 29,56% and in comparison with basic courts in the Project, the percentage is above 30%.**

Without comprehensive analysis of reasons for such a situation, it is difficult to speak about success/failure of results, therefore, part of the Project has been accordingly turned to empirical analysis of caused problems, not only backlog of work, but also possible reasons for revoking a decision based on non-judicial and other factors, including the ones related to participants at the proceeding.

Conclusion on **satisfactory work of judicial bodies is especially related to higher, or the second instance courts that have achieved annual level of efficiency** (without case backlog from previous years at Higher court in Bijelo Polje, or remaining 11 out of 3.630 cases at court in Podgorica).

The same level of efficiency has Administrative court which resolved all cases, from the current and previous years that were opened during 2009. Owing to exquisite and evident positive media access to this court, general image of

confidence in its work has been created. In that sense, it appears to be advisable to become acquainted with the positive reasons (objective and subjective) which have provided creation of such an image and comparison with other courts that has encouraged positive aspects of work of this court and relationship towards public.

In 2010, Montenegrin courts received 125.079 cases in the work and had a total of 165.863 pending cases. It is indicative that in this reporting period for the first time was reached the so-called annual efficiency i.e. Montenegrin courts solved more cases in comparison with the number that makes their annual inflow (resolved 127.197 cases). Number of backlog cases compared to 2009 and previous years has been reduced by almost 70%. At the same time, there has been an enviable quality of the work courts as the number of revoked decisions has been almost 23%.

In comparison to basic courts that are covered by the Project, the Report for 2010, stated almost the same number of received and resolved cases during the year (Podgorica 98.75% from the inflow, Kotor 99.96%, and Bijelo Polje 97.30%) and the backlog of almost 40% (Podgorica and Kotor), i.e. 23.36% (Bijelo Polje) from the overall number of open cases. Average load in all cases per judge in all basic courts in Montenegro was 679.92 cases, out of which 455 cases averagely per judge were solved (Podgorica 981.55 / solved 556.71; Kotor 601.62 / 356.31; Bijelo Polje 553.31 / 424). Besides these data, it should be reminded on norms stated in this material and compare them with the data, notwithstanding small number of finalized cases in this year in comparison with the previous year and bearing in mind that the backlog cases have been reduced for almost 3%. Monthly inflow (average) at basic courts covered by the Project was 1785.17 in Podgorica, 472.17 in Bijelo Polje and 386.17 in Kotor.

During 2010, higher courts received 17.030 cases (12.387 in Podgorica and 4.643 Bijelo Polje), and out of this number over 93% were resolved. Average caseload per judge was 368.45 cases while the average backlog was 25.4 cases. Monthly inflow was 1.419 cases (Podgorica 1.032, Bijelo Polje 387).

Within the period observed, Administrative court received 3.799 cases, which, with previously 1.283 unsolved cases, were total 5.082 open cases. **It is interesting that the annual inflow in comparison with the previous reporting year was higher for a whole 64%.** In 2010, 3.862 cases were solved (1.65% more than the inflow for mentioned year). Average caseload per judge was 564.6 cases, where averagely 429 cases per judge of Administrative court were finished.

According to the Report on work of basic courts for 2010, length of the proceeding for up to three months was noted at 41.60% of resolved cases, 20.91% of cases were resolved for up to six months, 12.90% of cases were resolved for up to nine months, 7.70% for up to a year and 16.89% resolved cases for more than a year. **Here we see that important majority of all complex cases or 83.11% is being finalized until expiration of one year period.**

When it comes to the civil proceedings for up to three months, 28.61% of them were resolved out of the total number of resolved cases; up to 6 months 20.72% of cases; up to 9 months 13.70%; up to a year 11.37% cases; and more than one year old cases, 25.59% of cases were resolved. **So, almost ¾ of civil proceedings are resolved within one year, or earlier.**

From the above stated statistics may not be made any conclusion on the nature of proceeding and cause-effect relationship with the efficiency of courts (closer data were given in the Report of the Judicial Council for 2010), but **certainly progress is reflected in the speed of resolving disputes and reducing of court backlog, which leads to achieving so called annual efficiency**. **Causes of slow decision making processes and what forms of protection of right to trial in reasonable time may be applied to combat this phenomenon in the remaining backlog cases** are issues that deserve thorough analysis; and not only statistical, but empirical analysis as well.

