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The report

MONITORING OF WORK OF COURTS IN MONTENEGRO

(transparency, access to justice, efficiency, organization, financial management, and the relationship with users of services of court administration)

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Publisher
Boris Raonić

Survey coordinator
Zoran Vujičić

Author of the report
Siniša Bjeković

Monitoring team
Zoran Vujičić
Siniša Bjeković
Milan Radović
Sandra Đonović
Boris Raonić

Translation
Sandra Đonović

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CONTENT

I BACKGROUND INFORMATION

For almost three years in a row, Civic Alliance conducts monitoring of work of courts in Montenegro, and informs public on its findings via reports that include legal analysis, and results received by the research on the terrain. The reports may be viewed at our web site www.gamn.org.

Five members team of CA worked on the research and writing of the report. We used the techniques of the terrain research, interviews and questionnaires, legal analysis, analysis of budget, and financial management of courts, monitoring of trials, press clipping, Law on free access to information, and official reports related to the work of courts. The project was supported by the USAID Good Governance Activity Programme in Montenegro.

Monitoring of work of courts in Montenegro was conducted from 01 March 2012 until 01 March 2013. The research covered Basic courts in Podgorica, Bijelo Polje, Kotor, Higher courts in Podgorica and Bijelo Polje, Administrative court and Constitutional court. Through this report, we monitored transparency, access to justice, efficiency, organization, financial management, and the relationship with users of services of court administration.

Continuity of monitoring of work of courts and stressed need for well-argumented access to acting of the most important component within the authority of a country, give us right to compare previous experiences and findings at time and space where such authority is in force. Status of specific branch of authority follows the overall social transition and may not be isolated from the status of remaining branches of power. However, it does not mean that it may be controlled or monitored by other types of authority, if such control is not based on clear and recognizable criteria of balance and inter-control which make the constituent part of wider concept of the rule of law.

Formally, the Constitution of Montenegro defines independent position of each judicial authority in comparison with executive and parliamentary. Such impression has usually been disrupted through reports of national and international organizations, and civil sector, which burdened the idea of monitoring of work of courts itself, in its very beginning. Due to that fact, this report lies on inputs of more social factors, and especially on position which judicial power creates on itself, i.e. judges. It is interesting to mention that from the previous experiences arise objective critics and self-criticism of all relevant actors who come in touch with judicial power.

Unfortunately, as previously, even this time the support of very important sector of judiciary in wider sense – advocacy, or institutionally Bar Association of Montenegro, to the project, failed. Due to absolute lack of standpoints of advocacy, this partially poor report, only sporadically contains the review of advocacy and the consequences of its impact on court proceedings. Debate on reasons for such situation can be expected at the promotion of the material and its

publishing, which will not reduce the quality and objectivity of information received during the campaign of surveying of all relevant subjects who participate differently in democratic control of judiciary.

Although previous report assessed that the general image of judicial power was made in objective, founded, and constructive manner, we have to emphasize that this period of reporting and the result of surveying itself have brought the new quality and quantity in cooperation of civil sector with institutions of judicial power. Such conclusion occurs for practical and timely responses to all questions and promptly delivering of all data important for final development of publication on monitoring of work of courts.

Unlike previous report, this period covers the work of Constitutional court of Montenegro, considering that a number of cases clearly imposed the impression on instaneous actions of this institution and decisions that have the impact of suspension. In that manner, Constitutional court clearly said that it imposed as the factor for achieving justice who, inter alia, has the capacity to abolish final court decisions when, according to assessment of the court, such decisions violate human rights and freedoms.

Except expressed standpoints of general public, reflected in statements of users of services of court administration, this report consumed standpoints of media, which is not insignificant if the role of this part of civil sector taken is taken into account and the need of public to be informed timely on events related to court proceedings and the work of courts generally.

Finally, financial management of courts came in the first plan after publishing of the report of National Audit Institution (DRI) on audit of annual financial report of the consumer unit Judiciary for 2010. This report confirmed specific failures in management, which were not assessed in the manner by which the report would not be accepted by this body, and as such received “conditioned positive opinion”. According to findings of National Audit Institution, it was defined that there were no “materially important mistakes in officially presented reports, except in one part of recommendations”, on which will be spoken in part of this report on monitoring of work of courts.

CA is grateful to all of those who contributed to successful realization of the research.

II SUMMARY OF THE PROJECT

Implementing the concept of the Project, this material provides data and assessments of actions of judicial authority and Constitutional court of Montenegro in areas of interest for their transparency, accessibility (physical and institutional), efficiency, quality of work, organization of work, financial management and supervising management and relationship with participants in the proceeding, or users of services of court administration.

Before considering each of mentioned components of the report, it was important to evaluate the existing situation, or provide the intersection of general data on organization, status, capacities, and future obligations of judicial authority in the process of European integrations.

Introductory part emphasizes major changes in organizational structures of judicial authority and expectations in a view of accomplishing efficient role in developing the country and society. In such constellation of relationships, it is clearly indicated on unsustainability of existing level of decision making process of courts on judicial budgets, or basic material presumption for optimal work of courts in accomplishing the role delegated by the Constitution. In that context (and not only in this) judicial authority needs to have significantly agile access and does not have to observe passively its own position in existing system of authority.

Transparency, as important characteristic of democratic institutions, is not only related to the principle of publicity in trial. One of the noticed failures in work of courts is inadequate relationship towards general public in sense of duly reporting and allowed exposure until the level which does not demolish principles of rights of parties in the proceeding, or the interest of the very proceeding. In the specified period of reporting has been registered certain level of failure of good relations with public, which all court institutions and especially heads of judicial bodies should have. Part of these affairs may be delegated to special officers but public appearance of heads would surely be the step forward in achieving the confidence of public and improving the reputation of court in wider community. Notable moves have been made on the plan of organizing informatics basis, and publishing information via new communication technologies and popular means of informing.

Infrastructure characteristics of court buildings do not allow appropriate level of attendance of general public, simply because of lack of technical conditions for that, which may hardly be the excuse in wider sense. On the other hand, requests for free access to information in courts covered by the project have usually been respected.

Access to justice has been monitored through demonstration of the free legal aid institute that has started implementation by establishing services, and has registered starting problems in complicated and expensive procedures of providing documentation which substantiate the property status of persons who need free legal aid.

Efficiency of court proceedings was monitored in relation with the caseload, backlog of court cases, time needed for adjudication and the quality of decisions. Data that provided comparative parameters with institutions of countries that cherish the same or similar legal tradition clearly show that Montenegrin

courts and courts from the neighborhood countries have still been overloaded by a number of cases from previous years, but the time distance needed for termination of disputes is more and more reducing. During 2011, Montenegrin courts achieved so called annual promptness (resolved more cases than they received), but in numerical terms, number of resolved cases was smaller. Another significant problem represents the lack of quality of some courts in Montenegro, which is the fact that has to be researched in details and continuously. Reasons for abolishing large number of court decisions has to be revealed in that process, so that measures for resolving problems can be undertaken, or define whether such situation was he consequence of rigid rules of proceedings, complicated and often changed material and legal basis of judgment or poorer wok of judges individually.

Announcement of Rationalization of court network based on Analysis has been emphasized in organizational sense, which was established on the basis of indicators taken out from the Study on efficiency of judiciary of the European Commission for efficiency of judiciary (CEPEJ) from 2012. Financial effect and the intention for abolishing specific court institutions dominated in the material we received, whereat some other not less important factors related to access to justice were neglected.

After conditionally positive opinion of National Audit Institution, which confirmed specific failures I organization of financial management, in the domain of courts were undertaken specific measures for recovering the situation. However, it should be emphasized that they were mostly of technical nature, of low expert level, and still unproved in practice (primarily, when it comes to analysis and planning of court budgets, internal audit, and control), therefore, it may be expected that their sustainability has to be proved in this fiscal year. Fear for capacities for conduction of this reform stays justified, if bearing in mind the capacity of existing budget and weak perspectives for increasing on any grounds.

Empirical data show dissatisfaction of all participants in the proceeding and in addition to this were identified problems, more or less the same for all questioned ones – both judges and citizens. Some detailed problems, such as obstruction in conducting proceedings and defects in work of public and other bodies, and failures in prolonging proceedings based on delaying expertise, impossibility to submit, and similar clearly indicate on unity of thinking. However, this surely is not and may not be the reason for parties to suffer consequences in the proceeding.

The role of Constitutional court as the kind of corrector in internal legal system is especially important segment. The impression is that a more evidence should be provided on intention of the country to make this court efficient and prompt, and on the other hand even this institution has to consider seriously indicators of large number of negative decisions, especially when it comes to proceedings on constitutional appeals.

In all cases of acting of national courts, totality of national legal framework should be taken into account, including the obligation of courts to implement directly national and international law as the constitutional obligation.

III MONITORING OF WORK OF COURTS

Introductory analysis and general impressions on work of courts in Montenegro (law and facts – real and possible)

Concept of the Project established multiple observation of work of courts in Montenegro, with the aim to indicate on transparency of judicial and administrative proceedings, easier access to courts, optimal communication between participants and court administration, efficiency of court proceeding, material and financial presumption for functioning of court administration and conduction o proceeding, and relation of the court authority or courts towards other social members.

In such systematic, each of mentioned elements was specially processed, from the aspect of internal procedures which provide functioning of judicial authority, and from the aspect of users of services of court administration and participants of the proceeding who emphasize the request for timely and efficient justice as the basic civilized values and the need of each member of an defined social community.

Infrequently, achieving justice is related to activity of courts in situations when they evidently do not have impact on creating conditions under which they act, make decisions, and naturally tend to implement these decisions. Naturally, any judicial decision that is not executed cannot contribute to reputation, but can certainly affect the lack of confidence in judiciary, generally. Sometimes it is a question of material and institutional capacities, but often can be a tool of obstruction in the hands of those who hold a monopoly of force, and therefore the strings of real opportunities for the execution of final and enforceable court decision. On the other hand, problems observed sporadically at courts, which are related to inconsistencies in adjudication, repetitive abolishing of verdicts in cases of special importance for parties and the public (cases of organized crime and criminal offenses in the field of international law), significantly affect standpoints of the public who express their doubts in the quality of work of courts. This is especially related to cases of corruption in which the subject of the proceeding were also holders of significant judicial functions. The last ones particularly challenged public attention and certainly, the fact that the actions were carried out, the procedural steps taken and the outcome resulted in acquittals, is not insignificant. Disregarding the actual merit of judgment, in such circumstances, general public is rightfully in dilemma over the reasons for initiating the proceeding on the basis of (in)sufficient or (in)adequate evidences.

In one part of justified critics, there is dilemma that is hard to resolve by the laic understanding of courts and trials. In fact, not denying the fact of justified dissatisfaction when obvious material mistakes are inevitable cause of abolishing court decisions, this indicator can hardly be applicable in assessment of overall work of judicial institutions and separation of responsibilities for the result of proceeding between courts and other bodies, primarily prosecution office. This actually means – in order to assess each case from the standpoint of merit court decision, the case has to be individualized, analyzed from the aspect of the quality of offered and evidence that was carried out, and then defined from the aspect of adjudication.

If we would make conclusions solely on the basis of presumed inappropriate adjudication, instead of decisions of higher court instances, thus we would certainly assume the role of judicial authority, regardless of how good legal exert would be the one who renders such appraisal.

Responsibility of other institutions is nothing new, and nothing should be added to this, in relation to what is already known. This is particularly important if we take into account the practice of the European Court of Human Rights, when as problems were recognized: lack of assistance or physical coercion in the execution of court decisions by the police (case of Bijelić against Serbia and Montenegro), failure of execution of court decision by the body of social welfare (Mijušković against Montenegro), the lack of completion of case before public bodies conducting the expropriation proceeding (Živaljević against Montenegro). In factual terms, it is easy to assume that the failure to deliver judicial documents in conditions of rigid procedural rules on personal delivery causes abolition of court decisions. We were in a position to see many cases when the court placed notes on non-delivery on documents (moved away, not at this address, family members say that a person has been abroad and would not be coming for a long time, the company is not at this address, the party / recipient not available/unknown), and certainly that the court is not physically able "to do the proper delivery". In such situations, assistance of police bodies often does not provide real result, and even judicial bodies are not authorized to prescribe and organize affairs that are under authority of other bodies. Besides, heads of some courts lately indicate on lack of cooperation of police bodies in respect of court orders (statement from the conversation with presidents of courts from the Project).

In cases with international elements, existence of process presumption on unavailability of the party in proceeding, or other participants (witnesses) also leads to abolishing of verdict. If it is impossible to achieve judicial cooperation in all cases, regardless of frequent and intensive interventions, than it is illusion to expect the success in a view of the quality and the result of dispute.

When it comes to other participants in the proceeding, lack of cooperation of public and other institutions is very often mentioned. Either it implies legal persons who simply do not act in accordance with orders of court, whereas available disciplinary sanctions are related only to delivery services. Manner of forcing public and other bodies on cooperation, stays open question and one of the manners was mentioned several times and is related to more rigid intervention, legislative and judicial, on questions of (dis) respect of court and its orders, such as the case with non-execution of court decision where material sanctions are high and effective.

In all these procedures cannot be neglected the obligation of courts to impose sanctions prescribed by law for the sake of maintaining the process discipline. However, they legally do not cover all participants of court proceeding and speaking about experienced views it may be said that now, courts often impose sanctions to lawyers, experts, and other participants in the proceeding for which they were authorized to impose such sanctions.

Transparency of proceedings implies increasing of the level of culture of trial, which is very important element in creation of image on judicial power. If important minimal knowledge on role of courts does not exist, their real competency, role of achieving justice and execution of judicial decisions, then it is illusion to make any conclusion. For that reason, it is important even in this Project to emphasize that a citizen has to be, even elementary, acquainted with the nature of actions of courts so that a citizens receive fast, efficient communication with court administration, which infrequently implies specific managing capacities within courts. Consequence of an arranged social system is, not only increase of confidence in work of courts, but even relief in sense of absence of unnecessary trial, prevention of additional litigation, and relaxation of courts in cases that may be resolved without dispute. Therefore, it is desirable to promote alternative methods of resolving disputes and support the system of restorative justice, which affirms resolving of situations without additional conflict and protects judicial system from unnecessary engagement of the overall judicial apparatus.

Infrastructure of court institutions still represents serious problem for exercising principles of publicity and free use of technology that provides easier and faster course of court proceedings. Objects and buildings where courts are placed seriously endanger elementary presumptions for the course of trial, not to speak about the necessary comfort, or the need for free and confidential communication between parties and their legal representatives. On the other hand, moves in resolving communication and better use of existing spatial capacities in large number of courts, nowadays are evident. We would say that that these proceedings correspond with requirements from our previous report and needs all participants in the proceeding, who, even in this report, mention urgency of resolving problems of accommodation and elementary comfort of judicial institutions, and therefore comfort of parties and general public. In that sense, discrepancy between the needs and real situation is obvious. On the other hand, formal regulations that would clearly define urban and spatial conditions, or minimal technical conditions for functioning of judicial facilities, including the access of disability persons, still do not exist.
Major characteristics of work of courts are still based on inflow of large number of cases of all types, and resolving at the annual level (Report for 2011) of large number of cases, than it was the access in the current reporting period, and smaller number of resolved cases in comparison with the previous year. Principally, the quality of work of all courts characterizes the percent of 65,46% of confirmed first instance decisions in civil and criminal cases, or 7,73% of revised and 26,78% of abolished court decisions. If we compare this data with some other neighbor country, it can be concluded that there are similar, and even worse indicators, which result in question of the reason for such situation and especially the cause that determinate decisions of the first instance courts. The example of Republic Croatia clearly indicates abolishing reasons (wrong implementation of rules of the proceeding, wrong implementation of the material law, wrongly defined facts). Through special analysis, indicators received in that manner, may be enforced in amending of legislation, at the plan of harmonizing of court practice, or even education, or appropriate selection of court staff.

When it comes to efficiency of court proceedings, it is unequivocally defined there is significant progress in hierarchically higher courts, especially in terms of promptness of resolving cases (higher courts and the Supreme court). In that sense, these courts have been positively highlighted and in comparison with

the courts at the same level in neighborhood. However, it should be said that, obviously, the hardest pressure is on the first instance courts, which mostly the first, and sometimes the only ones have 'live' contact with the case and participants in the proceeding (arriving at the spot, contact with parties in the proceeding, experts, witnesses, victims of the criminal offenses, representatives of other public bodies, legal and physical persons), on which grounds they make decision, or implement law. The same thing is related to higher courts, as courts of general competence, when conducting criminal proceedings as the first instance.

The fact itself that National Audit Institution of Montenegro gave conditional positive opinion, is enough reason for judicial authority to make move towards understanding the importance of its financing and especially planning of costs important for optimal, sometimes even elementary functioning and work of courts. The problem of financing is at the same time the problem of independency of judicial authority in situation when projected judicial budget represents only 'reference' in defining and adopting budget for certain fiscal year (which has never been respected according to the practice). As stated from DRI, it was difficult to achieve full financial independence of judicial authority when the Government makes final decision in a view of budget proposal, which is on the other hand the only negotiator with international financial institutions (therefore, the only one that is responsible), and on whose standpoints and requests are often created system of public finances in any country. This has importance in transitional countries, or at the time of structural adapting and overcoming economic crisis, considering that real budget (read: reduced public costs at the time of crisis) represents one of the fundamental conditions for receiving favorable international financial and credit arrangements. Low capacities of planning and programming budget and internal procedures and audits has been noticed among crucial deficiencies in existing organizational structure of judicial authority. The first steps were made in formalization of organizational acts and adopting of specific rules on which will be more in continuation of this text, but for the real effect in financial planning and control is important to qualify very strong logistic structure of planning and control, which is not the case at the moment. Problem may be the limit of the budget of courts, considering that some professional projections indicate on the need of forming personal core of at least ten executors, and additional engagement of following systems of logistical support at the level of judiciary and courts individually. This should be added that in the domain of judicial statistics (not only financial) requirements for serious interventions are highlighted, thus stays unclear how to achieve all this in conditions of deficiencies of spatial capacities, reduction of the budget, and impossibility of judicial authority to influence on creation of its financial potential in the budget of Montenegro in decisive manner.

Constitutional reforms in the field of judiciary that were announced and implemented until the level of the Draft of amendments of the text of valid Constitution, still have been the subject of political controversies and the result of the procedure still is not obvious. At the legislative level, several changes in the sector of organizational and functional legislation were done in the domain of judiciary, with the aim to provide higher level of independency and impartiality in making crucial decisions. They are related to representing and electing of bearers of judicial functions, and allocating real competencies until specific level so that proceedings would be more efficient and decisions made in hierarchically higher judicial institutions, which should confirm merit and authority of decision making process itself.

Law on amendments of Law on courts (Official Gazette of Montenegro, no 39/11), adopted by the Parliament of Montenegro at the eleventh session of the first regular plenum in 2011, on 22 July 2011, covered changes at the level of real competences of higher courts in the first instance, returning one part of competences to basic courts, or defining their real competency in a view of criminal offences for which has been prescribed more than ten years imprisonment sentence regardless of the character, profession and position of the person against whom the proceedings are conducted and regardless of whether the criminal offence was committed in peace, state of emergency, in a state of imminent war danger or in a state of war and in criminal offences of manslaughter, rape, endangering the safety of an aircraft in flight by violence, unauthorized production, keeping and releasing for circulation of narcotic drugs, calling for violent change of constitutional order, disclosure of state secret, instigation of ethnic, racial and religious hatred, discord and intolerance, violation of territorial sovereignty, associating for anti-constitutional activity, preparing acts against the constitutional order and security of Montenegro.

