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MONITORING REPORT

ON THE STATE OF JUDICIARY IN SERBIA 2020

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BASELINE REPORT ON THE MONITORING CYCLE FOR 2020

Authors: Dušan Protić, Katarina Grga

Belgrade, 2021.

INTRODUCTION

The rule of law presents the central topic of the several judicial reform cycles in Serbia, the process that has been almost continuous in the last two decades, with several stages that have been marked by significant legislative, personnel and institutional changes. In the recent period, the issue of the rule of law has become particularly important as one of the principal political criteria in the process of accession to the European Union. Among other things, achieving of this principle requires independent judiciary, consistent application of the law, exclusion of illicit influence on the work of judicial bodies, as well as the series of elements that are mandatory and essential for functioning of the independent judiciary in practice.

Observing of the entire judicial system, and in so called strategic approach to the problem, which is specifically used to create planning documents of the public bodies competent for implementation of the reform and generally for monitoring of the work of judicial bodies and evaluation of the progress in respect of the indicators in those documents, often lead to overlooking of the perspective of an individual and/or the citizens. An individual expects that access to court, means access to justice, as stated by Aristotle more than twenty-three centuries ago, but the position of an individual in court proceedings, the obstacles they face in accessing court in order to exercise or protect their rights, are not always in the focus of public policies in the judiciary. In order to establish a relationship of trust between the citizens and the judiciary as a whole, it is necessary to remove the feeling of legal uncertainty and strengthen the belief that the courts protect the rights and freedoms of the citizens, stop political power and arbitrariness, and concretize the principles of the rule of law through their actions and decisions in each situation.

The Report on the monitoring of the situation in judiciary is an attempt to review all the key matters and issues faced by the citizens in accessing the justice and opportunities to improve the situation in judiciary, in order make the path to justice more efficient, reliable and certain. A broad coalition of civil society organizations, gathered in order to implement this task, has taken on the complex challenge of objective and realistic understanding of the current situation from the perspective of the individual on that path. They have used a specific methodology to provide own evaluation of the access to justice standards in the relevant categories, and to facilitate the dialogue with the key public stakeholders in this area, in an effort to build a modern, efficient, and independent judiciary.

THE SUBJECT AND PURPOSE OF THE REPORT

The subject of this Report is the analysis of the situation in Serbian judiciary, according to the current legal framework, in the given institutional environment and real circumstances that have significant effect on the exercise and protection of citizens' rights in court proceedings, and other rights and interests of citizens within the judicial system, including judicial services. The Report should fill the existing gap in terms of an independent evidence and facts based mechanism for monitoring the progress of a judicial reform. We should keep in mind that the existing institutional mechanisms for assessing of the results and monitoring of progress in judicial reform do not sufficiently reflect the complexity of problems at the level of individual cases and situations faced by the citizens when facing the court or prosecutor's office. This requires supplementary analytical tolls in form of additional quantitative and qualitative evaluation. In addition, in the current analytical practice of civil society organizations, a fragmentary approach prevails, which is used to process certain narrow thematic units of importance for access to justice or protection of rights, while this Report represents the first attempt to cover the entire judicial system.

The purpose of this Report is to serve as an independent mechanism for monitoring the progress in judicial reforms from the point of view of the citizens and the real conditions for their access to justice. Itprovides an objective assessment of the situation and recommendations for improvement, based on the facts and independent experts' assessments, and pursuant to specifically developed methodology. The Report is both additional and complementary to the stated institutional monitoring and reporting mechanisms, such as the reports on the implementation of the Action Plan for Chapter 23[1], which is prepared and generated within the process of negotiations for the accession to the European Union, and the regular report on the work of courts and prosecutors' offices, based on the official statistics of the courts and public prosecutor's offices[2]. The purpose of the Report is not to look at the entire judicial system from a "bird's eye perspective" and provide the assessments according to the official data on the work of judicial bodies, as do public institutions competent for formulation of public policies in the field of judiciary. Its purpose is to provide more "down to earth" review of the discourse of the individuals who need to access a court in order to protect their rights. Having in mind this approach, this is a unique methodology, which has been specially developed for the purposes of this Report, and which breaks down this individual's discourse into objective criteria, defined through indicators and standards, and presented in seven key areas.

The data collected and presented in the monitoring reports will serve to define the proposals of the civil society in the current and upcoming processes of formulating of public policies in the field of justice that support the needs of citizens. Continuous monitoring of judicial reform by civil society organizations, which relies primarily on the perception of system beneficiaries, professionals and the general public, is important from the aspect of strengthening the participation and inclusiveness of the process of monitoring of the judicial reform. The ultimate goal of the monitoring and reporting process presented here is to contribute to a better understanding of the results of the judicial reform process so far and to point out possible improvements and directions of future strategic activities in the field of judicial reform.

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[1] Report on implementation of the Action Plan for Chapter 23 on the Internet page of the Ministry of Justice, https://www.mpravde.gov.rs/tekst/2986/pregovori-sa-eu.php

[2] Annual Report on the Work of Courts in the Republic of Serbia are available on the Internet page of the Supreme Court of Cassation, https://www.vk.sud.rs/sr-lat/publikacija-izve%C5%A1taj-o-radu-sudova, and the annual report "Work of Public Prosecutors' offices on prevention of Criminality and Protection of Constitutionality and Legality", on the page of the State Public Prosecutor's Office, http://www.rjt.gov.rs/sr/informacije-o-radu

NETWORK OF THE CIVIL SOCIETY ORGANIZATIONS

The implementation of research, data collection and processing for the purposes of this Report has been conducted by the network of civil society organizations that have already proven themselves in various activities related to citizens' access to justice and other issues in the field of justice, as well as their integrity, capacity and research experience. The network of civil society organizations, that has prepared and is presenting this Report, consists of:

1. Lawyers' Committee for Human Rights (YUCOM);
2. European Policy Centre (CEP);
3. Association of Public Prosecutors and Deputy Public Prosecutors in Serbia;
4. The Network of the Committee for Human Rights in Serbia (CHRIS Network);
5. Judges' Association of Serbia;
6. Transparency Serbia;
7. Belgrade Centre for Security Policy (BCSP);
8. Partners for Democratic Change Serbia (Partners Serbia);
9. Belgrade Centre for Human Rights (BCHR),
10. Judicial Research Center (CEPRIS);
11. National Parliament Leskovac;
12. Forum of Judges of Serbia.

European Policy Centre (CEP) is the leading organization for the component of the development of the methodology for monitoring and reporting coordination of collations of the analytics contributions and consolidation of the Report.

RESEARCH METHODOLOGY

For the purposes of monitoring and reporting on the situation in the judiciary in the Republic of Serbia by civil society organizations, a special methodology has been developed, based on which the situation has been analysed and evaluated in relation to objectified criteria, defined as the standards, classified into seven key areas, with indicators and sub-indicators in each of those areas. Each sub-indicator contains standards, as objectified statements that have been examined through the conducted research, and which were the subject of fulfilment assessment. The purpose of monitoring is to continuously monitor access to justice in these areas through the analysis of the legal framework and implementation in practice, which includes satisfaction of the citizens as system beneficiaries. Through specially defined indicators for each of these areas, the monitoring methodology includes the following dimensions and approaches to data collection:

- compliance with specific legal standards in the regulations (quality analysis of the existing legal framework);
- application of relevant regulations (analysis of collected information of public importance, court statistics, etc.);
- satisfaction of system beneficiaries (citizens) with the quality of services provided by judicial institutions (research of the opinions of system beneficiaries, focus groups, feedback obtained during the meetings called *Open Doors of Judiciary*).

The subject of the research has been divided into seven key areas, which have been thematically defined to cover all important aspects of judicial reform in the Republic of Serbia from the perspective of citizens' access to justice: *legal aid, access to data and transparency of courts and prosecutor's offices, access to courts, judicial efficiency, ethics in the judiciary, access to justice in criminal proceedings* and *access to judicial services.*

The research methodology is, therefore, focused on the aspects of the judicial reform that are directly related to the system

beneficiaries - such as the attitude of judges and judicial bodies towards the citizens, or the availability of information for citizens in the court proceedings. At the same time, it does not deal with the so-called internal reform factors, e.g. internal reorganization, restructuring of institutions, allocation of competencies, strengthening the independence of the judiciary in relation to the executive branch of government, etc. On the other hand, certain internal technical and organizational issues have been taken into account, to the extent that they significantly affect the ability of the system beneficiaries to access justice.

Within each key area, one or more *indicators* have been defined, and they reflect the situation in the given areas of the judicial reform. Depending on its complexity, each indicator is presented through several sub-indicators, which are then broken down into a set of elements that the methodology recognizes as standards or prerequisites that must be fulfilled, in part or in full, in order for the value of the corresponding sub-indicator for which the standards were defined, to be at a satisfactory level. These standards were defined by the partner civil society organizations on the project, based on their expertise and analytical and practical experience in the field of judicial reform in Serbia, as well as based on the available studies and research and international standards in the field of justice[3]. The methodology places structured and thematical standards within sub-indicators, as the basis for measuring of the progress of the judicial reform, which have predefined methods for measuring and calculation of the values.

Each indicator tends to provide balanced overview of the legal framework in these areas and implementation, i.e. functioning of relevant standards and guarantees in practice. Therefore, at least one, and if necessary more sub-indicators within each indicator, refer to the adequacy of the legal framework in the area to which the indicator refers (normative sub-indicators), and at least one, and if necessary more sub-indicators within each indicator refer to the practical application of the legal framework and standards. The analysis, i.e. the method of calculation of normative sub-indicators, is related to key issues identified in advance, and analysed in relation to a set of relevant legal documents (the so-called *basket of regulations*), as a source of verification. Sub-indicators related to the application of the normative framework in practice primarily rely on research activities conducted within the project itself, such as research on the perception of the work of a judicial institution by the system beneficiaries, i.e. efficiency of access to justice in those areas covered by the methodology, information obtained based on the requests for access to information of public importance, thematic discussions within the project (cycle of panels *Open Doors*) and focus groups with system beneficiaries in the towns across Serbia. In addition to these data sources, certain sub-indicators also use relevant court statistics as needed. As stated, for each sub-indicator, the methodology lists the sources of verification and the approach in value analysis and calculation.

The method for measuring and evaluation of the standards is set out in a special methodological document for evaluating of the standards (the so-called *scoring system*), which determines the method of measurement, source of verification, maximum value of standard evaluation and calculation method for each individual standard. Based on the findings and the conducted research, according to the defined sources of verification and methods of measuring, the determination of the value of individual standards has been carried out, as well as the explanation of the assigned value of the standard. The highest value of an individual standard is 1, for important and basic requirements, or 0.5 point, for additional and less crucial requirements, as well as for public perceptions. If the standard is assessed as met, then the assigned value of points is equal to the highest value (1 or 0.5). For the standard where the highest value is 1 point, if it is partially fulfilled, value of 0.5 point is assigned, and if it is not fulfilled, a value of 0 points is assigned. For standards for which the highest value is 0.5 point, a value of 0.5 is assigned if it is fulfilled or 0 points if it is not fulfilled. For each individual standard, a scale is determined in advance based on which the assessment of fulfillment and evaluation of points is performed, in the scoring system. Based on the scoring of individual standards, the value of the assessment at the level of sub-indicators and indicators was derived for each key area.

[3] Primarily, the standards of judicial independence and impartiality arising from the documents of the Council of Europe and the practice of the European Court for Human Rights

The monitoring was conducted in the period from May to December 2020, and it included in the field research, data collection based on requests for access to information of public importance, public opinion polls, focus groups and other research activities. The findings from the research include the latest available data on the work of judicial bodies at the time of the research, i.e. they mostly refer to 2018 and/or 2019, depending on the availability of data for individual segments of the reporting. Within the standards that do not refer to specific data on work, but to an unspecified period or practice, at least two years preceding the year in which the monitoring began have been taken into account.

This Report is a *baseline report* in the current cycle of monitoring of the situation in the judiciary, and in the following cycles, the progress will be measured in relation to these baseline values, using the same methodology. In addition, it should be borne in mind that this Report is a result of a completely new pilot for monitoring of the situation in the judiciary, which has been developed and improved during the implementation of monitoring activities, in this and the upcoming cycles. The next cycle should be implemented in the second half of 2021. Subsequent cycles will be conducted periodically, in line with the capacities of civil society organizations, in order to continuously and objectively monitor progress in various areas of the judicial reform.

LIMITATIONS AND CONDITIONINGS

The methodology for monitoring of the situation in the judiciary, which was applied during collection of data, as well as for the purpose of presenting of the assessments and findings, is original and specially developed for the needs of this monitoring mechanism. Analytical projects of civil society organizations that have been implemented so far in the field of justice were characterized by sectoral or problem related approaches, and the mechanism defined for the purposes of this and upcoming monitoring reports has an integrated approach to the judicial system as a whole. At the same time, this mechanism builds a platform for cooperation between a broad coalition of civil society organizations, gathered around a common goal of improving access to justice for the citizens of Serbia. Therefore, the first cycle of implementation of the mechanism, the result of which is this Report, is also the pilot program for the methodology of the mechanism, especially in terms of data collection methods, verification sources and methods for calculation of the assessment values for individual standards. Therefore, the possibility of the need for additional harmonization of the methodology is not excluded, based on the experience gained from this Report, and in accordance with the laws relevant for this subject matter. The research-analytical process has shown that in certain cases, the initially selected methodological approaches for measuring of certain standards were unfeasible in practice or did not provide sufficiently objective overview, and these individual cases will be further analysed in the next cycle.

As previously mentioned, the thematic framework of the research is adapted to a "civic-centric" approach, and does not cover all the aspects of the functioning of the judicial system, but only those identified as the most important ones for the access to justice by the individuals and monitoring possibilities for the civil society.

The monitoring approach makes the most of the knowledge and expertise of the civil sector, and relies on civil society as the main source of information. The limitations faced by this mechanism are primarily related to the capacities of the organizations participating in this complex and extensive endeavor, as well as to the issues of access to data that are relevant for the assessment of certain standards. In addition, certain standards, by their nature and content, are the subject to qualitative assessments by experts, judges, prosecutors and attorneys, and the independent experts from partner civil society organizations that implement the mechanism. The quality of the data is impacted by the structure and content of the official records in the judiciary, which usually do not meet the needs of the approach implemented in this mechanism.

Significant limitations were also set by the circumstances in which the research activities

were carried out, due to the unforeseen outbreak of the COVID-19 pandemic, which significantly affected the work of judicial bodies in Serbia, and affected the data on their work in 2020. The COVID -19 pandemic also had a negative impact on the work dynamics and capacities of the partner organizations, which led to certain delays in the analytical process.

This Report is a synthesis of a research conducted by partner organizations from the mentioned network of civil society organizations that implement the mechanism. The contributions that were purposefully collected by the partner organizations in the network were taken as sources of verification for the data, findings and assessments in this Report, including individual researches and analyses done by these and other organizations that were available at the time of the monitoring. Local civil society organizations also took part in some research activities, based on a special small grant scheme.

Details of individual analyses, summarized in the text of this Report, can be found in specially prepared contributions from partner organizations. Each organization is independently responsible for the assessments, accuracy of data, findings and sources used for the attachments to the Report, in the areas in which they conducted the activities, as well as for personal opinions, conclusions and views arising from these materials.

ABOUT THE PROJECT

The activities of monitoring, analysis and development of this report have been performed within the project "Open Doors for Judiciary", supported by the United States Agency for International Development (USAID) in Serbia[4] . General goal of the project is strengthening of citizens' trust in the work of judicial institutions in the Republic of Serbia, through improvement of the communication mechanisms between the citizens and the judiciary. This general goal of the project has been implemented through tree components:

1. establishing of the communication channels between the citizens and the judiciary in order to increase understanding of the citizens' rights and obligations and the role of the judiciary;
2. discovering the citizens' priorities in respect of the judicial reform through strengthening of the supervision of the civil society;
3. improvement of the judicial integrity through the mechanisms that have impact on establishing of the responsible judiciary.

The project has been implemented by the above-referred network of twelve civil society organizations led by the Lawyers' Committee for Human Rights (YUCOM).

[4] *Constituencies for Judicial Reform in Serbia*

THANK YOU NOTES

The Report on the monitoring is a result of the work of a great number of researches and other associates, within the network of the civil society organizations gathered on the project "Open Doors for Judiciary", which collected and processed the data and prepared the individual contributions for the Report. This includes the findings and evaluations summarized and systemized based on the standards, indicators and key areas in the Report. The research team that worked on the preparation and development of the Report includes: Milena Vasić, *attorney*, Natalija Šolić, *attorney*, Katarina Golubović, PhD, *attorney*, Katarina Toskić, *legal advisor*, Milan Filipović, *legal advisor*, Velimir Petrović, *project coordinator*, Momčilo Zivadinović, *project manager* (Lawyers' Committee for Human Rights); Dušan Protić, *program manager*, Katarina Grga, *researcher*, Milena Lazarević, *program director*, Jelena Miletić, *associate* (European Policy Centre); Marina Matić Bosković, PhD, *president of the program council*, Jelena Kostić, PhD, *associate* (Association of Public Prosecutors and Deputy Public Prosecutors in Serbia); Marko Dejanović, *head of the office*, Darko Mlinar, *legal associate*, Nađa Mićić, *associate* (Judges' Association of Serbia); Nemanja Nenadić, *program director*, Robert Sepi, *legal advisor* (Transparency Serbia); Jelena Pejić Nikić, *researcher*, (Belgrade Centre for Human Rights); Damjan Mileusnić, *junior researcher and lawyer*, Ana Toskić Cvetinović, *executive researcher*, Nastasija Stojanović, *project and administrative coordinator*, Kristina Kalajdžić, *researcher*, Darija Stjepić, *student*, Miloš Marković, *student*, Ilija Zivković, *student* (Partners for Democratic Change Serbia); Goran Sandić, *associate*, Dusan Pokuševski, *program coordinator* (Belgrade Centre for Human Rights); Sofija Mandić, *legal advisor* (Judicial Research Center); Snežana Marjanović, *judge at the High Court in Belgrade*, Nebojša Đuričić, *judge at the High Court in Belgrade*, Aleksandra Lozić, *lawyer*, Milica Jovanović, lawyer, Dejan Petković, *attorney* (Forum of Judges of Serbia).

We would like to thank Milena Lazarevic, program director of European Policy Centre (CEP) and Jelena Miletić, associate at CEO for coordination of the preparation and implementation of the research methodology. Jovana Knežević, project manager at CEP provided special contribution during organization and implementation of the panned activities.

We would particularly like to thank the courts, public prosecutor's offices, as well as other judicial bodies and professions, public administration bodies, independent supervisory bodies, units of local self–government and other bodies that have provided required data and documents in accordance with the inquires and requests for free access to information of public importance submitted by the members of the research team.

Finally, we would like to express our gratitude for the support of the United States Agency for the International development (USAID) and their representatives in Serbia in implementation of the project without which such form of cooperation between the civil society organizations or this Report could not be possible.

REPORT STRUCTURE

The Report has been divided into chapters that contain findings and assessments for certain key areas, where the findings for research indicators in the relevant area are presented. Each of the presented areas contain an assessment of compliance with the established standards, according to the indicators and sub-indicators in that area, given in numerical terms based on the criteria for assessing compliance with the standards according to the above methodology, with a narrative description of the situation, and based on research and contributions done by the partners from the network of civil society organizations that conducted analytical activities in certain areas. In addition to the assessment of the situation, a short concluding assessment at the level of indicators has been presented, as well as recommendations for the improvement of the situation, which have been defined based on the given findings.

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KEY AREA I: LEGAL AID

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1. The law clearly regulates what free legal aid includes	1/1
2. The law clearly defines the providers of free legal aid	0/0.5
3. The law clearly defines beneficiaries of free legal aid and conditions for its approval	0.5/1
4. The law sets justified limitations in provision of free legal aid	0/0.5
5. The law enables clear and fair decision making on the request for provision of free legal aid	0/0.5
6. The law enables efficient legal remedy in case of refusal of the request for provision of free legal aid	0/0.5
7. Legal framework that regulates position of legal profession defines the standards for provision of legal aid	0.5/0.5
8. Legal framework that regulates position of legal profession envisions clear and fair procedure for reexamining of the attorneys' actions during provision of free legal aid	0/1
9. The law that regulates the litigation procedure enables appointing of legal representative free of charge and fair procedure for deciding on his/her appointment	0/0.5
10. The law that regulates the criminal procedure envisions mandatory defense and defense of the poor, and the conditions for their appointment meet the interest of fairness in the procedure	0.5/0.5
11. The law that regulates the position of minors in the criminal procedure envisions mandatory representation of the damaged and accused minors, and the conditions for provision of representation meet the interest of fairness in the procedure	0/0.5
12. The law that regulates the position of minors in the criminal procedure envisions mandatory acquiring of special knowledge of the representatives of minors in the criminal procedure	0.5/0.5
13. Legal framework that regulates the work of the attorneys guarantees that the legal aid will be equally territorially distributed	0/0.5
TOTAL NUMBER OF POINTS	3/8

S1: THE LAW CLEARLY REGULATES WHAT FREE LEGAL AID INCLUDES
[1 POINT]

In accordance with the Constitution, legal aid is provided by legal professionals, as an independent and autonomous service, and by legal aid services established in the units of local self-government, in accordance with the law, and the law determines when this legal aid is free.[5] The concept of free legal aid, the conditions for its provision and the status of a provider, are regulated by the Law on Free Legal Aid (hereinafter: Law on Free Legal Aid)[6]. The term legal aid includes two categories - legal aid, which includes the provision of legal advice, drafting submissions, representation and defense, and legal support through the provision of general legal information, filling out forms, etc. There is a problem here in distinguishing between general legal information and legal advice, which fall into different categories of legal aid. However, since the Law on Free Legal Aid defines the scope of free legal aid in any case, this standard is considered as fulfilled. [1/1 point]

S2: THE LAW CLEARLY DEFINES THE PROVIDERS OF FREE LEGAL AID
[0.5 POINT]

Free legal support may be provided by notaries, intermediaries, law schools and associations, while free legal aid may be provided by attorneys, legal aid services in the units of local self-government and associations based on the provisions of the law governing the right to asylum and non-discrimination. The Law on Free Legal Aid provides a clear list of free legal aid and support providers, but omits certain institutions that provide certain forms of free legal aid in their work, such as local ombudsmen and trade unions, and for that reason, this standard is not fulfilled [0/0.5 point].

S3: THE LAW CLEARLY DEFINES BENEFICIARIES OF FREE LEGAL AID AND CONDITIONS FOR ITS APPROVAL
[1 POINT]

When it comes to the beneficiaries of free legal aid and the conditions under which it can be granted, the Law on Free Legal Aid provides the definition of the circle of beneficiaries, listing, *inter alia*, persons who meet the conditions for social assistance or child allowance, persons who would meet the conditions for receipt of this social assistance due to payment of legal aid, as well as members of vulnerable groups. Among the members of vulnerable groups, the Law on Free Legal Aid includes, among others, persons exercising the right to legal protection against domestic violence, asylum seekers, persons with disabilities, a child whose right, obligation or interest based on the law is decided in court proceedings, another state body, i.e. public authority, etc.[7] However, by tying the exercise of rights to very restrictive conditions for social assistance and child allowance, a significant part of persons in a state of social need remain outside the scope of this Law. It is true that the Civil Procedure Code (hereinafter: Civil Procedure Code) provides for the possibility of exemption from the costs of the proceedings (right of the poor), but by not taking these costs into account when examining the conditions for free legal aid, some citizens will be left without this aid, and without access to justice.

The Law on Free Legal aid is not sufficiently precise in respect of the conditions for the provision of free legal aid, and particularly in respect to the professional qualifications of the persons directly providing aid. As the comprehensibility and clarity of the regulations are a precondition for free access to justice, it is difficult or almost impossible for legal laypersons to have this access. While on the one hand law graduates who have passed the bar exam in a unit of local self-government can provide free legal aid and representation in civil proceedings and administrative disputes, employees with the same qualification in the associations are practically limited from representing in discrimination and asylum disputes. Specifically, law graduates who

[5] Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 67
[6] Law on Free Legal Aid ("Official Gazette of the RS", no. 87/2018)
[7] See the Law on Free Legal Aid, Article 4

have passed the bar exam can only represent the association in court when it is actively legitimized to initiate a dispute (e.g. in accordance with the Law on Prevention of Discrimination[8]), while the citizens, on behalf of the associations, may be represented only in an administrative procedure (e.g. Law on Asylum ad Temporary Protection[9]). When, for example, according to the Law on Asylum, after an administrative procedure, it is necessary to initiate an administrative dispute, the associations must hire an attorney to represent clients before the court. At the same time, the association can provide free legal support (providing general legal information and filling out forms) to a much wider scope than just discrimination and asylum. In addition, there is a collision regarding the conditions for a proxy in the procedure, compared to the procedure previously defined by the Civil Procedure Code.

For this reason, the Law on Free Legal Aid clearly defines the beneficiaries and conditions for granting free legal aid, but by linking these conditions to the right to social assistance, this service remains beyond the reach of the citizens who need it. Therefore, this standard is partially fulfilled. [0.5/1 point]

S4: THE LAW SETS JUSTIFIED LIMITATIONS IN PROVISION OF FREE LEGAL AID
[0.5 POINT]

By restricting the provision of free legal aid, equal access to justice for all the citizens under equal conditions is prevented. However, in some situations, restrictions may be justified, if this would enable redirecting of the limited budget funds to the most vulnerable groups. However, the Law on Free Legal Aid provides for high misdemeanor penalties and prohibits the provision of free legal aid in certain cases[10]. Although the misdemeanor penalty applies only to cases where free legal aid is financed from the budget, violation of the ban is the basis for deletion from the register of providers[11], which is especially problematic for associations that traditionally provide free legal aid in these cases. Additionally, this prohibition applies even to free legal support[12]. The problem arises especially from the item[13] that stipulates that free legal aid is not allowed "in a procedure where it is obvious that the applicant for free legal aid has no chance of success, especially if his/her expectations are not based on the presented facts and evidence or contrary to current regulations, public order or good practice". The existence of a mechanism for the prevention of frivolous disputes can be justified, but the method standardization has led to unintentional inclusion of the situation in which associations lead the so-called strategic disputes that usually have no prospect of success in the country, but only before the European Court for Human Rights. In respect of the types of free legal aid and support that are subject to approval, in order to commit a misdemeanor, it would be necessary for an authorized person in a unit of local self-government to approve the request contrary to the Law, and for the direct provider to perform and provide the service contrary to the Law. Since this may be a case of committing a criminal offense against official duty, the introduction of this misdemeanor may lead to the danger that the criminal proceedings would be suspended due to the application of the *ne bis in idem* principle, i.e. due to the previous termination of the misdemeanor proceedings. For all of the above-explained reasons, the restrictions provided by the Law on Free Legal Aid are not justified and may have negative consequences for the traditional work of the associations and practically reduce access to free legal aid to certain vulnerable groups, especially human rights defenders. Therefore, this standard cannot be considered as fulfilled. [0/0.5 point]

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8 Law on Prohibition of Discrimination ("Official Gazette of the RS", no. 22/2009)
9 Law on Asylum and Temporary Protection ("Official Gazette of the RS", no. 24/2018)
10 *See* the Law on Free Legal Aid, Article 7
11 Law on Free Legal Aid, Article 19 (1) (4)
12 Law on Free Legal Aid, Article 15
13 Law on Free Legal Aid, Article 7 (1) (6)

S5: THE LAW ENABLES CLEAR AND FAIR DECISION MAKING ON THE REQUEST FOR PROVISION OF FREE LEGAL AID
[0.5 POINT]

Deciding on the request for free legal aid must be clear and fair, so that all persons claiming this type of aid can have access to justice under equal conditions. The Law on Free Legal Aid defines the procedure for submission of a request for approval of free legal aid, deadlines for deciding on them, as well as the possibility of filing an appeal to the Ministry of Justice. The Law provides for a general deadline of 8 days, or a special deadline of 3 days, for deciding in case there is a danger of irreparable damage or missing of the deadlines. In case a unit of local self-government does not make a decision on the submitted request, it is considered that the request was rejected. The deadlines for appealing to the Ministry of Justice are 8 and 3 days, respectively. The Rulebook on the layout and detailed contents of the form for the approval of free legal aid[14] defines the template of as many as 9 pages, which may have a negative impact on access to this service, since most of the possible beneficiaries are persons of lower financial status, which entails a lower level of education, and often functional or complete illiteracy. The Law on Free Legal Aid also provides for the possibility of receiving requests for free legal aid verbally with the record of that, as well as electronically, which in practice can facilitate the submission of requests. Therefore, the Law provides for a clear and fair procedure for deciding on a request for free legal aid, but the length of the form can have a dissuasive effect on the access of functionally illiterate people, so this standard cannot be considered as fulfilled. [0/0.5 point]

S6: THE LAW ENABLES EFFICIENT LEGAL REMEDY IN CASE OF REFUSAL OF THE REQUEST FOR PROVISION OF FREE LEGAL AID
[0.5 POINT]

The Constitution of the Republic of Serbia[15] guarantees the right to a legal remedy, and it represents a systemic mechanism for exercising of the rights of citizens in all types of proceedings. The Law on Free Legal Aid prescribes an appeal to the Ministry of Justice as a legal remedy in case of a decision to reject a request for free legal aid, failure to make a decision within the prescribed period (*silence of the administration*), and revocation of the decision on free legal aid.[16] However, such uniformly prescribed deadlines do not take into account all cases that may occur in real life. The uniform deadline of 15 days defined for the Ministry of Justice to decide on an appeal does not allow avoiding the occurrence of irreparable damages or missing the deadlines, in situations where shorter deadlines for decision-making apply, i.e. filing of an appeal within 3 days. In addition, no special remedy is prescribed for the situation in which it is considered that the applicant has given up because he/she failed to not submit additional documentation within the set deadline.[17] If there are legal conditions, the party, in accordance with the Law on General Administrative Procedure, may request *restitution in integrum* or may address the Ministry of Justice with a complaint, for the purpose of supervision the work of a unit of local self-government.[18] Therefore, although the law provides a legal remedy in case of rejection of a request for free legal aid, the effectiveness is diminished by the absence of delays in the procedural deadlines during the decision-making on the request for free legal aid. Therefore, the standard is not fulfilled. [0/0.5 point]