In statistical sense, by reviewing the Annual Report for 2009, is being established **relatively small number of control claims for accelerating court proceedings before courts** in Montenegro (total 73) while **number of submitted complaints is symbolic** (total 24 for 2008 and 2009). Right to court protection for violation of right to trial in reasonable time have parties and

party in civil court proceeding, party and interested person in administrative dispute, accused and damaged person in criminal proceeding, if these proceedings are related to protection of their rights in a view of process guarantees of reasonable deadline for a trial according towards standards of European Convention for protection of human rights and fundamental freedoms. Control claims for accelerating court proceeding should be submitted to the court where the case is in process. Complaint for the fair settlement should be filed to Supreme court of Montenegro.

On the decision of Supreme court, over these cases **dominates rejection of claims for processing reasons** (in 20 cases in two years), and the most common reason is failure of final decision which is being challenged in accordance with the law.[28] If Article 2 of Law on the protection of right to trial within a reasonable time is being consistently apply and the constitutional principle of the primacy of international law, it remains an **open question whether the court equally applies the Conventional material and legal source and procedural and legal assumptions contained in domestic law.**

The report for 2010 noted **increased number of control claims (95)**. Out of this number, ten control claims were adopted, and in 30 cases was provided a notice that certain procedural steps would be conducted within four months. This distinction in dealing with the control claims is made on the basis of legislation, which although formally different, provide more or less equal legal effect, or authorization to the party to require fair compensation and protection of right to trial within a reasonable time.

During monitored period, **14 complaints for fair settlement were submitted, of which nine were refused, two were rejected, in two cases the claim was partially approved, and in otherwise manner one case was resolved** (there was no indication on the type of dispute resolution).

Conclusion on the effectiveness of legal remedies is premature, especially in the part which justifies effectiveness of legal remedies with the need to prevent unnecessary removal of cases before the European Court of Human Rights. The

[28] Source: http://www.vrhsudcg.gov.me/Odlukeibiltenisuda/OdlukeVrhovnogsuda

problem somewhere exists, if the number of submitted control claims and the result of the proceeding are taken into account. If decisions are really based on standards of European Court than it is **urgently important to work on education of the public and especially attorneys who initiate disputes, or submit control claims previously**. The essence of the current practice of European Court so far is reflected through the fact that effectiveness of the legal remedy needs to be proved in practice, and without this, the state has to carry out continuous review of existing legal remedies to find appropriate model.[29]

Empirical research suggests **there is still certain degree of dissatisfaction with the efficiency of court proceedings.**

For ordinary people this impression is created on the basis of dissatisfaction with the dynamics of the proceedings **which is interpreted more as the passive reflection of parties and other public bodies, than the courts themselves**.

In their observations, **lawyers provide an average rating (3.63, out of the highest rating 6) adherence to the scheduled trial date**, which is assessed by the index of 4.73 (of maximum 6) from the standpoint of importance for their business. Organization and dynamics of discussion was marked by 3.06 index points, out of maximal 6, while the importance of this segment of trial for lawyer profession was 5.21 (out of 6). Timely conduction of proceedings by judges was assessed by lawyers with the mark 3.50, and the importance of this element of trial by lawyers is assessed by 5.46 (from maximal 6).