Besides mentioned affairs, Higher courts shall hear and determine hear and determine criminal proceedings for criminal offences of organized crime regardless of the severity of prescribed punishment; and for criminal offences with the elements of corruption: violation of equality in performance of business activity, abuse of monopolistic position, causing bankruptcy, causing false bankruptcy, trading in influence, false financial statement, abuse of appraisal, disclosure of business secret, disclosure and use of stock-exchange secret, passive bribery, active bribery, disclosure of official secret, abuse of official position, fraud in performance of official duties and abuse of powers in commerce punishable by imprisonment of eight years or more severe punishment.

Besides mentioned affairs Higher courts shall act in cases of conducting proceedings and deciding on requests for extradition of accused and sentenced persons and shall perform duties of international legal assistance in criminal matters.

In comparison with the organization of affairs, stated amendments of the Law define that extended session of the Supreme court makes: general session of the Supreme court, and Presidents of the Appellate court, Administrative court an Higher courts. At the same time, this Law partly corrected deficiencies in the Constitution of Montenegro that did not envisaged duration of mandate of the President of Supreme court, therefore, the Law prescribes five years mandate, and for Presidents of other courts.

The Law also amended material and legal provisions on responsibilities of judges, procedures of taking cases for work, and in the domain of real competences of courts, legal situation when the court takes the legal standpoint at the session of judges was defined (when it is defined that on issues on implementation of law exist differences in understanding between some councils or judges of the court or when an council or a judge recedes from previously defined legal standpoint), which is very important institute in equalization of court practice.

At the same session of the Parliament were made amendments of Law on Judicial Council (Official Gazette of Montenegro, no 39/11), which defines institutes of ethics of bearers of judicial functions, or

modalities of election and participation of judges and other members[1] for establishing of Judicial Council, and the procedure of electing the President of Supreme court. Besides, this Law closely elaborates criteria for evaluation in the first election of bearers of judicial functions, or progressing in the career, which establishes special system of scoring candidates. The Law also defines the record of bearers of judicial functions with data on election, progressing, work experience, and references of each judge.

European Commission Report on Progress of Montenegro 2012[2] concluded that "future work should be directed towards establishing the system of employing judges unique for the whole country that would be based on transparent and objective criteria. Criteria for appointment of judges lack clarity and objectivity due to absence of periodical professional assessment of capacities of judges. Work of Judicial Council is inhibited due to lack of administrative capacities and budget means. Current Constitutional revision, aiming at resolving the problem of inappropriate political impact on judiciary should be finalized in accordance with the European standards".

Seams that the last formulation makes legislators confused and the ones obliged to implement constitutional reform, because varieties of organizational principles of judiciary in Europe are so different and do not reflect unique model on which the same one would be based, or the one that would be implemented the best as the adequate in Montenegro.[3] In comparison with the composition of judicial councils, professional materials expose two models: North-European and South-European model of judicial councils. From the Study of Efficiency of Judiciary (2012) of CEPEJ conclusion can be made about very heterogenic access to judicial institutions and diversity of ambient where social processes take place, including activities and development of judicial institutions, or systems.

In relation to this Project, very important segment of research in the domain of judicial system are inputs received from different actors, or participants in the proceeding and users of services of court administration. There, where the most severe conflicts are expected (relations courts – parties – legal representatives) exist very high level of consensus on reasons (in)efficiency of courts, or the manner of overcoming problems which burden the work of courts. Therefore, it is important for the experiences in this cycle to be expressed in appropriate recommendations and priorities in organization and work of judicial institutions, where authors of the project already orient towards strategic document that would be directed towards communication of courts with general public. Assistance of media should be taken into account in that view, who received appropriate space in this material for expressing their standpoints on work of courts.

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1 President of Montenegro makes the list of at least four candidates for election of members of Judicial Council, according to previously published consultations with the Bar Association of Montenegro, Union of Judges of Montenegro, Law Faculties, and the Academy of sciences and delivers it to widened session of the Supreme court for the opinion (Article 13a of the Law).
2 Document of the European Commission marked as COM (2012) 600 from 10 October 2012.
3 European Judicial Systems (Edition 2012 (data 2010)) – Efficiency and quality of justice, European Commission for efficiency of judiciary (CEPEJ) 2012. W. Voermans, P. Albers – Judicial Councils in the EU countries - European Commission for Efficiency of Judiciary (CEPEJ) Lajden/Hague, February 2003.

Finally, focusing on the quality and efficiency of courts, again, we emphasize the need for intensive education and updating knowledge. Without this, there would be no adequate trials and decision making processes, because passive relationship with innovations in knowledge lead to losing steps in comparison with international obligations, and therefore to cognition of internal law. Namely, the Constitution promotes primate of international law in comparison with the national legislation, indicates on its direct implementation, and therefore de iure and de facto promotes principle of material unity of internal and international legal system in comparison with (for Montenegro) approved and published international treaties.

All that is said for the process and material and legal aspect of work of courts of general competency, can be said for activities of Constitutional court. On one hand, obliged by the position in internal legal system and general expectation to be the corrector of all social deviations, and on the other hand, limited by modest logistics and personal support of different professional profiles that may assist for resolving cases before the Constitutional court (this is especially related to the area of international public law and interpretation of international treaties, primarily those about the system of human rights and freedoms), current potential of institutions make it insufficient to respond to all challenges that standing before it. This is especially related to the situation where this court already resolves cases on constitutional appeals in capacity of instance competence, and as such is seriously arising with the key role in equalizing judicial practice.

Seams that in this situation is more complex the role of court, in the proceeding for assessment of constitutionality and legality or harmonization of acts with provisions confirmed and published international treaties. Namely, constitutional norm which defines the primate of international law in comparison with national legislation in numerous areas is more of declarative nature, because courts decide on waiting for the result of the constitutional and legal procedure and then implement regulation in accordance with decision of the Constitutional court. The only area where regular courts engage in direct implementation of international standards is implementation of principles of balance between the right on privacy and freedom of expression, when now obviously, intensively and consistently implement the practice of European Court for Human Rights, while in other areas mostly rely on provision of Article 44 of Law on Constitutional court[4] and stop the proceeding until decision of this body. This can seriously imperil dynamic and work of Constitutional court and slow proceeding before regular courts, thus, special attention should be directed towards judicial practice which says that regular courts have to resolve cases directly on the grounds of international standards even before Constitutional courts make decision on this. Its intervention would follow up in exceptional cases when there are no appropriate comparative indicators in practice of international bodies or when it is hardly notable and debatable from the aspect of facts of a case or situation in internal law.

4 Article 44 of Law on Constitutional court of Montenegro:"If in the proceedings pending before a court is raised the issue of compatibility of the law with the Constitution and ratified and published international treaties or of other regulations with the Constitution and law, the court shall stay the proceedings and initiate proceedings for review of constitutionality or legality of that act before the Constitutional court" ("Official Gazette of MNE", no.64/08)

Constitutional court has to insist on making clear the rules on its work, because rules of the very proceeding seams disputable, priorities in resolving, reasonable duration of the proceeding, establishing of judicial councils in plenary session, maintenance of the process discipline and respect of court and other issues for its work.

Material-legal and process-legal presumptions of courts functioning in Montenegro

Essential elements of the rule of law have been materialized through existence of law, equality in implementation, rationality as the characteristic of relations between the norm and the goal as the result, legal security, consistency of interpretation, separation of power, process justice and stability of legal system are perhaps best reflected in actions and the role of judicial system in the context of a country. For that reason, occurs the objective question of proportional legislative interventions (often amending of regulations) and the goal that has to be achieved in legal system. This largely define capacities of judicial authority, because the legal regime where regulations change faster than social absorption of laic and professional public is possible, and the very courts, cannot usefully influence on the quality of adjudication. This comes firstly if it is known that laws are often adopted in fast dynamic, without appropriate social and institutional grounds. Empirical experiences talk about this, from conversations with bearers of responsibilities in different branches of power, however, seam that political agenda is the only goal and sometimes the only indicator of success of legislative reforms. Statistically seen, during 24th session (period from 23 April 2009 until 6 November 2012) the Parliament of Montenegro adopted 301 laws during regular sessions, 138 laws on amendments of laws and five constitutional laws, while five laws and 12 amendments of laws were adopted during extraordinary sessions.[5] All these laws make potential material and legal framework of adjudication, with additional laws that stayed at force and international treaties that have legal character.

Not denying obvious effort and hyperactivity of proposers and adopters of laws, stays the question about the time spent for the previous analysis of impact of law and more, what time was spent on preparation of implementation of law. It is known in some cases that public and professional debates were organized, mostly when it comes to systemic laws, but the nature of judicial function is as such that the judge has to be familiar with the overall material law and its implementation, or, according to the goal of the legal norm. Objectively, this is sometimes difficult to do without detailed analysis of judicial and quasi-judicial practice, especially when it exists in neighborhood countries. Some of these laws require specific legal knowledge, and once more this opens the issue of specialization of judges. What makes the most problematic part of this process is lack of time, considering that, according to empirical data, judges are overloaded, especially at some courts. This narrows the space for professionalism and learning of legal standards until impossibilities to response to their roles positively. It happens that courts ground their decisions at the regulation which ceased to be valid and decision at the same time passes all phases of court proceeding, which registered the practice of European Court in comparison with cases from

5 Report on work of the Parliament of Montenegro of 24th plenum, Parliament of Montenegro, December 2012, page 25

Montenegro.[6] This is, of course, unique case but it would be illusory to say that this was not the result of problems that are described here.[7]

Within the same period, more laws of material and process legal character were adopted or came in force, which significantly changed the status of courts in comparison with the court proceeding (amendments of the Criminal Code, criminal proceeding, misdemeanors, proceeding towards juveniles, international legal cooperation, and similar).

The last two years period marked strong impact of the European law, especially the law of the European Union. After the candidate status, and the beginning of negotiations with the EU, Montenegro has become obliged to largely harmonize its legal system with the law of the EU. Besides, in order to prove its capacity of overtaking obligations arising from the membership in the EU, the country additionally obliged to respect and implement human rights and freedoms standards, or standards of minority rights, to qualify administrative capacities, and thus prove readiness for membership in the EU. This also implies capacity of national courts to execute their functions timely, efficiently, and positively, or implement internal and international law. For that reason, negotiations on membership started and will end up with chapters 23 and 24, which largely indicate on the standard of needed quality of judiciary, or requirements judiciary receives in the process of reception in membership. During the process of harmonization, the need for the support to courts shall additionally strengthen, which in new circumstances receive wider material and legal basis of adjudication, because particular standards already tend to be interpreted in the spirit of the EU law (for example protection from discrimination, principles of judicial authority in a view of rationalization of network of courts and similar).

All above mentioned largely is related to promptness and the quality of work of the Constitutional court in Montenegro, which, according to our assessment, is marginalized in the process of the European integrations when it comes to its active role, and on the other hand several times defined as very responsible for the success of the process. Such situation is unsustainable and therefore it has to be explained whether this is passivity of the Constitutional court or its marginalization in the pre-accession process. Future constitutional reform in the part of judiciary has been understood as the opportunity for conduction of reforms of the Constitutional court, and that is one of the reasons why has to be count on better and more active participation of Constitutional court in the process of the European integrations of Montenegro.

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6 Case of Barac and others against Montenegro, verdict of the European Court of Human Rights from 13 March 2012, parag.33

7 Opinion of the Consultative council of the European Studies-CCJE (2012), no. 15 on specialization of judges states: "Specialization often comes from the need for adjusting to legal amendments then from the free choice. Intensive adopting of new legislation, whether at international, European or national level, and changes of practice and doctrine, makes the science of law wider and more complex. Although it is difficult for a judge to learn all about these areas; society and parties in trials require from court more professionalism and efficiency, at the same time. Specialization of judges may provide them having appropriate knowledge and experience in the field of their authority".

IV ORGANIZATION OF COURTS IN MONTENEGRO, CASELOAD AND COMPARATIVE INDICATORS

Constitutional court of Montenegro is defined by the Constitution as the body that executes the function of protecting the legal order, with prescribed competences to decide on harmonization of law with the Constitution and confirmed and published international treaties; harmonization of other regulations and general acts with the Constitution and law; constitutional appeal due to violation of human rights and freedoms guaranteed by the Constitution after all effective legal means were used; whether the President of Montenegro violated the Constitution; conflict of competences between courts and other public bodies, between public bodies and bodies of units of local self-government and between bodies of self-government units; prohibition of work of political parties or nongovernment organizations; electoral disputes and disputes related to the referendum that are not under competences of other courts; harmonization of measures and actions of public bodies undertaken at the time of war or extraordinary situations, with the Constitution. Constitutional court executes other affairs defined by the Constitution. Constitutional court has seven judges, with the President of the court, who are elected after the proposal of the President of Montenegro. Mandate of judges of Constitutional court lasts nine years, while the mandate of the President of Constitutional court, who is elected from the lines of its judges, is three years.

Current system of courts in Montenegro has been established by the Law on courts.[8] Thus, 15 Basic courts are active in Montenegro, divided by the territory competency at one or more municipalities at the territory of Montenegro, two Higher courts, two Commercial courts, Appellate, Administrative, and Supreme court of Montenegro. Besides these, special type of specialized courts are misdemeanor courts, but their role and status have usually been ignored, although they are very important bodies in conducting justice in the country, according to the nature of proceeding and circumstances under they work. Their status shall be regulated in special procedure, and until then, difference in comparison with criminal courts are mostly related to the level and the nature of punishment, but in a view of proceeding, the courts conduct almost the same rules as criminal courts.

Judicial function in courts of general competency is permanent. According to the Rulebook on orientation standards for defining important number of judges and other employees at court, from December 2008[9], number of judges for some courts is being specified according to the average number and the type of cases received for the last three years (average) and the number of cases a judge has to resolve per year. Decision on number of judges in courts in Montenegro ("Official Gazette of Montenegro", no. 78/09 and 11/11) defined overall number of 260 judges (during 2011, 253 positions fulfilled), out of which 148 in Basic courts, 55 in two Higher courts, 17 in two Commercial courts, 13 I Appellate court, nine in Administrative court and 18 judges in Supreme court.

8 ("Official Gazette of the Republic of Montenegro", no.05/02, 49/04; "Official Gazette of the Republic Montenegro", no. 22/08, 39/11)

9 ("Official Gazette of the Republic of Montenegro, no. 76/08")

Bearing in mind territorial structure of courts and demographic trends in Montenegro, it has been stated that at the territory of competency of Basic court in Bar one judge comes on each 3.822 residents, 3.904 in Berane, 4.205 in Bijelo Polje, 4.618 in Danilovgrad, 1.880 in Zabljak, 2.095 in Kolasin, 3.989 in Kotor, 4.452 in Plav, 3.848 in Pljevlja, 4.893 in Podgorica, 4.593 in Rozaje, 3.320 in Ulcinj, 4.409 in Herceg Novi and 3.331 in Cetinje.

According to the Study on Efficiency of Judiciary of CEPEJ from 2012 (data from 2010), Montenegro is between the countries with the largest number of courts in Europe (one court on averagely 28.450 people without the misdemeanor court). At the same time, by implementation of data from the last census and comparing with the number of judges in comparison with the number of people, occurs the conclusion that Montenegro is one of the countries with the largest number of judges in Europe (2.400 people per judge). For example, there is larger number of judges in Croatia in comparison with the number of citizens, than it is the case in Montenegro (one judge on 2.306 people, without misdemeanor courts). In Serbia, court of general competency, (Supreme cassation court, Higher courts, Appellate and Basic courts) one judge covers approximately 4.903,27 people.[10] According to data from the web site of the Appellate court in Novi Sad[11], in the domain of general competency in Serbia, there are 60 Basic and Higher courts (34 Basic and 26 Higher courts), four Appellate, and Supreme court. According to these indicators, and in comparison with the number of citizens, on each 116.396 citizens is one court of general competency.

According to the Report on work of courts in Montenegro for 2011, average overload of cases in work per judge was 638,30 cases. Number of finished cases was 485,85 cases and averagely stayed 152,42 unresolved cases per judge. In the same year, average overload of judges at courts of general competency in the Republic Serbia was 2.951,11 cases in work, out of which 1.171,25 were resolved averagely per judge, which says that 1.779,85 cases per judge stayed unresolved.[12]
Average number of cases in process under an individual judge in the Republic Croatia was 1.627,22 out of which averagely 1.076,35 were resolved and 550,87 cases per judge were unresolved.[13]

Without detailed analysis of judicial systems, it is difficult to make precise conclusions, because there are no additional indicators related to classification and the nature of proceeding, organization of courts, their competencies, structure and equipment, logistic resources, etc. At the same time, it is important to analyze which of the court cases enters into statistical indicators and in which area, considering there are evident differences in the code symbols of provisions of judicial rulebooks, therefore, manner of conducting statistics has to be differently treated. In addition to this, the

10 According to the census from 2011, Republic Serbia had 7.565.761 people, considering that it has 1.541 judges at courts of general competency, arises the average number of 4.909 people on one judge in the domain of general competency. According to census 2011, Republic Croatia had 4.284.889 people and 1.924 judges, which gives proportion of 2.306 citizens on one judge.

11 http://www.ns.ap.sud.rs/index.php/srl/sudska-vlast/sudovi-u-srbiji

12 Statistic on work of all courts in the Republic Serbia for the period 01.01.-31.12.2011. Supreme cassation court of the Republic Serbia, 2012, page 7

13 Statistical review on work of courts for 2011, Ministry of Judiciary of the Republic Croatia, Zagreb, April 2012, page 5

overall structure and statistics of courts in these countries participate courts of general competency (commercial, misdemeanor), therefore, it is relevant data when it comes to the Republic Croatia (and partly in Montenegro), while in Republika Srpska mentioned statistics excludes data from courts of the special competency (administrative, commercial, appellate, commercial, higher misdemeanor court, misdemeanor courts). Mentioned data are showed more as illustration and as the initial presumption for defining similarities and differences in understanding and structure of organization of judiciary, considering that recommendations for rationalization of network and improvement of efficiency of judicial institution were sent to these countries.

Constitutional court of Montenegro has seven judges, including the President of the court, according to data from 2011. During 2011, the court worked on 1.376 cases which results in conclusion about the average overload of 196,57 cases per judge. Besides the above mentioned, in 2011, 32 applications of citizens were received and registered in the constitutional-judicial registry under the symbol "R", which were related to the matters on which the court has not conducted the proceeding.

During the reporting period, Constitutional court received almost 840 cases. Out of this number, 120 cases were from the area of normative control and proposals for resolving competence conflicts, or 14,29% and 720 constitutional appeals or 85,71% of inflow. During 2011, Constitutional court considered 574 cases (94 from the area of normative control, five cases from the competence conflicts and 475 constitutional appeals), out of which 567 cases were resolved and in seven cases decision on initiating the proceeding was made. Bearing in mind these data, Constitutional court averagely resolved 81 cases per judge in 2011.[14]
If demographic statistical indicators are taken into account, according to the last census from 2011, (625.266 citizens), than one judge of the Constitutional court covers each 89.323,27 citizens of Montenegro.

Situation at courts covered by the project

According to data received during 2012, engaged personnel structure at courts covered by the Project was as follows:

Basic court in Bijelo Polje – In September 2012, this court had 75 employees, out of whom 13 were judges, including the President of the court, while there were no temporary allocated judges. Five councilors were directly engaged in the logistic of trial (not work with the judge), at the affairs and court administration. The court administration (without councilors and probationary employees) had 57 employees. Five probationary employees in this court were on professional qualifying. There was no person authorized only for communication with parties and public (except the President of court). One court officer was authorized for the reception and acting on applications, appeals, and control

14 Review of work of the Constitutional court in 2011, Constitutional court of Montenegro, 2012, page 4

requirements. There were 11 workers at the archive for direct communication with parties, while one officer was allocated at the reception desk and reception of parties.