[14] Rulebook on the form and detailed contents of the form for the approval of free legal aid ("Official Gazette of the RS", no. 68/2019)
[15] Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 36
[16] Law on Free Legal Aid, Article 34
[17] Law on Free Legal Aid, Article 32 (5)
[18] *See* the Law on General Administrative Procedure ("Official Gazette of the RS", no. 95/2018 – authentic interpretation), Article 82, Article 209

S7: LEGAL FRAMEWORK THAT REGULATES POSITION OF LEGAL PROFESSION DEFINES THE STANDARDS FOR PROVISION OF LEGAL AID
[0.5 POINT]

The Constitution of the Republic of Serbia defines that legal aid in our country is provided by the attorneys, as an independent and autonomous service, and legal aid services established in the units of local self-government, in accordance with the law, and that the law determines when legal aid is free.[19] The law defines the legal profession as an independent and autonomous service for provision of legal aid to individuals and legal entities.[20] Establishing the duties of the attorneys, the Law on Legal Profession (hereinafter: Law on Legal Profession) sets the standards in the provision of legal aid. It is stipulated that an attorney is obliged to provide legal aid professionally and conscientiously, in accordance with the law, the Statute of the Bar Association and the Attorneys' Code of Professional Ethics.[21] In addition, an attorney is obliged to comply with the principle of the attorney - client confidentiality, and to keep all the files and documents provided by a party as confidential. The Law on Legal Profession regulates in detail the matter of conflict of interest for the attorneys, i.e. situations in which an attorney must refuse to provide legal assistance to a party.[22] The Statute of the Bar Association of Serbia (Statute of the Bar Association)[23] provides more detailed definition of these matters, while the Attorneys' Code of Professional Ethics (Attorneys' Code)[24], as a set of rules on the professional - ethical duties of the attorneys, it regulates in more detail the obligations of the attorneys when providing legal assistance. According to the Code, an attorney is obliged to represent professionally, conscientiously with the knowledge for which he/she has acquired qualifications, follow regulations, legal practice and professional literature, and to renew, improve and expand his/her legal and general education. The conscientiousness of an attorney consists of careful, diligent, decisive and timely representation. An attorney is obliged to point out without delay all the violations of rights and other violations of the law to the detriment of the client, but also to put the client's interests before his/her own interests and the interests of his/her colleagues, other participants in the proceedings and third parties. Representation must not be influenced by political or religious beliefs, nor by national, racial or ethnic affiliation. When informing the client about the legal assessment of the case, assessment of the prospects for success and fulfillment or non-fulfillment of his/her obligations, the attorney should do it completely, openly and honestly, and in his/her professional work, the attorney may use only allowed and honorable means. In doing so, the attorney must not participate in the illicit acquisition of rights, nor refer to the evidence that he/she knows to be false or obtained illegally.[25] In addition to the above specified standards, the Attorneys' Code provides detailed regulation of confidentiality of the relationship between an attorney and a client, the incompatibility of functions with the legal profession, the responsibilities of the attorneys, attorney-client confidentiality, how that confidentiality is implemented and the circumstances when that confidentiality does not apply.[26] The Attorneys' Code further regulates the issues of illicit acquisition of clients, prohibition of advertising, prohibition of unfair competition, prohibition of dishonest or other illicit acquisition of clients.[27] Section B of the same chapter regulates all the issues related to representation. Specific Articles regulate how the attorneys should handle the valuables of the clients and cancellation of the power of attorney.[28] Although the Constitution, the Law on Legal Profession and the Statute of the Bar Association of Serbia provide only general regulation of the standards in provision of free legal aid, these legal acts refer to the observance of the Attorneys' Code of

[19] Constitution of the Republic of Serbia, Article 67
[20] Law on Legal Profession ("Official Gazette of the RS", no. 24/2012 – Decision of the Constitutional Court), Article 2
[21] Law on Legal Profession, Article 15
[22] Law on Legal Profession, Article 18
[23] Statute of the Bar Association of Serbia ("Official Gazette of the RS", no. 86/2013)
[24] Attorneys' Code of Professional Ethics ("Official Gazette of the RS", no. 27/2012)
[25] Attorneys' Code of Ethics, Chapter II
[26] Attorneys' Code of Ethics, Chapter III
[27] Attorneys' Code of Ethics, Chapter IV
[28] *See e.g.* Attorneys' Code of Ethics, Article 25

Professional Ethics, which thoroughly regulates the standards for provision of legal aid by the attorneys. Thus, it can be assessed that these standards are comprehensively regulated by the national legislation. Therefore, the existing legal framework that regulates the position of the legal profession, i.e. the Law on Legal Profession and the Attorneys' Code of Professional Ethics, defines the principles for provision of legal, so the standard can be considered as fulfilled. [0.5/0.5 point]

S8: LEGAL FRAMEWORK THAT REGULATES POSITION OF LEGAL PROFESSION ENVISIONS CLEAR AND FAIR PROCEDURE FOR REEXAMINING OF THE ATTORNEYS' ACTIONS DURING PROVISION OF FREE LEGAL AID [1 POINT]

The Law on Legal Profession provides detailed rules for work of the attorneys - from fulfilling the conditions for practicing of the law, to the rights and obligations of the attorneys, the Bar Association of Serbia and its chambers. The review of the conduct of the attorneys is regulated by the provisions on disciplinary responsibility contained in the Law on Legal Profession and the Statute of the Bar Association of Serbia. The Law on Legal Profession provides general definition of disciplinary liability, disciplinary proceedings and disciplinary bodies of the Bar Association. The Statute of the Bar Association of Serbia elaborates in more detail the procedure of disciplinary liability - from filing of a report to imposing of a disciplinary sanction, and the right of an attorney and a party to a legal remedy.[29] However, the issue that arises in respect of implementation of disciplinary liability is the fact that the disciplinary procedure is initiated by the disciplinary prosecutor of the Bar Association, where relevant attorney or legal trainee is registered. Disciplinary proceedings may be initiated based on an application submitted by an interested person or a state body, based on a proposal by a body of the Bar Association or *ex officio*.[30] Neither the Law nor the Statute oblige the disciplinary prosecutor of the Bar Association to explain the decision on rejection of the request to initiate disciplinary proceedings against an attorney upon a party's report. Thus, in practice, the parties only receive a notice that there are no grounds for disciplinary proceedings against a certain attorney, and the instruction on the available legal remedy. Therefore, due to the non-existence of the obligation of the disciplinary prosecutor of the Bar Association to explain the decision to reject the disciplinary report, this procedure cannot be assessed as clear and fair. For this reason, the standard is not considered as fulfilled. [0/1 point]

S9: THE LAW THAT REGULATES THE LITIGATION PROCEDURE ENABLES APPOINTING OF LEGAL REPRESENTATIVE FREE OF CHARGE AND FAIR PROCEDURE FOR DECIDING ON HIS/HER APPOINTMENT [0.5 POINT]

Another important aspect of access to justice by the citizens is the possibility of exercising the right to a legal representative free of charge under equal conditions. The procedure in which the decision on the award of a free legal representation is made presents the prerequisite for us to be able to determine the fulfillment of this standard. The Civil Procedure Code regulates the party's right to legal representation free of charge, as well as the conditions and procedure of awarding. During the entire proceeding, the court may recognize the party's right to free legal aid when the party is completely exempt from paying the costs of the proceeding, if it is necessary to protect the party's rights, or if it is prescribed by a special law. The deadline for the court to decide on the submitted request is 8 days as of the day of submission of the proposal, i.e. as of filing of an appeal before the second instance court. The deadline for a court to undertake an action regarding the protection of the party's rights starts as of the day of submission of the decision on the party's request for free legal aid. The attorney who will represent free of charge is appointed and dismissed by the president of the court in the order from the list of the attorneys. It should also be emphasized that the provisions that apply to legal representation also apply for legal representation free of charge, unless otherwise provided by law. There is no option

[29] Statute of the Bar Association of Serbia, Chapter 9; See especially Articles 240 and 241
[30] Statute of the Bar Association of Serbia, Article 201

to file an appeal against the court's decision to appoint a legal representative free of charge, and the basic precondition for exercising of this right is prior exemption from court costs.

Exemption from the costs of the court proceeding belongs to a party which, according to their general financial situation, is not able to bear these costs, and that includes exemption from payment of the fee and advance payment for the costs of the witnesses, experts, investigations and court announcements. In addition, it is possible for a court to exempt a party only from payment of the fee.[31] When making a decision on exemption from payment of the costs of the proceedings, the court shall assess all the circumstances, and particularly take into account the value of the subject matter of the dispute, the number of persons supported by the party and the income and property of the party and his/her family members.

However, there is a problem with implementation of the Civil Procedure Code, given that it is not harmonized with the newer Law on Free Legal Aid, because the latter, in addition to economically vulnerable citizens, recognizes particularly vulnerable groups of citizens entitled to free legal aid, regardless of their economic status, as well as the right of those citizens who would be financially threatened if their paid free legal aid. Furthermore, the Civil Procedure Code envisages a delay in procedural deadlines until the court decides on the award of a free attorney.[32] Due to all the above, the Civil Procedure Code has not fully fairly regulated the issue of granting a free legal representation by the court: this right is reserved only for those already economically disadvantaged citizens, but not those who would become economically vulnerable by paying for the services of a legal representative. In addition, the law does not distinguish between specific needs in exercising of the rights of vulnerable groups, such as persons with disabilities or victims of domestic violence, so they remain unrecognized as holders of this right. The fairness of the entire procedure is significantly affected by the fact that a party has no right to appeal against the decision rejecting its request for a legal representation free of charge. In addition, since the precondition for obtaining a legal representation free of charge is previously approved request for exemption from the costs of the proceeding, without the legal deadline for its rendering, this procedure cannot be assessed as fair. For all these reasons, this standard is not fulfilled. [0/0.5 point]

S10: THE LAW THAT REGULATES THE CRIMINAL PROCEDURE ENVISIONS MANDATORY DEFENSE AND DEFENSE OF THE POOR, AND THE CONDITIONS FOR THEIR APPOINTMENT MEET THE INTEREST OF FAIRNESS IN THE PROCEDURE [0.5 POINT]

In parallel with the regulations related to the exercise of the right to a free attorney in civil proceedings, the legislator has provided for appropriate mechanisms in criminal proceedings. Namely, the Criminal Procedure Code (hereinafter: the Criminal Procedure Code) provides for cases in which the defense of the defendant is mandatory, defense *ex officio*, as well as the defense of the poor.[33] These three types of defense can exist independently of each other, when the defendant personally hires a defense counsel, and they can be intertwined (in case a defendant does not have the means to hire a defense attorney, he/she shall be assigned *ex officio*, if the defense is mandatory, and the defendant submits a request for a defense attorney on the basis of "the right of the poor"). The Code clearly defines the situations in which the defendant must have a defense counsel, which is often related to the personal characteristics of the defendant, the gravity of the crime and the threatened punishment, possible deprivation of freedom, in case of a possibility to conclude an agreement on the testimony of the defendant or convicted person, etc. If the defendant does not directly appoint a defense counsel in cases where the defense is mandatory, he/she will be appointed *ex officio*.

As for the defense of the poor, the Criminal Procedure Code stipulates that a defendant who, according to the financial situation, cannot pay the defense attorney's fees and expenses, will be assigned a defense counsel at his/her request,

[31] Civil Procedure Code ("Official Gazette of the RS", no. 18/2020), Article 168
[32] Civil Procedure Code, Article 168
[33] Civil Procedure Code, Article 170

although there are no reasons for mandatory defense in criminal proceedings for an offense punishable by imprisonment for more than three years or due to the reasons of fairness.[34] In that case, the costs of the defense shall be borne by the budget of the court. This request is decided by the preliminary trial judge, the presiding judge or a single judge, and the defense counsel is appointed by the president of the court where the proceedings are conducted, and in the order from the list of the attorneys submitted by the competent bar association. In this case, the appointed defense attorney would have the status of the *ex officio* defense attorney.[35] Additionally, in the decision on the costs, the court may release the defendant from the duty to reimburse in full or in part, the costs of the criminal proceedings, as well as remuneration for the expert and appointed expert advisor, if their payment would jeopardize the livelihood of the defendant or the persons under his/her case.[36] Moreover, the court may, in a special decision, subsequently, after establishing the mentioned facts, release the defendant from this duty. Therefore, as the Criminal Procedure Code defines the cases of mandatory defense and the right to defense of the poor, this standard is considered as fulfilled. [0.5/0.5 point]

S11: THE LAW THAT REGULATES THE POSITION OF MINORS IN THE CRIMINAL PROCEDURE ENVISIONS MANDATORY REPRESENTATION OF THE DAMAGED AND ACCUSED MINORS, AND THE CONDITIONS FOR PROVISION OF REPRESENTATION MEET THE INTEREST OF FAIRNESS IN THE PROCEDURE
[0.5 POINT]

The position of the minors in the criminal procedure is defined by a special law[37] since it is considered to be an extremely sensitive topic. The Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors (hereinafter: Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors) prescribes that a minor must have a defense counsel during the first hearing, but also during the entire proceeding, and if there is none, he/she will be appointed *ex officio* from the attorneys who have special knowledge in the field of children's rights and juvenile delinquency.[38] This Law prescribes similar rules for the minors in the capacity of a damaged party. Such legal solution leads to a problem since a minor must have a legal representative only when the perpetrator is known, since the obligation of mandatory legal representative is associated with interrogation of the defendant. In case a defendant is not known, there is no obligation to appoint a legal representative for the minor.[39] In addition, the same law prescribes that the legal representative is appointed by the president of the court, which means that the legal representative is assigned to the minor at the stage of the proceeding before the court. The law does not provide an answer to the question what happens to a minor victim in the investigative phase of the proceeding, before the prosecution, i.e. before the indictment, and the reasons of fairness require that a minor victim should have a legal representative in all phases of the proceeding. Therefore, the existing legal solution does not fully satisfy the interests of justice because it does not contain a guarantee that minors will be represented at all stages of the proceedings, and the standard cannot be considered as fulfilled. [0/0.5 point].

S12: THE LAW THAT REGULATES THE POSITION OF MINORS IN THE CRIMINAL PROCEDURE ENVISIONS MANDATORY ACQUIRING OF SPECIAL KNOWLEDGE OF THE REPRESENTATIVES OF MINORS IN THE CRIMINAL PROCEDURE
[0.5 POINT]

However, the standard by which the relevant law prescribes mandatory acquisition of special knowledge for the legal representatives of minors in criminal proceedings is fully met, as the Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors prescribes that all persons involved in this procedure (which are primarily attorneys, judges in the cases regarding minors,

[34] Criminal Procedure Code ("Official Gazette of the RS", no. 35/2019), Articles 74, 76, 77
[35] Criminal Procedure Code, Article 77
[36] Criminal Procedure Code, Article 77
[37] Criminal Procedure Code, Article 264
[38] Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors ("Official Gazette of the RS", no. 85/2005), Article 49
[39] Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors, Article 154

and prosecutors in the cases regarding minors), in addition to other bodies, must have special knowledge in the field of rights of a child and juvenile delinquency. Therefore, the standard is considered as fulfilled. [0.5/0.5 point]

S13: LEGAL FRAMEWORK THAT REGULATES THE WORK OF THE ATTORNEYS GUARANTEES THAT THE LEGAL AID WILL BE EQUALLY TERRITORIALLY DISTRIBUTED [0.5 POINT]

The territorial distribution of legal aid providers is important for equal access to justice for all the citizens. The Law on Legal Protection regulates the existence, status and organization of the Bar Association of Serbia. Its headquarters are in Belgrade and it includes the Bar Associations of Vojvodina, Kosovo and Metohija, Belgrade, Zajecar, Kragujevac, Nis, Pozarevac, Cacak and Sabac with their headquarters.[40] By an act of the Bar Association of Serbia, in accordance with its statute, other bar associations within the Bar Association of Serbia may also be established. However, territorial distribution of legal aid is not limited by the legally determined number and distribution of bar associations, but by very different (and uneven) number of attorneys in certain places and their geographical distance from individual bar associations. The distance of attorneys from individual bar associations or their small number practically prevents their even territorial distribution. Consequently, the legal framework does not guarantee their even territorial distribution, and the standard is not fulfilled. [0/0.5 point]

SUB-INDICATOR 1.2: TERRITORIAL AVAILABILITY OF ALL FORMS OF LEGAL AID IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS
1. Free legal aid is equally territorially distributed in the units of local self-government	0.5/0.5
2. Free legal aid by the attorneys is equally territorially distributed	0.5/0.5
3. Licensed representatives of the minors in the criminal procedure are equally territorially distributed	0.5/0.5
TOTAL NUMBER OF POINTS	1.5/1.5

S1: FREE LEGAL AID IS EQUALLY TERRITORIALLY DISTRIBUTED IN THE UNITS OF LOCAL SELF-GOVERNMENT [0.5 POINT]

The Law on Free Legal Aid recognizes certain categories of persons as the providers of free legal aid.[41] The list of the registered providers of free legal aid is available at the Internet page of the Ministry of Justice of the Republic of Serbia, and it includes units of local self-government and city municipalities and associations.[42]

On the list of a total of 166 local self-governments

[40] Law on Legal Profession, Article 64

[41] Law on Free Legal Aid, Article 9

[42] Internet page of the Ministry of Justice of the Republic of Serbia, List of the registered providers of free legal aid that incudes units of local self-government and city municipalities and associations, available at https://www.mpravde.gov.rs/tekst/26370/spisak-registrovanih-pruzalaca-besplatne-pravne-pomoci-lokalne-samouprave-i-udruzenja.php

and city municipalities in the Republic of Serbia, 24 of them do not have registered persons who provide free legal aid. Therefore, a total of 142 local self-governments and city municipalities in the Republic of Serbia have registered persons in charge of providing this type of assistance, which is 85.5% of the total number in the Republic of Serbia.

In respect of the other providers of free legal aid, a total of 20 associations are registered, out of which 11 from Belgrade, 4 from Nis and Niska Banja, 1 from Novi Sad, 3 from Subotica, 2 from Leskovac, 1 in Valjevo 1 and 1 in Kraljevo. It should be noted that a number of associations, despite being registered in larger centers in Serbia, also provide free legal aid in the surrounding smaller towns, such as the association in Novi Sad and several associations in Belgrade.

In addition to this type of verification, a special verification of data on the municipalities and towns as providers of free legal aid was performed, based on the responses to the submitted requests for access to information of public importance. Out of 161 analysed municipalities and towns,[43] 126 of them responded to the request for access to information. Out of the 126 entities that responded to this request, only 31 state that they have established an office for free legal aid on their territory, i.e. 24.6%. On the other hand, a much larger number, 104 of them, state that they have a person to provide free legal aid, i.e. 82.5% of the 126 municipalities that responded to the request for access to this information. Out of those 104 municipalities, 88 of them, as they say, employ people who are trained for this type of legal aid, but only 13% have the provision of free legal aid as the only task in their workplace. In situations when an office for free legal aid is organized, the average number of employees is only 1.97, while 1.23 of them are law graduates, and there are even fewer attorneys who have passed the bar exam, only 0.62.

When we look at these results in relation to the total number of analysed municipalities, including those municipalities that have not even responded to the request for access to information (161), we conclude that 19% of the total number of municipalities have established an office for free legal aid, while 65% have a designated person in charge of provision of free legal aid. Out of the total number, in 88 municipalities, i.e. 55%, received training for provision of free legal aid. However, in only 11% of the entities, i.e. in 17 municipalities and towns, the provision of free legal aid is the only responsibility of a given person.

The analysis of other answers showed that some municipalities mistakenly provided positive response to the question about the person designated to provide free legal aid (23), despite providing the same positive answer to the previous question about the establishing of an office for the same purpose. Part of the municipalities also responded positively by mistake (8), since they had not designated a person who would provide free legal aid directly, but only a person to resolve citizens' requests for free legal aid. In accordance with that, 31 units of local self-government established an office, and 73 appointed a person, i.e. persons to provide free legal aid. In the administrative districts, the percentage of the units of local self-government that provide free legal aid ranges from 20% in the District of Central Banat to 100% in the District of West Backa.

In addition, the mentioned forms of legal aid were analysed at the level of administrative districts, and the following conclusions were reached. Out of 25 analysed administrative districts in the Republic of Serbia, a form of free legal aid is available in all of them in at least one municipality or town. Moreover, in some districts, less than 50% of municipalities and towns[44] that constitute that district provide this type of legal aid. In these cases, and according to the conducted assessment, approximately 40,000 and more citizens roughly gravitate towards one attorney in one district. However, there are also extremely positive examples, such as the District of

[43] Out of 167 units of local self-government, 161 were observed, excluding the municipalities in Belgrade, Nis and Novi Sad.

[44] In the region of South Banat, 50% of the municipalities and towns provide legal aid (half of them failed to respond to the request), while the workload is such that 44,170.57 individuals are referred to one lawyer. In the region of Toplica, a very small percentage of towns and municipalities provide legal aid, only 25% of them, while as many as 42,126 citizens of that region are referred to one lawyer. In the region of Pomoravlje, 44% towns and municipalities provide free legal aid. The situation is similar in the region of Zlatibor, with 40% of towns and municipalities on the territory of that region providing free legal aid.

Branicevo, where 88% of municipalities or towns provide free legal aid, or the District of Sumadija, where such a percentage is 86%.

Bearing in mind that out of the 25 analysed districts, 6 percent of towns and municipalities that provide free legal aid are below 50%, and in the remaining 19 districts it is at least half, or above 50% of the associated towns and municipalities, we can conclude that free legal aid evenly distributed.

Therefore, based on all above stated, we can conclude that registered providers of free legal aid are represented throughout the territory of the Republic of Serbia, and this standard is fulfilled. [0.5/0.5 point]

S2: FREE LEGAL AID BY THE ATTORNEYS IS EQUALLY TERRITORIALLY DISTRIBUTED
[0.5 POINT]

The Ministry of Justice of the Republic of Serbia keeps the directories of the providers of free legal aid, which can be accessed on the website of the Ministry.[45] The list of the attorneys providing free legal aid can be accessed in the same way, and this list is additionally divided by bar associations on the territory of the Republic of Serbia.[46] The total number of the attorneys who perform this activity on the territory of the Republic of Serbia, and are registered with the Bar Association of Serbia, is 10,939[47]. In addition, according to the Bar Association of Serbia, 5,085 attorneys are registered in the Belgrade Bar Association, 2,381 attorneys in Vojvodina Bar Association, 1,223 attorneys in the Bar Association of Nis, 829 in Cacak, 281 in Pozarevac, 183 in Zajecar, 562 in the Bar Association of Kragujevac, and 395 attorneys in the Bar Association of Sabac. In respect of the attorneys registered to provide free legal aid, the total number is 3,417 attorneys in the Republic of Serbia. In the Bar Association of Belgrade, the number of attorneys providing free legal aid is 901, in the Bar Association of Vojvodina the number is 1,010, in Nis 535, Cacak 370, Pozarevac 261, Zajecar 167, Kragujevac 16 and in the Bar Association of Sabac 157 attorneys.

By comparing the number of attorneys who have decided to provide free legal aid in relation to the total number of attorneys registered in the directory of the competent bar association, it has been determined that the highest percentage of registered attorneys who are also registered to provide free legal aid is in the Bar Association of Pozarevac 92.8%. In addition, in the Bar Association of Zajecar, a similar percentage of attorneys out of the total number has been registered for the provision of free legal aid - 91.2%. In the territories of other bar associations, this ratio is different. In the case of Nis, Cacak, Sabac, as well as the Bar Association of Vojvodina, approximately 40 percent of attorneys have registered in the directory of the competent bas association for this type of legal aid. The Bar Association of Belgrade, despite having the most members, has 17.7% of attorneys providing free legal aid. Finally, the Bar Association of Kragujevac has the smallest number of attorneys registered to provide free legal aid - only 2.8% of the total number.

As the territorial distribution of free legal aid attorneys is even, this standard can be considered as fulfilled. [0.5 / 0.5 point]

S3: LICENSED REPRESENTATIVES OF THE MINORS IN CRIMINAL PROCEDURE ARE EQUALLY TERRITORIALLY DISTRIBUTED
[0.5 POINT]

Based on Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors, only an attorney who has acquired special knowledge in the field of children's rights and juvenile delinquency could serve as the defense counsel of minors.[48] The attorneys acquire this special knowledge within the training they undergo, and they receive a relevant certificate as a confirmation of this knowledge. Based on the requests sent for access to information and the conducted analysis, the exact number of the attorneys in the Republic of Serbia who have

[45] Register of the providers of free legal aid and free legal support (mpravde.gov.rs)
[46] List of the providers of free legal aid – attorneys
[47] This data was obtained by telephone, during the conversation with the representative soft he bar Association of Serbia, on October 26, 2020, based on the data that were last updated on October 13, 2020
[48] Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors, Article 49 (3)

special knowledge in order to work with minors who are perpetrators of criminal acts and minors damaged by crime has been determined.

The list submitted by the Bar Association of Serbia includes 5,692 attorneys with a place of business. The Bar Association of Belgrade (1,908) has the highest number of these attorneys, and the least number has been registered in the Bar Association of Zajecar (136). The areas of jurisdiction of the bar associations, i.e. higher courts, were taken as a criterion for assessing of the equal territorial accessibility of licensed representatives of minors in criminal proceeding. This criterion is important from the perspective of the jurisdiction of the courts in the first instance in criminal proceedings against juvenile offenders, in accordance with the Law on Organization of Courts (hereinafter: Law on Organization of Courts).[49]

Based on the analysis of data submitted by the Bar Association of Serbia, it was established that in addition to Belgrade, the Bar Association of Vojvodina and the Bar Association of Nis have the largest number of licensed attorneys. On the other hand, in addition to Zajecar, the Bar Association of Pozarevac and the Bar Association of Sabac stand out as the bar associations with the lowest number of such licensed attorneys. Bearing that in mind, according to the data of the Bar Association of Serbia, the total number of attorneys in the territory of the Republic of Serbia is 10,939[50], the percentage of the attorneys licensed to represent the minors in comparison to the total number of attorneys was established and the following data were obtained. In the bar associations of Pozarevac, Zajecar, Kragujevac and Sabac, about 70% of registered attorneys also have a license for minors. In the Bar Association of Nis, this percentage is as high as 84.1%, which is also the territory of the bar association in Serbia with the highest representation of these attorneys. In the Bar Association of Vojvodina, the percentage of attorneys who have this license is 58.9%, and in Cacak 66.5%. Finally, although according to available data, the Bar Association of Belgrade has the highest number of attorneys with a license for minors, given the total number of attorneys registered in the directory of this bar association, this is also a bar association with the lowest percentage of attorneys holding a license - 37.7% .