At the specific question whether court proceedings are now faster than in previous years, the answer saying 'faster than they are able to' provided 11.1% of lawyers; **'according to the possibilities of the court and the judge' responded 61.1% of lawyers**, and 'slower than it would be' answered 27.8% of respondents. According to the opinion of lawyers, their clients mostly have objections on the length of proceedings and (lack of) undertaking of the procedural powers of the court and parties. Interestingly, **the lawyers have**

[29] Recommendation of the Committee of ministers of Council of Europe number 6, from 12 May 2004(Rec (2004)6)

much less objections to the work of delivery services and centers for social labor than other participants of the proceedings.

In one of the rare reactions of social partners, **the Union of Employers concludes that judicial proceedings generally moves within the range of standards, but they also believe that court proceedings should be accelerated** which would, thus, remove legal uncertainty that burdens the entrepreneurial environment in Montenegro.

Responses of judges indicated that the parties often complain about **the length of the procedure and dynamics of hearings** (on a scale from 1 to 7, this objection of the parties, in a view of the problem intensity is assessed with an average score of 5.49), **about misuse of procedural powers** (index 5.03), **delays in developing findings and opinions of experts** (4.66), **lack of experts of a particular profession as a cause of delay in court proceedings** (4.95) **and the inertia of public bodies** (4.96)**.**

In seeking the cause of obstruction of court proceedings, **most complaints by judges were directed towards the work of post and delivery services** (on a scale of 1 to 6, moving to a larger level of problems, were rated by index 5.24), Real-Estate Administration (4.92), the competent service of the Ministry of Internal Affairs and Public Administration (4.32), Centers for social labor (4.25), and the "least disputable" Police Directorate with an index 4.01. At the same time, the work of public bodies responsible for the registration of applications for temporary and permanent residence was assessed as inefficient by 46.8% of judges in the survey; 16.5% of the service is considered as efficient, while 35.4% of judges do not have particular opinion about this.

What could not be found out by the survey has been done through direct contacts with the parties and participants in proceedings. Specifically, current orientational norm and rigid procedural rules on scheduling require (especially in burdened courts such as the most in this project) excellent procedural discipline and responsibility of the very judges, and judges the most. At present, in order to respect procedural norms and dynamics of the proceeding, established by law, **the judge has to complete dozen of hearings in one day, therefore remains an objective issue about the time they can devote**

themselves to making decisions, reading cases and material objects and regulations, not to mention the time needed for professional trainings and education.

Interestingly, this observation gave lawyers themselves, who emphasized full understanding of judges for scheduling hearings and trials within the deadlines established by law (which is the real example of procedural rationality), but they also had opportunity to perceive the fact that, despite this approach, judges simply **can not schedule a hearing within the legally stipulated deadlines, because the schedule is overbooked months in advance.**

Since the European Court of Human Rights has developed a standard in which the effectiveness of legal remedies, important for the execution of court decision, is also set under the regime of procedural guarantees from Article 6 of European Convention, special reference to the problem of executing court decisions and respect of court orders in general should be made. Measures which maintain procedural discipline are available in the management of court proceedings, and failure to execute court decisions in particularly punishable criminal offense prescribed by Article 395 of the Criminal Code of Montenegro:

"1) An official or responsible person who refuses to execute a final and enforceable court decision, shall be punished by fine or imprisonment up to two years.
2) If the person referred to in paragraph 1 above shall make a final and enforceable court decision, the prosecution shall not be undertaken, and if it has been undertaken, it shall be discontinued."

As it is known from the case law, despite numerous final court decisions that have not been executed, the institution of criminal prosecution is rarely being taken, probably for reasons of opportunism, especially of those who would be most likely to insist on it, and these are judicial authorities.