Basic court in Kotor – According to data from this court in Kotor, from June 2012, there were 82 employees in this institution. Out of this number, 11 were judges and the President of the court. Judicial Council made decision on termination of judicial functions of two judges on 15 June 2012. Public call procedure for election of two judges was initiated. There were no temporarily allocated judges. The overall number of councilors engaged at the affairs of trials and court administration was seven. All of them were directly engaged in the logistic of trials (not work with judge). Overall number of employees at the court administration, without councilor and probationary employees was 45, on indeterminate and fixed term, on contracts on performing temporary and short-time working. Number of probationary employees was 18. Except the President of court, the Secretary of court, Vesna Pejovic, as PR was authorized for communication with parties and public. Technical Secretary of the President of the court was in charge of for the reception of parties in relation to applications, appeals, and control requirements, while the President of the court and the Secretary of the court were in charge for their processing. Eight officers in four archives of the court directly communicate with parties. At the reception desk was employed one officer. Reception of parties did all employees in the archive (eight employees) in the interval from 09,00 until 14,00, with the pause from 10,30 until 11,00.

Basic court in Podgorica – Data from this court show there were 192 employees in this court in June 2012 (officers, probationary employees), and 37 judges and the President of the court. Almost 23 councilors were engaged at the court and the Secretary of the court, out of which 17 councilors processed decisions, six councilors worked directly with parties. At administration worked 130 court employees, without councilors and probationary employees. Currently, there are 38 probationary employees at the court. Also, at the moment, President of the court and Secretary (PR elected as the judge) do public communication, and the reception and communication with parties execute the President of court, Secretary and a councilor. Until 13.00 p.m., 22 clerks work with parties. At the reception desk worked four employees as the court security, allocated by floors, and four officers of the Police Directorate allocated as the security staff.

Higher court in Bijelo Polje – According to data from June 2012, there were 74 employees in this court, out of which 19 were judges, including the President of the court. There were no data about temporarily allocated judges from other courts. Nine councilors were engaged on affairs of trials and court administration, who were directly engaged in the trail logistic at the same time. At the court administration (without councilors and probationary employees) was employed 35 persons. In this court, 11 probationary employees were on professional qualifying. One person was authorized for communication with parties and public. One court officer was engage for the reception, and acting upon application, appeals, and control requirements. Four officers in the archive were at disposal in direct communication with parties, while one officer worked at the reception desk and reception of parties.

Higher court in Podgorica – According to data from June 2012, there were 153 employees in this court.

Out of this number, 34 were judges, including the President of court. One judge of the Appellate court and seven judges of Supreme court were temporarily engaged at this court. At this court, 22 councilors were engaged in trials and court administration. At the same time, 21 councilors were directly engaged at the logistic of trials, which was less than the valid Rulebook on orientation standards for defining number of judges and other employees at court envisages. At the court administration (without councilors and probationary employees) were employed 56 persons. Almost 40 probationary employees worked on professional qualifying, while on 05 October 2012, the third year of labor service expired for 13 probationary employees. One PR was authorized for communication with parties and public at this court, while the same function had the Secretary and the President of the court. Three officers were authorized were authorized for the reception and acting upon applications, appeals and control requirements. Almost 14 archive officers were at disposal for direct communication with parties, while two officers worked at the reception desk and the reception of parties.

Administrative court – Number of employees at this court was 39 in 2012. This court had nine judges and the President of court, while there were no temporarily allocated judges. Number of independent councilors at the court was six, and the same ones assist the judge, draft decisions, execute independently or under surveillance and under directions of judges other professional affairs prescribed by law or regulations adopted in accordance with law. The administration of the court had 18 employees and five probationary employees. Authorized person at the court for communication with parties, reception, and acting upon applications, appeals, and control requirements, was the Secretary of court. The Chief of the archive was at disposal for direct communication with parties. One employed officer of Administrative court and one Police Directorate officer worked at the reception desk of the court.

Constitutional court of Montenegro - According to the latest data, there were 34 employees at this court. Number of judges, including the President of the court was seven. The overall number of councilors engaged at the trials and court administration was 12. Number of councilors that were directly engaged in the trail logistic (at work with judges) was 11. There were ten employees at the court administration (without councilors and probationary employees). Five probationary employees were engaged at the court. General Secretary of the court was authorized for communication with parties and public. There were no directly and separately allocated officers for the reception and acting upon applications and appeals, therefore, General Secretary and the Councilor of the President take care of that. There was only one officer who worked at the archive and was at disposal for direct communication with parties. There were no employees at the reception desk and the reception of parties at the court, because the object was under security of the Police Directorate and the security service engaged by the Property Administration of Montenegro.

According to introduced data it can hardly be concluded about the important number of engaged administrative staff, but it is obvious that the courts covered by the project lack councilors who are in direct logistic of trial. This data is very important in the situation when operating with the possibility of rationalization of network of courts and necessary number of judges, because a number of comparative indicators, which determine a number of judges, were based on strong trail logistic, where sufficient number of councilors are at disposal to a judge, and the cardinal function of adjudication is also given to a judge. For that reason, in determining

towards any reform, this fact has to be taken into account, besides, of course, other indicators that may serve as the basis of the reform. At the same time, speaking about the Constitutional court, it should be taken into account that its function is obviously spread on new fields of actions that make this institution important, on the issue of instance competence (abolition of final court decisions), therefore, there is justified question of the staff and other logistic support in situation when Constitutional court objectively performs function of equalizing the law, although that is duty of Supreme court, according to the Constitution and law.

Using the Report on judiciary for 2011 in the Republic Croatia, it can be concluded that 518 councilors and professional cooperators, 65 probationary employees, 5.179 other officers and employees, or totally 7.261 persons were engaged for 1499 judges (without misdemeanor courts) in 92 courts.

Comparative data showed that the number of judges increased, in comparison with the previous reporting period - at the municipal courts for five more judges, 13 for the County court, High Trade court of the Republic Croatia for six more judges, Supreme court of the Republic Croatia for one, while number of judges at the Administrative court of the Republic Croatia has stayed the same.

Overall number of court councilors (without misdemeanor courts) on 31 December 2011, was reduced in comparison with the same time in 2010, for six. Reduction of number of court councilors was the result of reduction of their number at the Administrative court in the Republic Croatia and Supreme court of the Republic Croatia. At the same time, number of court councilors at trade courts and High Trade court in Croatia increased. When it comes to number of court probationary employees, observing previous three years, their number is still decreasing and in comparison with the previous year was reduced from 81 to 65. Number of others employed at courts, or number of staff at administrative, material and financial and professional affairs, and number of court employees was reduced for 17.

Total number of judges in the Republic Serbia for 2011, was 1.543 at courts of general competence (without misdemeanor, administrative, and commercial courts). According to data from 2008, the overall number of employees at courts of general competence was 9.722, but it should be taken into account that the number of employees was reduced twice, and (according to many indicators and the conclusion of the trade union of judiciary in Serbia) the analysis of the effect of reduction on promptness and activities of courts, it has already been reached for purely financial reasons.[15]

When speaking about "European" experience, we will hardly find reliable comparative indicators. In already mentioned CEPEJ Study, only 34 countries submitted comprehensive data when it comes to non-court staff, and in delivered data under the category non-court staff were classified different categories of officers. In other cases, the same categories were differently classified in comparison with the previous reporting period, and taking as a whole, specific categories of staff in some countries have been classified in different groups of duties in the frame of work of courts.[16]
Anyway, according to data for 2010, Montenegro registered the largest percent of so called technical

15 Source: http://www.sind-prav.org.rs/novosti09.htm
16 CEPEJ Study, page 158

staff (even 64,9% in comparison with the overall non-court staff). This data stays uncertain, because the explanation with the questionnaire for the CEPEJ Study, or for required responses was emphasized that technical staff was considered to be IT managers, librarians, assisting personnel (security, couriers, physical workers, hygiene staff) etc, while the staff in function of trial administration was registered under special category. It is not possible to provide more precise information, according to this data, on restructuring of court administration and assisting staff, for the purpose of eventual improvement of situation. Certainly, further reform of court administration will cause the system of public executors, that still has not became operational and which is expected to be disburdened, or to relax courts from a number of so called non-court cases.

Specific goal in functioning of court administration was full …of information system, which is operational in almost all courts, but still has not reached full capacity, especially when it comes to automatisation of administrative procedures and acquisition of data of great importance for conduction of court statistics, in accordance with modern European standards. Similarly, it seems that it takes a lot of time and procedures to secure data from centralized national data base, which should be trussed in unique, reliable system that could also be tested, which should, as such, keep the status of independency and neutrality of different branches of power, or prevent their mutual conflict in executing obligation and competences.

V TRANSPARENCY AND THE ACCESS OF PUBLIC AS THE GENERAL PRINCIPLE IN WORK OF COURT INSITUTIONS

Constitutional and legal presumptions on publicity of trial are not related only court proceeding but have much deeper sense in introducing activities of courts to general public, of whom depends exercising elementary rights and needs of citizens. For that reason, it is very important that courts and judicial authority achieve good cooperation with media until that cooperation does not go back in basic rights of parties in the proceeding, including the two major – presumption of innocence and the right to be alone. Along with requirements of public, it should be taken into account that neither all proceedings, nor personal characteristics of parties in the proceeding, can be out of reach of standards of judiciary opened for public.

While promoting previous report on courts monitoring, we were witnesses of almost fully dissonant tones when it comes to relations of media and judiciary. The same impressions may be expressed even after this reporting period, therefore, it is perhaps more acceptable to use facts. If this trend is taken into account, than it should be noted there are signs of obvious progress, which in some parts timidly arise through questionnaires of all participants in the proceeding, including responses of media representatives, while statistical data show that in this period can be concluded about the large number of information that arose from the work of courts.

Thus, it can be stated that all courts in Montenegro received web page and therefore, possibility to additionally create its content and satisfy needs of citizens with important information from the work of courts and court practice. Besides few cases (Higher court in Bijelo Polje, Basic court in Podgorica) other officers for public relations were not sufficiently notable and less recognized by media, thus, rightfully, requirement for better representation and better informing of public has been emphasized.

In relation with organization of affairs at court, it might be said that obligations of timely and fully informing of public stay at the level of the rulebook provision on obligatory one annual press conference, which does not limit courts to communicate regularly with the public via media and always when they assess it as appropriate and necessary. Of all courts in Montenegro, it appears that such concept and public image is pursued only or predominantly by Administrative court. This court, not always, but in the extent possible, with appropriate level of formalism, provides for adequate relations with media and offers referent and quality information. This explains overall positive public perception of this court. Therefore the concise recommendation, based upon this material, invites other court presidents to strongly engage in process of informing the public (not just trough press officers - spokespersons), since this shapes the image of the courts they are managing.
Speaking of websites, it could be concluded that initial and immediate success of web pages of Administrative court and Basic court in Pogorica was followed with web pages of number of other courts, which have been featured with quality and quantity of available information (e.g. Basic court in Berane and especially Basic court in Rozaje). This component of court work should be, however, strengthened

with introduction of faster search engines and easier tracking of documents by keywords, despite the availability of these options on websites. Besides, it is necessary to standardize the minimum of data on the work of courts, since it has been noted that option for available data entails pages with four, five, six or more categories.

In regards to the website of Constitutional court, it has relatively fair content, data are generally updated, but full text of recent judgments is unavailable, which decreases the quality of overall available information on the work of this court. Also, there is an evident lack of translated decisions of international courts and other bodies relevant to the work of this court. In addition, it lacks easier and faster access to the statistical data, which might provide indicators of workload and dynamics of cases, as current research can rely only on data from previous years. Furthermore, institution such as Constitutional court should advance the work on publishing summaries of professional debates from country and abroad, which should allow for promotion of court activities. It would also provide the public and professional community the updated overview of relevant professional practice and basis fr understanding of constitutional-legal issues in country and compatible legal systems (predominantly of countries with shared legal heritage).

Interior and availability of information in monitored courts significantly improved in comparison to previous period. Besides marking of corridors and direction signs in buildings, citizens have at disposal the significant quantity of promotional and information material on free access to information, free legal aid, mediation as well as important information on specific court services.

Principle of publicity of trials is observed, but presence of general public is very restricted, except for the cases with increased focus of media and citizens. For these cases every court has one bigger courtroom, which still does not comply with all necessary criteria. This particularly relates to the presence of journalists and ensuring the minimum of optimal conditions for their work. Rulebook provisions on permission of photo shooting inside court buildings are still in force, though it seems completely inappropriate to prior seek approval from President of Supreme court. Such solution weighs down the authority of heads of court bodies and also significantly impedes direct and timely communication with media for the purpose of publishing “live information”, which presents a type of the tests towards implementation of principle of publicity. Therefore, this competence should be delegated to heads of courts before which trials take place for which permission for which shooting and taking photographs is required. Every court President has commitment to react on non objective reporting on the work of his court and insist on publication of reaction. In case the court should decide that media reporting require principle reaction, it should notify the Supreme court. In accordance with Court Rulebook, courts are tasked with following the media reports on their work and keep separate archives in “Su” registry, which additionally implies the importance of media coverage of the work of courts.

Possibility for free access to information, important for public has still been using largely or almost fully, by nongovernmental organizations. Number of individuals requesting exercising of this right is marginal. For the needs of this publication, course of the proceeding for four requests for access to information was monitored, in all courts covered by the Project. As previously, the best promptness and efficiency showed Basic court in Kotor, which allowed access to information in three cases. The court partially provided access

in one case, because the information was already available to public (the information was published). Basic court in Bijelo Polje also responded to all four requests. The court allowed access to information in three cases, but in fourth case asked for the addition to the question. After receiving the response, the court delivered its response fully. Basic court in Podgorica responded to three requests for access to information, delivering one response. The court responded on the second request explaining where the information could be found, and on the third request said that the court was not competent. Until finalization of data for this monitoring, Basic court in Podgorica did not respond on the fourth requirement.

Higher court in Bijelo Polje responded on all requests, and Higher court in Podgorica as well. Administrative court responded to three requests but did not respond on one. Constitutional court delivered response on four requests but responded on two and rejected another two requests, because at that moment, the court did not have requested information.

In the frame of responses to these questions, we present the example from practice of Judicial Council which implies that at the end of 2011, Network for Affirmation of Nongovernmental Sector (MANS), one of the most active NGOs in requests for free access to information, awarded Judicial Council for the second position at the list of national institutions for the highest capacities for implementation of Law on free access to information during the first phase of the project "You have the right to know". This project was financed by the European Commission, through EU Delegation in Montenegro.
In the domain of organization of court authority still has been expected more than transparency in the process of electing bearers of court functions, or the part that is related to qualifications of candidates. Lack of publishing of indicators of work of judges and candidates for judges individually may be substituted at least when it is related to progressing, if intensive monitoring of each judge cannot be provided. This may be clear message for transparency of all proceedings, and at the same time manner for preventing speculations on bad judges when they are elected and when the results of court functions show bad image, not only of judges, but bad image of courts as a whole.

VI MEDIA ABOUT COURT

For receiving more objective image on access and relations of courts towards media, and check whether there were any moves in comparison with the previous research and standpoints of journalists, Civic Alliance interviewed journalists this time (Dan, Vijesti, Dnevne novine).

According to received answers on questions: "Do you use Law on free access to information in order to receive information from court? If you use, please explain. How often do you use this option to get the information, how often a court responds?", we can conclude there was no progress in the manner of use of Law on free access to information in court, by journalists. As in the last year's research, journalists mostly do not use possibilities of the Law on free access to information when addressing courts. Reason has stayed the same – deadline for receiving response is too long, and information received in this manner would be too old because journalist report for proceedings that took place the same day. One of journalists said: "I rarely use Law on free access to information, simply because events I write about are mostly on daily basis, so, any waiting for the response longer than a day, would not be useful."

Journalists said that this Law is impossible to use when it comes to their needs for fast information, and they receive the same ones only owing to acquaintances and good will of judges and lawyers.

As in the previous report, we asked journalists this time: "are you satisfied with conditions court provides for you while you monitor trials? This was about premises – are they suitable, is there enough place for all interested journalists, and similar?" We noticed that the progress was made in this issue, but still there were specific problems and lacks that significantly hinder the work of journalists while reporting from trials.

Significant progress was made in Higher court in Bijelo Polje, where monitoring of trials for which public was very interested in, was provided via video link from another premise, which enabled all interested persons to monitor the course of a trial. Journalists said that even in Higher court in Podgorica, during the trial for which public was very interested in, enough space was provided at the courtroom and they could monitor trials without problems.

On the other hand, journalist said that in trials where interest of public is low, courtrooms are not provided but the trial takes place at the office where there is not enough space for parties, journalists, and other interested public. One of journalists said: "When it comes to a trial for the criminal offense murder or some summary criminal offense, and there is no interest of public, judges in trials use their offices. For that reason, very often, and almost every day, all journalists cannot attend he trial for lack of place or chairs, which resulted in lack of information". Journalists said that such a situation is most common in Basic court in Podgorica and misdemeanor court. Another journalist said: "I am a witness that all journalists could not monitor most trials in these two courts. In these cases, judge give themselves right to state that a journalist or at least part of journalists could come in and that public was represented in that manner."

Even this time, journalist complained that security did not allow them to use the technique that would ease their job. One journalist said: “Except chair, journalists do not have other conditions for work at court, and they are prohibited to use laptops at court, which would surely ease our job.”

As in the previous report, journalists indicated that their security is endangered due to the lack of space, when they are forced to wait the beginning of trial in front of the courtroom, with family and parties.

We asked journalists: “Are you satisfied with the relations of employees at the court administration and relations of PR services in the court? Do you receive information in appropriate manner, when trials are appointed and do you receive information easily? Have you ever missed to monitor a trial because you could not find place at the courtroom, or you were not informed or could not find out the date and time of trial?”, so we could make sure if journalists receive information timely, especially when they not attend trials, due to lack of place at courtrooms.

Journalists were unsatisfied and said they could respond selectively, which depended from court to court. One journalist said: “We can return to previous response here. That means when there is no place for journalists, we are forced to ask for information after the trial form the judge and then, in 70% of cases we do not receive the information because judges have no time for journalists”.

Journalists appraised communication with the PR of Higher court in Bijelo Polje and said that communication was thorough, with a lot of understanding towards journalists and their needs for urgent provision of information, which they receive for a very short time.

As in the previous research, journalist said they had difficult communication with Higher court in Podgorica. They said that Higher court in Podgorica did not have PR service. For that reason, journalists face with problems in everyday communication with some courts. One of journalists described communication with Higher court in Podgorica and said: “During this week several journalists requested meeting with one of judges at the Special Department, via reception officer, so we could inform about appointment of an trial. We received information that “PR delivers all information”. We asked to meet PR, in order to respect the procedure, which we know is the death letter on paper (considering that few of journalists monitor work of courts more than ten years and at the same time we know when changes occur, so we knew that the contract of Mrs who did the job of PR expired, and that the job position was empty). Clearly, we received answer that at that moment Higher court did not have PR, but we could send questions on email and someone would sent us answers… Letters are written, but nobody has answered.”

Journalists stated that few judges in this court do not communicate with media or they direct media towards PR, who, they claimed, did not have at court.

Specific problems, journalists mentioned, was receiving of information about the date and time of hearings. Namely, schedule of trials is published at the web site of courts, which has been published at the website at the beginning of month, according to journalists’ opinion, but the website has not

been updating regularly. The problem occurs when trials are postponed for two days and then, new information about the time of trial cannot be found. In that case, journalists try to find the way for new information about the time of new hearing in communication with lawyer.

Journalists are satisfied with the work ok PR at Basic court but they added that the PR was appointed too late and journalists were not informed about the election of PR but accidentally found out this information. Also, it was emphasized that judges come out to meet journalists, and want to help them.

Journalists claimed that sometimes they miss some trials because trials are appointed after fast proceeding and nobody informs them on this, notwithstanding the importance of a case. On the other hand, journalists said they were informed when restored premises were opened and other matters that promote court and work of judges.

One journalist said: “We search trials alone, or parties ask us to follow them.”
We asked journalists: “In your opinion, are courts and judges generally, open for cooperation with media, with the aim of improved informing of citizens? If not, why do you think so?”