Therefore, although the number of licensed attorneys for certain areas varies, each bar association in the Republic of Serbia has an adequate number of attorneys who have this license, without exception, and it can be considered that this standard, in terms of prevalence, is fulfilled. [0.5 / 0.5 point]

[49] Law on Organization of Courts ("Official Gazette of the RS", no. 87/2018 and 88/2018 – Decision of the Constitutional Court), Article 23 (1) (3)

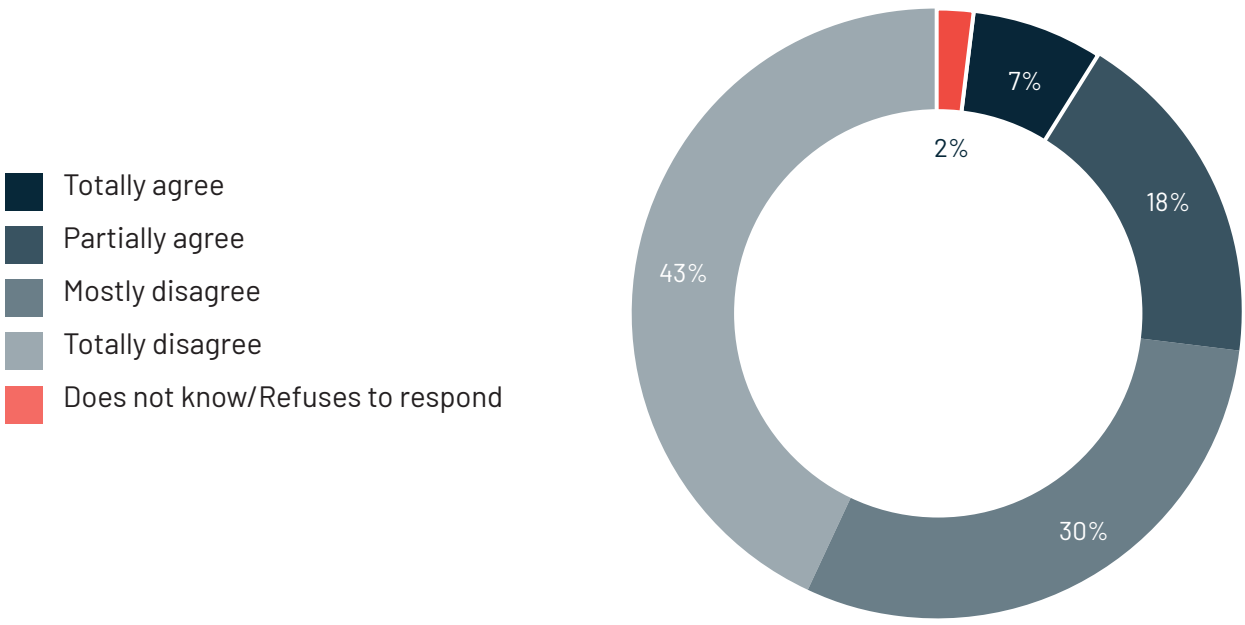
[50] This data was obtained by telephone, during the conversation with the representatives of the Bar Association of Serbia, on October 26, 2020, based on the data that were last updated on October 13, 2020

SUB-INDICATOR 1.3:
PERCEPTION OF THE SYSTEM OF LEGAL AID

SUB-INDICATOR STANDARDS	POINTS
1. System beneficiaries believe that the average amount of costs for payment of legal aid (e.g. hiring of attorneys) is accessible	0/1
2. It is clear to the beneficiaries what free legal aid is and under which conditions it could be requested	0/1
3. The beneficiaries are pleased with the quality of legal aid provided by the attorneys/ units of local self-government and other providers	0.5/1
TOTAL NUMBER OF POINTS	0.5/3

S1: SYSTEM BENEFICIARIES BELIEVE THAT THE AVERAGE AMOUNT OF COSTS FOR PAYMENT OF LEGAL AID (E.G. HIRING OF ATTORNEYS) IS ACCESSIBLE A [1 POINT]

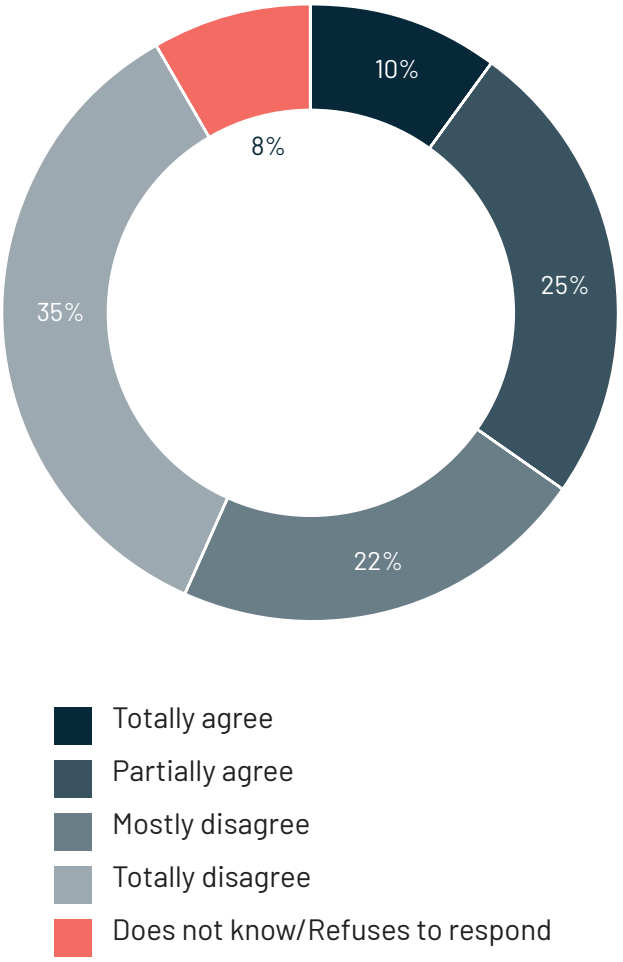
Based on a survey conducted among system beneficiaries, the following findings were established. 24.6% of the respondents believe that the costs of hiring an attorney for legal aid in Serbia are appropriate. However, the percentage of those who do not agree with this statement is much higher and it amounts to as much as 73.4%. It is important to note that within the percentage of those who believe that the average costs paid for legal aid (e.g. hiring of an attorney) is affordable, the majority of respondents (32.1%) have higher education, come from urban areas, and are predominantly from the capital city, with above - average incomes. Bearing in mind that two thirds of the respondents do not think that the costs of an attorney for legal aid in Serbia are appropriate, this standard cannot be considered as fulfilled. [0/1 point]



Accessibility of the average amount of the costs of legal aid (e.g. hiring of an attorney)

S2: IT IS CLEAR TO THE BENEFICIARIES WHAT FREE LEGAL AID IS AND UNDER WHICH CONDITIONS IT COULD BE REQUESTED
[1 POINT]

The following results were obtained about the familiarity of the respondents with the concept of free legal aid and the conditions under which it can be requested and received. As many as 57% of the respondents answered that it was not clear to them under what conditions they could receive free legal aid. A significant number of persons who responded this way have primary or lower level of education, with monthly incomes not exceeding 30,000 dinars per a household. In terms of territorial distribution, the respondents who responded this way come from both urban and rural areas, and equally from the territory of the capital, Vojvodina, Sumadija and Southern / Eastern Serbia. On the other hand, 34.8% of respondents stated that they were aware of the conditions under which they could receive free legal aid. These are mostly respondents with higher level of education, with monthly incomes of over 30,000 dinars per a member of a household. However, it should be borne in mind that as many as 8.2% of respondents did not know, or refused to comment on this topic. Given that 34.8% of respondents were in favor of this statement, this standard cannot be considered as fulfilled. [0/1 point]



Awareness of the citizens about the availability of free legal aid and conditions under which it could be requested

S3. THE BENEFICIARIES ARE PLEASED WITH THE QUALITY OF LEGAL AID PROVIDED BY THE ATTORNEYS/UNITS OF LOCAL SELF-GOVERNMENT AND OTHER PROVIDERS
[1 POINT]

When determining the results on this topic, the respondents were asked to comment on the quality of legal aid provided by each of these categories.

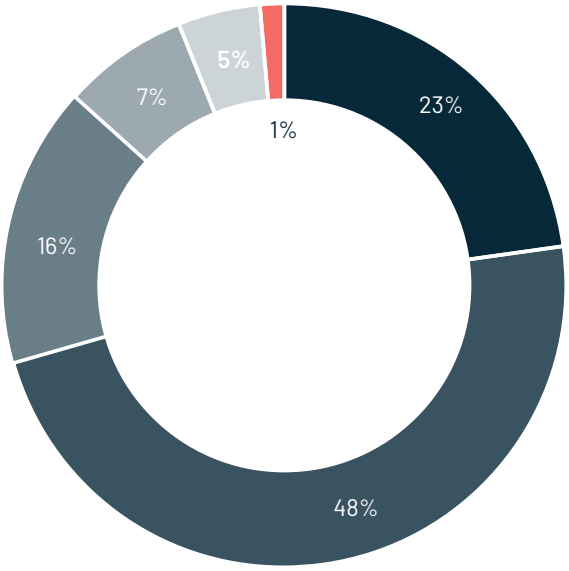
When we talk about the satisfaction with the quality of legal aid provided by the attorneys, the system beneficiaries expressed themselves in the following way. 23% of the respondents stated that they were completely satisfied with the quality of legal aid provided by the attorneys. Also, as many as 47.8% of respondents stated that they somewhat agree with this statement. On the other hand, 4.8% of the system beneficiaries had never used the services of an attorney, while 1.2% of the beneficiaries did not know, i.e. refused to answer. Finally, 7.2% of the respondents strongly opposed this claim, while 16% of the respondents were generally dissatisfied with the quality of legal assistance provided by the attorneys.

In respect of the quality of legal aid provided by the units of local self-government, an extremely large percentage of the respondents, as many as 43.4% had never used this type of legal aid. In addition, 3.2% of system beneficiaries did not know, i.e. refused to answer. Furthermore, 21% of the respondents were somewhat satisfied with the quality of legal aid provided by the units of local self-government, while only 5.8% of the total number of respondents fully agreed with this statement. Finally, 12.8% of the respondents generally disagreed with the statement, while 13.8% of the total number of respondents

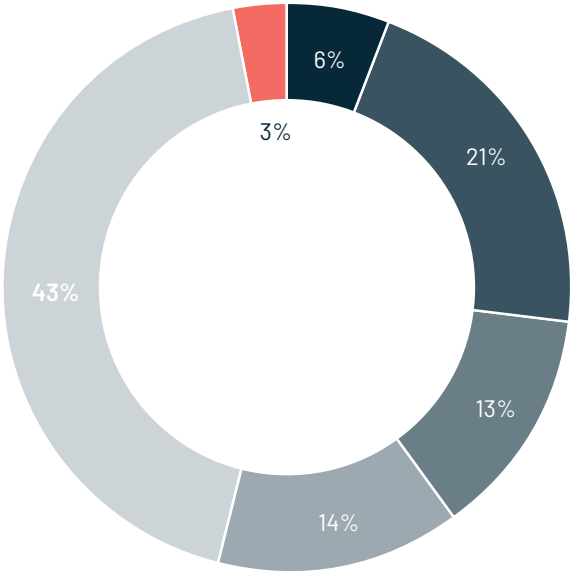
expressed strong disagreement. According to the above stated, 47.3% of the respondents, who had an encounter with the provision of free legal aid by local self-government units, assessed it positively.

Finally, as many as 62.8% of the respondents had not used the legal aid provided by an association. In addition, 7.2% of the respondents refused, i.e. did not know how to answer the question about satisfaction with the quality of legal aid provided by the association. Furthermore, 10.4% of the system beneficiaries were generally dissatisfied with the quality of legal aid provided by the associations, while 4% of the respondents were not satisfied with such legal aid at all. Finally, 12.6% were somewhat satisfied with the legal aid provided, while 2.8% were completely satisfied with the quality of legal aid provided by the association. According to the above, 50% of the respondents who had an encounter with the provision of free legal aid by the associations, assessed it positively.

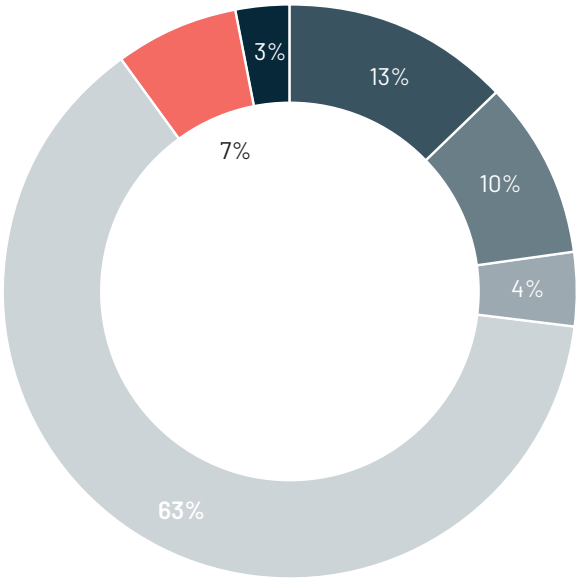
Therefore, based on the data collected this way, we can conclude that the citizens, to the extent that they are familiar with the appropriate form of legal aid, are satisfied with the quality of that assistance, and that this standard can be considered partially fulfilled. [0.5 / 1 point]

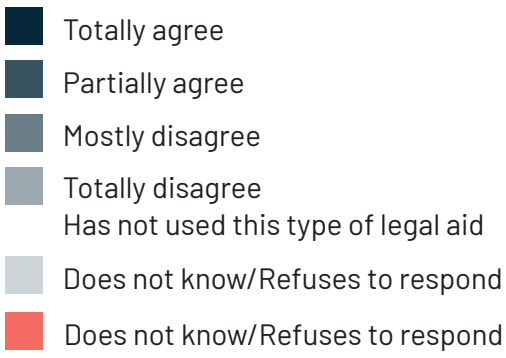


Satisfaction with the quality of legal aid provided by the attorneys



Satisfaction with the quality of legal aid provided by the units of local self-government





Satisfaction with the quality of legal aid provided by the associations

SUB-INDICATOR 1.4:
EFFICIENCY OF THE SYSTEM OF LEGAL AID

SUB-INDICATOR STANDARDS	POINTS
1. Share of the approved requests for provision of free legal aid in the total number of requests	1/1
2. Share of the rejected requests for provision of free legal aid due to expiration of the deadline for a response to the request in the total number of requests	1/1
3. Share of the approved requests for provision of free legal aid in litigation proceeding in the total number of requests in the litigation proceeding	1/1
4. Share of the initiated disciplinary proceedings against the attorneys in the total number of applications against the attorneys due to breach of the standards for provision of free legal aid	0/0.5
5. Share of the disciplinary decisions on the breach of the attorneys' standards due to breach of the standards for provision of free legal aid in the total number of requests	0/0.5
6. Average number of the employees working on the activities of free legal aid in the units of local self-government in Serbia	0/0.5
TOTAL NUMBER OF POINTS	3/4.5

S1: SHARE OF THE APPROVED REQUESTS FOR PROVISION OF FREE LEGAL AID IN THE TOTAL NUMBER OF REQUESTS
[1 POINT]

S2: SHARE OF THE REJECTED REQUESTS FOR PROVISION OF FREE LEGAL AID DUE TO EXPIRATION OF THE DEADLINE FOR A RESPONSE TO THE REQUEST IN THE TOTAL NUMBER OF REQUESTS
[1 POINT]

S3: SHARE OF THE APPROVED REQUESTS FOR PROVISION OF FREE LEGAL AID IN LITIGATION PROCEEDING IN THE TOTAL NUMBER OF REQUESTS IN THE LITIGATION PROCEEDING
[1 POINT]

Based on the analysis of data in 161 units of local self-government, it was determined that the total number of submitted requests for free legal aid was 2.548. 61, i.e. 1.557 requests were submitted in the civil procedure. In the criminal proceedings, that percentage is 4%, i.e. 98 requests.

Out of this number of requests, 2,280 were accepted in the civil and criminal proceedings, i.e. in 89.48% of cases, the decision on the adoption of the request was made. Having in mind the number of submitted requests in the civil procedure, for 87.73% of them (i.e. 1,366) the decision on adoption was made, while in the criminal procedure that share is 94.89%.

The decision on rejection was made in the total of 2.39% of cases, i.e. in respect of 61 claims filed. When we talk about the percentage of rejected requests in the civil proceedings, a decision was made in 36 cases, which represents a percentage of 59% of the total number of rejection decisions. In the criminal procedure, a total of 3 requests were rejected, which represents only 5% of the total number of rejected decisions. It should be emphasized that in another 207 cases (out of the total number of cases) there was a "silence of the administration" or a situation where the relevant authority did not make a decision within the legal deadline, and it is considered that the request was rejected, in terms of the Law on Free Legal Aid[51]. Most of the answers do not state the grounds for refusal, nor the type of the procedure.

[51] *See* the Law on Free Legal Aid, Article 32 (4).

In addition, it is important to note that in a small number of cases (0.27%), there was a decision to revoke the previously issued decision approving free legal aid. Furthermore, in 2.35% of the cases, the applicant withdrew the request, so that the request was not supplemented within the set deadline, in accordance with the Law on Free Legal Aid[52]. The Law on Free Legal Aid stipulates that when there is a danger of irreparable damage for the applicant or if the deadline within which he/she has the right to take action in the procedure expires, the administrative body has the duty to make a decision on the request within three days of receipt.[53] Based on the estimated sample, it was found that in only 1.53% of the cases, such a solution had been made.

According to the above stated, the evaluations for these standards are as follows. With regard to the standard concerning the share of approved requests for free legal aid in relation to the total number of requests, it is determined that the standard has been fulfilled. [1/1 point] Regarding the share of rejected requests for free legal aid due to the expiration of the deadline for responding to the request in relation to the total number of requests, the standard is considered as fulfilled. [1/1 point] Finally, in terms of the share of approved claims for free legal aid in civil proceedings in relation to the total number of requests in the civil proceedings, the standard can be considered as fulfilled. [1/1 point]

S4: SHARE OF THE INITIATED DISCIPLINARY PROCEEDINGS AGAINST THE ATTORNEYS IN THE TOTAL NUMBER OF APPLICATIONS AGAINST THE ATTORNEYS DUE TO BREACH OF THE STANDARDS FOR PROVISION OF FREE LEGAL AID
[1 POINT]

Regarding the disciplinary proceedings by bar associations in the Republic of Serbia that were possibly conducted against the attorneys regarding the application or in connection with the Law on Free Legal Aid, the following data were obtained. 6 out of 9 submitted requests were answered. The Bar Associations either do not keep records regarding the conduct of proceedings related to the application of the Law on Free Legal Aid or have not had proceedings related to the application of this law.

More precisely, the Bar Association of Vojvodina and the Bar Association of Pozarevac did not answer the sent inquiries. Also, the inquiry was sent to the branch of the Bar Association of Vojvodina in Novi Sad, which also did not respond to the sent inquiry. The smallest number of submitted applications (only 2) is in the Bar Association of Zajecar, while, as expected, the largest number of submitted applications (88) is in the Bar Association of Belgrade. According to the number of submitted applications, the Bar Association of Nis follows right after the Bar Association of Belgrade, with 48 submitted applications.

However, by far the largest number of rejected applications is from the Bar Association of Nis - as many as 38 rejected out of a total of 48 submitted applications in this bar association. The Bar Association of Zajecar, in addition to the smallest number of submitted applications, has no rejections. The Bar Association of Belgrade, which is the most numerous and thus with the largest number of applications, as already mentioned, has only 4 rejections of applications.

Regarding the initiated proceedings, Bar Associations of Sabac, Zajecar and Nis have not initiated any proceedings on the basis of the submitted application. Again, as expected, the Bar Association of Belgrade has the largest number of initiated proceedings, as many as 86.

However, as there are no precise data to determine with certainty the share of rejected applications and the share of initiated disciplinary proceedings against attorneys due to violation of the standard of free legal aid in relation to the total number of attorneys, and the bar associations either do not keep these records or have not had this type of proceedings so far, this standard cannot be considered as fulfilled. [0 / 0.5 point]

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[52] Public authority body that requests additional documentation from the applicant must set the deadline for its submission which cannot be shorter than eight days, and with its expiration it is considered that the applicant has given up on the application if he/she failed to deliver requested documentation; *see* the Law on Free Legal Aid, Article 32 (5)

[53] Law on Free Legal Aid, Article 32 (3)

S5: SHARE OF THE DISCIPLINARY DECISIONS ON THE BREACH OF ATTORNEYS' STANDARDS DUE TO BREACH OF THE STANDARDS FOR PROVISION OF FREE LEGAL AID IN THE TOTAL NUMBER OF APPLICATIONS
[0.5 POINT]

When we talk about the decisions made by the disciplinary bodies of the bar associations in the Republic of Serbia, regarding the breach of attorneys' standards on free legal aid, of all existing bar associations, only the Bar Association of Belgrade had this data for the relevant period. The Bar Association of Vojvodina, its branch in Novi Sad and the Bar Association of Pozarevac did not respond to the inquiry, while the Bar Associations of Nis, Cacak, Kragujevac, Zajecar and Sabac did not make any such decisions.

When we talk about the Bar Association of Belgrade, 4 decisions were made confirming the violation of duty and reputation of an attorney. Also, 16 decisions on rejection were made, while the decisions on acquittal had been rendered in 2 cases, but they do not refer to the application of the Law on Free Legal Aid. Therefore, as there is insufficient information on the outcomes of disciplinary proceedings, this standard cannot be considered as fulfilled. [0 / 0.5 point]

S6: AVERAGE NUMBER OF THE EMPLOYEES WORKING ON THE ACTIVITIES OF FREE LEGAL AID IN THE UNITS OF LOCAL SELF-GOVERNMENT IN SERBIA
[0.5 POINT]

Based on the conducted analysis in 161 municipalities and towns in the Republic of Serbia, the following data were generated. Out of the total number of observed municipalities and towns, 126 responded to the submitted requests for access to information.

It was established that the services for providing free legal aid in the given municipalities and towns employed the total of 203 persons, with the average of 1.97 employees per municipality, i.e. town, and the relevant legal aid service.

This number includes law graduates with and without a bar exam, as well as support staff. There are fewer law graduates who have passed the bar exam and this number is 64, which is an average of 0.62, while there are more law graduates without a bar exam and it amounts to 127 people, or 1.23 law graduates per municipality or town. Thus, the total number of lawyers is 189, while the support staff is smaller (18 people), and represents only 11% of the employees in these services.Therefore, this standard cannot be considered as fulfilled. [0 / 0.5 point]

EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**17** *(The sum of the maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**8** *(The sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-3.5	4-7.5	8-11	11.5-14	14.5-17
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**3**				

The constitutional rank of certain categories of legal aid, specifically the attorneys and legal aid services established in the units of local self-government, seems to attach great importance

to the issue of the availability of adequate legal aid to the citizens in court proceedings. However, significant shortcomings can already be noticed on the normative level, especially with regard to the regulation of free legal aid. The legal determinants of free legal aid providers were assessed as insufficiently precise, and the quality of regulations on the conditions, categories of the beneficiaries and procedures for exercising of the right to free legal aid are also problematic. The legislation adequately regulates the legal status of the legal profession and traditional procedural forms of legal aid in criminal proceedings, such as the rights of the poor and mandatory defense, but there is a need for improvement in the procedure of reviewing attorneys' actions, granting free attorney in litigation proceedings, mandatory representation of minors and guaranteeing equal territorial distribution of legal services. The evaluation of the practice of application of this legal framework, and the territorial availability of legal aid, led to the conclusions that there were shortcomings precisely in terms of uneven distribution of the access to legal services provided by the attorneys.

Citizens, who needed legal assistance in court proceedings, have provided satisfactory assessment of the quality of assistance provided by the attorneys or the municipal legal aid services. On the other hand, the perception is that the costs to hire an attorney are inadequate, as well as that the citizens are not sufficiently aware of what constitutes free legal aid and under which conditions this right could be exercised. In the practice of provision of free legal aid, according to the data on submitted and rejected requests in civil proceedings, an assessment has been made on the fulfillment of the established standards.

RECOMMENDATIONS

1. It is necessary to amend the Law on Free Legal Aid, in terms of defining the standards of existential vulnerability, so as not to be equated with the conditions for receiving social assistance. It is also required to more precisely regulate the criteria for associations as providers of legal aid, in order to take into account their long-term work, acquired specialized knowledge and built relationships with vulnerable and marginalized social groups. In addition, a general revision of the law is needed, in order to specify and concretize certain principles and provisions, especially in the part related to the prohibition to provide free legal aid.
2. It is necessary to appropriately associate the deadlines from the proceeding for resolving requests for free legal aid, with the deadlines for filing legal remedies and undertaking of procedural actions in procedural legislation (Civil Procedure Code, Criminal Procedure Code, Law on Enforcement and Security, Law on General Administrative Procedure) by prescribing a delay in procedural deadlines or a special reason for *restitution in integrum* in these situations.
3. It is necessary to amend the Civil Procedure Code, in order to allow for the possibility that a lag graduate with passed bar exam could represent a natural person was the provider of free legal aid registered in accordance with the law.
4. The Law on Legal Profession should stipulate the obligation for the decision of the disciplinary prosecutor of the Bar Association on rejection or dismissal of the party's proposal to initiate disciplinary proceedings against the attorney to be reasoned.
5. It is necessary for the Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors to precisely and clearly determine as of which procedural moment the minor as a damaged party is entitled to a free attorney, so that he/she is provided with legal aid during the entire course of the proceeding, including investigation in situations when the perpetrator is unknown.
6. It is necessary to conduct an appropriate information campaign in order to raise the level of information of citizens about the right to free legal aid, conditions and manner of exercising that right, especially having in mind economically and socially vulnerable groups, which are potential beneficiaries of this type of assistance.

KEY AREA II: ACCESS TO DATA AND TRANSPARENCY OF COURTS AND PUBLIC PROSECUTOR'S OFFICES

INDICATOR 1:
AVAILABILITY OF DATA ON THE WORK OF COURTS AND PUBLIC PROSECUTOR'S OFFICES

SUB-INDICATOR 1.1.
ADEQUACY OF LEGAL NORMS ON PROACTIVE PROVISION OF INFORMATION BY COURTS AND PUBLIC PROSECUTOR'S OFFICES

SUB-INDICATOR STANDARDS	POINTS
1. The Law regulates consistent publishing of judgment summaries, especially for the cases of public importance related to public authority bodies and officials	0/1
2. Laws or special regulations stipulate mandatory publishing of information on court proceedings completed with final decision	1/1
3. Information on court proceedings completed with final decision must be published for the cases of special interest for the public	1/1
TOTAL NUMBER OF POINTS	2/3

S1: THE LAW REGULATES CONSISTENT PUBLISHING OF JUDGMENT SUMMARIES, ESPECIALLY FOR THE CASES OF PUBLIC IMPORTANCE RELATED TO PUBLIC AUTHORITY BODIES AND OFFICIALS
[1 POINT]

Consistent publishing of judgment summaries is one of the indicators of transparency of judiciary, especially in cases of public importance, that is, in cases that are related to public authority bodies and officials. This issue is based on the constitutional standard stipulating that everyone shall have the right to be informed accurately, fully and timely about issues of public importance.[54] The Law on Free Access to Information of Public Importance defines information of public importance as information held by a public authority body, created during or relating to the operation of a public authority body, which is contained in a document and refers to anything the public has a justified interest to know.[55] Based on the legal definitions of the concepts of public authority bodies[56] and officials,[57] it can be concluded that every court in the Republic of Serbia is a public authority body and therefore obliged to adhere to the Law on Free Access to Information of Public Importance.[58] Hence, information contained in court decisions is information of public importance.

Based on the current regulations, the decisions of the Supreme Court of Cassation relevant to the case law shall be published in a special collection of works, in relation to the Supreme Court of Cassation's competences to provide uniform judicial application of law.[59] In addition, there is a prescribed obligation of publishing on the website all the Supreme Court Cassation decisions in which this court rules on extraordinary legal remedies filed against decisions of the courts of the Republic of Serbia and in other matters set forth by law.[60] On the other hand, the bylaws stipulate that all the decisions of the Supreme Court of Cassation shall be published in their entirety on the website, but the data on the parties whose identity is determined or may be determined by comparison with other available data, shall be replaced or omitted.[61] The appellate courts, in addition, publish on their website the conclusions accepted by the Supreme Court of Cassation.[62] Therefore, in line with the aforementioned, only the Supreme Court of Cassation publishes its judgments, but basic and higher courts' obligation to publish judgment summaries has not been recognized by laws and bylaws, thus this standard may not be considered as fulfilled. [0/1 point].

S2: LAWS OR SPECIAL REGULATIONS STIPULATE MANDATORY PUBLISHING OF INFORMATION ON COURT PROCEEDINGS COMPLETED WITH FINAL DECISION
[1 POINT]

As per the Court Rules of Procedure, courts must keep a general register of legal opinions containing concise legal opinions expressed in court decisions in certain cases or received from a higher court and that are of importance for court practice.[63] There is also a stipulated obligation for courts to forward legal opinions from the registrar to the Supreme Court of Cassation for the needs of the state judiciary information system.[64] General and special registers of legal opinions are kept separately for each branch of judiciary, chronologically, and they may be published in a special collection of works or on a court's website.[65] In joint sessions of appellate court departments, contested legal issues are examined based on the reports and co-reports of the rapporteurs and adopted conclusions are

54 Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 51
55 Law on Free Access to Information of Public Importance ("Official Gazette of the RS", no. 36/2010), Article 2(1)
56 Law on Free Access to Information of Public Importance, Article 3
57 Law on Anti-Corruption Agency ("Official Gazette of the RS", no. 88/2019), Article 2(1)(1)
58 Law on Free Access to Information of Public Importance
59 Law on Organization of Courts, Article 33(1)
60 Law on Organization of Courts, Article 33(2)
61 Rulebook on replacement and omission (pseudonymization and anonymization) of data in court decisions I Su-1 176/16 from December 12, 2016, Article 1(2)
62 Court Rules of Procedure ("Official Gazette of the RS", no. 93/2019), Article 29a (6)
63 Court Rules of Procedure, Article 28(1)
64 Court Rules of Procedure, Article 28(5)
65 Court Rules of Procedure, Article 28(3)

delivered to the Supreme Court of Cassation together with the reports, co-reports and minutes of these meetings, for the purpose of provision of opinion not later than 15 days as of the date of the joint session.[66]

Besides publishing of judgment summaries in cases that are of special interest to the public, there is an important obligation to publish information on the proceedings completed with final decision. In that sense, there are important provisions of the Law on Data Secrecy defining classified data,[67] as well as the concept of publicity in the proceedings defined by relevant regulations. The Civil Procedure Code stipulates that the main court hearing is public and that it may be attended only by persons over 16 years of age, unless otherwise provided by the law.[68] In the litigation proceeding, the court may exclude the public in cases determined by law.[69] Similarly, the same issue is regulated by the Criminal Procedure Code.[70] Information on court proceedings completed with final decision must be published when required by law or special regulations, as well as in the cases of special interest to the public and such information and data must be accurate and complete.[71] The data that are considered secret as per special regulations, and the protected data whose publishing is excluded or limited by law (i.e. person's unique personal identification number or address) are to be disclosed.[72] Relevant special regulations in the Republic of Serbia stipulate obligation of publishing information on court proceedings completed with final decision, as well as the situations when this obligation exists, so this standard is considered as fulfilled. [1/1 point].