2.5. Publicity of court proceedings and the publicity of the proceeding

The principle of the public is considered as one of the key postulates in the work of courts and judicial authority in general. Therefore, it has been considered in this project from several aspects, including the position of holders of judicial offices in terms of relations of public with the court public institutions. Besides already mentioned constitutional principle on public trial, the same principle represents each form of communication of courts and public, especially when it concerns information of public interest. Transparency of procedures within all functions of the judicial authority forms the basis of confidence in judiciary, and on the other side, freedom of expression of holders of judicial functions (which partially contains the success of this Project) provides multi-faceted insight into the real situation and solution of problems plaguing judicial authority. Thus, the public is not the principle that should be immanent only to courts in the exercise of their basic function, but judicial authority as a whole.[30]

Publicity of work of courts, or public trials, is reflected in all segments of work of judicial authority: the procedures of appointing and dismissing judges, reporting on the work of courts, communication with the media and the general public, communicating with clients and other participants in proceedings, and other forms of public informing of facts that are important for the general public and stakeholders.

Thus, the work of the Judicial Council is public, except in cases prescribed by Law as exceptions to this principle. The same is applied to the work of other bodies of judicial authority - courts (Article 6 of Law on courts). Relationship of court and public is determined by the provision of Article 123 of Law on courts which stipulates limitations only in cases when providing information would harm the interests of the proceeding and in that sense, maintaining the dignity of parties and presumptions of innocence. In this sense, the court can not be

[30] M. Dika, Principle of publicity in civil proceedings - Anthology of the Faculty of Law of the University in Rijeka (1991), v. 29, number 1, pages 1 and 2

and is not exempted from the obligation to provide information of public importance in its possession.

Article 48 of Judicial Rulebook prescribes obligations of **providing information to the public through the organization of press conferences at least once in a year**, which does not limit the court to inform public on some information often and in other manner. Restrictions in a view of public work of the court established by Judicial Rulebook closely defines process conditions in which the dignity and honor of the party has to be preserved, especially of minors, business reputation and interests, personality and family of the party, to the detriment of the principles of informing the public. **The provision of Judicial Rulebook which requires approval of the President of the Supreme court for the recording in the court is considered as pointless, because it endangers the reputation of the head of that body and at the same time significantly complicates direct and timely communication with the media.**

Reporting on the work of courts which is not objective and tendentious produces the obligation of the head of the body to react, or insisting on obligation to publish reply or correction in accordance with Judicial Rulebook. If the court estimates that in relation to media reporting is required reply of principle nature, it informs about it the Supreme court. Courts are due to monitor media reporting on their work and are obliged to keep special records in "Su" register.

Procedural rules suggest that the public makes one of the fundamental postulates of each procedural law, and that the exclusion of the public is only possible when the legal conditions are met. We would add: and when international standards as the primary indicate on this, in comparison to legislation in Montenegro.

The principle of public trial is sustainable in terms of compliance with standards, but also in terms of conditions when minimal technical capabilities allow it. It is concluded by direct observation that **in courts covered by the project, public debate can hardly be sustainable principle**, due to absence of primarily spatial conditions. In some cases, **conditions for elementary provision of security of parties does not exist, especially when it concerns the**

presence of damaged persons in the proceeding, not to mention the presence of the general public.

Space for the improvement certainly exists, especially when it concerns **the organization of work at courts and access to basic information on free access to information, alternative dispute resolution, advertising in the court buildings** (bulletin boards are largely "useless" from the aspect of finding information and publications of courts), **more often meaningful communication with the media in monitoring judicial issues** (not just in terms of the so-called "big cases").

General public and stakeholders have almost similar standpoint about public work of courts. When it is related to direct communication with civil servants at court administration, majority is consent that **it is mainly satisfactory**, that servants are kind and have correct standpoints on issues related to receiving information.

What appears to be complex work is **the importance of providing permission for the insight into previously made court decisions, considering they become public at the day of their proclaiming.** Parties express the need for faster reactions of judicial bodies on submitting of such information, especially if they are of vital interest for exercising any right.

It is interesting that a completely appropriate percentage of courts or judges (19%) are not informed about standpoints of media on their work, while almost 24% of them consider it unsatisfactory. **In comparison to the standpoints of parties on the work of courts, judges are not sufficiently or are not at all acquainted in 55% of cases.** In specific manner, parties' assessments of findings on court proceedings provided by judges speaks to the benefit of the thesis about the need of significantly **wider and more content campaign on place and the role of the court in the society, its competencies and the nature of judicial work** (over 80% of judges believe that parties are not sufficiently acquainted with the content of the proceeding and the procedural competencies).