Journalists said that presidents of courts generally were insufficiently opened for communication, that presidents did not organize independent press conferences and were not in the mood to give statements or interviews. The exception was Appellate court, which journalist appraised. President of Supreme court stated results of work of courts, which was positively assessed, but generally, journalists believe that judiciary was the closest system in the country.
Opinions on correct cooperation of judges and media were emphasized, especially cooperation with judges of Higher court in Bijelo Polje where all judges have understanding for journalists, provide them free monitoring of sessions, for which they are interested in and never had happened that a journalist need even a chair. It was mentioned that Appellate court was the only court whose archive may be visited by journalists so they can be informed if a new case arrived, who of judges would take it and similar information.

Journalists believe that NGOs were not appropriate address for their problems with courts and that responses related to problems in communication and work at courts would not change anything, as they did not in the previous research.
Journalists did not have insight into indictments, so they had to conclude themselves what was it all about at the trial they monitored, or for which criminal offense a person has been charged with, which was also, according to journalists’ opinion, one of the largest deficiency of courts.

VII ACCESS TO JUSTICE – FREE LEGAL AID

Free legal aid system has been functioning but still, there are no reliable indicators or analysis about the situations in this area. Perhaps, this is the proof in addition to the thesis that specific laws require appropriate social grounds and the awareness of user of right about the manner and the extent people can use legal instruments in exercising their rights; but also, and nothing less, the test of time, or appropriate time period from coming into force until the first analysis that would not be late for more than a year. From direct findings and media information, it has been concluded that the procedure becomes complicated by providing numerous documents, which makes free legal aid concept worthless. Thus, from the party is requested documentation which confirms their poor financial situation, and which, according to party's statement, is too expensive for material situation of the ones who need free legal aid. In addition to this, court decides on whether the overall court proceeding would be free or only part of it. Party who wanted to stay anonymous for newspaper because she was afraid that her request for free legal aid would be rejected, said she had spent almost 20 EUR to provide all documents she had to submit: a proof she was divorced and that she lived alone with two juveniles, proof she did not work and that she received social welfare subsidy, that she did not have any property, and similar.[17] Besides, the Office for free legal aid in Podgorica concluded that lawyers were not interested in free legal aid system because lawyers' tariffs are charged only up to the extent of 50%.[18]

As Zoran Radović, President of Basic court in Podgorica said, statistics of this court said that until 13 November, it had received 202 requests for approving of free legal aid, out of which 70% requests was resolved. On that occasion was indicated that the Law should be popularized, especially towards victims of violence, who have legal possibility to use pro bono lawyers. He added that most request for free legal aid was submitted due to resolving marital and family disputes.[19]

Information from daily "Pobjeda" from 5 January 2013[20] showed that 218 request were delivered to Office for free legal aid at Basic court in Podgorica. Out of that number, 150 were adopted, and 43 proceedings were finished and resulted in approving free legal aid. Representatives of the Office assessed that the first year of service functioned excellent, that citizens were satisfied and there was no waiting, and that the only difficulty they had was with cooperation with Tax Administration which was described as administration that "made problems – or did not send data in dynamics like Real Estate Administration or Central Depository Agency". As employees at the Office said, citizens mostly called due to marital and family relations which covered parental rights, divorces, and execution of verdicts on alimentation payments, which, as they said, made 70% of cases.

17 Daily "DAN", 10 September 2012 – title "Very expensive services"
18 Ibid
19 Daily ""Vijesti" from 17 November 2012, the Report on visit of representatives of Ministry of Justice and courts to Law Faculty of University of Montenegro in Podgorica. Text titled "President of Basic court: Citizens, use free legal aid"
20 Text titled "Citizens of Podgorica used free legal aid"

VIII STATISTICAL DATA ON EFFICIENCY AND QUALITY OF ADJUDICATION

Within competences prescribed by the Constitution of Montenegro, Constitutional court had 1376 cases in work. Out of this number, the court finally resolved 574 cases which represented increase for 16% in comparison with previous year, and 223% in comparison with 2009. This represents considerable overload of the court, bearing in mind the fact that all important conditions for its work have not been satisfied yet, and as the most were insufficient number of constitutional and court councilors and other servants and court employees. Within reporting period, Constitutional court received almost 840 cases and out of this number 120 cases were from the area of normative control and proposals for resolving conflicts of competences (U-I – 39, U-II – 77, U-V - 4) or 14,29% and 720 constitutional complaints, or 85,71%. In comparison with data from the Review of work for 2010, when 756 cases were received, 11,11% increase or increase for 605,89% was registered in 2011 (when 840 cases were received) in comparison with 2007. Within the same time, as collegial body, Constitutional court held 21 regular sessions, where 574 cases were considered (94 in the area of normative control, five cases in the area of conflict of competences and 475 constitutional appeals), out of which 567 cases were finally resolved and the decision was made on initiating proceedings in seven cases.[21]

Level of entering into the content of initial at which the party uses while addressing Constitutional court does not allow approximation in defining whether the court is more or less overloaded, or to which extent prolongation of the proceeding is indicated. Hypothetically, Constitutional court may assess harmonization of an internal legal act with large number of international treaties, but the situation where matter of constitutionality is less delicate and does not require better engagement of resources of court, can occur. It seems that existing formation of court decision making process slows the course of proceeding, because Constitutional court is collegial body, notwithstanding the institute of a judge-rapporteur. Furthermore, statistics does not indicate on overload of individual judge on matter of data processing, nor provisions of the Rulebook on work indicate on operations of collegial structure, because they envisage that Constitutional court shall, beside trials, deal with other organizational affairs, which performs special administrative body, for the system of regular judges – Judicial Council. These atypical affairs would be defining proposals for allocating annual in the budget of Montenegro for the work of Constitutional court; adoption of annual financial report and considering of material and financial and other matters from the general operating of Constitutional court. Besides this, Constitutional court had Redaction Commission, and Commission for achieving compliance with the constitution and law, as permanent work bodies.

Redaction Commission shall confirm the final text of decision and rulings adopted at sessions, according to the conclusion of Constitutional court and confirm the final texts of other acts issues by the Constitutional court. Besides, this body proposes to Constitutional court reconsideration of mentioned acts before they are distributed from Constitutional court, when it finds it appropriate.

21 Report on work of Constitutional court for 2011, Constitutional court of Montenegro, http://www.ustavnisudcg.co.me

Debates take place at the expert meeting of judges, for the previous taking of standpoints on legal matters important for constitutional and legal deciding and discussions on reports and decision proposals and solutions, delivered to President and judges. In comparison with affairs in the domain of courts of general competence, these bodies would be counterpart to bodies responsible for equalizing court practice.

Problem in functioning of Constitutional court, at least when it comes to parameters and primarily the time taken for proceeding has been noticed in non-transparency of procedures that determine priorities in deciding and practice, and the practice that in some initial acts the court did not act for a long period of time (lacks the instrument that would control and sanction unreasonably long proceeding before Constitutional court). Norm of the Rulebook on work of Constitutional court that defines the schedule of deciding provides that, besides clearly prescribed priorities (cases for which are prescribed deadline in the framework where Constitutional court has to consider and decide on case; cases related to deciding on some important legal matter and have wider social importance; cases where conditions for temporary orders for termination of particular acts or actions are fulfilled), under unspecified circumstances the court can work on what is priority "and other cases on which the court decides". In the practice of work of Constitutional court has been noticed almost prompt reaction on specific requests for acting, but in number of cases, the proceeding before Constitutional court waits for years, which surely does not contribute to expected authority, quality and position of neutrality in comparison to all social events.

The practice of European Court of Human Rights indicated on inefficiency of constitutional appeals as the legal instrument to internal law. However, this assessment does not have basis of such conclusion by this prominent international body, at least when it comes to cases from Montenegro. Namely, European court clearly positioned mentioned standpoint (inefficiency of constitutional appeal) in comparison to the time needed for court proceeding (cases Boucke and Živaljević) and availability of this legal remedy, not in comparison to violation of other rights guaranteed by European Convention for Protection of Human Rights and Freedoms (freedom and security of personality, prohibition of discrimination, right to life, etc). Another important indicator is related to time when violation was registered. According to standard practice of European Court of Human Rights, the time, when relations between presumed violation and legal remedies, is related to the time of submitting application.[22] According to arguments and legal description from the given period, it has been determined that the capacity of victim of violation of human rights and freedom exercises its subjective right before national bodies, in the frame of given and prescribed legal remedies.[23] This means that from such conclusions cannot or do not have to be necessarily made conclusion on capacities of Constitutional court in the line with the present time. Surely, other indicators of legal remedy efficiency have to be

22 See the latest case A. nad B. against Montenegro. Verdict from 05 March 2013, paragraph 62. In the concrete case, application was delivered In 2005.

23 Exceptions from this principle are rare in work of European Court of Human Rights and are registered in small number of cases (for example, Grzincic against Slovenija, verdict from 3 May 2007).

considered and one of them (statistics) the most. During 2011, Constitutional court resolved 475 cases on constitutional appeals. In these proceedings, the court made 253 decisions on constitutional appeals, out of which, in 237 negative decisions were made. While deciding in the part of process presumptions towards its competence, Constitutional court made 222 decisions, rejecting 219 constitutional appeals, while in three cases the proceedings were terminated. Positive decision was made in 16 cases (adopted constitutional appeals) which makes 3.37% of the overall number of resolved cases, or 6.32% in comparison to the number of cases where merit decisions were made.

When it comes to determined violations of rights and freedoms, then decisions where the ones by which were adopted constitutional appeals in comparison to violation of right to legal remedy from Article 20 of the Constitution, right to personal freedom from Article 29 Paragraph 1 and 2 of the Constitution, right from Article 30 Paragraph 1 and 4 of the Constitution, which define time of detention, right to fair and public trial from Article 32 of the Constitution, right to presumption of innocence from Article 35 of the Constitution, property rights from Article 58 of the Constitution. Besides violations of constitutional rights, Constitutional court determined violations of rights guaranteed by the European Convention for Protection of Human Rights and Fundamental Freedoms as follows: right from Article 5 Paragraph 1 and 3, right to fair trial from Article 6 Paragraph 1 and right from Article 1 of the Protocol number 1 with the Convention, which is related to property right. When it comes to nature and type of case in matters where constitutional appeal is adopted, they are related to areas of civil law in 13 cases or area of criminal law in three cases. Decisions on rejected constitutional appeals are related to civil law area (196), area of administrative law (23), criminal law area (15) and misdemeanor proceeding (one).

In regards to the content of presumed violation, rejected constitutional appeals were related to the principle of prohibition of discrimination, right to equality before the law, right to equal protection of rights and freedoms, right to legal remedy, right to dignity and integrity of individual, right to fair and public trial, right to property, right to work, right of employment and principle of legality of individual acts. Constitutional appeals have been rejected for following reasons: inadmissible constitutional appeals (e.g. as disputed acts did not provide for regulation of rights and commitments of appellants – various acts of public bodies, procedural decisions regulating the proceedings rather than deciding upon the proceedings, due to the lack of active legitimization, etc.); passed deadlines for constitutional appeals, jurisdiction of Constitutional court (in cases where constitutional appeal did not refer to protection of constitutional rights and freedoms); incomplete constitutional appeals (failing to provide all data ad evidences prescribed under art. 51 of Law on Constitutional court)

Given the presented statistics, it should also be pointed out that ECHR practice in regards to efficiency of legal remedy – refers to the actual effect of that legal remedy concerning the protection of human rights and freedoms. By applying such approach to the practical examples in Montenegro, the very fact on rejection of large number of constitutional appeals implies inefficiency of this mechanism. Recommendation REC (2004)6 of Committee of Ministers of Council of Europe to the member stats on improvement of domestic legal means – instructs states to:

- determine, through constant reexamining, in light of the ECHR precedent law, whether domestic legal means are available for everyone to press charges on the grounds of violation of Convention, and whether these legal means are efficient as well as whether they might result with decision on merit of those charges and corresponding compensation for any verified violation;
- reexamine, pursuant to the Court decisions implying the structural or general deficiencies in national legal framework or practice, the efficiency of existing domestic legal means and, where necessary, to ensure the efficient legal means in order to avoid bringing the recurring cases before the court;
- pay specific attention to the existence of efficient legal means in regards to the admissible charges related to excessive duration of trial proceedings.

Coming back to the original question – whether the available data indicate the (in)efficiency of trial proceedings, the response is relative. For one group of cases proceedings have been inappropriately and significantly delayed, disregarding the reasons for such outcome. Henceforth, it would be extremely important, aside deciding on violations of principle of trials in reasonable time for other court – the Constitutional court commits itself to determine more concise rules of proceeding and implement the same principles as ECHR. Also, it would be desirable to determine the certain level of specialization, and thus facilitate fluctuation of workload and quality of preparations for making decisions (proposed decision by the reporting judge, whereas draft of the decision is predominantly prepared by the qualified advisers in the Court). Following the mentioned recommendation of Council of Europe, the state and Constitutional court are obliged to evaluate the efficiency of constitutional appeal and investigate the reasons or at list identify basic causes for such high number of negative decisions, disregarding whether they are legal from the aspect of procedures and material-legal basis for such decisions. Instead of any conclusion on this matters, and aiming at enhancement of constitutional court protection in Montenegro – a thorough analysis must be conducted, followed by the general expert discussion on the role of Constitutional court in protection of legal order and human rights and freedoms, based upon the law and facts. This approach would address dilemmas on its role in the system for protection of human rights and freedoms.

In regards to the possible comparative practice, it is noteworthy to mention that Constitutional court of Republic of Croatia in 2012 resolved 8.705 cases, whereas in 2012 it received 5.726 cases related to the appraisal of constitutionality of laws and 87 of other acts, 5.980 constitutional appeals for the protection of human rights and fundamental freedoms guaranteed by the Constitution, etc.

As per organizational structure of Croatian court, it reveals its mega institutional proportions. Namely, Croatian Constitutional court has 12 judges, functionally divided into 4 entities, whose members are appointed on sessions of Constitutional court, following the nominations by the President of the court and majority of votes of judges with public vote taking place. These entities are: Council for procedural presumptions for deciding on constitutional appeals, Council for deciding on constitutional appeals, Council for election disputes and Council of deciding on complaints against decisions on depositions and disciplinary sanctions of judges.

Croatian Constitutional court is located in facilities occupying the 2.403 m^2, and according to the Decision on using the business space for this institution from 2006, current number of employees is 85, although internal systematization envisage the number of 114 employees. This number entails judges

also. Cabinet of the President of the court has designated chief and this organizational unit deals with protocol, public relations, international cooperation and professional and other needs of the judges.
Secretary of common tasks was awarded to cabinet of judges, and each judge has his Cabinet Secretary, General Secretariat of the Constitutional court of Croatia has two departments: service of constitutional and court councilors and general administration. Department of constitutional and court councilors has advisory service, a service for determining the procedural presumptions for deciding on constitutional complaints, the center of records and documents and services for the electronic processing of constitutional and court practice. General administration has the major Secretariat, Secretariat of the Constitutional and Court business and service of financial and accounting procedures, and control and disposal of assets.

The enclosed structure indicates on a much higher level of organization that is needed for creation of conditions for optimal work and timely treatment.
The Constitutional Court of the Republic of Serbia has 15 judges jointly with the President of the court. Professional services in the RS Constitutional Court are: Service for the affairs under the competence of the Constitutional Court, the Service of the President of the Constitutional court and the Service for General and Financial Affairs. The Constitutional Court has the Secretary General and his deputy. On consulting businesses are engaged consultants and senior advisors.

During 2011, before this court was 14.009 cases of all types, which was increase of 23% compared to the previous reporting period. The largest percentage increase in this area was of constitutional appeals (44.52%). During 2011, the court had held 47 meetings and decided on 3.493 cases, which is 8% more than in the previous year. A total of 3.362 cases were solved but and 10.228 remained unsolved cases, of which 958 of normative control and 9.270 cases on constitutional appeals.

The above comparative figures have dual purpose: to provide some form of numerical basis for comparison, but more to point out the need for a much higher level of organization and logistics. In both cases, the question remains question whether and to what extent the court resources are used, or whether it is even a question of organization and logistics in the field of constitutional powers of this institution. In operational terms it is very important to recognize-analyze the individual resources of the court and organize work on a new basis (councils, a single judge, specialized consulting services, external partners). This includes data cannon be reached at the moment and at this level of IT equipment of the Constitutional court.

In 2011, before all courts in Montenegro were 158,916 cases in work, o all grounds. The largest number of cases in work was before Basic courts (96.722), in Higher courts in operation was 17.409 cases, and in 4.937 cases before Administrative court. Before Basic courts were resolved 64.803 cases (66.96%), 15,108 cases before Higher courts (84.77%) and 3.673 cases before Administrative court (74.39%).

The annual influx of cases in courts in Montenegro, in all types of cases was 120,895 cases. Influx of cases in 2011 was lower than in 2010, for 4.162 cases, or 3.44%. Monthly influx of cases in all courts was 10.074,59 cases. In 2011, number of resolved cases was 120,984 cases or 67 cases more than the inflow, or 0.06%. Number of cases resolved this year was lower than in 2010 for 6.213 cases, or 5.14%.[24]

24 Annual report 2011, Judicial Council of Montenegro, page 99

The average caseload per judge in Basic courts in this period was 706.37 cases, in Higher courts 328.04, and in 549 cases in Administrative court. In the same period, the average number of resolved cases per judge was in Basic courts 473.01, 284.68 in Higher courts, and 408 cases in Administrative court. This year, 249 judges were in charge for cases, of which – 137 judges for Basic, 53 judges at Higher courts and nine at Administrative court.
In 2011, 35,122 cases were in work before Basic court in Podgorica (solved 20.562), before Basic court in Bijelo Polje were 6.821 cases (solved 5.230), Basic court in Kotor 7.694 (solved 4.799), Higher court in Bijelo Polje 4.851 (4.734 solved), Higher court in Podgorica 12.558 (10.374 solved) and before Administrative court 4.896 case (solved 3.632).

Average caseload of judges at Basic court in Podgorica was the 1.033 cases, in Bijelo Polje 620,09 cases and 591,85 in Kotor. Caseload of judges of Higher court in Bijelo Polje was 268,46, and 358,8 in Podgorica. Caseload of judges of Administrative court was averagely 549 cases.

In the first half of 2012, according to data of the Judicial Council, in the work of courts in Montenegro were 144.994 cases, of which 74.110 in Basic courts, 9.989 in Higher courts and 2.695 cases in the Administrative court.

On the day 30 June 2012, was registered a total of 21.870 cases in the work of Basic court in Podgorica for the current year. Out of this number of cases, that day were settled 11.302 or more than a half of pending cases. On the same day, 6.432 cases were registered in the operation in 2012 at the Basic court in Bijelo Polje. Out of this number, 3.480 or almost 55% of cases were resolved on 30 June 2012. According to the data of Basic court in Kotor, in the first half of the year, in the work of this court were 7.542 cases. On 30 June 2012, 2.440 cases were solved or slightly less than 35%.
During the first half of 2012, in the work before Higher court in Bijelo Polje were 2.351 cases. Out of that number, 1.820 cases or 77.41% were settled on 30 June 2012. During the first half of the year, Higher court in Podgorica worked on 7.638 cases. Of this number, at the end of the first half of the year, 4.869 cases or 63.75% were solved.

Finally, before Administrative court during the first half of 2012, were 2.695 cases. Out of this number of cases, 1.681 or 62.37% were resolved.

According to statistics for 2011, at the end of this year, 25.837 cases from 2010 and previous years were resolved, or 69.1% of the backlog from previous years. In Basic court in Podgorica were resolved 847 cases (76%), in Basic Court in Bijelo Polje 105 cases (92%) and before Basic Court in Kotor were resolved 2.136 (66.5%) cases from previous years.

Reduction of the number of cases from previous years, before Higher court in Podgorica was 1.147 (89.4% of old cases), and in Higher court in Bijelo Polje 57 cases (or 67.9% of the elderly subjects) were solved.