S3: INFORMATION ON COURT PROCEEDINGS COMPLETED WITH FINAL DECISION MUST BE PUBLISHED FOR THE CASES OF SPECIAL INTEREST FOR THE PUBLIC [1 POINT]

The public is often especially interested in the proceedings completed with final decision that include public office holders, public authority bodies, or discuss certain subjects of public interest. Because of that, it is especially important for transparency of a judicial system to have a prescribed obligation to also publish relevant data in these specific cases. The Constitution of the Republic of Serbia stipulates that everyone shall have the right to be informed accurately, fully and timely about issues of public importance.[73] The Court Rules of Procedure explicitly prescribe the obligation to publish information in these cases.[74] Importance of monitoring completion of cases that are of interest to the public is also confirmed by the provision of the Rulebook on internal organization and systematization of job positions in the Supreme Court of Cassation that stipulates the Department Secretary's obligation to keep records of the cases of wider general importance or wider public interest, that is, to monitor their course and the final result.[75] Since the Court Rules of Procedure clearly stipulate obligation to publish information on the proceedings completed with final decision in all cases, and especially in cases of special interest to the public, the maximum result has been awarded. The standard is considered as fulfilled. [1/1 point]

66 Court Rules of Procedure, Article 29a (5)
67 Law on Data Secrecy ("Official Gazette of the RS", no. 104/2009), Article 2(1)(2)
68 Civil Procedure Code, Article 321
69 Civil Procedure Code, Article 322
70 Criminal Procedure Code, Article 362 and 363
71 Court Rules of Procedure, Article 58
72 Court Rules of Procedure, Article 58 (4)
73 Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 51
74 Court Rules of Procedure, Article 58
75 Rulebook on internal organization and systematization of job positions in the Supreme Court of Cassation, Su I-9 3/19-3 from December 10, 2019, p. 15

SUB-INDICATOR 1.2.
ADEQUACY OF LEGAL NORMS ON REACTIVE PROVISION OF INFORMATION BY COURTS AND PUBLIC PROSECUTOR'S OFFICES

SUB-INDICATOR STANDARDS	POINTS
1. The Law ensures access to information of public importance as the citizen's right guaranteed by the Constitution	0.5/0.5
2. The Law clearly and unambiguously prescribes procedure for protection of rights to free access to information of public importance	0.5/0.5
3. Courts and public prosecutor's offices are included in the definition of public authority bodies to which the Law on Free Access to Information of Public Importance applies	0.5/0.5
4. Legal framework clearly defines the concept of official document and information of public importance	0/0.5
5. The Law clearly and unambiguously stipulates assumption of the public's right to know, request and receive relevant information of public importance from judicial bodies	0.5/0.5
6. As per the Law, everyone has the right to access to official documents and data of public importance without discrimination	0.5/0.5
7. The Law has precisely regulated limitations to free access to information of public importance	0.5/0.5
8. Special law clearly and unambiguously determines classification of classified data related to judicial bodies	0.5/0.5
9. The Law does not require the requestor to state reasons for access to information of public importance	0.5/0.5
10. The Law clearly prescribes the timeframe in which judicial body must respond to a request for access to information of public importance	0.5/0.5
11. The Law requires judicial body refusing to respond to a request for access to information of public importance to justify its refusal to provide information	0.5/0.5
TOTAL NUMBER OF POINTS	5/5.5

S1: THE LAW ENSURES ACCESS TO INFORMATION OF PUBLIC IMPORTANCE AS THE CITIZEN'S RIGHT GUARANTEED BY THE CONSTITUTION
[0.5 POINT]

In a situation with insufficient proactive transparency of state bodies, including courts, free access to information of public importance allows citizens to control the work of public office holders in the Republic of Serbia. The Constitution guarantees that everyone shall have the right to access information kept by state bodies and organizations with delegated public powers, in accordance with the law.[76] The Constitution also ensures that everyone shall have the right to be informed accurately, fully and timely about issues of public importance and the media shall have

[76] Constitution of the Republic of Serbia ("Official Gazette of RS, no. 98/2006), Article 51(2)

the obligation to respect this right.[77] The Law on Free Access to Information of Public Importance defines its own purpose and stipulates that it shall govern the rights of access to information of public importance held by public authorities, with a view to exercising and protecting the public interest to know and attaining a free democratic order and an open society.[78] This law also defines information of public importance as information held by a public authority body, created during or relating to the operation of a public authority body, which is contained in a document and refers to anything the public has a justified interest to know.[79] Therefore, based on the formulation from the Constitution, we can conclude that there is a legal regulation of this issue and that the constitutional standard is realized through a law that guarantees the right to access to information of public importance, thus this standard is fulfilled [0.5/0.5 point].

S2: THE LAW CLEARLY AND UNAMBIGUOUSLY PRESCRIBES PROCEDURE FOR PROTECTION OF RIGHTS TO FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE [0.5 POINT]

For a guaranteed right to be exercisable, there must be a clearly defined procedure for its exercising. The Law on Free Access to Information of Public Importance describes the procedure before a public authority[80] and the second-instance proceeding before the Commissioner for Information of Public Importance and Personal Data Protection.[81] The Commissioner is an autonomous government body, independent in the exercise of its powers that protects exercising of the right to free access to information of public importance.[82] There is also a guaranteed right to institute an administrative dispute against the decisions and conclusions of the Commissioner.[83] Implementation of this law is supervised by the administrative inspectorate of the Ministry of State Administration and Local Self-Government,[84] while enforcement of the Commissioner's decisions is ensured by the Government of the Republic of Serbia.[85] Therefore, the Law on Free Access to Information of Public Importance fully prescribes the procedure for protection of the right to free access to information and the standards is considered as fulfilled. [0.5/0.5 point]

S3: COURTS AND PUBLIC PROSECUTOR'S OFFICES ARE INCLUDED IN THE DEFINITION OF PUBLIC AUTHORITY BODIES TO WHICH THE LAW ON FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE APPLIES [0.5 POINT]

When we talk about those to whom the Law on Free Access to Information of Public Importance applies, it is stipulated that the term public authority body includes a state body, territorial autonomy body, a local self-government body, as well as an organization vested with public authority, and a legal person founded by or funded wholly or predominantly by a state body.[86] Thus, courts and public prosecutor's offices are included in the definition of a public authority body and they are obliged to act in line with the prescribed obligations. Therefore, citizens' access to information of public importance in courts and public prosecutor's offices is guaranteed by law. [0.5/0.5 point].

S4: LEGAL FRAMEWORK CLEARLY DEFINES THE CONCEPT OF OFFICIAL DOCUMENT AND INFORMATION OF PUBLIC IMPORTANCE [0.5 POINT]

For the procedure of access to information of public importance to function, besides defining the bodies obliged by the law, it is also necessary to define the subject of its application – official

77 Constitution of the Republic of Serbia ("Official Gazette of RS, no. 98/2006), Article 51(1)
78 Law on Free Access to Information of Public Importance, Article 1
79 Law on Free Access to Information of Public Importance, Article 2(1)
80 Law on Free Access to Information of Public Importance, Article 15-21
81 Law on Free Access to Information of Public Importance, Article 22
82 Law on Free Access to Information of Public Importance, Article 1(2)
83 Law on Free Access to Information of Public Importance, Article 27(1)
84 Law on Free Access to Information of Public Importance, Article 45
85 Law on Free Access to Information of Public Importance, Article 28(4)
86 Law on Free Access to Information of Public Importance, Article 3

document as a source of information and the information of public importance itself. Information of public importance is information held by a public authority body, created during work or related to the work of the public authority body, contained in a document, and related to everything that the public has a justified interest to know.[87] The Law itself also prescribes limitations to the right to free access in case of a document or information with the status of state, official, business or other secret, that is, if they are accessible only to a specific group of persons and their disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and outweigh the interest of accessing the information.[88] The Law on Data Secrecy defines the data of interest for the Republic of Serbia and classified data.[89] However, the Law on Free Access to Information of Public Importance itself does not provide precise definition of an official document. Even though information of public importance is clearly defined, legal regulations do not provide precise definition of an official document, so, in our opinion, this standard is not fulfilled [0/0.5 point].

S5: THE LAW CLEARLY AND UNAMBIGUOUSLY STIPULATES ASSUMPTION OF THE PUBLIC'S RIGHT TO KNOW, REQUEST AND RECEIVE RELEVANT INFORMATION OF PUBLIC IMPORTANCE FROM JUDICIAL BODIES
[0.5 POINT]

For access to information of public importance to be possible, it is necessary to have a justified public interest. It is considered that a justified public interest to know exists whenever information held by a public authority concerns a threat to, or protection of, public health and the environment, while with regard to other information held by a public authority, it shall be deemed that justified public interest to know exists unless the public authority concerned proves otherwise.[90] Therefore, citizens are allowed to access information of public importance without having to prove their legal interest to access such data. Burden of proof is on the public authority body refusing to provide the requested information and it must justify its reasons for refusal. The Law on Free Access to Information of Public Importance clearly defines justified public interest to know and stipulates an assumption that such interest exists until the public authority proves otherwise. Thus, the standard is considered as fulfilled. [0.5/0.5 point].

S6: AS PER THE LAW, EVERYONE HAS THE RIGHT TO ACCESS TO OFFICIAL DOCUMENTS AND DATA OF PUBLIC IMPORTANCE WITHOUT DISCRIMINATION
[0.5 POINT]

It is not enough just to have an ability to access information, but it is necessary to specifically stipulate prohibition of discrimination in exercising of this right. Any unwarranted discrimination or unequal treatment, or omission, be it overt or covert, on the grounds of personal characteristics, affiliation, or specific orientation of information requestors or persons close to them,[91] cannot constitute grounds for selective application of this right. The Law on Free Access to Information of Public Importance stipulates that the rights in this law belong to everyone, under equal conditions, regardless of real or presumed personal characteristics of requestors.[92] In line with this, there is an important issue of legal prohibition of discrimination of media in terms of their access to information. The Law on Free Access to Information of Public Importance stipulates that a public authority may not give preference to any journalist or media outlet, when several have applied, by allowing only him/her or allowing him/her before other journalists or media outlets to exercise the right to access information of public importance.[93] Since the law specifies that the right to access information of public importance belongs to everyone under equal conditions, regardless of personal characteristics of the requestors, including the media, maximum value is awarded here [0.5/0.5 point].

87 Law on Free Access to Information of Public Importance, Article 2
88 Law on Free Access to Information of Public Importance, Article 9
89 Law on Free Access to Information of Public Importance, Article 2 (1) (1) and (2)
90 Law on Free Access to Information of Public Importance, Article 4
91 Law on Prohibition of Discrimination, Article 2 (1) (1)
92 Law on Free Access to Information of Public Importance, Article 6
93 Law on Free Access to Information of Public Importance, Article 7

S7: THE LAW HAS PRECISELY REGULATED LIMITATIONS OF FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE [0.5 POINT]

Free access to information of public importance has also certain limitations. All limitations of the right to free access to information[94] are permitted in a democratic society (if it is necessary), in order to prevent serious violation of an overriding interest based on the Constitution or law.[95] Namely, through limitations of free access to information of public importance, legislators protect the most valuable goods such as life, health and security, interests of conducting criminal and other legal proceedings, detection, trial and punishment of criminal offences, as well as interests of national defense and security, international relations, economic relations, official, commercial and other secrets the disclosure of which could cause serious consequences to legally protected interests.[96] In addition, public authority does not have to allow a requestor to exercise his/her right to access information of public importance if such information has already been published and made accessible, but it will instruct the requestor where and when the requested information was published.[97] Requestor shall be denied the right to access information if the requestor is abusing the rights to access information of public importance. Examples of such abuse may be unclear requests, requests for too much information, requests for information that was already provided to the requestor, etc.[98] The law also recognizes that in certain situations it is necessary to protect the right to privacy of certain persons. Publishing of such data is allowed if the person in question agrees to that, if such information relates to a person or event of public interest, in case of holder of public office or political figures, and if the information is related to the duties performed by that person, and if the person's behavior has provided sufficient justification for request of information.[99] The law clearly defines limitations, and the burden of proof is on public authority to show that it is possible to apply these limitations to a concrete case, that is, that in that concrete case there is an interest based on the Constitution or the law that overrides the public's interest to know. Therefore, the standard is fulfilled. [0.5/0.5 point].

S8: SPECIAL LAW CLEARLY AND UNAMBIGUOUSLY DETERMINES CLASSIFICATION OF CLASSIFIED DATA RELATED TO JUDICIAL BODIES [0.5 POINT]

Classification of secret data is important for protection of sensitive data in judiciary. Classified data mean any data of interest for the Republic of Serbia, which have been classified and for which a level of secrecy has been determined by law, other regulations or decisions of a competent authority brought under law.[100] Data of interest for the Republic of Serbia mean any data or documents in possession of a public authority, related to territorial integrity and sovereignty, protection of the constitutional order, human and minority rights and freedoms, national security and public safety, defense, internal affairs and foreign affairs.[101] Disclosure of data of interest to an unauthorized person would cause damage, if the need to protect the interest of the Republic of Serbia prevails over the interest to have free access to information of public importance.[102] Considering the level of data secrecy and potential damage caused by disclosure to unauthorized persons, classified data can be marked as "top secret", "secret", "confidential", "and restricted".[103] In addition, Court Rules of Procedure stipulate that the register "DT.Su", "SP.Su", "P.Su" and "I.Su" with the data marked with level of secrecy – "top secret", "secret", "confidential" and "restricted" kept by the president or person designated by the president, contains classified court administration data and the received documents marked by sender as "top

94 Law on Free Access to Information of Public Importance, Article 8-14
95 Law on Free Access to Information of Public Importance, Article 8(1)
96 Law on Free Access to Information of Public Importance, Article 9
97 Law on Free Access to Information of Public Importance, Article 10
98 Law on Free Access to Information of Public Importance, Article 13
99 Law on Free Access to Information of Public Importance, Article 14
100 Law on Data Secrecy, Article 2
101 Law on Data Secrecy, Article 2 (1)
102 Law on Data Secrecy, Article 8(1)
103 Law on Data Secrecy, Article 14

secret", "secret", "confidential", "restricted".[104] The same classification with reference to relevant law is also cited in the Rulebook on Administration in Public Prosecutor's Offices.[105] Thus, there are no separate standards for data secrecy classification in judiciary, but a general classification from the Law on Data Secrecy is applied[106] and it clearly and precisely stipulates what classified data are and regulates their classification. [0.5/0.5 point]

S9: THE LAW DOES NOT REQUIRE THE REQUESTOR TO STATE REASONS FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[0.5 POINT]

In relation to this, free access to information is also reflected in the possibility for a requestor not to state the reasons for requesting certain information. The Law on Free Access to Information of Public Importance stipulates that in the process of requesting access to information, the requestor does not need to state the reasons for that request.[107] Since there is an explicit definition of this standard, maximum value is awarded [0.5/ 0.5 point].

S10: THE LAW CLEARLY PRESCRIBES THE TIMEFRAME IN WHICH JUDICIAL BODY MUST RESPOND TO A REQUEST FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[0.5 POINT]

Timely received information without any delay and within legally prescribed timeframe is one of the most important aspects of practical application of standards prescribed by law. Public authority must respond to a request within 15 days as of the receipt of the request; however, this timeframe may be extended in certain situations if the public authority is unable to provide response for justified reasons.[108] In that case, the public authority shall, within seven days of receipt of the request at the latest, inform the applicant thereof and set another deadline, which shall not be longer than 40 days of receipt of the request.[109] If a public authority does not respond to a request within the specified deadline, requestor may submit a complaint with the Commissioner.[110] Thus, all the requestors are provided with appropriate mechanism for protection of rights since the Law on Free Access to Information of Public Importance prescribes the timeframe in which public authority must respond, extended timeframe, as well as additional mechanisms of protection in case the authorities fail to provide information within the prescribed timeframe. [0.5/0.5 point]

S11: THE LAW REQUIRES JUDICIAL BODY REFUSING TO RESPOND TO A REQUEST FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE TO JUSTIFY ITS REFUSAL TO PROVIDE INFORMATION
[0.5 POINT]

Besides the situation when an authority fails to respond to a request in a prescribed timeframe, there is a potential situation in practice when a public authority refuses to provide the requested information. If a public authority refuses to respond to a request partially or entirely, it is obliged without delay, and within 15 days of receipt of the request at the latest, to render a decision rejecting the request and provide justification for such a decision in writing, and is, furthermore, required to notify the applicant in the decision of the available legal remedies against such decision[111]. Thus, the burden of proof of lack of justified public interest to know is on the public authority from which that information is requested. Requestor has a possibility to subsequently file a complaint to the Commissioner, who will then instruct that authority to provide information.[112] Therefore, the Law clearly stipulates that public authority may not refuse to provide information without justification, thus this standard is fulfilled. [0.5/0.5 point].

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[104] Court Rules of Procedure, Article 264
[105] Rulebook on Administration in Public Prosecutor's Offices ("Official Gazette of the RS", no. 57/2019), Article 73b
[106] Law on Data Secrecy
[107] Law on Free Access to Information of Public Importance, Article 15(4)
[108] Law on Free Access to Information of Public Importance, Article 16
[109] Law on Free Access to Information of Public Importance, Article 16(3)
[110] Law on Free Access to Information of Public Importance, Article 16(4)
[111] Law on Free Access to Information of Public Importance, Article 16 (10)
[112] Law on Free Access to Information of Public Importance, Article 16 (4)

SUB-INDICATOR 1.3.
PROACTIVE TRANSPARENCY OF COURTS AND PUBLIC PROSECUTOR'S OFFICES IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS
1. Courts have accessible websites	1/1
2. Courts have regularly (at least once a month) updated websites	0.5/1
3. Courts' websites are also available in languages of national minorities	0/0.5
4. Courts' websites are adapted for visually impaired persons	0/0.5
5. Key information about court work (address and contact information, territorial jurisdiction, working hours, cost of basic services) is available in not more than three clicks from the homepage on courts' websites	0/1
6. Public prosecutor's offices have accessible websites	1/1
7. Public prosecutor's offices have regularly (at least once a month) updated websites	0/1
8. Key information about public prosecutor's offices work (address and contact information, territorial jurisdiction, working hours, cost of basic services) is available in not more than three clicks from the homepage on their websites	0.5/1
9. Courts regularly publish judgment summaries on their websites, which is a minimum for cases of public importance	0/1
10. Courts regularly publish on their official websites annual work reports and reports	0/1
11. Public prosecutor's offices regularly publish on their official websites annual work reports and reports	1/1
12. Professional biographies of judges including their career development are available to the public	0/0.5
13. Professional biographies of public prosecutors including their career development are available to the public	0/0.5
14. Court work reports contain complete information	0/0.5
15. Public prosecutor's office work reports contain complete information	0.5/0.5
TOTAL NUMBER OF POINTS	4.5/12

S1: COURTS HAVE ACCESSIBLE WEBSITES
[1 POINT]

Based on the analysis conducted on 17 court websites sampled from territorial jurisdictions of different appellate courts[113], the following conclusions were drawn. All 17 courts from the sample consisting of basic and higher courts in territorial jurisdictions of all four appellate courts, have their own websites that are functional, that open without any issues, and that can be accessed via clearly defined address. Thus, websites of all analysed courts from the sample are accessible and the standard is fulfilled. [1/1 point]

S2: COURTS HAVE REGULARLY (AT LEAST ONCE A MONTH) UPDATED WEBSITES
[1 POINT]

Out of 17 analysed basic and higher courts from the territorial jurisdiction of appellate courts in the Republic of Serbia, 10 of them provided precise responses to the submitted query, stating in their response whether website update is performed daily, weekly, or monthly. On the other hand, only the Higher Court in Prokuplje failed to respond to the sent query, while in 6 cases[114] the courts failed to provide precise answer to the question asked. Out of 10 courts that provided precise answers to the question asked, all 10 of them update their websites at least once a month, and sometimes even more frequently. Furthermore, Belgrade Higher Court, Basic Court in Jagodina, Basic Court in Sabac and Basic Court in Valjevo update their websites daily. Thus, this standard is considered as partially fulfilled [0.5/1 point].

S3: COURTS' WEBSITES ARE ALSO AVAILABLE IN LANGUAGES OF NATIONAL MINORITIES
[0.5 POINT]

When we talk about accessibility of websites in languages of national minorities, it must be noted that only certain courts from the sample of 17 courts were examined since those courts are in the territory with multiethnic population and those communities have one or more national minority languages in official use. From the sample, Basic Court in Bujanovac, Basic Court in Subotica and Novi Sad Higher Court were relevant for this standard. Importance of evaluation of this standard is seen through a prism of providing equal opportunities to all citizens to access information on court activities. However, after the conducted analysis, it is determined that none of these three courts have websites available in national minority languages. Thus, this standard is not fulfilled. [0/0.5 point]

S4: COURTS' WEBSITES ARE ADAPTED FOR VISUALLY IMPAIRED PERSONS
[0.5 POINT]

Out of 17 analysed courts from the sample, in most of the cases websites are not adapted for blind and visually impaired persons. Namely, according to the claims of Krusevac Higher Court, their website is "partially adapted". Also, Novi Pazar Higher Court's website is adapted, while Prokuplje Higher Court failed to answer this question. According to claims of all the other courts from the sample, that is, 14 of them, their websites are not adapted for blind and visually impaired persons. Thus, this standard cannot be considered as fulfilled. [0/0.5 point]

S5: KEY INFORMATION ABOUT COURT WORK (ADDRESS AND CONTACT INFORMATION, TERRITORIAL JURISDICTION, WORKING HOURS, COST OF BASIC SERVICES) IS AVAILABLE IN NOT MORE THAN THREE CLICKS FROM THE HOMEPAGE ON COURTS' WEBSITES
[1 POINT]

When it comes to key information on court activities being available at no more than three clicks from homepage on court websites, out of the 17 courts of various instances, only 7[115] of

[113] Law on Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices ("Official Gazette of the RS", no. 101/2013), Article 6

[114] The courts that responded imprecisely to the question on regular updating of court websites are: Smederevo Higher Court, First Basic Court in Belgrade, Novi Sad Higher Court, Nis Higher Court, Basic Court in Bujanovac and Basic Court in Pirot.

[115] Court websites that contain all listed information at not more than three clicks from homepage are the following: websites of First Basic Court in Belgrade, Basic Court in Valjevo, Novi Sad Higher Court, Basic Court in Sabac, Krusevac Higher Court and Prokuplje Higher Court.

them contain all the necessary information easily available to the citizens, at no more than three clicks. Of those seven, 3 courts with complete information available are in the territorial jurisdiction of Belgrade Appellate Court, 2 are in the territory of Novi Sad Appellate Court, while there are 2 courts in the territories of Kragujevac and Nis appellate courts, respectively. In other 10 cases, at least one key information is missing, if not more. To be more precise, 7 courts do not have easily accessible information on territorial jurisdiction and in 6 cases more pieces of information are missing, such as useful forms, or costs of basic services and court data (account number and other payment information) at no more than 3 clicks from the court's homepage. In case of Basic Court in Bujanovac, for example, besides the information on cost of basic services and court data not being easily available at less than 3 clicks, there is also no simple way to get information about the court's working hours. Since there are only 7 cases in the whole sample where the courts have made this information easily accessible, we believe that this standard is not fulfilled. [0/1 point]

S6: PUBLIC PROSECUTOR'S OFFICES HAVE ACCESSIBLE WEBSITES
[1 POINT]

Analysis was conducted on the sample of 17 public prosecutor's offices belonging to various instances and in territorial jurisdictions of 4 appellate prosecutor's offices in the Republic of Serbia[116]. Namely, all public prosecutor's offices from the sample have their own website. These are newer, uniform websites, visually and structurally standardized. They have clear and logical structure, Cyrillic and Latin version. According to submitted requests for access to information, certain prosecutor's offices have already had websites before, and the current uniform sites are part of the multi-site system of the State Prosecutorial Council created during 2019. Thus, this standard is fulfilled. [1/1 point]

S7: PUBLIC PROSECUTOR'S OFFICES HAVE REGULARLY (AT LEAST ONCE A MONTH) UPDATED WEBSITES
[1 POINT]

Out of the total number of prosecutor's offices analysed, 35.3% have regularly updated websites, that is, 6 prosecutor's offices have them, while the other 11 do not. This assessment was made by reviewing posts on the websites and was not based only on responses to submitted requests to access to information. Namely, 3 prosecutor's offices said in their response that they updated their website once a month or more, which, however, was not confirmed by the website review, thus they failed to meet the standard. Several prosecutor's offices do not have any posts on their website besides the mandatory elements required for establishing a website. Since the percentage of the prosecutor's offices meeting this standard is under 50%, this standard may not be considered as fulfilled. [0/1 point]

S8: KEY INFORMATION ABOUT PUBLIC PROSECUTOR'S OFFICES WORK (ADDRESS AND CONTACT INFORMATION, TERRITORIAL JURISDICTION, WORKING HOURS, COST OF BASIC SERVICES) IS AVAILABLE IN NOT MORE THAN THREE CLICKS FROM THE HOMEPAGE ON THEIR WEBSITE
[1 POINT]

All analysed prosecutor's offices from the sample have their contact information, address and working hours displayed either at the bottom of the homepage, or at the contact page available at one click from the homepage.

Yet, when it comes to territorial jurisdiction, the situation is quite different – only 3 offices (17.6%)

[116] In the territory of Appellate Public Prosecutor's Office in Belgrade, the following were analysed: Higher Public Prosecutor's Office in Belgrade, Higher Public Prosecutor's Office in Smederevo, First Basic Public Prosecutor's Office in Belgrade, Basic Public Prosecutor's Office in Vrsac and Basic Public Prosecutor's Office in Valjevo. In the territory of Appellate Public Prosecutor's Office in Novi Sad, the following were analysed: Higher Public Prosecutor's Office in Novi Sad, Basic Public Prosecutor's Office in Subotica, Basic Public Prosecutor's Office in Sabac and Basic Public Prosecutor's Office in Kikinda. In the territory of Appellate Public Prosecutor's Office in Kragujevac, subjects of analysis were Higher Public Prosecutor's Office in Novi Pazar, Higher Public Prosecutor's Office in Krusevac, Basic Public Prosecutor's Office in Jagodina and Basic Public Prosecutor's Office in Pozega. Finally, in the territory of Appellate Public Prosecutor's Office in Nis, we analysed: Higher Public Prosecutor's Office in Nis, Basic Public Prosecutor's Office in Vranje, Higher Public Prosecutor's Office in Prokuplje and Basic Public Prosecutor's Office in Vranje.

provide this information on their website, while 10 of them give this information in their information reports (2 of them also have this information on their website). However, it must be emphasized that the reference to territorial jurisdiction of an equivalent court cannot be considered as fulfilling of this standard.

When it comes to payment information, only 3 offices have their account numbers provided. Another 4 offices give their account numbers in their reports, which are available at no more than three clicks from the homepage. None of the websites provide information on the cost of services; the only costs stated are those for document copying and they are part of the form included in each of these websites (Request for Access and Copying of Document). The Rulebook on Administration in Public Prosecutor's Offices lists the following in relation to forms and costs: issuing of certificates, petitions and appeals, payment of fees.[117] Submission of criminal charges is free of charge. Based on the aforementioned, the conclusion is that the standard is partially fulfilled [0.5/1 point]

S9: COURTS REGULARLY PUBLISH JUDGMENT SUMMARIES ON THEIR WEBSITES, WHICH IS A MINIMUM FOR CASES OF PUBLIC IMPORTANCE
[1 POINT]

Based on the data received upon request for information of public importance, the following was established: in the representative sample of 17 courts in the Republic of Serbia, 13 courts do not publish judgment summaries, while one court (Prokuplje Higher Court) failed to respond to the submitted question. While collecting data, the following was noticed for certain courts: for example, Nis Higher Court publishes the notices on judgements against certain individuals, in the proceedings of interest to the media. On the other hand, Novi Sad Higher Court publishes bulletins with judgement statements. Finally, Belgrade Higher Court issues statements on adopted judgements in the cases of special interest to the public, that is, in so-called media cases. Based on all the aforementioned, it may be concluded that in most cases courts do not publish these data, thus this standard is not fulfilled. [0/1 point]

S10: COURTS REGULARLY PUBLISH ON THEIR OFFICIAL WEBSITES ANNUAL WORK REPORTS
[1 POINT]

When evaluating this standard, the focus was on whether the courts have on their websites available annual work reports not older than 2019, that is, those from 2019 or earlier. If neither of these criteria have been met, it is considered that the courts have not made this information available on their websites.

Upon the review of the data available on the websites of the sampled courts in the Republic of Serbia, it is established that in the jurisdiction territory of Kragujevac Appellate Court, only the Basic Court in Pozega publishes annual work reports and activity reports on its website. In addition, in the jurisdiction territory of Nis Appellate Court, out of the sample courts reviewed, only the Basic Court in Pirot has this information available to public on its website. If we look at all the courts analysed as per their appellate territories, approximately one half, that is, less than one half of the courts in the territories of appellate courts in Novi Sad[118] and Belgrade[119] do not publish this information on their websites. Based on these data, we cannot say that the courts regularly publish their annual work reports and activity reports on their official websites, since out of 17 courts in the sample, only 6 courts have made these data available.[69] Thus, this standard is not fulfilled. [0/1 point]

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[117] Rulebook on Administration in Public Prosecutor's Offices ("Official Gazette of the RS", no. 110/2009, 87/2010, 5/2012, 54/2017, 14/2018 and 57/2019), Article 64

[118] Novi Sad Higher Court and the Basic Court in Subotica publish annual work reports and annual reports while basic courts in Kikinda and Sabac do not publish them, while they also belong to Novi Sad Appellate Court jurisdiction territory.

[119] In the Belgrade Appellate Court jurisdiction territory, only Belgrade Higher Court and Smederevo Higher Court publish this information on their websites. On the other hand, the First Basic Court in Belgrade, Basic Court in Valjevo and Basic Court in Vrsac do not publish this information on their websites.