According to responses of 43% of judges, the interior of the court room does not provide respect of principles of publicity at the proceeding, and 26,6% of them stated that the principle of publicity might be fully provided only for "emphasized and increased interest for specific cases".

Responses of lawyers stated already mentioned problem of space and the equipment of the court room which should not be additionally commented and which, in any case, **indicates on lack of conditions for implementation of principles of publicity of court actions.**

Views of citizens in this survey would be limited on several conclusions: **conditions at offices for trials are weak; court building should be placed at another location with larger parking space, judges are closed for media, PR cooperative.** Questions whether employees at court administration were kind and communicative, whether they delivered expected replies, advices and directions, 57 surveyed persons gave positive answers while 12 surveyed persons did not provide answers.

2.5.1. Free access to information

Using current statistics in a view of free access to information, it should be said that **mostly and almost exclusively civil sector addresses courts with requirements**. Citizens address courts **in a very small number of cases**, considering that information they are usually interested in, are being received through other forms at the proceeding. We have received such an answer from the very members of judicial authority.

In a view of access to this problem, the most content data provided Basic court in Kotor which conducts special records with data on filed requirements, court trials, and results of these proceedings and as such, **it may serve as a positive example to other courts**.

Youth Initiative for Human Rights (YIHR) tested courts and their reactions after claims for free access to information. Therefore, for the needs of the

testing, citizens sent four claims to Basic courts in Podgorica, Bijelo Polje, and Kotor, and Higher courts in Podgorica and Bijelo Polje.

Basic court in Kotor replied in accordance with Law on free access to information **on all claims that were sent**. In three cases, Basic court allowed the access and sent required data but in one case the court rejected the access, because required information has already been published.

Basic court in Bijelo Polje also **delivered responses to four claims**. In two cases, Basic court in Bijelo Polje allowed the access, but the access to information was not allowed in the manner stated in the requirement and that is in accordance with Law, but issued decision which provided direct insight in information. Considering that citizens who sent claims were from Podgorica, their departure to Bijelo Polje would require additional costs. Decisions of the court to allow the access in this manner in concrete case **may be considered as limiting ones or more difficult way to receive information for citizens who are not from the same town**. At one request, Basic court in Bijelo Polje delivered information about the place where required information was, and on one required information, the court delivered required information in written form.

Basic court in Podgorica, **replied on three claims for the access to information**. In two replies, citizens were sent where required information had already been published and in one response, a citizen was told to address Judicial Council because the Council possessed required information. **One claim did not receive answer from Basic court in Podgorica**.

Higher court from Bijelo Polje **replied to all claims**. Information was delivered in three answers and in one case was indicated where required information was published.

Higher court in Podgorica **did not submit answers on the occasion of required information**.

For the needs of this survey, YIHR required information from NGO MANS which very often uses Law on free access to information in its work.

Since the beginning of 2011 until 31 August 2011, MANS **sent 58 claims** to Basic court in Podgorica. Out of this number, the access was allowed 16 times, partly allowed for seven claims and was prohibited three times. MANS received **32 times the answer from Basic court that the court did not have required information, that it had already been published, or that the court was not competent to deliver the information.**

MANS filed complaint 37 times to Ministry of justice and three complaints to Administrative court. One verdict was rendered and was for the benefit of MANS.

Within the same period, MANS required information three times from Basic court in Bijelo Polje. Access was prohibited twice and one response said that information had already been published, that the Court was not competent or that the court did not have required information. MANS filed two complaints to Ministry of justice and filed two complaints to Administrative court. Still, not any verdict has been rendered yet.

MANS required information from the Basic court in Kotor four times. The access was allowed in one case but was prohibited in three cases. MANS complained to Ministry of justice in three cases, and after this MANS filed three complaints to Administrative court. Until nowadays, not any verdict has been rendered for the benefit of MANS.