The Constitutional court decided on 1.221 (100%) cases from 2010 and previous years.

In cases before Administrative court in 2012, was registered the duration of the procedure up to three

months in 259 cases, up to six months in 817 cases, 504 cases up to nine months, up to one year in 97 cases, and more than a year in four cases.
In work of Basic court in Podgorica, the duration of the procedure in up to three months was registered in 6.409 cases, up to six months in 1.471 cases, up to nine months in 996 cases, up to one year in 996 cases and over one year in 1.665 cases, with duration longer than one year was recorded in civil (1.129), small claims (120), crime (102), inheritance (49) and cases of criminal sanctions (74).

In work of Basic court in Bijelo Polje, duration of the proceeding of up to three months was registered in 1.865 cases, up to six months in 783 cases, up to nine months in 439 cases, up to one year in 439 cases, and for more than one year in 11 cases. Duration of proceeding longer than one year was mostly recorded in civil (104), matters related to enforcement (49) and in cases of criminal sanctions (27).

Basic Court in Kotor time required to 3 months was registered in 1378 cases, up to 6 months, subject to 305, 214 to 9 months, up to 1 year and over 214 409 cases a year, with a duration longer than one year, the highest recorded in the civil (682), crime (21), extra-judicial complex (23) and cases of enforcement of criminal sanctions (22).

Higher court in Podgorica registered duration of the proceeding of up to three months in 2.663 cases, up to six months in 1.223 subjects, up to nine months in 697 cases, up to one year in 697 cases and duration of the proceeding for more than a year was mostly registered in the civil (45), investigating (44) and criminal cases (18).

Higher court in Bijelo Polje registered duration of proceeding for up to three months in 1.657 cases, up to six months in 144 cases, up to nine months in ten cases, up to one year in ten cases, and I four cases duration of the proceeding was more than a year, with duration longer than one year was recorded only in criminal matters in four cases.

In the structure of unresolved cases that were in operation during and at the end of June 2012, before five courts that are part of this project, most of them were related to civil cases (Higher court in Bijelo Polje 332, Higher court in Podgorica 2.067, Basic court in Bijelo Polje 561, Basic court in Kotor 2.072, Basic court in Podgorica 5.286 cases). In a view of criminal matters, backlog relates to a number of cases in all mentioned courts (Higher court in Bijelo Polje 332, Higher court in Podgorica 182, Basic court in Bijelo Polje 24, Basic court in Kotor 190, Basic court in Podgorica 834 cases). In addition to the above mentioned, in the structure of unresolved cases significantly figure disputes of small value, inheritance, complex non-contentious cases and matters related to enforcement, of which especially the last ones should be resolved by applying the new legislation and the inclusion in the system of public enforcement.

Looking at these statistics it seems that the duration of the procedure is not a systemic problem in Montenegro. However, if taking into account the outcome of the proceedings before the European Court of Human Rights against Montenegro, it is obvious that incidental cases create a bad image on Montenegrin courts, as it does a number of cases where it is difficult to find justification for represented duration of trial. On the other hand, it is evident that duration of the proceeding depends

not only on the organization of court administration and managing of the process, but also depends on parties and acting of other public bodies, which is also characteristic of the Montenegrin cases at the Court in Strasbourg. In so far finalized proceedings, this refers to the social welfare authorities, cadastral agencies and one part of the Police Directorate. On outer impressions and empirical data related to trials, more words will be in the special part of this publication.

Municipal courts in the Republic of Croatia had 404.166 unsolved cases to the end of 2011, which in comparison with 2010; and at the end 2010 when 408.198 cases remained unsolved, represented a decrease for 1%. Analyzing the number of unsolved cases by the type, there is a reduction in the number of unsolved criminal cases by 11.6%, 16.8% land register, and legacy for 15.28%, while the number of civil cases increased for 6.6% and non-contentious for 8%.[25]

The total number of cases received in 2011 year in all county courts in Croatia (regional territorial jurisdiction) was reduced from 119.944, as much was received in 2010, to 114.662, or by 4.4%. It is noticeable decrease in the number of criminal cases of first instance for 6.3%, second instance criminal cases by 24.8% while, at the same time, increased the inflow of civil cases of the second instance for 0.7%.

At the beginning of 2011, the courts of general competence in the Republic of Serbia (Basic, Higher, Appellate courts and Supreme cassation court) finds a backlog of 3,140,243 cases, which amounted to 4,547,675 with newly admitted cases in work. Out of this number, 1,804,903 cases were solved. At the ed of reporting period, backlog was 2,742,772 cases. Out of this number, 1,378,402 unresolved old cases, according to the date of access to court, or according to the date of filing of the initial act - 1,452,793 cases. Comparative analysis with the previous reporting period concludes that Higher courts in Serbia had more unresolved cases at the beginning of 2011, compared to the same period in 2010, and that the inflow of cases was reduced for 4.87%. The total number of cases in 2011 at Higher courts was higher by 5.56%, while the number of resolved cases was higher by 9.16% than in the previous year, therefore, at the end of 2011, number of unresolved cases reduced for 2.37%. Statistical data for Basic courts were not compared due to changes of the Court Rulebook, but was concluded that the inflow of cases fell by 7.96% in comparison with the previous year.[26]

Quality of adjudication itself is not the criterion for court monitoring, but the presumption that determines both the efficiency and promptness of court proceedings, and the backlog in solving of court cases. In this regard, we emphasize for a long time the need for creating an appropriate model for monitoring of work of courts and judges individually, with the necessary development of complexity criteria of each case, in addition to what makes objective statistical picture of the work of courts and judges. It is evident that we still do not have statistical model recognized in the practice of the Europena Court of Human Rights and institutions dealing with the improvement of the efficiency of European justice. Thus, the European Court has recognized as complex cases with a foreign element, cases where larger number of parties and participants appear in the process, complex cases whose solution depends on the number of procedures that flow out of the court proceedings (pensions, benefits in respect of insurance and similar).

25 Statistical review on work of courts for 2011, Ministry of justice of Republic Croatia, Zagreb, April 2012, page 22

26 Statistics on work of all courts in Republic Serbia for the period 01 January – 31 December 2011, Supreme Cassation court of the Republic Serbia, 2012, page 8

European Court treats as complex cases by the nature of the dispute. An additional element to complexity is the fact that in these cases appears a number of witnesses, larger number of material regulations, extensive factual material, complex expertise for which is required specific professional knowledge, opening of a large number of legal issues, large number of defendants or plaintiffs in dispute, disputes with international elements, merger of civil litigation, changes in the status of the litigation caused by the objective nature of the events (for example, death of the party, the termination of a legal entity)[27]. Convention right in assessing complexity provides a framework that makes the complexity of the facts, the complexities of the material law and the complexity of a case. As individualization of the issue cannot presume complexity of the case, it is the practice of courts and the judiciary to notice complexity with the analysis of previous cases and court practice, and as such develop statistical indicators that would help to explain why long duration of certain types of disputes is justified.

Given the observed characteristics of the trials which make the presumption of a fair trial and procedural justice, in this publication we decided on analyzing the quality of litigation (civil) and criminal cases (criminal proceeding without investigation and the cases by which is being decided on the state and situations after the pronouncing of the final court verdict).

In cases of Administrative court in 2011, 79.38% decisions were confirmed, and 20.62% was abolished.

According to verdicts of Basic courts in criminal cases, there was a total of 67.61% of confirmed, 11.61% of revised and 20.78% of abolished first instance decisions. In respect of the courts, individual proportion at the Basic court in Podgorica was as follows: 74.67% confirmed, 13.84% of revised and 11.49% of abolished criminal cases; Basic court in Bijelo Polje - 70.42% confirmed, 10.14% revised and 19.44% abolished criminal cases; Basic court in Kotor - 62.13% confirmed, 10.95% revised and 26.92% abolished criminal cases.

Data of Higher courts are as follows: Higher court in Podgorica - 54.60% confirmed, 24.54% revised, and 26.86% abolished criminal cases; Higher court in Bijelo Polje - 60.76% confirmed, 21.52% revised and 17.72% abolished criminal cases.
In civil cases resolved by the first instance decision of the Basic Court in Podgorica were 74.67% confirmed cases, 5.47% revised and 28.64% abolished criminal cases; in Basic court in Bijelo Polje 74.89% confirmed, 6.11% revised and 19.00% abolished civil cases; in Basic court in Kotor 55.71% confirmed, 5.43% revised and 38.86% abolished civil cases.

In the civil second instance cases of the Higher court in Podgoria, there were 78.54% confirme cases, 5.69% revised and 15.77% abolished decisions; at the Higher court in Bijelo Polje - 77.92% confirmed, 5.52% revised and 16,56% of abolished cases.

Using the analogy of the specified cases, this research would offer information about the quality of courts in the former Yugoslavia countries, concretely in Serbia and Croatia.

Thus, on matters of the quality of courts in Serbia, according to the report for 2011, the highest percentage of abolished criminal decisions of Basic courts was in courts in Čačak (39.19%), Bor (36.66%), Leskovac (32.55%) and Kraljevo (31.26%).

27 S. Caric, Right to trial in reasonable time, Official Gazette, Belgrade, 2008, page 83 – 85.

In comparison to civil cases (marked as "P1") the largest percentage of abolishing was recorded at Basic courts in Zaječar (54.30%), in Kosovska Mitrovica (52.63%), Valjevo (50.50%), Sombor (44%) and Novi Pazar (35.57%). In civil processes marked as "P", the highest percentage of abolished decisions was recorded at courts in Kruševac (29.69%), Vranje (29.50%), Vršac (28.10%), Smederevo (27.85%) and Leskovac (27.69%).[28]

When it comes to Basic courts with the lowest percentage of abolished civil decisions ("P1"), these data looks as follows: in criminal cases, the court in Vranje (10.97%), Novi Sad (14.04%), Sombor (17.86%), Zrenjanin (18.37%) and Kikinda (19.05%), in civil cases, other Basic court in Belgrade (5.60%), the court in Kraljevo (10.15%), Zrenjanin (10.77%), Negotin (10.91%) and Kragujevac (11.23%). When it comes to disputes with the "P" the lowest percentage of abolished cases have courts in Belgrade (the first Basic) 10.44%, Kragujevac (10.66%), Sombor (11.11%), Sremska Mitrovica (12.54%) and Nis (12.74%).[29]

As for the situation in the Republic of Croatia, of the total number of the first instance decisions of all municipal courts in criminal cases, which were dealt with upon appeal in 2011, 67.5% were confirmed, 20.10% were abolished, and 10.9% revised. When it comes to civil cases, then the situation is as follows: 62.8% confirmed cases, 19% abolished and 11.20% revised cases, while 6.2% of cases were settled in other manners.

As a reminder, 67.61% of the first instance criminal charges in Basic courts were confirmed in, 20.78% was abolished, and 11.61% of cases were revised. When it comes to civil cases before Basic courts, 64.38% of cases was confirmed, 29.83% were abolished and 5.79% were revised.

Making any conclusion regarding Montenegrin courts is pretentious, though it should be noted that the statistic does not provide reasons for abolishing decisions, nor there are any published results of work of each individual judge. Such statistics would additionally reveal the reasons that determine the quality of work of judges and courts, and would also serve as the basis for a deeper analysis of the abolition of a number of cases. Analysis would give an answer to the question of whether the disputed rigid rules of proceeding, the complexity of material law, poor selection in the appointment of judges, or reaching out for any rigid rules of proceeding rather than entering into the merits, or resolving of the dispute. It seems that in the explanation of the current situation should take into account all of these elements, and that all rules of proceeding should be reconsidered (which was, in a way suggested by answers to questionnaires filled out by judges at courts covered by the project), as well as the work of those courts and judges, where deficiencies in the quality of adjudication were noted.

28 Provisions of the Judicial Rulebook ("Official Gazette of RS", no. 110/2009, 70/2011) prescribe specific business codes of civil procedure, depending from the legal area. Sign "P" is used when appeals are recorded in disputes over failure to issue payment request, payment requests under complaint, cases in which the court rejected proposal to issue payment request, cases in which proceeding is continued under specific regulations, following the objection against payment order (cases following the objection on decision on execution, based upon the authentic personal documents and on decision made in shortened execution proceeding), as well as in other cases determined by the special law. Sign "P1" marks cases in Basic court dealing with appeals in labour disputes, etc.

29 Source of all data was the Report of the Supreme Cassation court on work of all courts in the Republic Serbia for 2011.

The system of the court statistics has to be comprehensive. The part that is made public, and through which the professional and laic public introduces about the indicators on work of courts; should contain indicators that determine the quality of court decisions, and also indicate on abolishing reasons, or provide image of causes (lack of) quality court decisions. Therefore, as the reference could serve the system of data contained in the report on the work of the courts in Croatia. Specifically, the report for 2011 contains data on the number of criminal cases of Basic courts which were solved in the complaint procedure, the outcome of the proceeding upon appeal (abolished, confirmed, revised) including the content of decision on punishment imposed by the revision (sentence increased, decreased, or other reason of revision), or giving the proportion of abolishing reason (wrong or fully determined facts, false application of provisions of the criminal proceeding, submitting of new evidences or facts). In addition to such statistics, when the number of confirmed first instance decisions adds the information about the number of rejected appeals and the number of revised first instance decisions, it comes out that almost 80% of the first-instance decisions in which the appeal was filed, remain in force.[30] These facts are relevant as an element in assessing the quality of the municipal courts in criminal cases, and may be indicative in creating statistical basis for work of courts in Montenegro.

If the conclusion is made about the problems in the procedural rules it is important to initiate changes, because in this format of the report, the need for legislative intervention cannot be profiled, especially not specific legislation. At this level, we will stop on the polls that clearly indicate a high degree of consent on importance of clarifications of certain norms of the Procedural Law. On the other hand, it is important to ask for a precise answer on high percentage of abolished decisions, because it essentially prolongs and raises the price of justice. In this sense, organizational rules on establishing department for court practice, and its operating in every court would be of crucial importance, when it concerns the effect of horizontal equalization of law. However, the issue here is the relationship of vertical harmonization of court practice and defining attitudes and standards of the hierarchically higher courts, which would act preventively in the making of - in the broadest sense of the word - legally invalid decisions. According to information received from the judges, during the interview, it could be concluded that educational seminars are common, which rightfully raises the question of sustainability of such meetings, if topics such as reasons for abolishing relatively high percent of abolishing decisions, are not discussed there, or if standpoints and opinions leading to appropriate adjudication, are not discussed at meetings. It would be absolutely irrational to expect that these and other debatable issues resolved only through the instance control of the immediate superior court.

Additional illustration of such claims is contradiction in terms of actions of regular and extraordinary legal remedies. For example, if the first instance decisions are rejected by the second instance court, and at the same time such second instance decisions are being rejected by the highest court in the country, in the proceedings by extraordinary legal remedies, then reasonably occurs the question what is the meaning of statistics, which provide only to statistically monitor the case to the level of instance of immediate superior court, whereas no information about the outcome of the results in the last instance. In this case, statistics follows the work of courts of first instance only to a decision on the appeal and seeks to determine whether that decision is confirmed on the next instance or returned for retrial.

If at least Croatian model of judicial statistics would be applied on local conditions, that would be an impulse for further actions on increasing the quality of adjudication, ie. If the conclusion would be made

30 Statistical review on work of courts for 2011, Ministry of justice of the Republic Croatia, Zagreb, April 2012, page 31, 32

from such statistics on dominant reason for repealing reasons (for example, incorrect application of the rules of procedure, or incorrect or incomplete established facts), then it would be a powerful input for additional education or initial education for future bearers of judicial functions to focus their attention to some of these segments during the court proceeding. In addition to this, we should not frequent communication (of course, official and continuous) between the courts of different hierarchical levels. Also, if there are other reasons that determine poor quality of adjudication, it cannot justify the court in relation to the requirements of parties regarding quality and timely decision making. Therefore, reasons have to be determined and undertaken appropriate action, and where the needs appear, proceeding of defining individual responsibility and accurately located responsibility has to be conducted.

In the fourth year of implementation of the Law on the Protection of right to trial in reasonable time, 115 control requests for acceleration of court proceedings were filed. Three of these requests stayed unresolved. Of this number of processed control requests, 57 were rejected, two were rejected due to failure to submit appropriate application, and nine were rejected as obviously unfounded. In 27 cases followed announcement for the party saying that within four months would be acted or that decision would be made, in seven requests party was informed about the deadline for taking procedural steps for unjustified delay in the proceedings and decisions on the case, and seven cases were resolved in other manner. From the above mentioned arises that control request was justified in almost 51% of cases, which authorizes the applicant to use other legal means – lawsuit for rightful settlement.

Out of 20 appeals on decisions on control requests, 17 were denied, in two requirements decision was abolished, and decision on one request was revised.

Another legal remedy – lawsuit for rightful settlement - was filed in 25 cases and all lawsuits were resolved (four lawsuits were rejected, four were decline - partly adopted in 15 cases, and in other manners were resolved in two cases). The average duration of the proceeding (from filing until finalization of the case - seeking case files and opinion of Protector of property interests of Montenegro) was 20 days.

From the above data, and data about the reduction of the backlog of cases and statistic indicators about duration of proceedings before Montenegrin courts, conclusions can be made about the prompt treatment of the Supreme court on lawsuits for the protection of right to trial in reasonable time and direct impact/work on solving backlog (old) cases, since the number of the last ones in the last reporting period for all types of cases has been solving. Statistically represented, this means that there were no unresolved small claims from 2010 and previous years, at Basic courts in Montenegro in 2011; from 2010 and previous years were resolved 25,837 cases in comparison to remaining 37,388 cases from previous years. According to the given indicators for 2010, 20,273 cases from previous years were resolved (in work remained 32,320 cases from the previous years).

IX ALTERNATIVE DISPUTE RESOLUTION

The issue of caseload of courts largely opens the question of possibilities of alternative dispute resolution. Law on Mediation is passed in order to prevent excess of litigation and to offer parties cheaper, faster and less complex proceeding in which they would have opportunity to resolve dispute in peaceful manner, according to demonstrating of basic characteristics and projections of the flow and result of dispute,

According to information of the Center for Mediation of Montenegro, out of 433 cases in 2008, 255 or 58.89% were resolved through mediation, while the value of disputes in these cases amounted 2,314,966.00 EUR; out of 547 cases in 2009, 349 were solved, with a total value of 12,417,785.17 EUR; of 742 cases in 2010, 570 were solved, in total amount of disputes 14,567,972.42 EUR; out of 552 cases in 2012 (data from 6 November) 329 were solved, with a total value of 18,000.42 EUR

According to the Report of the Agency for the peaceful settlement of labor disputes in Montenegro, in a given period since its foundation until October, 2011, the Agency received 356 proposals for a peaceful settlement of labor disputes, including: 351 individual labor disputes and five collective labor disputes. Specified number of submitted proposals included more than 6,000 parties, given that one proposal decides on the exercise of rights to labor, on the ground of work for larger number of parties, and for reasons of efficiency and economically of the proceeding.

All submitted proposals were resolved as follows:

- 296, or 83.15% - positive (agreement between the parties), out of the aforementioned number of positively resolved cases, 3% were resolved without a hearing, after submission, proposal to the other side in the dispute, by the Agency;

- 38, or 10.60% - suspended as follows: 4 collective and 34 individual labor disputes (reasons: refusal of another party to access to the proceeding of peaceful settlement of dispute, and failure to express its standpoints of another party on the proposal in the statutory and additional deadline);

- 22, or 6.25% - rejected (reasons: the process has already been completed by a final court judgment - a real lack of jurisdiction and subject matter was not under the competence of the Agency - the employer is in bankruptcy).[31]

The case of individual disputes before the agency were: unlawful termination of employment contract, unpaid contributions for social insurance, denial of right to use annual leave, unpaid allowances for annual leave, unpaid severance upon retirement, unpaid overtime compensation, unlawful allocation to another job position; denied right to early retirement, other rights arising from the work and according to the work.