S11: PUBLIC PROSECUTOR'S OFFICES REGULARLY PUBLISH ON THEIR OFFICIAL WEBSITES ANNUAL WORK REPORTS AND REPORTS
[1 POINT]

Of the total sample of 17 prosecutor's offices, 94.1%, that is, 16 offices regularly publish their annual work reports, and only one does not do that. It should be noted that one of these 16 offices is on the "verge" of meeting this standard since its report was published in 2019, but it has been over a year since its last update. Thus, this standard is fulfilled. [1/1 point]

S12: PROFESSIONAL BIOGRAPHIES OF JUDGES INCLUDING THEIR CAREER DEVELOPMENT ARE AVAILABLE TO THE PUBLIC
[0.5 POINT]

The criterion for determining availability of professional biography information on judges including their career development is established in such a way that a court website must contain this information for all the judges and not only for the court presidents. After reviewing the sample of 17 courts belonging to appropriate appellate jurisdictions, where the sample includes a selection of higher and basic courts, it is concluded that none of the courts, regardless of their instance, provide this information. Rationale for such selection of courts lies in the fact that both higher and basic courts are the first-instance courts for certain group of cases, and they need to provide certain type of information essential for the citizens in order to facilitate their access to courts. Therefore, none of the courts provide the information on professional development and biography of all their judges. Thus, it is determined that this standard is not fulfilled. [0/0.5 point]

S13: PROFESSIONAL BIOGRAPHIES OF PUBLIC PROSECUTORS INCLUDING THEIR CAREER DEVELOPMENT ARE AVAILABLE TO THE PUBLIC
[0.5 POINT]

None of the prosecutor's offices from the sample provide professional biographies of their prosecutors, not even of the senior ones, either on their website or in their work report. On the other hand, 11 offices have a list of prosecutors' names and surnames on their websites, and 16 offices have those in their work reports. Since the prosecutor's offices do not publish prosecutors' professional biographies and their career development so that they are available to the public, this standard is not fulfilled. [0/0.5 point]

S14: COURT WORK REPORTS CONTAIN COMPLETE INFORMATION [120]
[0.5 POINT]

The Law on Free Access to Information of Public Importance stipulates that all state bodies are obliged to publish a report with the basic data about their work.[121] It is also prescribed what elements these reports must include[122], and there is also an adopted Guidebook for Publishing a Report about State Body Activities by the Commissioner for Information of Public Importance and Personal Data Protection[123]. In order for a report to be considered complete, it must contain the following elements: contents, basic information on the state body and the report, organizational structure, description of powers and duties of heads of that body, description of rules related to transparency of operations, list of most frequently requested information of public importance, description of jurisdiction, competencies and duties, description of actions inside of its jurisdiction, competencies and duties, stating regulations, services that the body provides to interested parties, procedure for provision of those services, overview of data on services provided, data on incomes and expenses, data on public procurements,

[120] Information is complete if it fully describes actual situation and there is nothing to add to such description. Complete information is also objective information since it does not hide unfavorable facts.
[121] Law on Free Access to Information of Public Importance, Article 39.
[122] Law on Free Access to Information of Public Importance, Article 39.
[123] Guidebook for Publishing a Report about State Body Activities ("Official Gazette of the RS", no. 68/2010)

data on state aid, data on salaries and other compensations paid, data on work assets, storing of information mediums, types of information they have, types of information they provide access to, and information on requesting free access to information of public importance. The research did not include content analysis of each report, but it rather meant determining whether the reports contained all the required elements.

Out of 17 analysed basic and higher courts in appellate courts' jurisdiction territories, it is determined that over one half of the courts do not meet this standard. More precisely, 9 out of 17 analysed courts have annual work reports that do not contain all the required elements. Thus, incomplete reports were published by Basic Courts in Valjevo, Vrsac, Subotica, Sabac, Kikinda, Jagodina and Pirot, as well as Novi Pazar Higher Court and Nis Higher Court. On the other hand, the other 8 courts meet this criterion and their reports are complete.[124] Thus, since more than half of the analysed courts fail to meet the said criterion, we can conclude that this standard is not fulfilled. [0/0.5 point]

S15: PUBLIC PROSECUTOR'S OFFICE WORK REPORTS CONTAIN COMPLETE INFORMATION [0.5 POINT]

Out of 17 prosecutor's offices analysed, 14 offices (82.4% of the sample) publish annual work reports that contain all the sections.[125] However, out of those 14, five prosecutor's offices have reports with incomplete content or without certain sections listed, but the relevant information is in the report text, so we can still consider that the criterion is met in these cases. Two offices have additional sections in their reports, and at least two offices have appropriate sections in their reports but without relevant information in those sections. Out of the three offices with incomplete information, only one office has a report but without half of the required sections. Since even 82.4% of prosecutor's offices has complete annual work reports, we can consider this standard as fulfilled, despite inconsistencies in some cases. [0.5/0.5 point]

[124] These are the courts from the sample: Belgrade Higher Court, Smederevo Higher Court, Novi Sad Higher Court, Krusevac Higher Court and Prokuplje Higher Court, as well as Basic Courts in Pozega and Bujanovac and First Basic Court in Belgrade.

[125] Guidebook for Publishing a Report about State Body Activities ("Official Gazette of the RS", no. 68/2010)

SUB-INDICATOR 1.4.
REACTIVE TRANSPARENCY OF COURTS AND PROSECUTOR'S OFFICES IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS
1. Job classification document or annual court activity schedule includes persons in charge of responding to requests for access to information of public importance	0.5/1
2. With appropriate internal document, prosecutor's offices appoint a person in charge of responding to requests for access to information of public importance	0/1
3. In courts, there is a designated person authorized to respond to requests for access to information of public importance	0.5/0.5
4. In prosecutor's offices, there is a designated person authorized to respond to requests for access to information of public importance	0.5/0.5
5. Persons authorized to act upon requests for access to information of public importance in judicial bodies are trained to protect privacy while processing information	0.5/0.5
6. Courts provide timely response to requests for access to information of public importance	0.5/1
7. Prosecutor's offices provide timely response to requests for access to information of public importance	0.5/1
8. Courts provide accurate and precise information in response to requests for access to information of public importance	0.5/0.5
9. Prosecutor's offices provide accurate and precise information in response to requests for access to information of public importance	0/0.5
10. In practice, courts do not require requestors to state reasons for requesting information of public importance	0.5/0.5
11. In practice, prosecutor's offices do not require from requestors to state reasons for requesting information of public importance	0.5/0.5
12. Courts appropriately apply legal grounds for limiting access to information of public importance	0.5/0.5
13. Prosecutor's offices appropriately apply legal grounds for limiting access to information of public importance	0/0.5
TOTAL NUMBER OF POINTS	5/8.5

S1. JOB CLASSIFICATION DOCUMENT OR ANNUAL COURT ACTIVITY SCHEDULE INCLUDES PERSONS IN CHARGE OF RESPONDING TO REQUESTS FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[1 POINT]

Through analysis of the sample of 17 courts of various instances that belong to 4 different appellate jurisdictions in the Republic of Serbia, the following has been concluded: nine courts out of the total of 17 analysed, designate a person in charge of responding to requests for access to information of public importance. Furthermore, these 9 courts have this person designated in their Annual Activity Schedules, and one of the courts also has it on its website. In other 8 cases, 4 courts have this information in their annual work reports and not in their annual activity schedules or job classification documents. Thus, although the courts do not provide this information in

the Job Classification Document but mostly in their annual activity schedules, this standard, in the context of courts, is considered as partially fulfilled. [0.5/1 point]

S2: WITH APPROPRIATE INTERNAL DOCUMENT, PROSECUTOR'S OFFICES APPOINT A PERSON IN CHARGE OF RESPONDING TO REQUESTS FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[1 POINT]

When we talk about prosecutor's offices, the situation is somewhat different. Only one prosecutor's office has published its Job Classification Document on its website. Four other offices provided this document upon a request for access to information of public importance. None of these available documents include job position for handling requests for access to information of public importance. Analysis of these documents shows that job positions are typical with the same formulation of duties that do not include handling of requests for information of public importance, so the expectation is that this percentage would remain the same even if we included analysis of these documents in other prosecutor's offices (which is certainly difficult to do). Thus, since contrary to courts, prosecutor's offices do not make this information available, it is considered that this standard is not fulfilled. [0/1 point]

S3: IN COURTS, THERE IS A DESIGNATED PERSON AUTHORIZED TO RESPOND TO REQUESTS FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[0.5 POINT]

When we talk about persons authorized to respond to requests for access to information of public importance, 17 courts were analysed, and they were of various instances and belonging to territorial jurisdictions of appellate courts in the Republic of Serbia.

In case of courts, it is established that 88%, that is, 15 out of 17 courts analysed have filled a position for responding to requests to access to information of public importance. Two (2) courts that have not filled this position are Basic Court in Jagodina and Nis Higher Court. When it comes to availability of the names of persons in charge of responding to requests for information of public importance, websites of 9 out of 17 sampled courts contain this information.

Thus, the courts' job positions for responding to requests for information of public importance are mostly filled and it is possible to identify persons in charge of these tasks via judicial bodies' websites, that is, via their work reports. In smaller number of cases, this information is obtained through request for information of public importance. Thus, this standard is considered fulfilled. [0.5/0.5]

S4: IN PROSECUTOR'S OFFICES, THERE IS A DESIGNATED PERSON AUTHORIZED TO RESPOND TO REQUESTS FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[0.5 POINT]

When we talk about persons authorized to respond to requests for access to information of public importance, 17 prosecutor's offices were analysed, and they were of various instances and belonging to territorial jurisdictions of appellate courts in the Republic of Serbia.

Regarding these positions, none of the prosecutor's offices state on their websites name of the person authorized to respond to requests for access to information of public importance. The situation is better when it comes to work reports: 12 prosecutor's offices state names of these persons – in 5 cases that person is a staff member of the prosecutor's office and in 7 cases this is a default position (public prosecutor or acting public prosecutor). This default position is listed without an actual name provided in 2 reports, while 3 prosecutor's offices do not give this information at all in their report. Of the last 3, two (2) prosecutor's offices provided the name of these persons in response to a request for access to information of public importance and in both cases, these are prosecutor's office secretaries. One (1) prosecutor's office failed to provide information.

As well as in courts, positions for responding to requests for access to information of public importance are mostly filled and it is possible to identify the persons in charge of these tasks in

prosecutor's offices. In smaller number of cases, this information is obtained through a request for information of public importance. Thus, this standard is considered fulfilled. [0.5/0.5]

S5: PERSONS AUTHORIZED TO ACT UPON REQUESTS FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE IN JUDICIAL BODIES ARE TRAINED TO PROTECT PRIVACY WHILE PROCESSING INFORMATION
[0.5 POINT]

Training in privacy protection and personal data processing organized by the Judicial Academy of the Republic of Serbia in 2019, according to their Annual Report,[126] had a goal to acquaint judges and prosecutors with the new Law on Personal Data Protection[127] and its application. Target group for the conducted trainings included judges of criminal departments of basic courts, judges of misdemeanor courts and misdemeanor appellate courts, judges of criminal and civil departments of higher courts, judicial associates and secretaries, basic, higher and appellate public prosecutors and their deputies, prosecutorial assistants and associates, as well as smaller number of independent participants and basic training participants.

Based on the Judicial Academy's data, during last year, that is, in the period from end of May till end of December 2019, 19 one-day seminars were held in Nis, Belgrade, Kragujevac and Novi Sad with the total of 367 participants. Based on the available information, it is not possible to determine to which judicial bodies these training participants belonged. However, having in mind the total number of courts and prosecutor's offices in the Republic of Serbia,[128] it may be concluded that significant number of employees completed this training in a relatively short period last year. As a result of the conducted trainings, judges and prosecutors are acquainted with the provisions of the new law and are capable of its application. With all the above mentioned, it can be concluded that the trainings in personal data protection are implemented and competent persons in judicial bodies are getting trained, thus this standard is considered as fulfilled. [0.5/0.5 point]

S6: COURTS PROVIDE TIMELY RESPONSE TO REQUESTS FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[1 POINT]

Requests for access to information of public importance were sent to all courts in the observed sample. Out of 17 courts of various instances and belonging to territorial jurisdiction of appellate courts in the Republic of Serbia, all 17 courts responded to submitted requests for access to information of public importance. In addition, it should be noted that all 17 courts from the sample responded to submitted requests in line with the defined 30-day deadline. It should be noted that although the legally prescribed deadline for response to this type of requests is 15 days from the receipt of request[129], 30-day deadline was deemed adequate by the project participants, having in mind the scope of documentation and the number of questions submitted to the judicial bodies. Thus, it may be concluded that this standard is partially fulfilled. [0.5/1 point]

S7: PROSECUTOR'S OFFICES PROVIDE TIMELY RESPONSE TO REQUESTS FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[1 POINT]

When it comes to prosecutor's offices, 4 out of 17 offices from the sample failed to respond to request for information of public importance. Out of 13 positive responses received (complete or partial), only 3 prosecutor's offices submitted the complete documentation as requested. Although there were some delays in terms of meeting of deadlines, since there was a state of emergency in

[126] Judicial Academy's Annual Report for 2019, Belgrade, March 2020
[127] Law on Personal Data Protection ("Official Gazette of the RS", no. 87/2018)
[128] According to the Law on Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices ("Official Gazette of the RS", no. 101/2013), Articles 2-4, 6,7,9-11, there are 44 misdemeanor courts in the Republic of Serbia, 66 basic courts, 25 higher courts, 4 appellate courts, and there are 3 departments of the Misdemeanor Appellate Court. In addition, it should be noted that there are 58 basic public prosecutor's offices in the Republic of Serbia, while there is the same number of higher public prosecutor's offices as the higher courts– 25. Finally, there are 4 appellate public prosecutor's offices.
[129] Law on Free Access to Information of Public Importance, Article 16 (1)

force between March 15, 2020 and May 6, 2020[130], we should consider that they responded to the received requests within the legal deadline. Thus, it may be concluded that this standard is partially fulfilled. [0.5/1 point]

S8: COURTS PROVIDE ACCURATE AND PRECISE INFORMATION IN RESPONSE TO REQUESTS FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[0.5 POINT]

Out of 17 courts of various instances and belonging to territorial jurisdiction of 4 appellate courts in the Republic of Serbia, 14 courts provided accurate and precise information as per submitted requests for access to information of public importance. In the remaining 3 cases[131], the courts failed to provide complete documentation requested, that is, they failed to respond to all questions in the request for access to information of public importance. Thus, since the courts provided higher share of accurate and precise information than the prosecutor's offices, we can conclude that this standard is fulfilled. [0.5/0.5 point]

S9: PROSECUTOR'S OFFICES PROVIDE ACCURATE AND PRECISE INFORMATION IN RESPONSE TO REQUESTS FOR ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[0.5 POINT]

In case of prosecutor's offices, the situation is somewhat different. Out of 17 offices which represent the sample, 13 offices responded to the submitted request, while 4 failed to do that[132]. Out of 13 responses received, 7 were assessed as accurate and precise, so this standard cannot be considered as fulfilled. [0/0.5 point]

S10: IN PRACTICE, COURTS DO NOT REQUIRE REQUESTORS TO STATE REASONS FOR REQUESTING INFORMATION OF PUBLIC IMPORTANCE
[0.5 POINT]

When submitting a request for access to information of public importance, requestor is not required to state reasons for the request.[133] Purpose of this standard was to determine practical application of this principle.

Out of 17 analysed courts of various instances belonging to territorial jurisdiction of various appellate courts in the Republic of Serbia, 16 courts did not require requestor to state reasons for request for information of public importance. However, one (1) court[134] asked for these reasons. Thus, this standard is considered fulfilled. [0.5/0.5 point]

S11: IN PRACTICE, PROSECUTOR'S OFFICES DO NOT REQUIRE FROM REQUESTORS TO STATE REASONS FOR REQUESTING INFORMATION OF PUBLIC IMPORTANCE
[0.5 POINT]

Situation is identical with the prosecutor's offices. Out of 17 offices analysed, only one office asked during a phone call for the reasons for the request. Requestor was asked to put a company stamp on the request "for safety reasons", which was refused since that is not required by law. It must be noted that in this case, later, the said prosecutor's office provided an antedated response, but since the findings had already been completed, that response could not have been taken into consideration.

Having in mind that high percentage of prosecutor's offices, 94% of them, did respect legal provisions and did not require requestors to state their reasons for request for access

[130] Decree on Deadlines in Administrative Procedures during the State of Emergency, ("Official Gazette of the RS", no. 41/2020 and 43/2020), Article 3 (1) from March 24, stipulates that the deadlines in the administrative procedures, including those related to requests for access to information of public importance, shall expire 30 days after the state of emergency ends.

[131] The courts that failed to provide accurate and precise information in response to the submitted request for access to information of public importance are: Pirot Basic Court, Prokuplje Higher Court and Nis Higher Court.

[132] Prosecutor's offices that failed to respond to request for access to information of public importance are: First Basic Public Prosecutor's Office in Belgrade, Basic Public Prosecutor's Office in Vrsac, Basic Public Prosecutor's Office in Kikinda and Higher Public Prosecutor's Office in Krusevac.

[133] Law on Free Access to Information of Public Importance, Article 15 (4)

[134] It is Pirot Basic Court.

to information of public importance, it may be concluded that this standard is fulfilled. [0.5/0.5 point]

S12: COURTS APPROPRIATELY APPLY LEGAL GROUNDS FOR LIMITING ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[0.5 POINT]

When determining if this standard is fulfilled, we looked at whether the courts consistently apply legally prescribed reasons for limiting access to information of public importance. Namely, access to information of public importance may be limited if it would jeopardize life, health, safety or any other vital interest of a person, jeopardize, obstruct or impede the prevention or detection of criminal offence, indictment of a criminal offence, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial, or if that would seriously threaten vital interests of public safety, defense, international relations or economic interests.[135]

In case of the courts, 5 of the 17 analysed courts have limited in a certain way provision of complete documentation requested. Thus, Belgrade Higher Court refused to provide the latest decisions in the proceedings that had not been conclude with a final decision due to ongoing appellate proceedings. In addition, the Basic Court in Pirot refused to provide documentation and asked for the request to be amended because "there is a potential to jeopardize, obstruct or impede legal procedure if there is no justified interest for submission of copies of those judgments". They asked for justification of requestor's interest for obtaining those judgments, since the requestor was not a party to any of the proceedings for which they requested a judgment copy. To get a broader picture, it should be noted that these are at the same time the courts that failed to provide most of the requested documentation. Having in mind all of the above, in the context of courts, this standard can be considered as fulfilled. [0.5/0.5 point]

S13: PROSECUTOR'S OFFICES APPROPRIATELY APPLY LEGAL GROUNDS FOR LIMITING ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
[0.5 POINT]

As in case of the courts, it was analysed whether prosecutor's offices appropriately apply legal grounds for limiting access to information of public importance. It is determined that none of the prosecutor's offices referred in their response to any of the legally prescribed grounds for limiting access to information of public importance (Articles 9-14 of the Law on Free Access to Information of Public Importance).

Responses to submitted requests for access to information of public importance are either not provided (4 prosecutor's offices), or the responses received that lacked certain information or documents either failed to justify that (4 prosecutor's offices) or they cited "state of emergency" as a reason (2 prosecutor's offices) or "not being in possession of the document requested" (4 prosecutor's offices, 3 of which referred to another competent body). Based on all of the above, this standard is not fulfilled. [0/0.5 point]

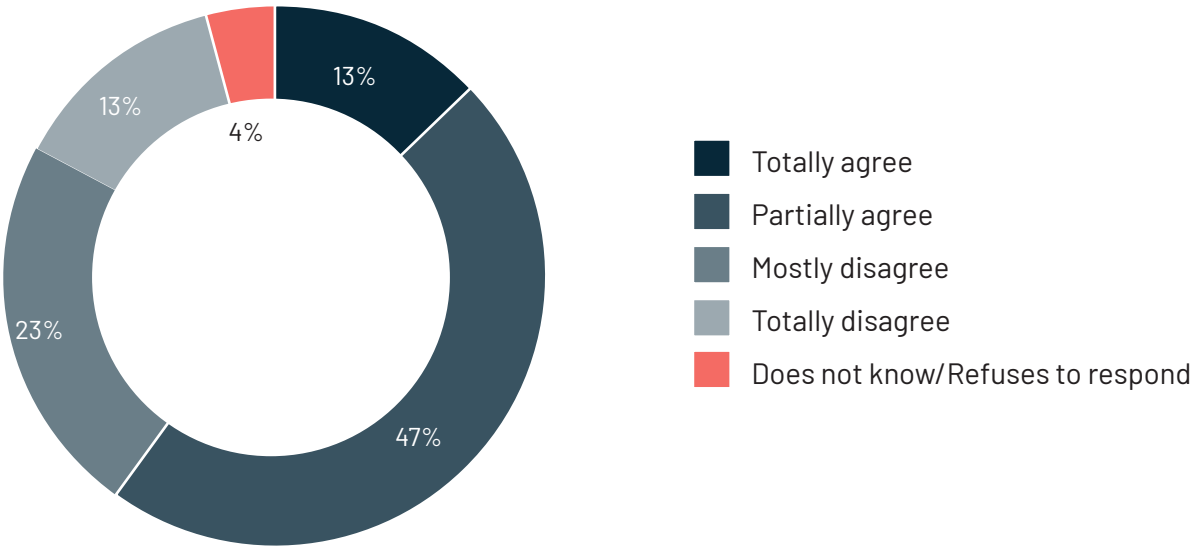
[135] *See* the Law on Free Access to Information of Public Importance, Articles 9-14

SUB-INDICATOR 1.5.
CITIZENS' PERCEPTION OF TRANSPARENCY OF WORK OF JUDICIAL BODIES

SUB-INDICATOR STANDARDS	POINTS
1. Judicial system beneficiaries believe that their "citizen's right to know" about the work of judicial bodies is fulfilled	0.5/1
2. Judicial system beneficiaries believe that information they receive from judicial bodies is complete	0.5/1
3. Judicial system beneficiaries believe that the key information on courts' work is easily accessible to them (at no more than three clicks from homepage) on court websites	0/0.5
4. Judicial system beneficiaries believe that the information on prosecutor's offices' work is easily accessible to them on prosecutor's office websites	0/0.5
TOTAL NUMBER OF POINTS	1/3

S1: JUDICIAL SYSTEM BENEFICIARIES BELIEVE THAT THEIR "CITIZEN'S RIGHT TO KNOW" ABOUT THE WORK OF JUDICIAL BODIES IS FULFILLED
[1 POINT]

Based on the survey conducted on fulfillment of the citizens' right to be informed by judicial bodies, the following results were obtained: 12.6% of the polled citizens agree that their citizens' right to be informed about the work of judicial bodies is fulfilled, while 47.2% of those polled partially agree. Contrary to that, 36.2% of those polled disagree with this statement and they gave negative response; more precisely, 13% of those polled totally disagree, and 23% partially disagree with this statement. Since the percentage of the persons polled who responded positively to this statement is 59.8% (under 75%), we believe that this standard is partially fulfilled. [0.5/1 point]



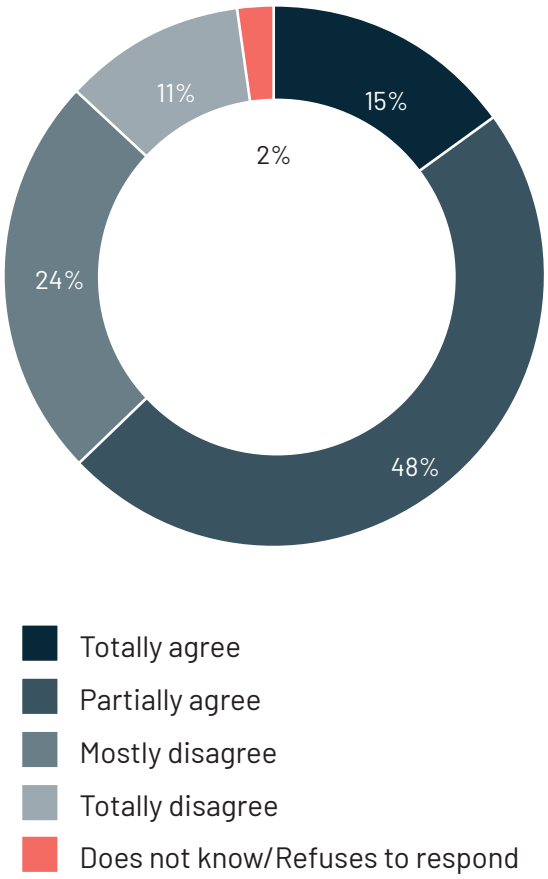
My civil right to be informed about the work of judicial bodies is satisfied

S2: JUDICIAL SYSTEM BENEFICIARIES BELIEVE THAT INFORMATION THEY RECEIVE FROM JUDICIAL BODIES IS COMPLETE
[1 POINT]

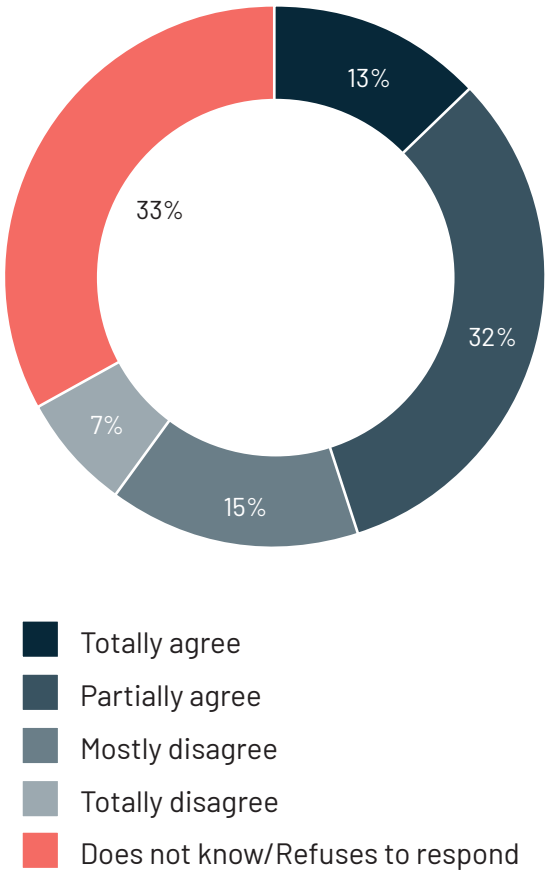
Citizens were polled to see to what extent they agreed with the statement that information they received from judicial bodies were complete. The term complete denotes a situation in which all pieces of information were provided, thus there are no missing pieces of information. Up to 62.8% citizens replied positively to this, while 35.2% expressed disagreement. More precisely, 15% totally agree, while 47/8% partially agree with this statement. On the other hand, 11.4% of citizens totally disagree, and 23.8% partially disagree. Since the percentage of the persons polled who responded positively to this statement is 62.8% (under 75%), we believe that this standard is partially fulfilled. [0.5/1 point]

S3: JUDICIAL SYSTEM BENEFICIARIES BELIEVE THAT THE KEY INFORMATION ON COURTS' WORK IS EASILY ACCESSIBLE TO THEM (AT NO MORE THAN THREE CLICKS FROM HOMEPAGE) ON COURT WEBSITES
[0.5 POINT]

Polled citizens gave their opinions on the following statement: "Information of public importance is easily accessible on court websites". Out of the total number of those polled, 44.6% of the citizens gave positive response. 12.8% of those totally agree, while 31.8% partially agree with this statement. On the other hand, 22.8% of those polled believe that information of public importance is not easily accessible on court websites – 15.4% partially disagree, and 7.4% totally disagree. In addition, it is important to note that up to 32.6% of those polled did not know or refused to respond to this question. Because of all of this, we believe that this standard is not fulfilled. [0/0.5 point]



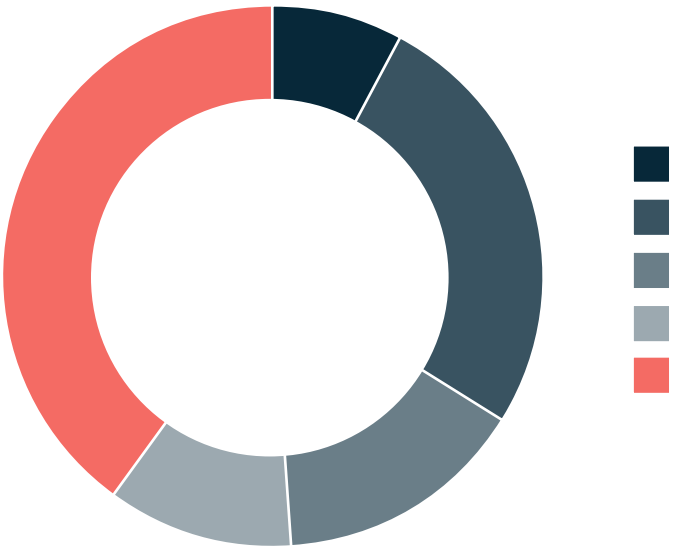
Information I receive from courts, that is important for me to exercise my rights and obligations, is complete



Information of public importance is easily accessible on court websites

S4: JUDICIAL SYSTEM BENEFICIARIES BELIEVE THAT THE INFORMATION ON PROSECUTOR'S OFFICES' WORK IS EASILY ACCESSIBLE TO THEM ON PROSECUTOR'S OFFICE WEBSITES
[0.5 POINT]

Citizens were asked if the information of public importance was always easily accessible on prosecutor's office websites. Out of the total number of those polled, up to 40.4% refused to respond, that is, they did not know how to respond to this question. Out of the rest of those polled, 34.4% citizens believe that information on prosecutor's office work is easily accessible on prosecutor's office websites. Of that percentage, 8% of those polled totally agree, and 26.4% partially agree. Contrary to them, 25.2% of the polled citizens disagree with this statement. More precisely, 14.4% of beneficiaries partially disagree, while 10.8% totally disagree with the given statement. Thus, this standard cannot be considered as fulfilled. [0/0.5 point]



EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**32** *(The sum of the maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**17.5** *(The sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-7	7.5-14.5	15-20	21-26.5	27-32
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**3**				

Legal framework that regulates availability of information about work of courts and prosecutor's offices is to a significant extent harmonized with the established standards. There is an observed need for improvement when it comes to obligation to publish judgment summaries in cases of public importance and those related to public office holders and officials, as well as the need to specify the definition of official document in the law regulating access to information of public importance.