During mentioned period, MANS required information six times from Higher court in Podgorica. Higher court allowed the access twice, but one the court rejected the access to information and once it stated that the court was not competent, that it did not have information or that the information was already published. **MANS filed six complaints to Ministry of justice**. Within this period, MANS did not file complaints to Administrative court.

MANS required information for five times to Higher court in Bijelo Polje. The court replied in each of five cases that it was not competent, that it did not have information, or replied where the information was. MANS did not initiate proceedings or file complaints against Higher court in Bijelo Polje.

2.5.2 Access to information by media

For the need of this research, YIHR contacted journalists and media. YIHR also contacted four daily newspapers: Vijesti, Dan, Pobjeda and Dnevne novine; Public service - Television of Montenegro, Television Vijesti and Radio Antena M. Journalists who submitted answers stated they did not use Law on free access to information in order to receive information by courts in Montenegro. As the most important reason for not using the Law in order to receive information, they said that **eight days deadline prescribed by the law is too long.** Therefore, received information would not be new and after eight days information would not be useful for them. Small number of journalists who answered they are being used Law on free access to information expressed dissatisfaction because they had been waiting o receive information for up to one month.

As the bad side, they emphasized that **court rooms technically did not provide journalist to be separated from the family and friends of accused persons**. Very often, they wait the beginning of a trial at halls, together with accused persons and damaged persons and their families. They consider that in this manner their safety is endangered because it is always possible that someone of the accused damaged ones or their family cause incident if not satisfied with reporting.

In some cases, journalists can not receive the information about which case has been awarded to which judge. Therefore, they are exposed to more significant efforts, and, rarely, they go from one judge to another in order to receive information. Journalists complained that judges and other competent at court are rarely ready to communicate and deliver information. They indicated that investigation judge of the Higher court in Podgorica rejects to communicate with journalists and does not want to answer phone calls.

Journalists believe that more efforts have to be made for overcoming the problem of premise limitations. **Trials which attract more attention and take place at misdemeanor court in Podgorica do not have enough spatial capacities to accept all interested journalists.** Journalists think that in such

situations, misdemeanor court has to develop cooperation with Basic court and then borrow large court room from Basic court.

Journalists also believe that Presidents of courts have to be more open for cooperation. Some of journalists said they have never received answers for the interview with the President of Higher court. Journalists praised PR service in Basic court in Podgorica and Higher court in Bijelo Polje **saying they receive almost all answers from PRs.** Journalists indicated that communication with the PR service of Higher court in Podgorica was not good.

Information about the appointed time of some trials, journalists hardly find. Although they said that Higher court has a monitor which shows trials, it does not inform about all trials and information are related only to trials for that day. Journalists said that information on appointed trials may even not be found at the web sites of courts. Therefore, journalists usually receive information via lawyers. Specific problem related to receiving information about scheduled trials is the problem of Basic court in Podgorica and journalist usually receive information via judges of the court.

Journalists emphasized they were prohibited to record trials and accused persons and to take tape-recorders with them at the court room and laptops which limits exercising of their jobs or reporting public on information they are interested in.

3. Conclusions

- Despite adoption of Law on free legal aid, there is an open issue whether parties which previously submit claim for exercising any right before administrative body may, when the administrative proceeding assumption for conduction of court trial, be holders of right to free legal aid, or whether failure of providing legal aid at the administrative proceeding would in this manner harm right to access to court. In resolving this issue, practice of European Court for Human Rights should be taken into account.
- Material conditions under which judiciary exercises its affairs generally, and especially courts, cause difficulties in the access to the court. None of the courts covered by the project, except Administrative court, does not fulfill spatial and technical conditions that would satisfy necessary standards of court proceedings, which endangers exercising of right to public trial. Also, appropriate standard of constructing and equipping of court rooms does not exist. On the other hand, current spatial of judicial facilities do not represent specific problem.
- Architectural barriers to the access to court are more than evident and persons with disabilities do not have provided adequate premises, where they can communicate with legal representatives, nor adopted sanitary premises.
- Capacities of court libraries are mostly based on electronic or hard copy issues of official documents; rarely, judges have to provide literature by themselves, and communication about appropriate space for the library and care for bibliography does not exist.
- Due to the lack of information tables and identification plates for court officers, citizens face with difficulties in finding relevant premises and persons important for resolving their requirements.
- Improved communication between courts, executive and parliamentary authorities has to be developed, aiming at timely and comprehensively consideration of each legal project, because its implementation is largely based on court control and protection.