31 From the report on work of Agency for peaceful settlement of labor disputes for the period 20 September 2010 until 31 October 2011

When it comes to collective disputes they were related to non-compliance of provisions of the collective contract (unpaid compensation for work in shift, unpaid bonuses, unpaid transportation allowance, unpaid funds to the housing fund of employees, other financial benefits of employees, et.) preventing exercise of right to trade union organizing.

The same report stated that "after submitted Report on functioning and work of the Agency, at the request of the MOR Office in Budapest, senior representatives of MOR concluded that the Agency for peaceful settlement of labor disputes in Montenegro , in relation to the results achieved, legal solutions, as well as staff capacities, made a step forward in relation to the environment and can be compared with similar institutions in other EU countries, where non-contentious settlement of labor disputes has a very significant and long tradition in this area."

If bearing in mind the total number of cases before courts in Montenegro, and the fact that a number of these cases that were delivered to the body for peaceful settlement of disputes, in the proceeding before the courts of general competence that were studied in this project, it seems that the institute of mediation and peaceful settlement of labor disputes have still been unused and could be an important element to disburden courts and prevent excessive litigation. While requesting the use of data, we were not able to get more data on mediation, which would show us the nature and types of disputes that mostly arrive to mediation, or those who rarely become the subject of mediation. This points out to the need of a very serious analysis for the purpose to find an adequate model and approach to the promotion and frequent use of this important institute in the function of disburdening courts and cheaper justice.

X FINANCING OF COURTS AND COURT ADMINISTRATION

The financing system of courts and court authority is based on the classical model of budget where courts are one of consumer units. This basically means that the judiciary does not have essentially decisive or even more serious role in the creation of its own budget.[32] Court authority reflected in the Judicial world projects its own needs and thus formed budget sends to the Ministry of Finance, which makes the budget projections. Relationship between these actors the best illustrates the fact that the judiciary projected the budget for 2012 in the amount of 31,569,532.22 EUR, and that the Ministry of Finance "reduced" the same one 19,239,343.17 EUR, after which this budget position was prescribed by law in the amount of 19,252,931.22 EUR.

In the structure of the budget spending under the Law on final account of the budget for 2011, the consumer unit Constitutional court has implemented its expenses in the amount of 647,613.78 EUR, out of which, in the structure of expenditures on wages and other incomes amounted to 510,768.47 EUR (78.86 % of total expenses), expenses for postal 1,963.55 EUR, 35,505.55 EUR for contracted services, equipment maintenance 4,583.28 EUR and 15,885.00 EUR for the equipment costs. In relation to the overall budget, allocation for the Constitutional court was 0.044% of the actual budget for 2011.

Consumer unit Judiciary achieved 19,288,921.06 EUR (1.33% of the budget). Out of this amount, 8,331,418.80 EUR (43.19% of total expenditures) was spent on wages and other incomes; spending on goods and services were 140,888.73 EUR, maintenance facilities 50,704.17 EUR, equipment maintenance 149,999.51 EUR and 1,625,417.00 EUR for contracted services. In explanation of budgetary positions, related to other charges in the amount of 232,476.36 EUR, the secretariat of the Judicial Council submitted a response which shows that on this basis realized benefits to members and commissions of the Judicial Council, housing compensations to judges, compensations to members of the Program and Coordinating Board of the Centre for the training of bearers of judicial functions, fees for lecturers in this Centre, the payment of compensation based on double standards in Appellate court, Administrative court, Higher courts and the Supreme court, as well as to recording clerks in the courts, and the payment of awards after decisions made by the President of all courts.[33] For all these solutions were paid taxes and other contributions, prescribed by law.
According to the Law on budget for 2013, for the consumer unit - Constitutional Court was allocated 727,827.96 EUR, of which 568,253.76 EUR for salaries, 20,743.20 EUR for business trips, 17,600.00 EUR for communications services, 13,000.00 EUR for professional development and for consulting services, projects and studies was allocated 26,800.00 EUR.

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32 *Consultative council of European judges (CCJE) in its Opinion no.2 on financing and management of courts* intends to point ot that, although court financing is integal part of State Budget adopted by the Parliament and forwarded by the Ministry of Finance, it should not be subject to political influences nd changes. Disregarding that level of budget allocations is determined by the state resources available for the courts – is essentially political decision, which must be taken into consideration, in order to ensure that neither executive nor legislative branch should not exercise anz type of political pressure over judiciary in the process of defiing its budget. Decisions on budget allocations for court system must be pursued with strict observance of court independence.
33 Decision of Judicial Council on allowing Civic Alliance access to information, Su.R.no.757-3-3/2012 from 19 November 2012.

For the mentioned period, 20,296,979.73 EUR was allocated to the consumer unit Judiciary. Within this budget period were separated positions of the Judicial Council, courts and administration. For that reason, position of the Judicial Council received 678,837.48 EUR, judiciary received 10,276,043.64 EUR and administration received 9,342,098.61 EUR. The highest expenses were still projected for incomes: Judicial Council approximately 410,000 EUR, 6,774,965.64 EUR for courts and administration more than seven and a half million EUR.

Data from the study of CEPEJ, that were obtained from all member states of the Council of Europe, except Liechtenstein, said that the annual allocations for the courts (without free legal aid) in 2010 amounted to an average of 37 EUR per capita, which is slightly more than the allocations in Montenegro in this period (32 EUR), which is an arithmetic middle in comparison to European countries. Countries in the region allocated: Macedonia 13.9 EUR, Serbia 15.2 EUR, Bosnia and Herzegovina 18 EUR, Croatia 47,9 EUR, Albania 3.3 EUR and Slovenia 86.9 EUR. In comparison with allocations for judiciary according to the gross domestic product of a country, data looks as follows: 0.64% Montenegro, Albania 0.10%, Serbia 0.40%, Macedonia, 0.41%, Slovenia 0.50%, Bosnia and Herzegovina 0,55%.

In the current practice, National Audit Office once carried out a control of all consumer units, from the Constitutional court in 2007, when it was determined that the operation of the Constitutional court in all major segments was in accordance with the laws and other regulations in force, except in one part of irregularities which referred mostly to technical harmonization of affairs with regulations, or engagements of a number of persons in business accounting, taxes and contributions for engagement on contract and payment of credit loans. In the general image of business was found that the Court did not have serious disturbances.

Consumer unit - courts was controlled in 2010, and the final Report was published in 2011. In this report, Consumer units Judiciary received conditional positive opinion. Audit of the annual financial report showed there were no material errors in officially presented reports, except in some parts that were related to:

- Unrealistic plan related to salaries of employees and other payments of employees, capital expenditures and finances of donations for the program Judiciary;
- Partially inappropriate use of the structure of expenses established by Law;
- Irregularities in the public procurement system, in implementing procedures for the consumable and office material;
- Lack of the system of internal audit;
- Inaccurate recording of obligations towards suppliers and service executors;
- Untimely recording of property in the accounting lists while procuring, but the same one was recorded in records at the end of the accounting period;
- It was noted that revenues from taxes, costs and imposed sanctions were recorded indirectly, through the Ministry of Finance, and that there were no structured data about this;
- Uncertainties in the calculation of contribution on the basis of work;
- Cash payments for fuel costs, office supplies, etc.
- The payment of taxes and contributions on personal income

Respecting the recommendations of the mentioned report, spending unit - judiciary is just in the part of the wages and benefits, on the basis of specific results of work, aligned the results in the special budget line in fiscal 2011, as required by recommendation.

At the same time, the Judicial Council informed the National Audit Office about undertaken measures for fulfilling obligations under its recommendations, concerning the budgetary positioning of certain obligations, procurement through tenders, which shows that during 2011, there were no canceled tenders, which again points out on slowness of the process decisions on appeals, which brings in issue the process of work although this process was much faster during 2012. In relation to the internal audit, Internal Audit Department was established by the systematization act, after which followed fulfillment of job positions and adoption of internal procedures. According to the envisaged systematization, the Department should have three officers: Higher Internal Auditor, Senior Internal Auditor and Junior Internal Auditor. It needs to be strengthened, because in the current conditions the whole concept of internal audit, if it rests on a single officer in hierarchically lowest rank, has become an issue. If Department for Internal Audit has been established, it has only one employee – Junior auditor - who fulfilled all conditions when receiving the service. In terms of accounting and bookkeeping records appropriate software was obtained, whose implementation has been planned to start at the end of 2012 and at the beginning of 2013 (no information that it functions). This would also resolve the problem of recording procurement during the fiscal year. Bearing in mind that fiscal revenues are recorded and submitted to the court by Ministry of Finance as the aggregate data, the assessment of the Judicial Council says that still there is no prompt, structured and precise records, which is impossible to influence on in the existing normative and institutional organization.

In terms of compensation for the performance of duty and emergency operations from the beginning of 2012, innovated Decision on increase of incomes to the civil servants and state employees for performing certain tasks, has been implemented ("Official Gazette" no.62/11 MNE). In two letters to the courts (one on 10 January, 2013, act no. 5/13, which required submitting to the Judicial Council balance sheets in commercial banks and the financial report and the other on 22 January, 2013, no. 39/13 act, which required information on unspent funds and evidence of that, and that those funds should be returned from the cash desk to the treasury), they were warned that at end of the year, the remaining amount from the cash desk has to be paid to the account of the State Treasury, and the recommendation which pointed out on obligation to income taxes and benefits on incomes was fully respected.

Information on situation regarding the status of public procurement, working team of this project received written confirmation from the authorized public institutions: the Public Procurement Administration - Department for Vocational Training, National Commission for supervision of public procurement procedures and the Secretariat of the Judicial Council on the basis of individual requests for access to information of public importance.

Following the general indicators of public spending and the public sector needs, it is obvious that the entire budget becomes risky in times of economic crisis and constant requests for rationalization in the sphere of budget allocations. In this sense, the judicial budget is not privileged, nor it can be done as exclusive by any indicator of public spending. Number of users of budget allocations is quite large, and the stability of the budget is constant obligation that has to be respected by the country as an economic

criteria in global and regional financial movements. Key role in creating the budget have bodies of executive authorities, primarily the Government and the Ministry of Finances, but in the current situation hardly that anything can be changed, because it would be unrealistic to expect the inclusion of the judiciary as the key determinants in the creation of a part of public spending. This even faster, as in the process of negotiations with international financial institutions or in the negotiating structure, only the executive power is involved. However, this does not mean that the structure of public spending should be released from the impact of judicial power. Access to this problem requires an extremely capable and technically prepared logistics of planning and execution of the court budget. Strengthening of the logistics of planning essentially means more serious approach, or requires that the component of the financial organization within the Secretariat of the Judicial Council, has to recognize the really plan the needs and the revenue side of the budget, as the presumption of allocating specific part of funds for the covering the needs of court institutions and other users of court budget. Unrealistic plan of budget collides with the real consequences of the budget spending, and as long the first one is subjected to political pressure, the second segment prevents covering the needs, or depending on the reaction makes the budget unenforceable. Similarly, the expenditure side of the budget, including internal audit, must have required professional level and potential, in order to note negative sides and act preventively on deviations in execution of budget.

For the realistic budgetary planning, planning has to be based on specific indicators, and one of them is certainly projecting of consequences which adoption of particular legislation regulations may have on the structure of budget, not only in the part of purely administrative duties, but also in the part of needs for implementation of law (logistics, education, social background), especially in the initial phase. This text has already discussed the number of laws, if we bear in mind only one period of parliamentary activity.
Very often, discussions on public procurement system debate about the practical implications regulations have on business of subjects in the field of public procurement control. And in the case of the judiciary, seems there are elements where dilemmas have been recognized - to implement provisions of law or to accept objective responsibility, and not allow blocking of operations. For such dilemmas, conclusions have been made on the need to find an appropriate legal model that protects public interest, while at the same time does not block business activities, because, for example lack of office supplies and equipment cannot be taken as an excuse for prolongation of court proceedings.

Looking at the reasons for early departures, as well as the current situation in budgeting needs of the judiciary, it seems that the main problem in the need of planning and long-term projecting of needs of judicial institutions, which must be based on realistic indicators and predictability. Therefore, the judicial branch should accept the position of mere spectator of the legislative activities and budget execution policy. On the contrary, it must identify model of transforming its capacity of aggregate defining of budgetary needs into continuous system of monitoring and planning, i.e. programming of its own budget. At the same time, internal controls must be based on clear rules and criteria that will accurately determine the costs.

The act prescribing such procedures was adopted by the Judicial Council in the 6th session, held on 31.12.2012, which also resulted with regulations on financial management within the Judicial Council. In order to implement the system of financial control and management, it was necessary to develop a set of internal policies and procedures to ensure proper, economic, efficient and effective use of budgetary

funds. The Book of procedures has been adopted, providing the set of internal procedures for proper financial management and control, i.e. framework that integrates all of the financial issues that affect the achievement of the key objectives of the Council. Timing of the adoption of Book of procedures coincides with the end of this monitoring report, hence the impact of these rules on budgetary discipline and planning would be suitable for review pending the time span necessary for testing of those procedures. On the other hand, effects of proper planning are envisaged for next fiscal period. For these measures to be practically implemented, necessary institutional baseline would entail strengthening of the financial sector in the administration of the Judicial Council (department of internal accounting controls and audit), which for now practically does not existent.

According to the experience hitherto, model of courts' budget planning entails defining (cataloguing) the list of needs from the previous fiscal year. Finance department simply copies the individual courts' budgets from previous year, and heads of the courts attach requests with additional requirements regarding the maintenance of buildings or other needs, i.e. types of expenses for which the plan they would be implemented in the coming year. Thus, these expenses are added to proposed "base" budget, consisting of expenditures from the previous fiscal year. Upon completion of budget proposal in such manner, Judicial council is forwarding this document to the Ministry of Finance, which either renders support or reduce proposed budget (in existing situation, the latter option is dominant). This constitutes additional aspect of dependence from executive branch of power.

Speaking about the budgetary needs of the courts, it is not appropriate to analyze solely the expenditure side of the budget. Products of the trials concerning collection of fees, court expenses and fines must be taken into consideration in order to determine in what way and up to what extent these indicators could be observed in process of projection of courts' financial needs. In practical terms, this means that it must be explored whether more qualitative and efficient work of courts, under the assumption of increased financial funds, could enhance the revenue side of the budget. In order to assess this aspect, it would be necessary to further develop and provide IT equipment to the special unit of Judicial Council that would be responsible for this analytical segment of work, given that data on sanctions are being analyzed by the Central Bank, whereas funds at the transit account of the Ministry of Finance, in this regard, have been presented as a cumulative figure.

When it comes to the budget control of the court system, it seems that the recommendations of the State Audit Institution contributed to the improvement of the administrative and financial operations of the courts (specifically, this relates to the fulfillment of the recommendations regarding the establishment of internal audit, adoption of books of internal procedures for control of operations and expenditures, order in the form of a circular letter prescribing that unspent money at the end of the fiscal year should be returned to the State Treasury, and on the same grounds – defined procedures for determining state of the accounts of court units and accrued liabilities till January 2012, the financial report on work of court units for the purpose of expenditures control, etc..).
Rationalization of the court network in Montenegro should be based on specific indicators that are valued at the time of developing of the Analysis of judicial network that was done by the Ministry of Justice in 2009, and its audit that was done recently. In developing of this final analysis, the project team considered:

• The current organizational scheme of judicial bodies in a manner which especially analyzed real jurisdiction of courts in terms of the first instance competence in criminal cases (a catalog of crimes within the jurisdiction of Basic and Higher courts, and Basic and Higher Prosecutor's Offices), and in the appeal proceeding (competence of Higher and Appellate courts and Higher and Supreme Public Prosecutor's Office), as well as specialized jurisdiction (two specialized divisions at Higher courts and Special Department for prevention of organized crime, corruption, terrorism and war crimes in the framework of Supreme Public Prosecutor's Office).

• The current number of judges, state prosecutors, civil servants and court employees - the impact of new laws on reduction of number of judges and public prosecutors and administrative staff, and implementation of the new Code of Criminal Procedure, particularly in a view of transfer of investigation from court to prosecution, implementation of alternative manner on resolving disputes (opportunism and the agreement on confession of guilt), as well as implementation of the new Law on Misdemeanor offences, Law on Notaries, Law on Mediation, the Law on Public executors, etc..

• The position of Montenegrin judiciary according to the CEPEJ Report for 2010, and the results in a view analysis of the organizational scheme of the judiciary and number of judges, state prosecutors and other employees in the judiciary bodies, in order to make conclusions for the development of plan of reorganization of judicial network and the parameters for the financial impact.

Obviously, this analysis was guided by the broader aspects of work of the entire judiciary, not only courts, and that its effect is directed towards the reconstruction of the judiciary, not only of the network of courts. In the particular part related to judicial institutions is emphasized that there is no unified European model of judicial network, but experiences of the CEPEJ studies performed in 2004 and 2008, served as the basis for establishing objective criteria on which would be based the Montenegrin model. For that reason has been spoken about "shared values that the Council of Europe accepts, expressed and adopted in resolutions and recommendations in the field of efficiency and proper functioning of judiciary. They were conducted as surveys that collect data from several sources, but are not based on previously specified criteria for analysis and evaluation. For this reason, we cannot talk about the previously established European "standards", but only about tendencies that are indicative for specific area within judiciary and that tend to adapt to each country, taking into account all objective circumstances."

In the analysis were used key indicators in terms of the number of residents who are already at the territory of the court, geographical distance of court from place of residence and the caseload of the court (inflow, duration of proceeding, number of judges). As a side indicators were taken into account:

• mismatch between the number of judges, court officials and employees and working conditions at court and the number of cases in the court;
• efficiency of court administration and scheduling of hearings;
• achieving of the principles of independence of the court in relation to number of citizens and territory;
• the possibility for new, younger judges to have an older "mentor" at the same court and access of all the judges to specialist practice in certain areas;

- court potential to develop into an efficient, modern and the court which is accessible to everyone, based on indicators such as: development of the information system, the special skills of judges and court employees, the use of alternative manner of resolving dispute cases (mediation, etc.) and so on;
- duration of certain types of proceedings, specific for a particular court;
- economic implications of retaining or abolition of the court;
- existence of a system of measuring user satisfaction with the services provided by the court and the system of processing users' complaints;
- existence of minority population at the territory of court.

One of the statements from the CEPEJ document based on mentioned indicators clearly indicates that "number of judge is still considered as very large, resulting in high costs in the judiciary. The only way to improve this is by reducing tasks of judges or by increasing efficiency". At the same time, it is concluded that "some countries that are in transition continue reforms by increasing the number of holders of judicial function (Azerbaijan, Bosnia and Herzegovina, Montenegro, the former Yugoslav Republic of Macedonia and Ukraine). Trend of increasing number of judges in some countries can be explained by the recent admission to membership or by candidacy for the membership in the European Union (Bulgaria, Turkey). What is not directly stated in the study was intention to increase in this manner the efficiency and promptness of courts in the transition period when the activity of parties is increased, which was in direct manner instructively done towards Portugal ("... disorders in the overall social sphere of relation such as transitional changes and similar, regardless of de facto problems such as, for example sudden inflow of a large number of cases, cannot be justification to the country for relativization of responsibility in a view of providing reasonable deadlines for trial ... ").[34]

Analysis of rationalization in Montenegro indicates that a measure that shows the relationship of results and court resources is needed. If this allows the quality of data that are available in the judicial system (court statistics, prim.aut), the results can be measured as the number of resolved cases, while resources can be presented through the budget spent and the number of judges. This brings us to the third measure, the cost per case, which shows the average cost of resolving cases according to their type. For easy access, efficiency is shown as the portion of budget per resolved case within a given period of time. The main purpose of the cost per case is to show the difference in efficiency between the courts, not to show the average cost per case. However, this indicator, which is reflected in the amount of budget for specific court, in relation to the number of cases, has given general information about the "most expensive" courts in the country (186 EUR per case in Basic Courts in Kolasin and Cetinje), or the most rational (Basic court in Niksic - 53 EUR).[35] When it comes to Basic courts, as the rational ones are identified courts from the project (in Bijelo Polje - 91 EUR averagely per case; Podgorica - 75 EUR averagely per case, Kotor - 94 EUR per case). At the Higher court in Podgorica this indicator is 226 EUR, at Higher court in Bijelo Polje - 229 EUR. Indicator of the budget efficiency at the Administrative court of Montenegro is 210 EUR.