Evaluation of the practice of informing the public about the work of courts and prosecutor's office, both reactive and proactive, is significantly weaker. There is a noted need for greater availability of information in national minority languages and for visually impaired persons, judgment summaries relevant for the public, more comprehensive reports, more up-to-date information about the work of prosecutor's offices and more of the key information on the work of courts. There is a noted lack of persons in charge of responding to requests for access to information of public importance in certain prosecutor's offices, as well as inadequate or delayed reaction of judicial bodies to these requests. In addition, citizens assess that information of public importance about the work of courts and prosecutor's offices is not easily accessible.

RECOMMENDATIONS

On a legislative level, it is necessary to specify the definition of an official document in the Law on Free Access to Information of Public Importance, as a source of information of public importance.

It is necessary to designate persons in charge of responding to requests for access to information of public importance in all prosecutor's offices and ensure they have a specialized training for adequate handling of the requests and good cooperation with office of the Commissioner for Information of Public Importance.

It is necessary to improve quality and content of prosecutor's office websites in order for the citizens to be better informed and in order to ensure regular and continuous publishing of relevant data. There is a need for adapting the website content to visually impaired persons and national minorities, especially in the municipalities with considerable share of minority population. In addition, it is necessary to update websites of prosecutor's offices with basic information about prosecutors, as well as actual and local jurisdiction.

It is necessary to improve quality and content of court websites, especially concerning provision of key information on the work of courts in a complete, accurate, up-to-date and accessible way, provision of the same information in the language or languages of national minorities in the communities where these languages are in official use, as well as to adapt the websites to blind and visually impaired persons.

Besides basic information about judges that is mostly available on websites, it is necessary to also provide work biographies that would primarily include data about their education, their work and career development, professional development and other data about their professional career and performance in a position of judge, modelled after the form and content of work biographies published on the Supreme Court of Cassation website.

It is necessary to improve quality of reports in the courts in which they do not contain all required elements as prescribed by law.

It is necessary to further improve the practice of handling requests for free access to information of public importance in courts in order to eliminate inconsistencies or irregular practices in terms of deadlines, content of information or availability of documents requested, that is, in order to ensure full transparency of work and consistent practice in all courts, in line with the practice and interpretations of the Commissioner for Information of Public Importance.

KEY AREA III: ACCESS TO COURTS

INDICATOR 1: FINANCIAL AND PHYSICAL ACCESSIBILITY OF COURTS

SUB-INDICATOR 1.1: ADEQUACY OF LEGAL NORMS THAT REGULATE FINANCIAL ACCESSIBILITY OF COURTS

SUB-INDICATOR STANDARDS	POINTS
1. The Law stipulates payment of court fees in civil proceedings and exemption from payment	1/1
2. The Law stipulates payment of court fees in criminal proceedings and exemption from payment	0.5/1
3. The Law stipulates that payment of court fees is not a requirement for conducting civil or criminal proceedings	1/1
4. Laws include all groups - sensitive (vulnerable) social groups fully listed in the law as categories for *ex lege* exemption from payment of court fees	0/0.5
5. Laws prescribe clear requirements for individuals who may be exempt from payment of court fees under certain conditions (depending on type of procedure and category of party).	0.5/0.5
6. Rules on exemption from payment of court fees and costs of procedures are mutually harmonized and coherent	0/0.5
7. The Law prescribes deadlines for submission of request for exemption from payment of court fees and other costs of procedure[136]	0/1
8. The Law clearly prescribes court's actions upon receiving a request: deadline for ruling on the request; circumstances evaluated by court; proposed efficient legal remedies	0.5/1
9. The Law stipulates possibility of exemption from payment of other court costs in civil procedure	0.5/0.5
10. The Law prescribes clear reasons, procedures, and deadlines for exemption from other court costs (court expertise) in civil procedure	0/0.5
11. The Law stipulates possibility of exemption from payment of other court costs in criminal procedure	0.5/0.5
12. The Law prescribes clear reasons, procedures, and deadlines for exemption from other court costs (court expertise) in criminal procedure	0.5/0.5
TOTAL NUMBER OF POINTS	5/8.5

[136] This standard does not refer to costs of representation, since that is covered by the legal aid indicator, which also includes free legal aid.

S1: THE LAW STIPULATES PAYMENT OF COURT FEES IN CIVIL PROCEEDINGS AND EXEMPTION FROM PAYMENT [1 POINT]

In court proceedings, court fees are paid in line with the Law on Court Fees.[137] Court fee is an amount of money used for covering court expenses related to conducting of the proceedings[138] and is paid for petitions prescribed by Tariff Numbers of the same Law.[139] Their inclusion in the law, as well as definition of special categories of persons (including sensitive social groups) that may be exempt from payment under legally prescribed conditions, is a standard than must be ensured by a modern judicial system open to its beneficiaries. When we look at the court fee systems in certain countries of the Council of Europe, according to the CEPEJ (Council of Europe European Commission for the Efficiency of Justice) report, only France, Luxembourg and Spain provide free access to all courts and do not require payment of court fees for initiating a proceeding.

The Law on Court Fees prescribes that a party pays a court fee for petitions when they are submitted to a court[140], and for court decisions when they are published[141]. In civil proceedings, fees are paid as per value of the subject of a dispute.[142] Fees prescribed by Fee Tariff are paid in court fee stamps or in cash.[143] If a party pays higher fee than prescribed, they have the right to refund.[144] The law defines special categories of persons that may be exempt from payment of court fees, as contrary to other countries in the region (i.e. Croatia) that provide extensive list of persons in this case. State and their institutions are exempt from payment of fees.[145] Before making a decision, a court will evaluate all circumstances and specifically take into account applicable amount of fee to be paid, total income of the party and members of his/her household, and the number of persons the party supports financially.[146] Special law may also prescribe exemption from court fees, so according to the Law on Consumer Protection, in a consumer dispute, court fees for the lawsuit shall not be charged if the value of the dispute does not exceed 500,000 dinars. The Law on Free Legal Aid, in turn, when compared to special laws, provides a broader list of persons who have the right to free legal aid.[147] Thus, based on all the above mentioned, this standard is considered as fulfilled. [1/1 point]

S2: THE LAW STIPULATES PAYMENT OF COURT FEES IN CRIMINAL PROCEEDINGS AND EXEMPTION FROM PAYMENT [1 POINT]

While in civil proceedings a party usually must pay a fee to initiate a proceeding, in criminal proceedings court fees exist only in the systems where parties may initiate a criminal proceeding per private lawsuit. Here, as well as in civil proceedings, the result of the proceeding decides who needs to pay costs of proceeding. However, although stipulated by law, these fee amounts are small. In criminal cases, none of the members of the Council of Europe have court fees for initiating a proceeding before the court, except for Croatia, Cyprus, Greece, Monaco, Montenegro, Portugal, Serbia, and Switzerland. In Serbia, a fee is paid in criminal cases per private lawsuits. The Law on Court Fees defines a possibility of exemption from payment of court fees. There are conditions for exemption from fees in criminal proceedings per private lawsuit, as in a civil proceeding. Since the Law on Court Fees prescribes payment of fee in criminal proceedings per private lawsuit, as well as conditions for exemption from payment of fees, the standard for inclusion of these provisions in criminal proceedings is partially fulfilled. [0.5/1 point]

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137 Law on Court Fees ("Official Gazette of the RS", no. 95/2018)
138 Law on Court Fees, Article 1
139 Law on Court Fees, Article 3
140 Law on Court Fees, Article 3 (1) (1)
141 Law on Court Fees, Article 3 (1) (3)
142 Law on Court Fees, Article 21 (1)
143 Law on Court Fees, Article 6 (1)
144 Law on Court Fees, Article 43 (1)
145 Law on Court Fees, Article 9 (1)
146 Law on Court Fees, Article 10 (2)
147 Law on Free Legal Aid, Article 4

S3: THE LAW STIPULATES THAT PAYMENT OF COURT FEES IS NOT A REQUIREMENT FOR CONDUCTING CIVIL OR CRIMINAL PROCEEDINGS
[1 POINT]

In most of judicial systems, court proceeding gets suspended due to failure to pay court fees before a certain deadline, but in Serbia, there is a different practice. The Law on Court Fees stipulates that underpaid or unpaid fee shall not delay court proceedings, and the court shall not suspend the proceeding if the fee is not paid.[148] Upon party's request, court is obliged to receive unpaid or underpaid petitions.[149] However, if a party does not pay the fees before the deadline, or does not fully pay them, a court may initiate a proceeding for forced collection of payment.[150] The court will send to the party or its legal representative (if they have one) a warning to pay the unpaid or underpaid fee in not more than 8 days. If the party still fails to pay the fee after the warning, the court adopts a decision on enforcement that requires the party to pay the fee, as well as a penalty fee which is 50% of the fine.[151] With all the aforementioned and having in mind that the Law on Court Fees stipulates that underpaid or unpaid fees shall not delay court proceedings and courts shall not suspend proceedings if the fees are not paid, this standard is completely fulfilled. [1/1 point]

S4: THE LAWS INCLUDE ALL GROUPS - SENSITIVE (VULNERABLE) SOCIAL GROUPS FULLY LISTED IN THE LAW AS CATEGORIES FOR EX LEGE EXEMPTION FROM PAYMENT OF COURT FEES
[0.5 POINT]

Two groups of individuals are *ex lege* exempt from paying fees – dependent persons[152] and persons requiring payment of minimum wage.[153] Other groups of persons not belonging to these two categories may be exempt from payment of court fees under legally prescribed conditions related to their financial circumstances. Court may exempt a party from payment of fees, at the party's request, if by paying the fees, the assets used to support the party and members of his/her household would be so diminished to endanger their social security.[154] However, when it comes to inclusion of vulnerable groups into exemption from payment of court fees, these social groups are very narrowly defined and refer to special procedures regulated by law, so the standard for inclusion of all sensitive groups in the context of the right to exemption from payment of court fees is not fulfilled. [0/0.5 point]

S5: LAWS PRESCRIBE CLEAR REQUIREMENTS FOR INDIVIDUALS WHO MAY BE EXEMPT FROM PAYMENT OF COURT FEES UNDER CERTAIN CONDITIONS (DEPENDING ON TYPE OF PROCEDURE AND CATEGORY OF PARTY)
[0.5 POINT]

The Law on Court Fees stipulates that the decision on exemption shall be adopted by a first-instance court at the request of a party.[155] Before adoption of a decision, a court will evaluate all the circumstances and specifically take into account applicable amount of fee to be paid, total income of the party and members of his/her household, and the number of persons the party supports financially.[156] The purpose of this provision is primarily to protect social security of a person and it does not limit parties in terms of submission of request for exemption from payment of fees depending on type of procedure and category to which the party belongs, if they meet legally prescribed conditions, which the court must examine in each separate case when handling a request for exemption from costs of procedure submitted by that party.

However, without additional guidelines, courts

148 Law on Court Fees, Article 7
149 Law on Court Fees, Article 7 (2)
150 Law on Court Fees, Article 37
151 Law on Court Fees, Article 40(1)
152 Dependent persons in terms of legal support are minor children or foster children, children or foster children in regular education or in early studies, if they are unemployed - up to the age of 26, grandchildren, if they are not supported by parents and if they live together in a household of that party, the spouse and parents or adoptive parents – *see* Law on Court Fees, Article 10
153 Law on Court Fees, Article 9 (1)
154 Law on Court Fees, Article 10 (1)
155 Law on Court Fees, Article 10 (2)
156 Law on Court Fees, Article 10 (2)

are left with a possibility to make discretionary decisions on party's exemption from payment of fees, which leads to uneven court practice and inconsistencies in access to justice.[157] However, since the law prescribes clear conditions for individuals to exercise their right to exemption form payment of court fees, this standard is considered as fulfilled. [0.5/0.5 point]

S6: RULES ON EXEMPTION FROM PAYMENT OF COURT FEES AND COSTS OF PROCEDURES ARE MUTUALLY HARMONIZED AND COHERENT
[0.5 POINT]

For access to justice, and, thus, for legal security to exist in a system, it is necessary for relevant provisions to be mutually harmonized and coherent. In addition to the Law on Court Fees,[158] Civil Procedure Code,[159] Criminal Procedure Code[160] and Law on Misdemeanors[161] prescribe a possibility for exemption from payment of costs of procedure. The Law on Court Fees defines socially vulnerable persons as suitable for exemption from payment of fees (besides the two groups of persons designated by law),[162] the Civil Procedure Code defines them as persons not capable to bear expenses,[163] and the Criminal Procedure Code and the Law on Misdemeanors define them as persons whose support would be threatened[164] or as persons supported by the defendant.[165] Application of the social criterion is a basis for exemption from costs in court proceedings. The Civil Procedure Code stipulates that in ruling on exemption from payment of costs of the proceeding, a court can exempt a party from only payment of fees.[166] In such cases, the problem is that the court sees such decision as complete approval of party's request, which does not leave a possibility for the party to appeal that decision, with the instruction on a legal remedy stating that appeal is not allowed. In addition, in a civil procedure, court may *ex officio* collect necessary data and information about financial situation of a party requesting exemption from payment of costs.[167] This provision leads to inconsistent practical application of the rule for proving fulfilment of conditions for acknowledgment of the right to exemption from costs.

The Civil Procedure Code does not stipulate that exemption from payment of costs also means exemption from payment of attorneys' remuneration, but it prescribes additional criteria and special procedure for acknowledgment of the rights to free legal aid in civil procedure.[168] This right can be achieved only when a party is fully exempt from payment of costs of procedure.[169] In that sense, additional problem is that there is no defined deadline in civil procedure in which court should rule upon request for exemption from payment of costs of procedure, so until the court rules upon the request, the party is not able to exercise its right to free legal representative. At the same time, with adoption of the Law on Free Legal Aid,[170] a parallel system has been established for acquiring free legal aid in completely separated administrative procedure in the bodies of municipal or city administration. There is a wider range of persons who can exercise the right to free legal aid than those who can be exempt from payment of court fees or exempt from payment of costs of procedure.[171] Thus established parallel systems for exercising of the rights may create a confusion and hinder access to courts for individual beneficiaries. Rules of

[157] Functional Review of the Justice Sector in Serbia, Multidonor Trust Fund for Justice Sector Support in Serbia, Belgrade, 2014, p. 187.
[158] Law on Court Fees
[159] Civil Procedure Code, Article 168
[160] Criminal Procedure Code, Article 264(4)
[161] Law on Misdemeanors ("Official Gazette of the RS", no. 91/2019 – other law), Article 141
[162] Law on Court Fees, Article 9
[163] Civil Procedure Code, Article 168(1)
[164] Criminal Procedure Code, Article 264(4)
[165] Law on Misdemeanors, Article 145
[166] Civil Procedure Code, Article 168(3)
[167] Civil Procedure Code, Article 169(3)
[168] Civil Procedure Code, Article 170
[169] Civil Procedure Code, Article 170(1)
[170] Law on Free Legal Aid
[171] Law on Free Legal Aid, Articles 27 and 46

exemption from payment of court fees and costs of procedure are not sufficiently harmonized, so this standard may not be considered as fulfilled. [0/0.5 point]

S7: THE LAW PRESCRIBES DEADLINES FOR SUBMISSION OF REQUEST FOR EXEMPTION FROM PAYMENT OF COURT FEES AND OTHER COSTS OF PROCEDURE 172 [1 POINT]

Besides the circumstances evaluated by court and the legal remedies, it is also important for parties to have a deadline by which they can get exemption from payment of costs. The Civil Procedure Code and the Law on Court Fees do not contain explicitly preclusive deadline for submission of a request. In most cases, parties are not informed by anyone that they could request fee exemption; they usually submit request after court decisions come into force since, by rule, that is when courts send out fee payment warnings. This gap results in courts setting through their inconsistent practices the deadlines that citizens fail to meet and thus lose the right to exemption from payment of costs of procedure. In a criminal procedure, defendant pays the costs once the court pronounces them guilty where the court, in addition to its judgment, also adopts a decision on payment of costs.[173] However, even after adoption of such a decision, the court may, through a special decision, exempt the defendant from payment of costs of criminal procedure, in line with the Criminal Procedure Code.[174] Possible exemption from costs is similarly regulated in a misdemeanor procedure.[175] Thus, based on the aforementioned, the Law on Court Fees and the Civil Procedure Code do not prescribe deadlines for submission of request for exemption from payment of court fees and other costs of procedure, contrary to the Criminal Procedure Code. This gap creates legal uncertainty since, by rule, no one informs the parties about a possibility of submission of such a request, which results in them missing the deadline and their request being rejected. Thus, the standard is not fulfilled. [0/1 point]

S8: THE LAW CLEARLY PRESCRIBES COURT'S ACTIONS UPON RECEIVING A REQUEST: DEADLINE FOR RULING ON THE REQUEST; CIRCUMSTANCES EVALUATED BY COURT; PROPOSED EFFICIENT LEGAL REMEDIES [1 POINT]

Clearly prescribed legal deadlines, criteria for decisions and possible legal remedies are the main preconditions for an efficient and transparent procedure for exercising the rights in any section of a legal system. The Law on Court Fees stipulates that court may exempt a party from payment of fees if, having in mind the assets used to support the party and its household members, by paying the fees those assets would be so diminished to endanger their social security.[176] Before making a decision, a court will evaluate all the circumstances and specifically take into account applicable amount of fee to be paid, total income of the party and members of his/her household and the number of persons the party supports financially.[177] In order to exercise this right, the parties need to submit proof of their financial situation,[178] and the court may obtain and verify the needed data *ex officio*.[179] If a court rejects a request, a party may appeal that decision before the second-instance court. Court's decision to approve request for exemption from payment of fees may not be appealed.[180] Thus, even though there are prescribed circumstances evaluated by court, as well as the legal remedies, the deadline for submission of a request with which parties identify themselves before the court is not defined, so this standard is partially fulfilled [0.5/1 point]

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172 This standard does not refer to costs of representation, since that is covered by the legal aid indicator which also includes free legal aid.
173 Criminal Procedure Code, Article 264(1)
174 Criminal Procedure Code, Article 264(4)
175 Law on Misdemeanors, Article 145
176 Law on Court Fees, Article 10(1)
177 Law on Court Fees, Article 10(2)
178 Law on Court Fees, Article 11(1)
179 Law on Court Fees, Article 11(5)
180 Law on Court Fees, Article 11(6)

S9: THE LAW STIPULATES POSSIBILITY OF EXEMPTION FROM PAYMENT OF OTHER COURT COSTS IN CIVIL PROCEDURE
[0.5 POINT]

Besides court fees, parties to a procedure also face other costs. Thus, a possibility to get exemption from other costs as stipulated by law is an important right of the party to that procedure. The Law defines civil procedure costs as the costs incurred in the course of, or in relation to the procedure,[181] which also include remuneration for the work of attorneys and other persons entitled to remuneration pursuant to the law.[182] In a civil procedure, the rule is that each party bears their own costs during that procedure[183], and when it ends, the losing party must reimburse the costs of the other party, including the court fees.[184] The Law includes in exemption from payment of costs of procedure, exemption from payment of court fees and exemption from payment of deposit for costs of witnesses, expert witnesses, investigation and court announcements.[185] However, the Civil Procedure Code does not include here exemption from payment of attorneys' remuneration.

The right to free legal representative is regulated by special Law on Free Legal Aid,[186] which came into force in October 2019. However, despite adoption of the Law on Free Legal Aid, the Civil Procedure Code still includes a possibility to get free legal representation granted by court.[187] The party requesting exemption from the costs must submit a request for exemption from costs of the procedure to the first-instance court, which then renders the decision.[188] Besides that, it should be noted that the Civil Procedure Code also includes a possibility for appointment of a temporary representative[189] or a legal representative for receiving communications from the court,[190] in certain situations. Although this right is rarely exercised in practice, there are still two legally regulated methods for exercising the right to free legal representative. The Civil Procedure Code stipulates that parties and other participants to the procedure who are blind, deaf or mute are entitled to free assistance of interpreter.[191] However, although constitutional norm guarantees the right to free assistance of an interpreter if a person does not speak or understand the language officially used in the court,[192] the Civil Procedure Code does not *a priori* give this possibility to the parties. Parties may be exempt from payment of the services of an interpreter the same way as for other costs of the procedure. Since the Civil Procedure Code defines the method for exemption from other costs of the procedure during litigation, this standard is completely fulfilled. [0.5/0.5 point]

S10: THE LAW PRESCRIBES CLEAR REASONS, PROCEDURES, AND DEADLINES FOR EXEMPTION FROM OTHER COURT COSTS (COURT EXPERTISE) IN CIVIL PROCEDURE
[0.5 POINT]

When it comes to reasons, procedures and deadlines for exemption from other court costs (such as court expertise) in civil procedure, these issues must be regulated by law. As the main reason for exemption from payment of the costs of procedure, the law stipulates party's inability to bear costs due to their financial situation.[193] Before ruling on exemption from payment of costs of procedure, a court will evaluate all the circumstances and specifically take into account applicable amount of fee to be paid, number of persons that party supports and income and

[181] Civil Procedure Code, Article 150(1)
[182] Civil Procedure Code, Article 150(2)
[183] Civil Procedure Code, Article 151
[184] Civil Procedure Code, Article 153
[185] Civil Procedure Code, Article 168(2)
[186] Law on Free Legal Aid, Article 6
[187] Civil Procedure Code, Article 17
[188] Civil Procedure Code, Article 169(2)
[189] Civil Procedure Code, Article 82
[190] Civil Procedure Code, Article 146
[191] Civil Procedure Code, Article 95(4)
[192] Constitution of the Republic of Serbia, Article 32(2)
[193] Civil Procedure Code, Article 168 (1)

assets of the party and his/her family members.[194] The process is initiated upon party's request.[195] The party requesting exemption from costs must state the facts in the request and submit proof of those facts.[196] The court may exempt a party completely or partially (only fees).[197] If the court in the course of procedure establishes that the party is capable of bearing the litigation costs, it may repeal its original ruling and decide whether the party shall completely or partially reimburse the expenses and fees from it was previously exempt from.[198] No appeal is permitted against the ruling of the court granting the request of a party ,[199] which leaves a gap in interpretation whether this norm applies to the situation when the party's request has been partially approved, that is, whether an appeal is permitted even when the court has approved exemption only from payment of court fees. Deadlines for court's decision to exempt a party from payment of costs of procedure are not defined, which results in uncertainty for the parties regarding a timeframe in which they can submit the request. The Civil Procedure Code prescribes the reasons and procedure for exemption from other costs, but it does not prescribe firm deadlines, which creates legal uncertainty for the parties, thus this standard may not be considered as fulfilled. [0/0.5 point]

S11: LAW STIPULATES POSSIBILITY OF EXEMPTION FROM PAYMENT OF OTHER COURT COSTS IN CRIMINAL PROCEDURE
[0.5 POINT]

In criminal procedure, the costs are the expenses incurred in connection with the procedure from its initiation until its conclusion,[200] and they include costs of witnesses, expert witnesses, professional consultants, translators, interpreters and professionals, costs of inquests, costs of transporting, bringing in and medical treatments of defendants, biochemical analyses and transportation of a cadaver to the site of autopsy, remunerations, necessary expenses and lump sums.[201] Nominally, the defendant bears the costs of criminal procedure when the court convicts them.[202] However, if the payment of costs would bring into question the support of the defendant or a person he/she is required to support, the court may exempt the defendant from the payment.[203] Support implies ensuring necessary existential minimum, which includes housing needs, nourishment needs, education needs, etc. Evaluation must be based on the needs of an average person. The law stipulates financial situation as the main reason for exemption from costs of procedure and the court must examine whether the defendant would jeopardize his/her support or other persons' support by paying these costs. In case of such circumstances, the court would have to exempt the defendant from payment of costs, fully or partially.[204] This exemption refers to all abovementioned expenses, except remuneration and necessary expenses of legal representatives and other persons, if it is justified by financial difficulties that defendant could face.[205] If these circumstances are established after the issuance of a decision on costs, the court may issue a separate ruling relieving the defendant of the duty to bear the costs of criminal procedure.[206] When criminal proceedings are discontinued, charges are dismissed, or a defendant is acquitted, costs of procedure are paid by the court[207] or private prosecutor.[208]

[194] Civil Procedure Code, Article 168 (4)
[195] Civil Procedure Code, Article 169 (1)
[196] Civil Procedure Code, Article 169 (2)
[197] Civil Procedure Code, Article 168 (3)
[198] Civil Procedure Code, Article 172 (1)
[199] Civil Procedure Code, Article 169 (4)
[200] Criminal Procedure Code, Article 261 (1)
[201] Criminal Procedure Code, Article 261 (2)
[202] Criminal Procedure Code, Article 261 (4)
[203] Criminal Procedure Code, Article 264 (4)
[204] Criminal Procedure Code, Article 264 (4)
[205] Criminal Procedure Code, Article 264 (4)
[206] Criminal Procedure Code, Article 264 (4)
[207] Criminal Procedure Code, Article 265 (1)
[208] However, private prosecutor shall not bear the costs of procedure if the charges were dismissed due to the death of the defendant or the expiry of the statute of limitations on criminal prosecution due to the delay of proceedings for which the private prosecutor cannot be blamed – *See* Criminal Procedure Code, Article 265 (3)

The costs of translation and interpretation, as well as the costs of defense of an indigent person are free of charge.[209] On the other hand, defense of an indigent person means that at the request of the defendant who, due to his financial status, cannot afford to pay the fees and costs of the defense counsel although there are no reasons for mandatory defense if the criminal proceedings are being conducted in connection with a criminal offence punishable by a term of imprisonment of over three years, or where reasons of fairness so demand, a defense counsel shall be appointed and the costs of defense shall be borne by the court.[210] Contrary to the defense of an indigent person, the costs of appointed defense counsel in cases of mandatory defense (if defense counsel is not selected) are paid from the budget funds of the court only if payment of a fee and necessary expenses would bring into question the support of the defendant or of a person he/she is required to support.[211] Based on the aforementioned, the Criminal Procedure Code stipulates that the defendant who is pronounced guilty shall bear the costs of the criminal procedure.

However, if the payment of costs would jeopardize support of the defendant or of a person, he/she is required to support, the court may exempt him/her from payment of the costs of the procedure. Thus, this standard can be considered as fulfilled. [0.5/0.5 point]

S12: THE LAW PRESCRIBES CLEAR REASONS, PROCEDURES, AND DEADLINES FOR EXEMPTION FROM OTHER COURT COSTS (COURT EXPERTISE) IN CRIMINAL PROCEDURE
[0.5 POINT]

As already mentioned, the concept of costs includes the costs of court expertise and other expenses. In addition, the Criminal Procedure Code clearly describes the reasons related to financial situation of the defendant and persons he/she supports, that are identified by the court in the course of procedure or after the ruling on payment of costs. Thus, based on all of the above, this standard may be considered as fulfilled. [0.5/ 0.5 point]

[209] Criminal Procedure Code, Article 261 (5)
[210] Criminal Procedure Code, Article 77 (1)
[211] Criminal Procedure Code, Article 266

SUB-INDICATOR 1.2.
ADEQUACY OF LEGAL NORMS REGULATING PHYSICAL ACCESSIBILITY OF COURTS

SUB-INDICATOR STANDARDS	POINTS
1. The Law prohibits denial of rights (discrimination) based on personal characteristic, especially disability and age	1/1
2. The Law stipulates obligation of physical adaptation of facilities so that they are accessible to persons with movement difficulties	0.5/1
3. The Law stipulates obligation of informational/communicational adaptation of courts for persons with communication difficulties (especially deaf and hearing impaired, blind and visually impaired, persons with mental disability)	1/1
TOTAL NUMBER OF POINTS	2.5/3

S1: THE LAW PROHIBITS DENIAL OF RIGHTS (DISCRIMINATION) BASED ON PERSONAL CHARACTERISTIC, ESPECIALLY DISABILITY AND AGE [1 POINT]

Legal prohibition of discrimination based on personal characteristic, primarily based on disability or age, guarantees fairness and efficiency of judicial system. The Law on Prohibition of Discrimination guarantees that everyone shall have the right to equal access to and equal protection of their rights before courts of law and public administration bodies.[212] The prohibition refers to all aspects of access to public administration bodies, from municipal to procedural ones. In addition, everyone shall have the right to equal access to objects in public use, as well as public spaces, in accordance with the law.[213] Discrimination of disabled persons shall be considered to occur in the case of conduct contrary to the principle of observing the equal rights and freedoms of disabled persons in political, economic, cultural and other aspects of public, professional, private and family life.[214] The Law on Prevention of Discrimination of Persons with Disabilities prohibits discrimination based on disability when it comes to access to services and access to objects in public use and public spaces.[215] The law also stipulates a court protection in case of occurrence of discrimination.[216] Through legal action, one can request identification of occurrence of discrimination, prohibition of perpetration of discrimination act (threatening acts of discrimination, acts of perpetration or repetition), elimination of consequences of discrimination, as well as compensation for material or non-material damages.[217] Besides court protection, the Law on Prohibition of Discrimination prescribes a process for protection from discrimination implemented by the Commissioner for Protection of Equality. This form of protection does not exclude subsequent court protection. Other laws do not regulate discrimination exclusively, but they recognize its importance. For example, the Law on Local Self-Government defines that one of the local self-government competencies is to ensure fulfillment of special needs of persons with disabilities and protection of rights of vulnerable groups.[218]

[212] Law on Prohibition of Discrimination ("Official Gazette of RS, no. 22/2009), Article 15 (1)
[213] Law on Prohibition of Discrimination, Article 17 (2)
[214] Law on Prohibition of Discrimination, Article 26
[215] Law on Prevention of Discrimination of Persons with Disabilities ("Official Gazette of the RS", no. 13/2016), Article 13 (1)
[216] Law on Prevention of Discrimination of Persons with Disabilities, Articles 39-45
[217] Law on Prevention of Discrimination of Persons with Disabilities, Article 43
[218] Law on Local Self-Government ("Official Gazette of the RS", no. 47/2018), Article 20 (1) (5)

Serbian legislation's normative solutions recognize the problem of discrimination and prohibit discriminatory behavior based on personal characteristic, especially disability and age. Thus, this standard is considered as fulfilled. [1/1 point]

S2: THE LAW STIPULATES OBLIGATION OF PHYSICAL ADAPTATION OF FACILITIES SO THAT THEY ARE ACCESSIBLE TO PERSONS WITH MOVEMENT DIFFICULTIES [1 POINT]

Physical adaptation of public administration facilities means ensuring access for all members of society regardless of their personal characteristics, and especially their movement difficulties. The Law on Planning and Construction defines the standards of accessibility[219] – these are mandatory technical measures, standards and conditions of designing, planning and construction, which ensure unhindered movement and access for persons with disabilities, children and the elderly.[220] The Law stipulates that buildings for public and commercial use, as well as other facilities for public use shall be designed, constructed and maintained so that all users, in particular persons with disabilities, children and the elderly, are provided with unhindered access, movement and stay, i.e. use in accordance with applicable technical regulations.[221] The investor is not obliged to acquire the site conditions in case when he/she performs works on investment maintenance of the facility and removal of obstacles for persons with disabilities.[222] The Law on Planning and Construction stipulates misdemeanor liability of the investor in case of failure to provide access to the facility for persons with disability, in compliance with accessibility standards.[223] However, the fine for this violation is extremely small and it amounts to 300.000 dinars (the fixed amount).[224] More serious sanctioning of failure to meet the accessibility standards would certainly encourage investors to take their legal obligations more seriously. Thus, although the investors are normatively obliged to meet precisely defined accessibility standards for facilities during their construction or adaptation, potential fine that legal entities face for that offence is so low that this standard is considered as partially fulfilled. [0.5/1 point]

S3: THE LAW STIPULATES THE OBLIGATION OF INFORMATIONAL/COMMUNICATIONAL ADAPTATION OF COURTS FOR PERSONS WITH COMMUNICATION DIFFICULTIES (ESPECIALLY DEAF AND HEARING IMPAIRED, BLIND AND VISUALLY IMPAIRED, PERSONS WITH MENTAL DISABILITY) [1 POINT]

Besides adaptation of facilities for persons with movement difficulties, it is also important to adapt facilities for the needs of persons with communication difficulties, that is, for mute, deaf, hearing impaired, blind and visually impaired persons, as well as persons with a mental disability. The Law on Prevention of Discrimination of Persons with Disabilities, in its section on measures for encouragement of equality of persons with disabilities, requires the bodies of state administration, territorial autonomy and local self-government in charge of culture and media-related tasks to take measures in order to make information and communication accessible to persons with disabilities through use of appropriate technologies.[225] Thus, normative solutions fully require state bodies, including courts, to ensure access to information and communication through use of technology. The standard is considered as fulfilled. [1/1 point]

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[219] Rulebook on technical standards of planning, designing and construction of facilities which ensure unhindered movement and access for persons with disabilities, children and the elderly ("Official Gazette of the RS", no. 22/2015), regulates in more detail terms and standards of accessibility as prescribed by the Law on Planning and Construction.