- Practice of Administrative court in a view of updating the web page, that has been equipped with a large number of information and case law, legal standpoints and professional work, may serve as the model to other courts, which would significantly improve conduction of principles of publicity.
- Issue of finding appropriate model of proportionality of number of judges in comparison to the number of inhabitants has to be monitored by development of appropriate logistic of trial, by encouraging the concept of legal culture, culture of trial and respect of judicial function and court orders, and significantly improved promotion of judicial institutions in public. In that sense, as special issues occur motivating court administration and the issue of engaging important number of officers for exercising affairs of logistic trial and affairs of court administration.
- Process of professional development is in some cases conducted without previous strategy and agenda. Sometimes this endangers position of those for whom this education is being organized, and the position of citizens as well, which is especially evident in comparison to "small" courts, where practically each week a number of judges is absent due to some form of education. Also, segment of training of judicial administration (civil servants) is not at the level of other employees at courts.
- Progress in efficiency of resolving cases before courts in Montenegro is evident. At the same time, faster resolving of cases has not caused the fall of quality of court decisions. Judges consider that one of the major barriers to further moves in this area is unsatisfactory work of post and delivery services, updating of registers of temporary and permanent residence and functioning of specific public bodies that have important role in providing data significant for the result of a trial.
- Despite the progress that has been made, empirical research tells that there is still obvious level of dissatisfaction with the efficiency of court proceedings. Citizens interpret this impression more as a reflection of passive parties and other public bodies, than of the very courts. Union of Employers also believes it is important to accelerate court

proceedings and, in that manner, remove legal uncertainty which burdens entrepreneurship ambient in Montenegro.

- Judges have to do more than ten discussions a day, therefore there is an objective question whether and when can they devote their time to decision making processes, reading of cases, and material documents, not to mention time necessary for professional development and education.
- Although increased number of control claims and complaints filed in accordance with the provisions of Law on protection of right to trial in reasonable time, has been noticed, still exists the need for work on education of public and especially legal representatives initiating disputes, i.e. control claims previously.
- Provision of Judiciary Rulebook that prescribes that for recording at the court has to be issued approval of the President of Supreme court, seems pointless because it endangers the reputation of the head of that body and at the same time makes direct and timely communication with media difficult. At the same time, journalists see the prohibition of recording a trial and accused persons as significant limitation of exercising their duties.
- Journalists mentioned, as limitations for their work, lack of information on judges responsible for some case and information on appointed trials, lack of readiness of judges and employees at court to communicate with journalists, and the feeling of endangered security when, due to spatial limitations, journalists wait the beginning of a trial together with accused persons and their families.
- There is significant space for improvement of accessibility of basic information on exercising rights to free access to information, in a view of developing communication via information tables. On the other hand, general public and stakeholders are mostly satisfied with direct communication with officers of court administration.
- The need for wider and more content campaign related to the place and the role of court in society, its competencies, and the nature of judicial affairs, exists. Also, public needs to be informed about alternative manners of resolving disputes and it is important to establish more

content communication with media due to monitoring of judicial problem.

- Non governmental organizations mostly address courts requiring free access to information. Citizens address courts in small number of cases. Journalists rarely use possibilities this law provides because, according to their opinion, eight days deadline which public body needs in order to deliver response, was too long to answer their needs.