34 Guincho against Portugal, verdict from 10 July 1984, par.37

35 Level of justification has an average of 153 EUR per case, and the middle value for all courts is 113 EUR per case. In comparison to Basic courts, middle value is 112 EUR per case.

The conclusion from the Analysis should be especially mentioned, that only a few countries in Europe are able to demonstrate budgets of courts, and therefore are able to control costs by the scope of work, ie. amount of cases (Section 4.3.3. Efficiency).

Among Basic courts, especially the court in Bar, but also the courts in Herceg Novi, Niksic, Pljevlja, Rozaje and Ulcinj, have particularly good performance with very high and excellent rates of resolving cases. Most of them (except, in a positive sense Rožaje and Pljevlja) still have a very large number of cases, but the situation here is also improving. It is obvious that almost all of these courts in the last four years have improved their performance. Courts in Berane, Plav, Podgorica and Kolasin show warning rates of resolving cases, which is accompanied by accumulation of pending cases.

What makes a curiosity in this Analysis is the fact that among the productive courts are some that have very low quality of adjudication in some areas, while some successful courts have been described as financially inefficient. Therefore, there is reasonable question on sustainability of such indicators. In any case and from this approach clearly follows that the efficiency and financial sustainability hold as higher priority than the quality of adjudication, as in this analysis, at least when it comes to the courts, that is not mentioned. It should be noted that, except for the direction where the conclusions of the mentioned study go, documents and recommendations of some other bodies, such as the Consultative Council of European Judges (CCJE) move in the direction of the required quality of judicial decisions (quotations from the CCJE Opinion No. 11 related to resources):

“The quality of court decision is directly determined by means which are at disposal to justice system. Courts cannot operate effectively with inadequate human and material resources. Appropriate judicial compensations (wages) are needed so that judges can protect themselves from pressures aiming at affecting their decisions and their behavior in general, and to provide the best candidates for judicial duties. Assistance of qualified court personnel and the cooperation of court assistants, who have to make judges free from routine tasks, and preparation of documents, can contribute to improvement of the quality of decisions given by the court. If such resources lack, efficient functioning of judicial system, directed towards achieving of high quality products materialized by the court decision, would be impossible.”

In same opinion, CCJE states that “quantitative statistical methods include statistical data at the level of court (details of unsolved cases that are still in course before the court, registered cases and solved cases, the number of hearings in each case, canceled hearings, court proceedings, duration of court proceeding, etc.). The amount of work done at court is one of the measures for assessing the ability of performing court functions in satisfying the needs of citizens. This capability is one of the indicators of the quality of judiciary. The method of analysis takes into account the court activities, but itself is not enough for the assessment of real decision of satisfactory quality. The nature of decision depends on merits of each case. Judge, for example, perhaps has to make a series of interrelated decisions on cases of little merits. Statistical data are not precise indicators in all situations, and they have to be considered within the context. However, this method allows the assessment of whether cases have been conducted within an appropriate time frame, or there was a lot of backlog, which may justify the allocation of additional resources, and undertaking of measures aimed at their reduction or elimination.

By implementing statistical methods of a good quality, decisions are classified according to their type, object on which decisions are made, and complexity of the case. This method allows analysis of various types of cases for determining efficient and proper distribution of work, and minimal and maximal load that may be required from the court. The characteristic of this method is to take into account the specifications of certain cases or types of problems, in order to take into account those that include considerable amount of work, although the number of decisions is limited. The difficulty of qualitative statistical assessment, however, in defining the factors that are taken into account, and in determining which authorities are competent to determine the indicators."

Another very important instrument in determining the criteria of proportionality between demands of efficiency and principles of budgetary rationality are orientation measures for duration of court proceedings. They are principled, but certainly have to be taken into account, because they are the product of the best practices in Europe, and observations contained in the jurisprudence of the European Court of Human Rights.[36]

Therefore, a basis for rationalization of the court network has to be based on more indicators. Some of them are certainly in the domain of organization of managing of courts and court procedures, but there are significant number of other indicators that have be taken into account, if it is desirable that financial indicators are consolidated, rationalization / reduction of public spending and efficiency of court and judges in the exercise of its primary objective, which is timely and effective justice. Organization of courts has to take into account the factor of income, which on the verge of sustainability in some courts. However, the problem cannot be analyzed without closer indicators, as conclusions from the official report on the work of the courts cannot be made on the caseload of courts and judges towards the nature and type of case in relation to the number of judges in charge of cases of certain areas (criminal and legal, civil matters, executive matters). Of course, it is important to take into account that rationalization of the court network and the effect of achieving justice do not make the issue on the very essence of procedural fairness, which are rights of citizens to have effective access to courts and timely trial. It also seems that the Ministry of Justice withdrew a few very important steps, including the cardinal one, which is that needs have to be determined and if assessed as reasonable, to rationalize the court network. It may eventually act encouragingly to the overall system of judiciary in terms of determining development priorities and improving the level of quality, proportional to objective possibilities of the system and requests of the modern judiciary in the process of European integrations.

In addition to the above mentioned, there is one more indicator that deserves attention in the CEPEJ Study on the efficiency of judiciary 2012, where, according to data for 2010, 169,921 EUR were allocated for legal aid in Montenegro, without specifying the definition of the purpose and type of cases for which this amount was allocated.

36 Compendium of "best practices" on time management of judicial proceedings, Strasbourg, 8 December, 2006. CEPEJ(2006)13
Time management of justice systems: a Northern Europe study, Strasbourg, 8 December 2006 CEPEJ(2006)14

IX EMPIRICAL OBSERVATIONS OF DIFFERENT ACTORS IN THE FUNTIONING OF COURT AUTHORITY

1. View from the study perspective

Conducting questionnaires among judges of those courts that are covered by the project, citizens as users, the media, and only in two cases by interviewing qualified attorneys, this project is aimed to continuously get the answers to some of the issues that determine relationships within court institutions, as well as the no less important to the general public.

In searching for characteristic answers, judges of Constitutional court, Administrative court, and two Higher courts and judges of Basic courts in Podgorica, Kotor and Bijelo Polje were interviewed. Analyzing the given answers, we will present major standpoints single questions, in relation to all courts:[37]

Judges of the Constitutional court assessed that their position in relation to the general public and its confidence were good, but the media reporting on work of the court was mostly satisfactory. In terms of general attitudes of parties on work of court, judges said they were insufficiently informed or were not informed at all. When asked about complaints of parties, judges gave very heterogeneous responses in which the bad mood of parties judges described as the result of duration of proceeding before the court (four judges gave such an assessment), while the violation of procedural competences as a problem on which parties pointed out, saw two judges. Impartiality of the court, as an essential element of discontent of parties found one judge, while on an open question about unspecified problem that burdens parties, 71.4% of the judges did not provide responses, which implies that the questions were well-designed. Partial response followed after the question about the behavior of parties in relation to the respect of the court as an institution, while the vast majority (85.67%) of judges concluded that parties were not familiar with the proceeding and organization of work of the court. Large number of judges of the Constitutional court held that the existing facility and infrastructure were inappropriate for the needs of this institution, and that facilitated communication within and outside the court was poorly secured. More than half of the judges considered that the arrangement of the courtroom was not at a high level, in a view of the presence of parties and public. In assessing the personal capacity of the administration, judges said that there was obvious will, but that the funds were a problem, while two judges noted that there was a space for improvement of resources.
More than 85% of judges believed that the capacity of the professional library was insufficient, and added they receive periodical publications and the current practice of international bodies only occasionally. The vast majority of judges (six) confirmed they were on different type of education more than 10 times. Also, large number of judges said that the specialization of judges in certain areas would be desirable, and of crucial importance for the quality and efficiency of work of the Constitutional court. Also, more than 85% of judges (six) said that existing procedural rules were efficient, but can also be improved, while one judged

37 Percentage of answers defined in comparison to number of judges that participated in the questionnaire: Constitutional court and Administrative court – all judges, Higher court in Podgorica – of 32 responded 12 judges; at Higher courts in Bijelo Polje responded 15 judges, out of 18; Basic court in Bijelo Polje – responded all judges, 13 judges; Basic court in Pogorica – out of 37 judges, responded 18; and from the Basic court in Kotor responded 13 judges, out of 14.

believed they were insufficiently clear. The vast majority of judges of the Constitutional court do not see the need for the strengthening of staff and professional support to the work of the court, and they also think the manner of work should be rearranged by introducing judicial councils or the institute a single judge. Almost 60% of judges think special rules of proceeding in the work of the Constitutional court should be adopted.

The judges of the Administrative court assessed the position of the court in relation to the public as satisfying, with no exception. Most judges (70%) assessed the media reporting on work of the court as satisfactory and with the general attitudes of parties on courts were introduced 60% of judges. As judges of this court assessed, parties did not comply about duration of the proceeding, violation of procedural rights, and impartiality of the court. Inertia and obstruction of public bodies as a problem parties complained about, noticed 80% of judges of the Administrative court, while 70% of the judges found that the court was respected as the institution by the public. Judges delivered partial response to the question about the role of the court and proceedings and the parties in the case, while public bodies considered their relationship with the court has to be particularly changed by the Real Estate Administration and postal or delivery service. About the work of bodies for application for residence and temporarily residence, in relation with the court proceedings, 30% of judges considered they were not prompt, and 70% of them had no opinion about this. The vast majority of judges believe that rented premises met the needs of the court, as well as means of communication within and out of court, or development of the courtroom. The same number (70%) of judges believes that the current court administration is sufficient and qualified for the logistics of trials, but the capacity of professional libraries was assessed as insufficient (60%).

Half of the judges of the Administrative believed that there was lack of periodicals publications and the current practice of international courts. Most judges participated in some form of professional training up to ten times (two judges responded they had never participated in seminars or other forms of professional training). Most judges (60%) believe that the existing rules of proceeding are efficient, but can be improved. Most judges think personal support through the trial should be improved through larger number of councilors, and some of them believe that this should be preceded by a special analysis. Almost 40% of judges considered that the existing norm and the method of conducting statistics fits the needs, 20% thought that it was not sufficiently detailed and 40% that Did not provide real image of work of courts and judges.

Judges of the Higher court in Podgorica found that the overall position of the court in relation to the general public and its confidence was mostly unsatisfactory (58.3%), while 75% of judges believed that the media reporting on their court was unsatisfactory and biased. Nearly 60% of judges believed that there was enough information about the general attitudes of parties related to the court, and the other half was experiencing complaints of parties about the long duration of proceedings and said that were quite present. Violation of competences, as a serious objection of a party, saw nearly half of the judges, while the bias of the court, as parties assessed, was insufficiently expressed. The lack of experts for a specific profession, as an obstruction of trial, on which parties pointed out, noticed 33% of judges, and prolongation of analysis ad opinions of experts, the same number of judges. Inertia of public bodies as the problem of parties, noticed more judges of the court, and 75% of judges assessed that this court has not been respected by parties as the institution. Number of judges of the court (16.7%) believed that the reason for that was poor understanding of the role of this court in court proceedings.
A large number of judges of the Higher court found that the parties did not know sufficiently about the proceeding and the manner of organization of work at the court, while many judges believed that the

Ministry of Interior Affairs had to improve its relationship with the court, Centers for social labor, and particularly the postal and delivery service. More than 75% of the judges considered that the existing infrastructure was insufficient for the work of the court, while only 25% of judges were not satisfied wuth communication technologies. Arrangement of the courtroom was a relative problem for 16.7% of judges and 50% of them believed it was not enough for the work of judges and the court. In 75% of responses judges assessed that the work of court administration was good, and that the capacity of professional library was poor, while 66.7% of them found that only periodically they had received professional publications. Almost 92% of judges believed that the specialization of judges in particular areas would be useful for a better work of courts, while in terms of proceeding rules, almost 60% of the judges said they were not clear enough, and another 25% that these rules were effective, but could be improved. Most judges considered that the staff capacities should be strengthened in terms of cooperators, with the possibility of previous determined analysis. In terms of expertise, judges believed they slow down the proceeding (33.3%) and 58.3% of judges assessed that was only in specific areas. According to opinion of this court, judicial norm has not been sufficiently detailed (41.7%), while 16.7% believed that it did not provide a realistic image on the work of judges.

Judges of the Higher court in Bijelo Polje found that the overall position of the court in relation to the general public and its confidence mostly satisfactory (73.3%), while 66.7%of judges believed that the reporting of media on its court was mostly satisfactory and objective. Most judges did not have enough information on general standpoints of parties about the court, and most of them noted objections of parties about long duration of trials and saw it as very present and serious objection. Violation of competences as serious objection of parties did not note most of judges, while impartiality of the court, as parties assessed had not been expressed sufficiently. Lack of experts for specific area as an obstruction of a trial, on which parties indicated, noticed more than 47% of judges and the same number of judges noted prolongation of development of analysis and opinions of experts. Inertia of public bodies as expressed problem of parties noted more judges of this court, and 66,7% of judges believed that parties did not respect this court as the institution.

Large number of judges of Higher court believed that parties did not know enough about the about the proceedings and the manner of work of the court (60%), while large number of judges considered that Real Estate Administration, Centers for social care ad especially postal and delivery services had to improve their work related to the work of the court. Most judges believed that the existing infrastructure was sufficient for the work of court while half of judges were satisfied with the communication technologies. Arrangement of the courtroom was relative problem for 20% of judges, and 33.3% of them considered that was enough for the work of court and judges. In 86.7% of responses judges assessed that the work of court administration was good, but the capacities of professional library were insufficient, while 73.3% of them stated they had received only periodically professional publications. Almost 94% of judges thought that specialization of judges in specific areas would be useful for better work of the court while in a view of proceeding rules, 33.3% of judges said they were not quite clear, 46.7% said that rules were efficient but could be improved. Most judges considered that the staff support should be strengthened in a view of cooperators, with the possibility for previous specific analysis. On matters related to expertise, judges said that it significantly slowed the proceeding (33.3%) while 60% said that was the case in specific area. As judges of this court said, judicial principles has not been detailed (26.7%) while 40% said it did not provide real image on work of judges.

Judges of Basic court in Podgorica mostly believed that their overall position in relation with the general public and its confidence was not satisfactory and reporting of media on their work as well. Most judges said they were sufficiently informed about general standpoints of parties on matters related to this court. As judges of the court said parties comply on duration of judicial proceedings, and partially on impartiality during court proceedings. Prolongation of analysis and opinions of experts ere not mentioned as problem, and also lack of experts. Judges of this court experienced complies of parties on inertial and obstruction of other public bodies while nearly 75% of judges said that parties did ot respect the court as an institutions. Most judges believed that the parties did not know enough about the proceeding and the organization of work the court, but the police, Real Estate Administration, postal and delivery services should significantly change its attitude towards the court.

Half of the interviewed judge believed that the work of reception services was prompt, and added they were satisfied with the infrastructure facilities they worked in, and with communication equipment as well (internet, phone, fax). Premises of the courtrooms were insufficient unless in cases of increased interest in cases, when large courtroom was available. Almost 61.1% of judges believed that the administration capacity was sufficient, and another 27.7% said it was good, but there were more space for improvement. Capacity of professional library was assessed by all judges (100%) as poor, while 77% of them concluded that only occasionally they had received professional periodicals. 66.1% of judges confirmed they were more than ten times in different forms of education related to their position. Nearly 85% of judges believe that their specialization would provide better functioning of the court, while 75% believed that the proceeding rules were unclear, or there was enough space for their improvement. Most judges thought that the advisory structure should be strengthened, while another 16.6% said that it should be preceded by a special analysis. Nearly a quarter of respondents believed that expertise slowed down the process, and another 50% added that was the case only in specific areas. In terms of standards, judges of this court considered in 16.6% of responses that it was adequate, 44.4% that it was not sufficiently detailed and did not provide complete insight into the work of courts and judges, while 38.9% said they it did not provide realistic image of work of courts and judges.

Judges of the Basic court in Bijelo Polje mostly believed that their overall position in relation to the general public's confidence and its confidence was satisfactory, as well as media reporting on their of work, with only a third of the judges who believed they were sufficiently informed about the general attitudes of parties on issues related to this court. According to judges' findings, parties significantly complies about the duration of proceedings and they partially complies about the impartiality during the proceeding and violations of the proceeding competences during the court proceeding. Prolonged development of analysis and opinions of experts were also mentioned as important problems and the lack of experts as well. Judges of this court also said that relative number of parties complained about inertia and obstruction of other public bodies, while nearly 65% of judges said that parties did not respect the court as an institution as a whole, while lack of understanding of its role in the proceeding. Most judges believed that the parties did not know enough about the proceeding and the organization of work in the court, and significantly changed relation with the court should have Real Estate Administration and postal or delivery service.

Third of interviewed judges believed that the work of reception services was prompt, and half of them were satisfied with the infrastructure facilities they worked in, and 90% of them were satisfied with the communication equipment (internet, phone, fax). Courtrooms were insufficient (69.2%), except

in cases of increased interest in cases, when large courtroom was at disposal. Almost 69.2% of judges believed that the administration's capacity was sufficient, while 30% believed it was good, but there was more space for improvement. Capacity of professional library was assessed by majority of judges (92.3%) as insufficient, and 92.3% of judge found they had received professional periodicals occasionally. 46.2% of judges confirmed that they were more than ten times in different forms of education related to their position. Nearly 77% of judges said that their specialization would provide better work of the court, while 75% believed that the proceeding rules were unclear (15.4%) or that there was enough space for improvement. Most judges thought that the advisory structure should be strengthened, while 46.2% believed that it should be preceded by a special analysis. Almost 15.4% of respondents believed that expertise slows down the proceeding and another 69.2% that this was the case only in specific areas. In terms of standards, judges of this court considered in 15.4% of responses that it was adequate, 53.8% that it was not sufficiently detailed and did not provide complete insight into the work of courts and judges, while 23.1% said it did not provide realistic image of work of courts and judges.

Judges of the Basic court in Kotor mostly believed that their overall position in relation to the general public's confidence and its confidence was satisfactory (69.2%), and reporting of media on its work was also mostly satisfactory (53.8% of responses), with two-thirds of judges who said they were sufficiently informed about the general standpoints of parties about this court. According to findings of judges, parties usually complied about the duration of court proceeding, and partly about violation of proceeding competences during the court proceedings. Prolonged development of analysis and opinions of experts were also mentioned as significant problem, and the lack of experts as well. Judges of this court did not have experience by which parties complained about inertia and obstruction of other public bodies, while nearly 85% of judges said that parties did not respect the court as the institution. Most judges believed that parties did not know enough about the proceeding and organization of work of the court. They also added that Centers for social work, Real Estate Administration and postal or delivery service should change their relation with the court.

Third of interviewed judges believes that the work of reception services was prompt, and 61.5% of them were satisfied with the infrastructure facilities they worked in, while 90% said they were satisfied with the communication equipment (internet, phone, fax). Courtrooms were insufficient (53.8%), except in cases of increased interest in cases, when special room was available. Almost 46.2% of judges believed that the administration capacity was sufficient, 15.4% said it was not satisfactory, 30.8% said it was good, but added that there was enough space for its improvement. Capacity of professional library was assessed by the majority of judges (69.2%) as sufficient, and 15.4% said they regularly received professional publications, while 76.9% of judge found they had received professional periodicals only occasionally. 46.2% of judges confirmed they had attended various forms of education less than five times, but 38.5% of them attended different forms of education trainings related to their position more than ten times. Nearly 70% of judges believed that their specialization would improve better work of the court, while 75% believed that the proceeding rules were or unclear or slowed down the process (46.2%) or that there was enough space for its improvement (30.8%). Most judges thought that the advisory structure should be strengthened due to the large number and complexity of cases, while 7.7% thought it should be preceded by a special analysis. 38.5% of respondents believed that expertise significantly slowed down the process, and another 46.2% said that was the case only in specific areas. In terms of standards,

judges of this court considered in 15.4% of responses that standards were adequate, 30.8% that it was not sufficiently detailed, while 46.2% judges said it did not provide realistic image of work of the court and judges.