[220] Law on Planning and Construction ("Official Gazette of the RS", no. 9/2020), Article 2 (1) (4)

[221] Law on Planning and Construction, Article 5 (1)

[222] Law on Planning and Construction, Article 53a (8)

[223] Law on Planning and Construction, Article 206

[224] Law on Planning and Construction, Article 206 (1)

[225] Law on Prevention of Discrimination of Persons with Disabilities, Article 35

SUB-INDICATOR 1.3.
ADEQUACY OF LEGAL NORMS THAT REGULATE LANGUAGE ACCESSIBILITY OF COURTS

SUB-INDICATOR STANDARDS	POINTS
1. There is a guaranteed free-of-charge use of national minority languages during complete court proceeding in the territory of municipality in which the national minority languages are in official use	0.5/1
2. There is a guaranteed free-of-charge use of national minority languages during complete court proceeding in the areas where the national minority languages are not in official use	1/1
3. There is a guaranteed interpreter if a party does not speak or understand the language that is in official use in court during complete court proceeding	1/1
4. There is a guaranteed assistance of interpreter for the blind and visually impaired, deaf and hearing-impaired persons during complete court proceeding	1/1
TOTAL NUMBER OF POINTS	3.5/4

S1: THERE IS A GUARANTEED FREE-OF-CHARGE USE OF NATIONAL MINORITY LANGUAGES DURING COMPLETE COURT PROCEEDING IN THE TERRITORY OF MUNICIPALITY IN WHICH THE NATIONAL MINORITY LANGUAGES ARE IN OFFICIAL USE
[1 POINT]

Free of charge use of national minority languages during complete procedure before the public administration bodies in the areas where those national minority languages are in official use, presents the fulfillment of constitutional guarantees. The Constitution of the Republic of Serbia prohibits all direct or indirect discrimination on any grounds, specifically listing prohibition of discrimination based on language.[226] In addition, it is guaranteed that members of national minorities shall have the right to use their language in proceedings also conducted in their language before state bodies, organizations with delegated public powers, bodies of autonomous provinces and local self-government units, in areas where they make a significant majority of population.[227] European Charter for Regional or Minority Languages[228] obliges all the signatory states[229], under specific conditions and at party's request, to allow use of regional or minority languages in court proceedings.[230] Since the Charter and the Constitution of the Republic of Serbia proclaim conducting of procedure in a national minority language in areas where a national minority makes "significant majority of population",[231] the Law on Official Use of Language and Script stipulates significant majority of population in the territory (local self-government) where members of national minority make at least 15% of the population according to the latest census.[232] Official use of language of national minorities includes, among other things, conducting of procedures and use of national minority languages in administrative and court proceedings.[233]

[226] Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 21 (3)
[227] Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 79
[228] European Charter for Regional or Minority Languages, ETS No. 148
[229] Republic of Serbia ratified this Charter in 2005
[230] European Charter for Regional or Minority Languages, ETS no. 148, Article 9
[231] Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 79 (1)
[232] Law on Official Use of Language and Script, ("Official Gazette of the RS", no. 48/2018), Article 11(2)
[233] Law on Official Use of Language and Script, Article 11

However, although guaranteed, this right is subject to certain limitations. The most important limitation is the one that allows only first-instance procedures to be conducted in national minority languages.[234] In addition, in order for a national minority language to be used even in the first-instance procedure, certain conditions must be fulfilled.[235] In the second-instance procedure, at the request of a national minority member participating in the procedure, court transcript or some of its sections may be translated to a national minority language.[236] The Constitution guarantees that human and minority rights may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of the restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right.[237] The provisions of the Law on Official Use of Language and Script, that is, limitation of the right to conduct procedures in national minority language to only first-instance procedures are not permitted by the Constitution and they encroach upon the substance of the guaranteed right, thus, it may be concluded that the established normative standard is partially fulfilled. [0.5/1 point]

S2: THERE IS A GUARANTEED FREE-OF-CHARGE USE OF NATIONAL MINORITY LANGUAGES DURING COMPLETE COURT PROCEEDING IN THE AREAS WHERE THE NATIONAL MINORITY LANGUAGES ARE NOT IN OFFICIAL USE
[1 POINT]

The right to free assistance of a translator and an interpreter is an integral part of the right to fair trial, so the party in need of translation or interpreter during a court proceeding should not bear these costs, but rather a competent body should bear them. The Constitution of the Republic of Serbia, besides guaranteeing the right to translator and interpreter during a court proceeding to ensure its fairness, also guarantees that a participant in a procedure shall have the right to free assistance of a translator or an interpreter.[238] Provisions of the Criminal Procedure Code[239] and the Civil Procedure Code[240] apply this constitutional norm consistently, so the costs of translation and interpreting are paid from the funds of the competent body. Since these legal solutions refer to any situation in which a person participating in a procedure does not speak Serbian, but some other language, which is in official use in the procedure, this category also includes members of national minorities. Members of the national minorities that make more than 2 percent of the total population of the Republic of Serbia have the right to address the state bodies in their native languages, while members of other national minorities may exercise the same right through units of local self-government where their language is in official use.[241] Maximum value is awarded here since legal solutions fully guarantee fulfillment of the standard. [1/1 point]

S3: THERE IS A GUARANTEED INTERPRETER IF A PARTY DOES NOT SPEAK OR UNDERSTAND THE LANGUAGE THAT IS IN OFFICIAL USE IN COURT DURING COMPLETE COURT PROCEEDING
[1 POINT]

Parties must be guaranteed use of their own language during complete procedure, as well as translation in case they do not speak or understand the language officially used in the court. This applies to all procedures, but the two of them are, by all means, the most important – criminal and civil proceedings. The Constitution of the Republic of Serbia which guarantees the right to fair trial, guarantees that everyone shall

[234] Law on Official Use of Language and Script, Article 12
[235] The conditions are the following: that there is a party's request, if there is only one party participating in the procedure; in case of more parties, they need to agree on the language of the procedure if they speak different languages; if they fail to agree and one party requests the procedure to be conducted in Serbian, that procedure will be conducted in Serbian language – *see* Law on Official Use of Language and Script, Article 12
[236] Law on Official Use of Language and Script, Article 17
[237] Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 20 (1)
[238] Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 32
[239] Criminal Procedure Code, Article 261
[240] Civil Procedure Code, Article 95
[241] Law on Official Use of Language and Script, Article 11

have the right to free assistance of an interpreter if a person does not speak or understand the language officially used in the court.[242] In addition, it guarantees that any person charged with criminal offense shall have the right to be informed promptly, in accordance with the law, in the language, which this person understands, and in detail about the nature and cause of the accusation against him/her, as well as the evidence against him/her.[243] The Criminal Procedure Code further develops the constitutional guarantee and prescribes that parties, witnesses and other persons participating in a procedure are entitled to use their own languages and scripts during the procedure, and, where procedures are not being conducted in their language and unless, after being advised on their right to translation, they declare that they know the language in which the procedure is being conducted and that they waive their right to translation, the interpretation of what they or others are saying, as well as translation of instruments and other written evidence, are secured and paid from budget funds.[244] One of substantial violations of criminal procedure is violation of the right of the defendant, defense counsel, injured party or private prosecutor to use their own language at the trial, which is one of the grounds for appeal.[245] The Civil Procedure Code, similarly to the criminal procedure, stipulates that parties and other participants in the procedure have the right to use their own language and script,[246] and they have the right to translation assistance during the procedure.[247] Translation costs in civil proceedings are included in the costs of procedure, and a special decision is adopted regarding that. Since normative solutions fully ensure fulfilment of guarantees, maximum value is awarded here. [1/1 point]

S4: THERE IS A GUARANTEED ASSISTANCE OF INTERPRETER FOR THE BLIND AND VISUALLY IMPAIRED, THE DEAF AND HEARING-IMPAIRED PERSONS DURING COMPLETE COURT PROCEEDINGI
[1 POINT]

The right to an interpreter for blind and visually impaired, deaf, hearing-impaired and mute persons during complete court proceeding is equal to the right to use one's own language in the procedure. The Constitution of the Republic of Serbia which guarantees the right to fair trial,[248] guarantees that everyone shall have the right to free assistance of an interpreter if the person does not speak or understand the language officially used in the court and the right to free assistance of an interpreter if a person is blind, deaf, or mute.[249] The Criminal Procedure Code guarantees interrogation and questioning through an interpreter,[250] and the same applies to the civil proceedings where the Civil Procedure Code provides the same guarantees.[251] Thus, maximum value is awarded since normative solutions fully guarantee fulfilment of the standard. [1/1 point]

[242] Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 32 (2)
[243] Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 33
[244] Criminal Procedure Code, Article 11
[245] Criminal Procedure Code, Article 438 (1) (5)
[246] Civil Procedure Code, Article 6 (3)
[247] Civil Procedure Code, Article 95
[248] Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article 32
[249] Constitution of the Republic of Serbia ("Official Gazette of the RS", no. 98/2006), Article (2)
[250] Criminal Procedure Code, Articles 87, 96 (4) and 98 (6)
[251] Civil Procedure Code, Articles 95 and 256

SUB-INDICATOR 1.4.
COSTS OF COURT PROCEEDINGS IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS
1. Consistent court practice regarding application of rules for proving fulfillment of conditions for recognition of rights to exemption from payment of costs of procedures	0/1
2. Ratio of collected court fees to the amount of court funds spent on exemption from payment of costs of procedures[252]	0/1
3. Beneficiaries believe they can estimate total costs till the end of procedure	0/0.5
4. Attorneys' tariff is predictable, affordable, and clear	0/0.5
5. Information on costs of court proceeding and methods for exemption are publicly available to citizens on courts' websites and/or other information tools of courts	0.5/1
6. Judicial system beneficiaries believe that costs of court proceedings are appropriate to their income	0/0.5
7. Judicial system beneficiaries believe that costs of court proceedings do not prevent access to justice	0/0.5
8. Harmonization of court fees with average income in Serbia	0.5/0.5
9. Harmonization of attorneys' tariffs with average income in Serbia	0/0.5
10. Judicial system beneficiaries believe that they are informed about possibility of exemption from payment of fees, that is, costs of procedure	0/0.5
TOTAL NUMBER OF POINTS	1/6.5

S1: CONSISTENT COURT PRACTICE REGARDING APPLICATION OF RULES FOR PROVING FULFILLMENT OF CONDITIONS FOR RECOGNITION OF RIGHTS TO EXEMPTION FROM PAYMENT OF COSTS OF PROCEDURES [1 POINT]

Based on a survey conducted on judges, the following results were gathered. Due to unclear regulations, exemption from payment of costs in civil proceedings leaves space for different interpretation of legal provisions, which results in inconsistent practice in this process. Since the Civil Procedure Code stipulates that court shall evaluate all circumstances when ruling on exemption,[253] some judges list the following as special criteria: the crucial issue is how many persons that party supports with their income, whether the party has sufficient means for support, what is the total amount of costs they are asking to be exempt from, expenses (support, medical treatment, average consumer basket, etc.), value of household assets, unemployment, other sources of income, real estate information, or other household members' income.

Since the Civil Procedure Code does not prescribe the form for the court decision on exemption from costs, practice shows that decision on exemption from costs may be adopted as part of a judgment when the court decides about costs of procedure, or as a separate decision. In this survey, 81.8% of the judges responded that they would make this

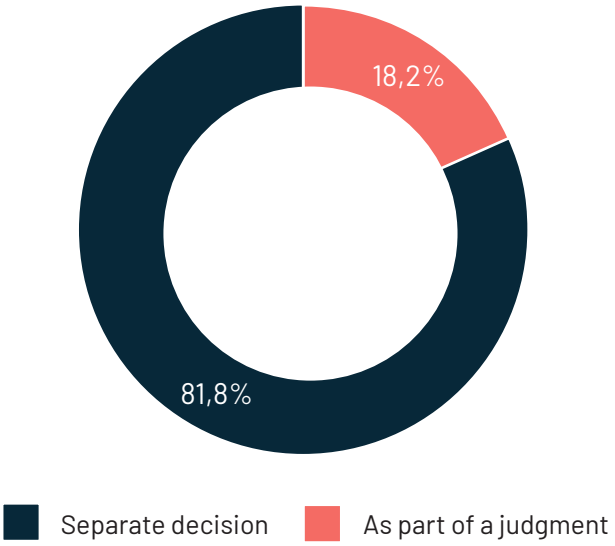
[252] On the subject of the ratio of collected court fees to the amount of court funds spent on exemption from payment of costs of procedures, there is this report done by the Council of Europe: "European judicial systems – Efficiency and quality of justice (2018)" available at https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c

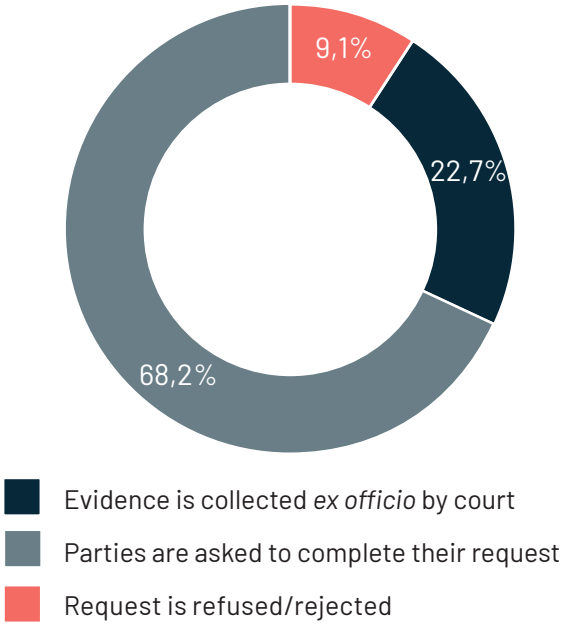
[253] Civil Procedure Code, Article 168

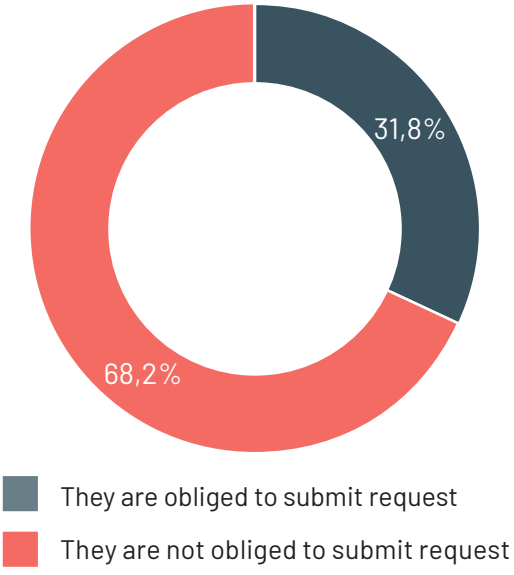
decision as a separate one, while 18.2% of the judges stated that they would make this decision as part of the judgment. Decision on exemption from payment of costs of procedure may significantly affect the outcome of the procedure itself since it may prevent the party from proposing evidence regardless of their financial situation. Since court expertise is often necessary for a party to prove their claim, decision on exemption from costs of procedure may prevent the party from proposing and presenting evidence.

When we talk about the evidence a party should submit with their request for exemption, court practice is also inconsistent. The Civil Procedure Code stipulates that a party is obliged to state facts and provide their proof in the request for exemption, but also, if needed, court may *ex officio* collect the necessary data and information about financial situation of that party.[254] When asked about parties' requests that do not contain proof, 68.2% of the judges stated they would request that party to complete the request, 22.7% of the judges would collect the data *ex officio*, while only 9.1% of the judges stated they would reject, that is, refuse such request.

Besides persons with sensitive social security, the Law on Court Fees also lists groups of persons such as dependent persons in procedures related to legal support and persons who require minimal wage payment, who are, by law, exempt from payment of court fees.[255] However, even though these persons are *ex lege* exempt from payment, and this provision is seemingly clear, court practice is not quite consistent. Thus, 31.8% of the judges state that it is party's obligation to submit request for exemption from payment of court fees, while up to 68.2% of the judges state that a party is not obliged to submit such request. Therefore, it often happens in practice that the abovementioned group of persons in court proceedings receives a court order to pay court fees even though the law strictly states that these persons are exempt from payment .

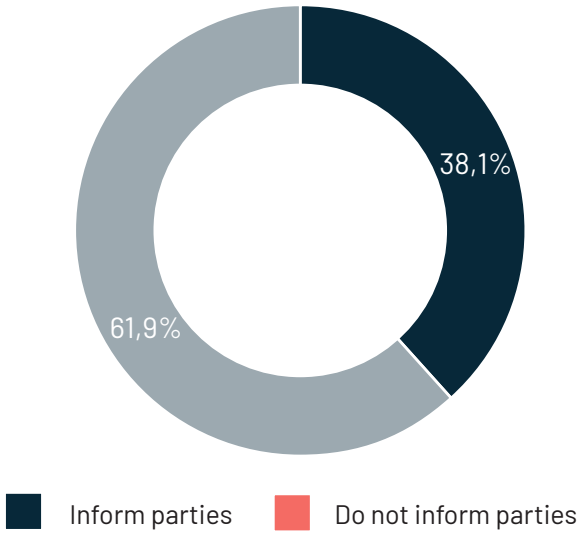






[254] Civil Procedure Code, Article 169
[255] Law on Court Fees, Article 10.

Having in mind that courts must inform lay parties who, due to lack of knowledge, fail to exercise their rights related to possibility to engage a representative,[256] they should have an equal obligation to also inform parties about a possibility of exemption from payment of costs of procedure.[257] However, in most of the cases (even 61.9%) judges do not inform parties about possibility of exemption from costs of procedure, while only 38.1% of the judges stated that they informed parties about these rights.

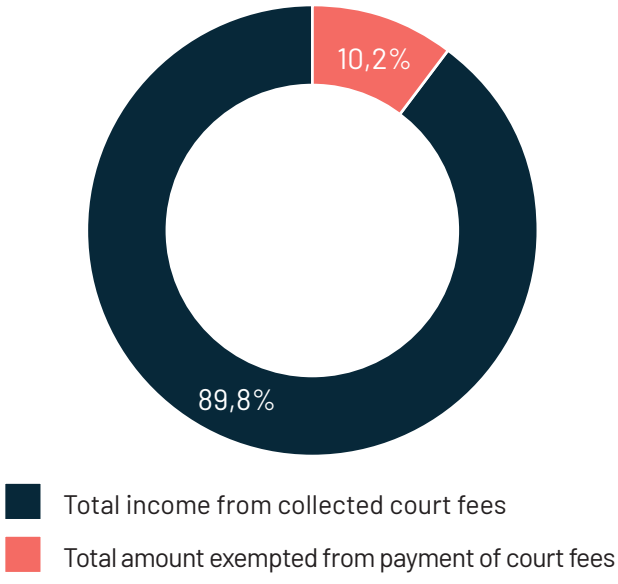


The law does not prescribe a deadline by which courts should decide upon a request for exemption from costs of procedure. Because of that, it may happen that a party submits request for exemption too late, which results in its rejection. The question asked in this survey – *What is the latest possible moment for a submitted request to be considered by court as belated,* was answered by judges in different ways. Most of the judges state that the practice is based on an opinion that a request is overdue after legally final completion of the procedure. Other responses from judges were that a request may be submitted: before conclusion of examination, before conclusion of first-instance procedure for costs incurred in that phase, before final conclusion of the main hearing, during the entire procedure, after adoption of decision on costs, or, that there is no deadline by which a party may submit a request.

Since it is determined based on the responses received from judges that there is no consistent court practice regarding application of rules for proving fulfilment of conditions for recognition of rights to exemption from payment of costs of procedure, this standard may not be considered as fulfilled. [0/1 point]

S2: RATIO OF COLLECTED COURT FEES TO THE AMOUNT OF COURT FUNDS SPENT ON EXEMPTION FROM PAYMENT OF COSTS OF PROCEDURES
[1 POINT]

In 2019, the total income from collection of court fees was 5,606,007,383.65 dinars, which is 652,978,069.22 dinars less than in 2018, primarily due to continued transfer of court competencies to the notaries.[258] Of those fees collected, 40% has been allocated for court's current expenses, except for expenses for court staff and public prosecutor's office staff, while 20% is used for improving financial state of employees in courts and public prosecutor's offices who make court staff and public prosecutor's office staff, other expenses, as well as for investments in line with law. However, besides generating income from



Percentage of collected and uncollected court fees

[256] Civil Procedure Code, Article 85.
[257] During the entire procedure, the court will recognize party's right to free legal aid when the party is fully exempt from payment of costs of procedure; *see* Civil Procedure Code, Article 170.
[258] High Court Council's Annual Report, 2019, p. 14, accessed at: https://vss.sud.rs/sites/default/files/attachments/IZVESTAJ%202020.%20za%20sednicu.pdf June 25, 2020.

collection of court fees, courts have a legal possibility to exempt certain categories of citizens (mostly socially vulnerable ones) from payment of court fees and costs of procedures. During 2019, the courts in Serbia exempted 13,695 parties from payment of court fees, while the total amount of exempted court fees was 571,790.942 dinars. That means that out of the total income from collection of court fees, the courts exempted vulnerable categories of population from payment of 10.2% of that amount.

However, since the courts do not keep a separate record of total amounts exempt from payment of costs of procedure, it is not possible to make a correct conclusion on courts' policy when it comes to ensuring citizens' financial access to courts. Thus, this standard cannot be considered as fulfilled. [0/1 point]

S3: BENEFICIARIES BELIEVE THEY CAN ESTIMATE TOTAL COSTS UNTIL THE END OF PROCEDURE
[0.5 POINT]

Based on a survey conducted among the citizens of the Republic of Serbia, the following results were noted. Namely, when given a statement "*At the beginning of procedure I was able to estimate total costs of the procedure until its completion*", 63.4% of the citizens disagreed. Noticeably, those who responded affirmatively are mostly persons with college or university degree, aged 30-44. Since 63.4% of the survey participants responded negatively to this statement, this standard cannot be considered as fulfilled. [0/0.5 point]

S4: ATTORNEYS' TARIFF IS PREDICTABLE, AFFORDABLE, AND CLEAR
[0.5 POINT]

In relation to this standard, citizens responded to the survey statement *"Anyone can easily find out Attorneys' tariff and its composition (online or some other way)."* This statement was confirmed by 46.8% of the participants. Over half of the persons with such response belong to the population ages 30-44 and have college or university degree, live in the territory of Belgrade and Vojvodina, are from urban environments, with average monthly income over 30,000 dinars per household member. On the other hand, 42.6% of the survey participants disagreed with this statement. It is important to note that 10.6% of the participants did not know how to respond or refused to respond to this question. Since only 46.8% of the survey participants agreed with this statement, and having in mind the opinions of other participants, this standard may not be considered as fulfilled. [0/0.5 point]

S5: INFORMATION ON COSTS OF COURT PROCEEDING AND METHODS FOR EXEMPTION ARE PUBLICLY AVAILABLE TO CITIZENS ON COURTS' WEBSITES AND/OR OTHER INFORMATION TOOLS OF COURTS
[1 POINT]

In order to have access to justice, citizens must be provided with understandable information on costs of court proceedings and ways to get exempted from their payment. The Consultative Council of European Judges recommends that litigants should be fully informed, by attorneys and courts or tribunals, even before proceedings are instituted, as to the nature and the amount of the costs they will have to bear, and that they should be given an indication of the foreseeable duration of the proceedings up to the judgment.[259] In addition, point 14 of the Magna Carta of Judges states that justice shall be transparent and information shall be published on the operation of the judicial system.[260] Strategic documents of the Republic of Serbia also recognize the need for improvement in terms of transparency and availability of information, especially having in mind the possibilities of new communicational technologies and development of e-justice.[261]

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[259] Opinion No. 6 (2004) of the Consultative Council of European Judges (CCJE) submitted to the Committee of Ministers on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement, Strasbourg, 2004. Principle 19.

[260] Magna Carta of Judges, Consultative Council of European Judges, point 14, available here, CCJE (2010)3 Final Version, Strasbourg, 2010.

[261] See more at Judicial Development Strategy (working draft) for the 2019-2024 period, Ministry of Justice of the Republic of Serbia, 2019, available; the Strategy has not been adopted by the National Assembly of the Republic of Serbia. See also Prosecutorial Communication Strategy, State Public Prosecutor's Office and State Prosecutorial Council, 2015-2020; Communication Strategy for the High Court Council and the Courts 2018-2022, USAID Rule of Law Project, 2018.

Research has shown that information on court fees is not available on courts' websites. Half of the courts provide some type of information about court fees. Most of these pieces of information relate to display of tariffs, while few courts have electronic calculator for calculating court fees. This electronic tool is easily accessible on the Internet and it is easy to use, so all court websites should use it in order to better inform the citizens about the costs of procedures. Small number of websites[262] also include brochures (Guide to Exemption from Costs of Procedure) that contain simple instructions regarding basic costs of procedures in trials, provide directions how to calculate these costs, deadlines for their payment and the consequences for failing to pay them. This is an example of a good practice that should be adopted by all the courts in the Republic of Serbia for the purpose of better informing of the citizens about the costs of court proceedings. Thus, this standard is considered as partially fulfilled. [0.5/1 point]

S6: JUDICIAL SYSTEM BENEFICIARIES BELIEVE THAT COSTS OF COURT PROCEEDINGS ARE APPROPRIATE TO THEIR INCOME
[0.5 POINT]

Based on a survey conducted on judicial system beneficiaries, the following conclusions were made. Up to 78.2% of the survey participants disagreed with the statement that costs of court proceeding are appropriate considering their income. Only 20.4% of the participants had the opposite opinion. Even though it is a predominant opinion, it was mostly expressed by the participants with elementary or lower level of education coming from the territories of Sumadija and Western Serbia.