2. Public impressions – standpoints of citizens who participated in the proceeding and users of services of court administration at Basic courts

Kotor: A total of 20 respondents participated in the questionnaire, 13 or 65% were males, and 7 or 35% were females. Respondents were between 29 and 53 years old. Out of 65% of respondents said they were in court for the first time, while 35% of respondents said they had already been in the courts. 95% of citizens said they easily found the building of the court, and only 1 or 5% of respondents said they did not. When asked: "Are you satisfied with the court access (parking, etc.)?", 13 respondents or 65% said they were, and 7 respondents or 35% said they were not. Orientation within the court was easy for 16 respondents or 80%, while 4 respondents or 20% could not orientate within the court. 18 or 90% of respondents said that the services and premises of the court for verification of documents and provision of other services were clearly marked, while 2 respondents or 10% said they were not. Eleven respondents or 55% of them easily noted officers with ID cards, while the remaining nine respondents or 45% said that officials were not notable at court.
When asked: "Are the officers at the court kind and communicative? Did they provide expected answers, advices and guidance?", 14 respondents or 70% said "yes", and six respondents or 30% answered "no". Reasons for visiting the court, ten respondents or 50% of them said it was due to the trial, and the remaining ten respondents or 50% said due to providing of services. Overall satisfaction with the service delivery at the court, respondents assessed with (ratings from 1 to 10): 4 – two respondents or 10%; 5 – eight respondents or 40%; 6 – six respondents or 30%; 7 - two respondents or 10%; 8 - one respondent or 5%, 10 - one respondent or 5%. Average assessment of satisfaction with the service provided by the court was 5.8.

Podgorica: In the questionnaire participated 40 respondents, 22 or 55% were males, and 18 or 45% were females. Respondents were between 18 and 78 years old. Out of the overall number of respondents, 27.5% of respondents said they were in court for the first time, while 72.5% of respondents said they had already been in courts. 95% of respondents said they easily found the building of the court, and only two or 5% of respondents said they did not. When asked: "Are you satisfied with the court access (parking, etc.)?", 25 respondents or 62.5% answered they were satisfied, while 15 respondents or 37.5% said they were not. Orientation within the court easily achieved 17 respondents or 42.5%, while 23 respondents or 57.5% said they did not manage to orient within the court. Number of 28 or 70% of respondents said that the services and premises of the court for verification of documents and provision of other services were clearly marked, while 12 respondents or 30% said that they were not. Number of 21 respondents or 52.5% said they easily noted officers with ID cards, while the remaining 19 respondents or 47.5% answered that the officers were not visible in the court.
When asked: "Are the officers of the court kind and communicative? Did they provide expected answers, advices and guidance?", 21 respondents or 52.5% answered "yes", while 19 respondents or 47.5% answered "no". Reasons for visiting the court, 23 or 57.5% of respondents said it was due to the trial, and remaining 17 or 42.5% respondents said it was for service delivering. General satisfaction with the provision of services during their visit to the court was assessed by the respondents with (ratings from

1 to 10): 1 - one respondent or 2.5%; 3 – three respondents or 7.5%; 4 – four respondents or 10%; 5 - four respondents or 10%; 6 - nine respondents or 22.5%; 7 - nine respondents or 22.5%; 8 - five respondents or 12.5%; 9 - two respondents or 5%; 10 – three respondents or 7.5%. Average assessment of satisfaction with the service provided by the court was 6.2.

Bijelo Polje: In the questionnaire participated 19 respondents, 13 or 68.42% were males, and 6 or 31.58% were females. Respondents were between 19 and 64 years old. Out of the overall number of respondents, seven or 36.84% responded said they were in the court for the first time, while 12 or 63.15% of them said they had already been in courts. 94.73% of respondents said they easily found the building of the court, and only one respondent or 5.26% responded they did not. When asked: "Are you satisfied with court access (parking, etc.)?", 13 respondents or 68.42% said they were, and six respondents or 31.58% they were not. Orientation within the court was easy for nine respondents or 47.36%, and ten or 52.63% respondents failed to orient within the court. Twelve respondents or 63.15% said that the offices and premises at the court for verification of documents and provision of other service were clearly marked, while seven respondents or 36.84% responded that they were not. Number of 17 or 89.47% respondents said they easily noted officers with ID cards, while the remaining two respondents or 10.52% claimed that officials had not been noticeable in court.
When asked: "Are the officers of the court kind and communicative? Did they provide expected answers, advices and guidance?", 17 respondents or 89.47% answered "yes", while the remaining two respondents or 10.52% answered "no". The reason for visiting the court, 16 or 84.21% respondents said it was due to the trial, two respondents or 10.52% said it was due to the service providing, and one respondent did not answer. General satisfaction with the provision of services while visiting the court, respondents assessed with (ratings from 1 to 10): 5 - one respondent or 5.26%; 7 - one respondent or 5.26%; 8 - one respondent or 5.26%; 9 - four respondents or 21.05%; 10 - nine respondents or 47.36%; and one respondent did not answer. Average assessment of the service provided by the court was 8.5.

XII MANAGEMENT OF COURTS AND PROBLEMS IN FUNCTIONING OF COURTS

1. Summary review of standpoints of judicial management after the conversation with heads of courts covered by the project

It is obvious that, in addition court functions, another no less important discipline appears in the system of judicial power, and that is running the court. This process should be separated from the typical managing of court proceedings, which are just partly dependent on the ability of the court management to provide organizational presumptions that court proceedings are conducted smoothly, and citizens as users of court services receive them at the highest level. Besides the Law on Courts, the system of court administration, manner of organization of work and procedures within the courts are prescribed by the Court Rulebook. This act largely defines the role of the head of courts as the most essential, and the most responsible in the system of functioning of court administration.

Capacities of court management are not only a mere formalization of procedures and making solid administrative decisions. Lately, Presidents of the courts are required to have specific knowledge and more appropriate level of inventiveness until the prescribed measures, and to adapt proceedings in the best possible way to the situation in the court. In response to this research through the project, such elements are almost not recognized in the work of Presidents of courts. For that reason, in the analysis of the situation was presented the review of some key conclusions from interviews with the heads of courts who largely condition the functioning of courts and the work of judges individually. Now, it should be said that conversations were very open, all questions were fully discussed, and the conclusions made were focused on improving of all components directed towards the functioning of courts to the maximal possible extent. From the findings arises that certain measures cannot be implemented only within the judicial power, and in this regard, this material should be understood as an invitation to action aimed at tackling of one of the most sensitive areas of the country's action, because everyone expects the justice.

Investments in information technologies are definitely seen everywhere. Thus, nowadays, Internet can be seen as the very important source of information, particularly in those courts such as Basic court in Podgorica, or Administrative court, where, except the relevant information related to the work of these courts can be found other information important for parties, but also for the professional and laic public in general.

After visiting courts in Podgorica, Bijelo Polje and Kotor we were convinced that the progress has been made in those segments on which indicated previous analysis (orientation in the court, bulletin boards, monitors with information about trials, identification of officer at the court, optimization of the space where parties are placed), but all this is not enough to erase the impression about the largest part of rooms with poor conditions. Thus, statements in the polls for judges in which this problem is not recognized, sometimes really sound strange. One of the examples of good practice in organization and infrastructure, as the last time, we met in the Administrative court. In contrast, we appreciate not only as the practical issue, but as an issue of national dignity, the problem of accommodation of institutions of Constitutional court and Supreme court of Montenegro, which, do not have their own buildings like similar institutions

worldwide, nor the current buildings are at the required level. In this sense, problem of accommodation and arrangement of Higher courts is no less, especially departments that are responsible for dealing with cases in the field of terrorism and organized crime.

Capacities of the library and availability of professional literature is not systematically solved and it really relies on the enthusiasm of individual presidents of courts and judges individually, which is unacceptable. So, we had the opportunity to see quite well equipped library, at Basic court in Kotor. This will have special repercussions on harmonization of judicial practice and innovating knowledge in new areas (for example, international public and private law), which have not significantly affected court proceedings on the merits until nowadays, because there was no basis for this, or simply there was no implementation in the internal rules.

Matter of security of courts and judges is another area which needs special attention, especially when it concerns to access and interior arrangement of court facilities. In one of the conversations, again was initiated the idea about establishing of the judicial police, whose alternative cannot be the court guard, which is now the case.

Problem of lack of respect of courts and judges necessarily produces the conclusion that in the general erosion of morals and universal values has lost “awe” in the positive sense of the word, which enjoy all the courts in modern democratic countries. On the other hand, all actors outside the courts have the capacity and freedom to make continuous pressure before making a decision on the merits, and at least 50% of the participants in the process are always unsatisfied. Judges do not have that option - their limit is presumption of innocence and impartiality in the proceedings. Not denying the possibility of making illegal decisions, courts emphasize they are controlled in appealing proceedings, and in the final form, inspection is performed by the relevant international bodies and organizations. It is indicative that only one decision changes the image of the judiciary in general, which suggests the conclusion that courts and judges are under constant tension of public and must endure the pressure as any other man alive. Media pressures for information about the work of courts are somehow obstructions, but the “hunger” of the media for information has to be respected by appropriate response from the judicial authorities, which must comply with the need for its own service or a person for the public relation. To make this process flow in both ways, it is important to determine the continuous forms of cooperation of courts and media, not only through the typical training, but also through regular communication and the one that cannot harm the court proceedings and the rights of parties. This means that the courts cannot only hold the Rulebook provisions on minimum of contacts with the public, but to react always when objective circumstances and the interests of the public (and the media) require.

Besides direct contacts through qualified attorneys, parties often communicate with courts directly, and on that occasion is noticed a good deal of ignorance of the essence of the trial and the role of court. Recently published documents of the Association of Judges of Montenegro, which in a popular manner provide basic information about the organization of courts and proceedings, should animate the laic part of the public and be an example of the manner of learning the essence of justice.

Relations of other public bodies with the courts often are not at the satisfactory level and therefore, special measures should be taken to overcome this problem. Besides passive obstruction in proceedings after orders of the court (particularly worries in one part passive attitude of the police), some public bodies do not find it necessary either to intervene at an early stage of the proceeding or during the administrative proceedings (administrative silence), which often unnecessarily engages the entire judicial apparatus.

Hyper-production of laws and often novelties impose additional efforts of holders of judicial functions, and besides duties, most of the time they usually study new regulations and training for their implementation. The largest number of judges is only "final users" and they usually inform about the laws in the final stage, or even after the law comes into force. This is not the case for the adoption of important systemic laws, when public discussions are organized, but it is practically impossible to manage to involve all judges that are due to implement such regulation, in the process. Just to remind, that the consistency of rights and stability of the legal system are one of the foundations of the rule of law. For that reason, special attention should be devoted to education of judges, sometimes in a manner by which the education will take place in their close environment (in their court), as longer leave and travel can sometimes be counter-productive with regard to the caseload of those who are sent to such forms of professional qualification. In addition, trainings are organized in informal ambient, which sometimes causes a chaotic situation, when judges should respond every time to some form of training or education. In this regard, key role of the Center for Education of Holders of Judicial Functions (hopefully future Judicial Academy) has to be specified, by which would be carried out very important coordination and control of all aspects of training of judges.

The problem of undertaking special measures on regulating rules and procedures of expertise, or their licensing and evaluation of work is also an important resource of trial. In a number of delivered answers this was emphasized as one of the most important problems, especially in areas where there is evident lack of certain professions. In some cases is also stressed a kind of process lack of discipline, for which suffer both courts and parties. During the recent research and interviews conducted by the NGO Civic Alliance, such statement is more or less confirmed.
Although the topic itself is emphasized in almost all reports on work of the judiciary, it is useful to emphasize once again specific problem of delivery in the country which has slightly more than 625,000 inhabitants. This, of course, imposes the question about the promptness of data on registration of accommodation and residence, regardless of whether it was spurred or not, represents serious problem in Montenegro.

In the current conditions, when it comes to reform of the court network, appeal for strengthening the staff structure at the level of cooperators in court institutions it sounds inappropriately. This cannot be said for the institution of the Constitutional court, which has to be strengthened to a level that allows smooth functioning and accuracy of one of the most important, if not the most important institutions in the country. Regardless of the frequent negative reactions on the work of this institution, its dignity has to be preserved, and its references would be very easy controlled through decisions of international courts, which has somehow already been done in some cases of the European Court of Human Rights. Strengthening of this institution will largely ignore already exaggerated expectations of international courts, where the road to justice in these courts is often too long, and expected results even more negative (only about 5% of cases pass so called filter of permissibility). It can be concluded that, in relation to the number of pending cases and further upward trend of cases in 2012, number of employees, particularly professional staff,

does not correspond to the real needs of the court and that it deviates from the standard in professional services of other Constitutional courts. According to these standards, every judge of the Constitutional court should have at least two councilors, who deal only with the constitutional and court cases, which should be increased, in comparison to the current seven, by the same amount. Number of employees at the professional service has been slightly increased. Only 19 job positions have been fulfilled out of 39 envisaged by the Rulebook on organization and systematization of the Service of Constitutional court. Besides, this institution does not face with the problem of financial independence.

Similar problem figures in other courts in Montenegro, therefore long announced analysis of the network of courts has to deal with this issue.

XIII CONCLUSIONS AND RECOMMENDATIONS

Material conditions where judiciary in general operates, and especially courts, still result in difficulties in the access to courts. Still, only rented object of the Administrative court, partly fulfills spatial and technical conditions that would satisfy important standards of court proceeding, while others violate exercise of right to fair trial. Existing urbanistic locations of court objects make special security problem and the problem of architectonic barriers in the access to court. Situation has to pass through the system analysis and the problem has to be recognized jointly with the defining of priorities in resolving.

Capacities of court libraries are still very poor, and abandoned to enthusiasm of judges who have to provide professional literature on their own, while there are no words about appropriate space for the library and the care on bibliographic fund. Judiciary as a whole, and the courts especially, should have appropriate logistical support that would be related to provision of professional literature and creation of data base with the key bibliography material.
Previous problem related to boards with information and identification cards of court officers, citizens found as smaller and it seems that it was done more in this area, and in terms of some general information about the work of courts or transparency of proceedings within court objects and trials. In order to continue this positive trend, it is important to provide adequate access to all courts, and in particularly to continue providing elementary information about the work of courts, through other forms of informing.

The websites of the courts at different levels of equipment offer a large number of so far inaccessible information, and in this part should be stimulated further development of the IT sector in the judiciary, in order to get an equal and uniformed system of communication through the Internet.

Now, there is no dilemma that the judiciary continuously records positive results in resolving the backlog of cases and in the domain of quality remain serious problems in a number of courts. However, the reasons of less expressed quality is impossible to find without a proper analysis of revoking reasons and restructuring of reports regarding court statistics, as it has been done in some countries in the region, which clearly requires financial and human resources. In addition, it is evident that in some courts, primarily due to the complexity of proceedings and unresolved systemic problems (property registers, disputes with a foreign element, and a continuous inflow and disputes from the domain of so called non- court cases) is higher pressure than on other courts at the same hierarchical level. Due to the abve mentioned, it is important to analyze and update the court statistics, strengthen the segment by information support and coordinate the work on statistical researches in various sectors (for example, official court statistics servicing the needs of international cooperation and international obligations towards treaty bodies such as the Committee for the Prevention of Torture, the European Commission Against Racism and Intolerance, and similar).
Management in general and particularly financial management proved as very important in creating and presenting needs, even in the field of accounting controls. In this sense, the initial steps should be strengthened by creating strong managing basis for planning and programming, and the control of costs of the court budget, with no less importance and increasing the level of management skills of heads of courts (hereinafter would be additionally explained the need to strengthen the management capacities of the judiciary).

The focus of the stronger support should be given to stronger logistical support to hierarchically lower

courts that come into direct contact with various and numerous participants in the proceedings (parties, witnesses, experts, attorneys, interpreters, etc.), where, in some way, occurs a battle for the timely and efficient justice process. At the same time, courts of higher instance, which practically achieved annual promptness, some of them even more, should be appraised. Some of them practically resolved almost all cases.

Relations between courts and media should be built on grounds of mutual respect and trust. For now, this is not the case. In addition, courts have to restore its own reputation and position in society which is not only the duty of the judiciary.

Rationalization of the court network has to be based on a number of indicators and has to reflect not only solid financial interest, but also the interests of justice. There is no unimportant element in this process - geographic distribution, demographics, road infrastructure, caseload of courts, reform of so called non-court proceedings, reform of judiciary in general, financial sustainability, maintenance of quality and efficiency, logistics of trial, etc.

A serious duty is in finding an appropriate balance between the caseload of judges, their free time, education and knowledge innovation, because sometimes comes into question their psychological and physical ability to achieve effects on all issues, especially if it is taken into account their material position and financial status. Simply by imposing standards without proper analysis of results brings into question the existing system of valuation of work.

Management of the judiciary has to include a number of components: financial management, planning and programming, communication strategy for work with clients, managing court administration, relations with the media, responsibility for the smooth processes at court, etc. The system of internal controls should not the aim for itself, but an efficient instrument which in the finale provides optimal work of courts, the fulfillment of obligations prescribed by the Constitution and the law, and at the end directed towards an efficient, timely and effective justice.

At the level of associating, through its association and other institutions, a judge has to strengthen its position in the field of designing various measures - legislative, administrative and judicial, which would affect the stabilization of the rule of law and the preservation of all its elements.
Transparency of proceedings provide one of the fundamental principles of the rule of law, and that is mutual control and balance of different types of powers and responsible governing implemented by the judiciary through independent and impartial court. Transparency has to be seen as a relief, and not forced control, because publicity of judicial institutions strengthens the confidence in courts and the country in general. However, the price of requirements for transparency cannot be the pressure on objectivity of court and its decision making process, and there is where lies a necessary balance between the rights of judges and courts and the media requirements.

Resources of courts are based on the objective possibilities of the country. In order to preserve resources, it is important to invest in them, and one of the tasks of rationalization of the court network has to be the capacity of managing as a whole, and not only financial component. This also means that the rationalization of the court network cannot perform in a way which will cause the suffering of the party

in proceeding, because the courts, in addition to the role of guardians of order, focus on easy access to justice and rationalization of proceeding for parties, not only for the state.

Support to the work of courts and judges at the same time means the support to determine responsibility. It has to be followed by open and clear positioning of judges in relation to their own responsibility for timely and prompt justice. In this respect, ethical responsibility of judges has to be encouraged and principles of the Code of Professional Ethics for Judges applied.
In relation to the total number of cases in work of all courts in Montenegro, and comparing these data with the statistics in the field of mediation and arbitration, seems that these institutes as a form of alternative resolving of disputes have not been used sufficiently. Therefore, it should be insisted on implementation of these institutes, including the further legislative encouragement (for example, before involving in dispute with the public bodies, mediation should be proclaimed as obligatory, as it was done in some countries in the region).

Continuously reported number of cases where abolition of decisions was noticed in larger number, has to be the subject of special analysis, and after its results should be undertaken legislative, administrative and operational measures for overcoming the problems expressed. On that occasion, special attention has to be devoted to the movement of cases in different stages of the proceeding in order to obtain a unique picture on the quality of adjudication.

Through the education of staff in judiciary, criteria established by law should be clearly profiled, and should be insisted on legal skills in the application of regulations, or law in general. Courts generally have to be referred to the essence of a trial and the outcomes that should primarily be devoted to the resolution of the dispute on the merits.