Since the percentage of the participants who agree with this statement is just 20.4%, this standard cannot be considered as fulfilled. [0/0.5 point]

S7: JUDICIAL SYSTEM BENEFICIARIES BELIEVE THAT COSTS OF COURT PROCEEDINGS DO NOT PREVENT ACCESS TO JUSTICE
[0.5 POINT]

The percentage of the survey participants who believe that costs of court proceedings prevent access to justice is 64.6%. This opinion, although quite present in all age groups, is the most prominent among the citizens with elementary and lower level of education. In addition, the highest percentage of the citizens with this opinion come from the territories of East and South Serbia. However, 31.4% of the survey participants believe that this is not the case, and that the costs of court proceedings do not prevent their access to justice. Thus, this standard cannot be considered as fulfilled. [0/0.5 point]

S8: HARMONIZATION OF COURT FEES WITH AVERAGE INCOME IN SERBIA
[0.5 POINT]

The purpose of introduction of court fees is to deter parties from initiating trivial and less relevant lawsuits before the court that would burden the court activities and waste the time that judges could use for their work on more important procedures. This fact is especially important for court systems that are overloaded with cases.[263] However, the fees must not be too high because that would prevent citizens' access to justice. This balance is determined by numerous judgments of the European Court of Human Rights in examination of violation of Article 6 of the European Convention on Human Rights, and specifically, the right to fair trial.[264] Court fees depend on the value of the claim, and in some procedures such as a dispute on lifelong support or divorce, these fees may be in the fixed amount. Thus, compared to the average net salary in Serbia, which was 59,772 dinars in December 2019, or compared to the median salary of 44.530 dinars, the total costs of court fees in divorce

[262] Such as, for example, Basic Court in Ivanjica and Basic Court in Zrenjanin

[263] During 2019, in Serbia, 1,072,1567 of cases remained pending without enforcement, mostly due to increased number of new cases (2,116,339 cases without enforcement during 2019). Such disputes may be resolved in less expensive and less complicated ways (mediation, settlement, etc.).

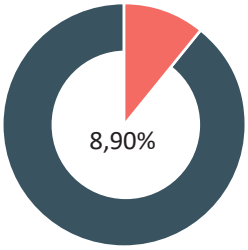
[264] *See Kreuz v. Poland*, ECHR June 19, 2001, Judgment, para. 60-67; *Podbielski and PPU Polpure v. Poland*, ECHR, November 30, 2005, Judgment, para. 65-66; *Weissman and Others v. Romania*, ECHR, December 2, 2011, Judgment, para. 42; *Georgel and Georgeta Stoicescu v. Romania*, ECHR, October 26, 2011, Judgment, para. 69-70.

procedure of 5,320[265] dinars makes 8.90%, that is 10.67% of that. This amount is not high compared to this type of procedures where the amount of court fees is fixed. However, the data vary a lot if we take into account average net salaries in the municipalities in the Republic of Serbia where that amount is up to four times lower, as it is the case, for example, with municipalities of Novi Beograd and Trgoviste. When you look at the fee compared with the value of a claim, the results are quite different and the fees range from 1,900 to 97.500 dinars. The fee for the claims where the value is less than 10,000 dinars is 4,750 dinars, while for the claims where the value is 250,000 dinars, the fee is 37,000 dinars

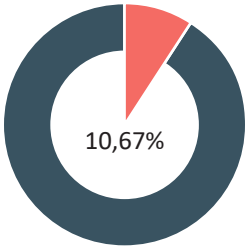
When we compare the court fees with those in other countries, they are much higher, especially in disputes with higher claims. On the other hand, for disputes with lower claims, fees are quite similar. In disputes where the value of the claim increases, court fees increase proportionally at the same time. In these situations, Serbia has the highest increase of fees, especially in commercial disputes. This disproportion is significantly higher when we take into account the average salary in Serbia compared to the average salary in other countries.[266]

Thus, this standard is considered as fulfilled. [0.5/0.5 point]]

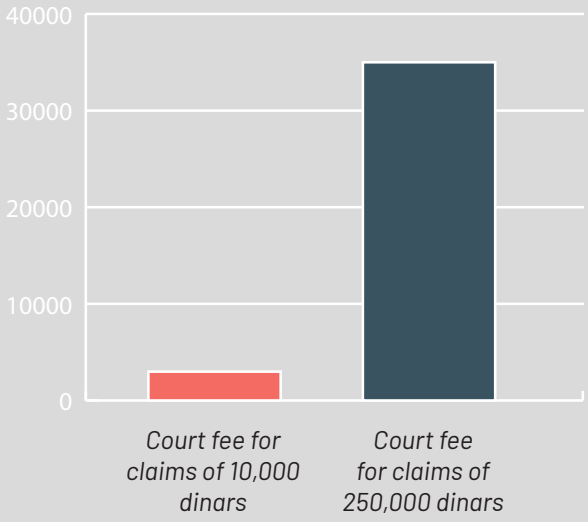
Share of court fee in divorce procedure in the average net salary in Serbia



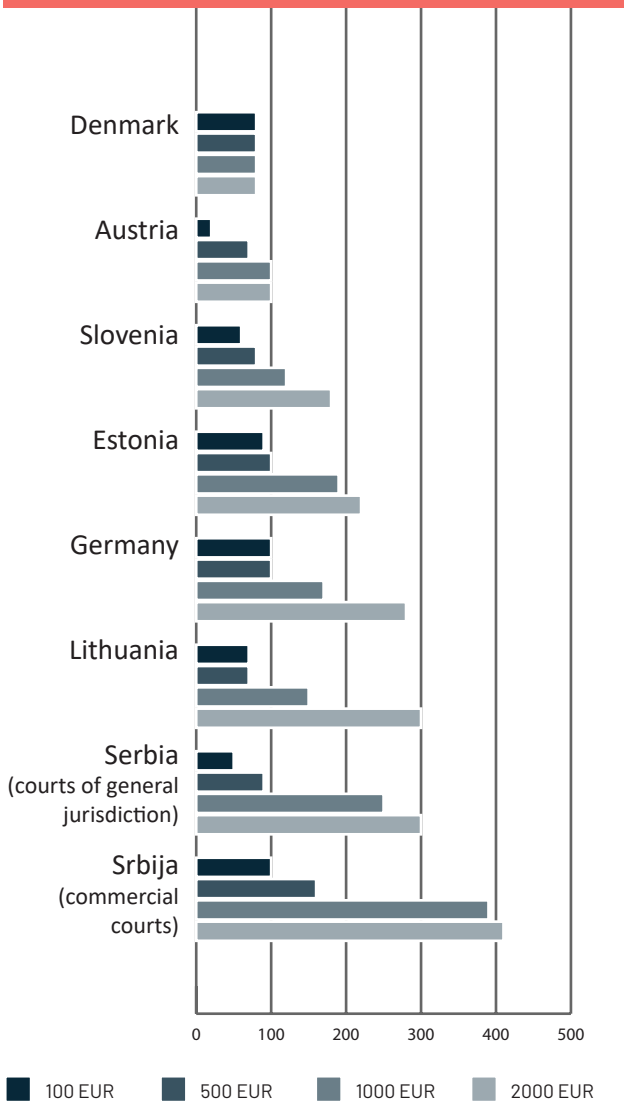
Share of court fee in divorce procedure in the median net salary in Serbia



Comparison of court fees for claims where the value is 10,000 and 250,000 dinars



Comparison of court fees in different countries



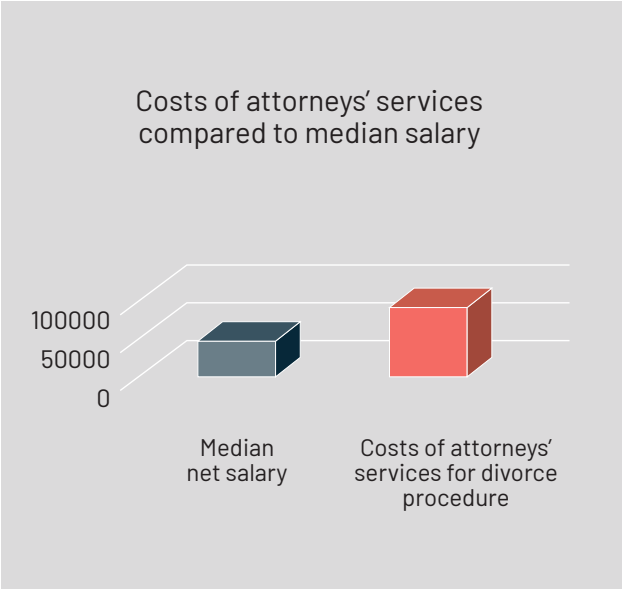
[265] The amount of 5,320 dinars includes fees for lawsuit and judgment.

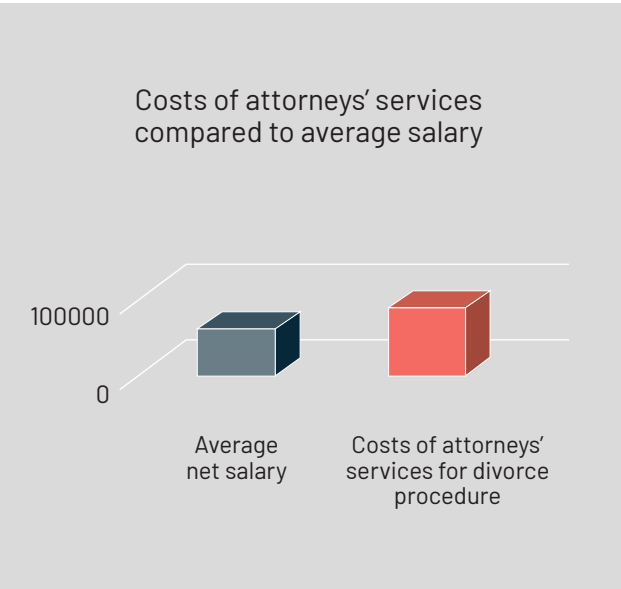
[266] Small Claims - Where Does Serbia Stand, Trust Fund for Justice Sector Support in Serbia (MDTF-JSS), Belgrade, 2019, p. 17, available at http://www.mdtfjss.org.rs/archive/file/Small_Claims-Where_Does_Serbia_Stand.pdf

S9: HARMONIZATION OF ATTORNEYS' TARIFFS WITH AVERAGE INCOME IN SERBIA [0.5 POINT]

Attorneys' tariffs are prescribed by the Tariff for Reward and Compensation for Attorneys' Work[267].. The Tariff is attorneys' official pricelist and attorneys in the Republic of Serbia are required to adhere to the attorneys' tariff. An attorney may agree with a party in written form on remuneration that is lower or higher than the amount prescribed by the Tariff, but the agreed amount must not be less than 50% of the amount prescribed by the Tariff, or higher than that fivefold amount.[268] In addition, an attorney may make a written agreement with a client to specify calculation of remuneration as per the number of hours they work on the case. In this case, the attorney and the client agree together on the price, where that price cannot be lower than 4,750 dinars per hour of work on the case. The Attorneys' Code explicitly states that it is forbidden to represent a client for a remuneration lower than the one prescribed by the tariff.[269] Such fixed amounts are not in line with European practice since they prevent competition among the attorneys. Many countries were forced through accession negotiations with the EU to change such restrictive legislation and move towards bigger freedom in price negotiation.[270] The Tariff stipulates payment of attorneys' services per filing or per court session. Such system of financial compensation may motivate attorneys to introduce unnecessary procedural steps in order to increase costs of legal services, which is contrary to the opinion of the Consultative Council of European Judges.[271] Average amount of attorneys' compensation in the divorce procedure is 87,000 dinars as per the tariff.[272] When we take into account the average salary of 59,772 dinars or the median net salary of 44,530 dinars, costs of attorneys' services significantly exceed these monthly amounts. Thus, median net salary in the Republic of Serbia makes only 51% of the average compensation for attorneys' services in the divorce procedure.

Having in mind the comparison between average salaries and compensations determined by the Attorneys' Tariff, and the fact that costs of legal services significantly exceed average net salary or median net salary, this standard cannot be considered as fulfilled. [0/0.5 point]

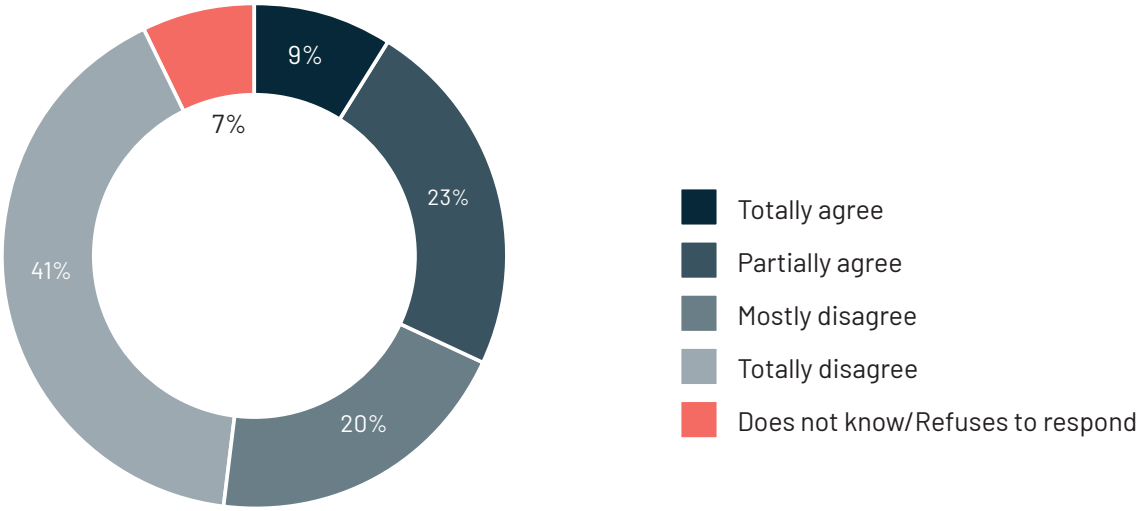




[267] "Official Gazette of the RS", no. 121/2012 and 99/2020
[268] Tariff for Reward and Compensation for Attorneys' Work ("Official Gazette of the RS", no. 121/2012 and 99/2020), Article 4
[269] Attorneys' Code of Conduct, point 18.2.2
[270] Functional Review of the Justice Sector in Serbia, Multidonor Trust Fund for Justice Sector Support in Serbia, Belgrade, 2014, p. 189.
[271] Recommendation A.5, Opinion No. 6 (2004) of the Consultative Council of European Judges (CCJE), Strasbourg, 2001.
[272] The amount of 87,000 dinars includes compensation for lawsuit, 3 court sessions and one filing.

S10: JUDICIAL SYSTEM BENEFICIARIES BELIEVE THAT THEY ARE INFORMED ABOUT POSSIBILITY OF EXEMPTION FROM PAYMENT OF FEES, THAT IS, COSTS OF PROCEDURE [0.5 POINT]

Based on the survey conducted among the judicial system beneficiaries, we learned that up to 60.6% of the participants were not informed about possibility of exemption from payment of fees, that is, costs of procedure. The highest percentage of persons who responded this way come from the territories of Sumadija and West Serbia, with average monthly income ranging from 18,000 to 30,000 dinars per household member. On the other hand, 32.4% of the citizens taking the survey consider themselves informed about this possibility. In addition, it is important to note that 7% of the survey participants did not know or refused to respond to this question. Since only 32.74% of the survey participants consider themselves informed about the possibility of exemption from payment of fees, that is, costs of procedure, this standard cannot be considered as fulfilled. [0/0.5 point]



Judicial system beneficiaries are informed about possibility of exemption from payment of fees, that is, costs of procedure

SUB-INDICATOR 1.5.
PHYSICAL ACCESS TO COURTS IN PRACTICE

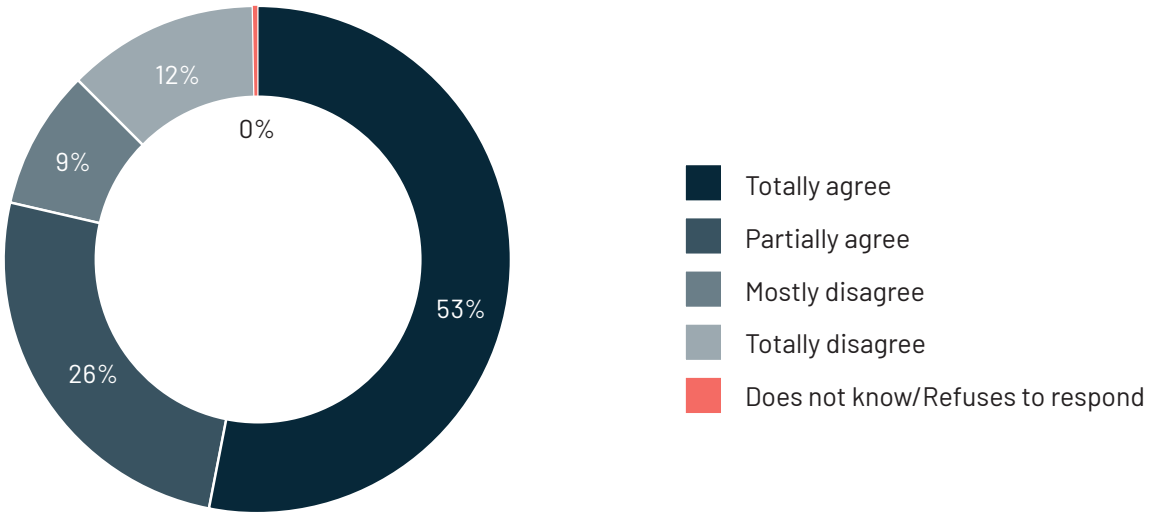
SUB-INDICATOR STANDARDS	POINTS
1. System beneficiaries believe that the network of courts ensures adequate territorial coverage of the Republic of Serbia	1/1
2. System beneficiaries believe that courts are equally accessible to everyone, including persons with disabilities and movement difficulties	0.5/1
3. Courts have at least 1 employee trained to communicate with and to support various social categories, including persons with disabilities and movement difficulties	0/1
4. System beneficiaries believe that court buildings are easy to navigate and that court signage (signposts, court plans, courtroom numbers, etc.) is appropriate and easy to understand	0.5/0.5
TOTAL NUMBER OF POINTS	2/3.5

S1: SYSTEM BENEFICIARIES BELIEVE THAT THE NETWORK OF COURTS ENSURES ADEQUATE TERRITORIAL COVERAGE OF THE REPUBLIC OF SERBIA
[1 POINT]

Surveyed citizens were asked to respond to the following statement: *"The closest first-instance court (basic or higher court) in my place of residence is at the distance that does not prevent my access to court"*, and the following results were compiled.

Up to 78.8% of those surveyed agreed with this statement. However, 21% of those surveyed disagreed with it. Most of those who disagreed come from the rural areas, from the territories of Sumadija and West Serbia, with average monthly income of 18,000 dinars per household member.

Having in mind that up to 78.8% of those surveyed agreed with this statement, this standard is considered as fulfilled. [1/1 point]



The closest first-instance court (basic or higher court) in my place of residence is at the distance that does not prevent my access to court

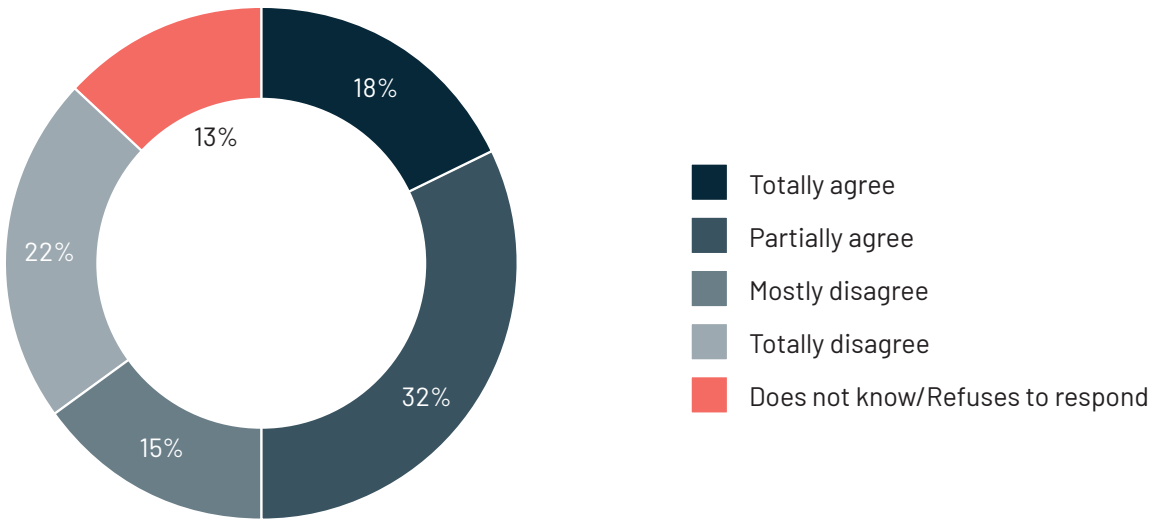
S2: SYSTEM BENEFICIARIES BELIEVE THAT COURTS ARE EQUALLY ACCESSIBLE TO EVERYONE, INCLUDING PERSONS WITH DISABILITIES AND MOVEMENT DIFFICULTIES
[1 POINT]

When asked about access to courts for persons with movement difficulties (persons in wheelchairs, or elderly persons), as well as unobstructed entrance and navigation through court buildings (existence of ramps, special accessible/flat entrances, elevators, etc.), 50.6% of those surveyed believe that courts are accessible to everyone, and that there are appropriate options for entrance and navigation through the court buildings for persons with disabilities and movement difficulties. Over half of those surveyed who responded this way come from the territory of Belgrade and have college or university education. However, up to 36.6% of the citizens believe this is not the case and that these options do not exist. Besides that, it is important to note that up to 12.8% of those surveyed refused to answer or did not know how to answer this question. Therefore, with these results taken into account, it can be concluded that this standard is partially fulfilled. [0.5/1 point]

S3: COURTS HAVE AT LEAST 1 EMPLOYEE TRAINED TO COMMUNICATE WITH AND TO SUPPORT VARIOUS SOCIAL CATEGORIES, INCLUDING PERSONS WITH DISABILITIES AND MOVEMENT DIFFICULTIES
[1 POINT]

This standard was supposed to be evaluated based on a quantitative analysis of the Judicial Academy's data on implemented trainings. However, the Judicial Academy's data on trainings which include basic and ongoing trainings, special programs, and exams, as well as trainings for mentors and lecturers, do not include data on training of court employees to communicate and provide support to various social categories, including persons with disabilities and movement difficulties.-

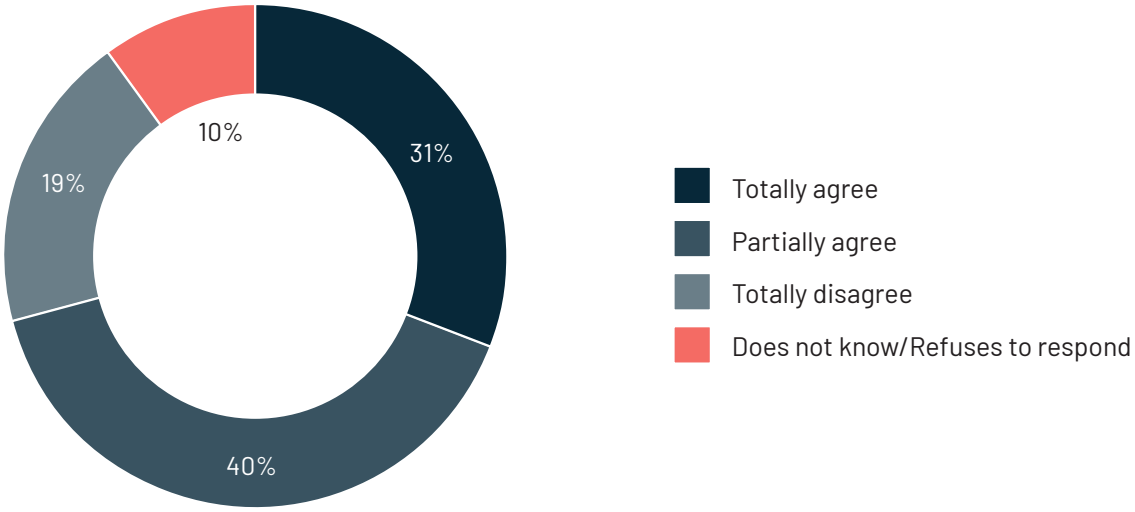
Since the data on training of persons for communication and support to various social categories, including persons with disabilities and movement difficulties are not available at the Judicial Academy, and that, according to the data of the Ministry of Justice, only 30% of the courts are equipped for access of persons with disabilities, this standard may not be considered as fulfilled. [0/1 point]



Access to courts – entrance and navigation through court buildings

S4: SYSTEM BENEFICIARIES BELIEVE THAT COURT BUILDINGS ARE EASY TO NAVIGATE AND THAT COURT SIGNAGE (SIGNPOSTS, COURT PLANS, COURTROOM NUMBERS, ETC.) IS APPROPRIATE AND EASY TO UNDERSTAND
[0.5 POINT]

70.8 of the survey participants agreed with the statement that court buildings are easy to navigate and that court signage (signposts, court plans, courtroom numbers, etc.) is appropriate and easy to understand. 29.2% of the participants disagreed with this statement. Thus, this standard may be considered as fulfilled. [0.5/0.5 point]



It is easy to navigate the court buildings. Signage (signposts, court plans, courtroom numbers, etc.) is easy to understand

SUB-INDICATOR 1.6.
LANGUAGE ACCESSIBILITY OF COURTS IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS
1. Information about the right to interpreter and translator is unified, public and easily accessible	0.5/1
2. Courts provide information on free translator assistance for members of national minorities whose languages are in official use in the area where the court is located	0/1
3. Courts provide information on free translator assistance for members of national minorities whose languages are not in official use in the area where the court is located	0/1
4. Courts provide information about certified translators for foreign citizens in the course of procedure	0/0.5
TOTAL NUMBER OF POINTS	0.5/3.5

S1: INFORMATION ABOUT THE RIGHT TO INTERPRETER AND TRANSLATOR IS UNIFIED, PUBLIC AND EASILY ACCESSIBLE
[1 POINT]

Evaluation of this standard was based on the data from the annual work reports and from the websites of courts from the examined sample. When we talk about publicly available information on the right to interpreter and translator, it should be noted that the Provincial Secretariat for Education, Regulations, Administration and National Minorities – National Communities has made available its court translators database, where it is possible to run searches per towns and languages.[273] In addition, information about interpreters and translators is also available for some of the courts from the sample on their websites, that is, their annual work reports. However, for 8 out of 17 courts from the representative sample, these data are not available. It should also be mentioned that, according to the records of the Ministry of Justice on permanent court interpreters,[274] there are 22 registered permanent interpreters for hearing-impaired persons. Thus, having in mind all of the above, and having in mind that all this information is public and accessible although not fully unified, this standard may be considered as partially fulfilled. [0.5/1 point]

S2: COURTS PROVIDE INFORMATION ON FREE TRANSLATOR ASSISTANCE FOR MEMBERS OF NATIONAL MINORITIES WHOSE LANGUAGES ARE IN OFFICIAL USE IN THE AREA WHERE THE COURT IS LOCATED
[1 POINT]

Evaluation of this standard was based on the data from annual work reports and websites of the 17 courts from the sample. In those places where national minority languages are not in official use, this standard was not evaluated. Out of the 17 courts from the general sample, we looked at 5 courts covering the territories where national minority languages are in official use. Of those five, only one court, Basic Court in Subotica, provides on its website the information about free translator assistance for members of national minorities whose languages are in official use in the territory of that court. In addition, it should be noted that the Novi Sad Higher Court, which has a special section on its website dedicated to court interpreters and translators, does not provide information on other languages in official use even though Hungarian, Slovakian and Rusyn languages are in official use, besides Serbian. Having in mind that only small percentage of courts provide such information even though there are certain national minority languages in official use in their territory, this standard may not be considered as fulfilled. [0/1 point]

[273] http://www.puma.vojvodina.gov.rs/tumaci.php
[274] Strategy for Improvement of the Position of Persons with Disabilities in the Republic of Serbia, for the period from 2020 to 2024, 44/2020-176

S3: COURTS PROVIDE INFORMATION ON FREE TRANSLATOR ASSISTANCE FOR MEMBERS OF NATIONAL MINORITIES WHOSE LANGUAGES ARE NOT IN OFFICIAL USE IN THE AREA WHERE THE COURT IS LOCATED
[1 POINT]

Evaluation of this standard was based on the data from courts' annual work reports and websites. Out of the 17 courts in the sample, it was established that 8 courts provide information on free translator assistance for members of national minorities whose languages are not in official use in the territory of that court. Having in mind that the percentage of courts not providing such information is under 60%, this standard may not be considered as fulfilled. [0/1 point]

S4: COURTS PROVIDE INFORMATION ABOUT CERTIFIED TRANSLATORS FOR FOREIGN CITIZENS IN THE COURSE OF PROCEDURE
[0.5 POINT]

Evaluation of this standard was based on the data from courts' annual work reports and websites. Out of the 17 courts in the sample, it was established that 8 courts (47.05%) have available information on providing certified translators to foreign citizens in the course of procedure before courts in the Republic of Serbia. Since less than 50% of courts provide this information, it is concluded that this standard is not fulfilled. [0/0.5 point]

EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**29** *(The sum of the maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**14.5** *(The sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-5.5	6-11.5	12-17.5	18-23.5	24-29.5
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**3**				

Legal regulation of physical and language access to courts is evaluated as mostly adequate, while there are some issues regarding regulation of financial access, primarily for vulnerable and socially disadvantaged social groups. Evaluation of financial aspect of access to courts is even more unfavorable in practice. There are problems noted in application of rules for proving fulfillment of requirements for exemption from costs of procedure, prediction of possible cost of court proceeding until its completion, and attorneys' tariff. In addition, citizens believe that costs of court proceeding are not appropriate to their income and thus prevent access to justice, and that they are not adequately informed about the possibility to get exempted from these costs. In practice, physical accessibility of courts is satisfactory, but it is necessary to improve language accessibility.

RECOMMENDATIONS

1. It is necessary to improve legal framework regulating the costs of litigation procedure, especially regarding possibility for exemption of members of vulnerable groups from payment of court fees, because these social groups are very narrowly defined, as well as regarding the deadlines prescribed for ruling upon submitted requests. It is necessary to also introduce mandatory legal advice for the parties regarding their possibility to submit request for exemption from costs. In addition, it is necessary to harmonize rules of exemption from payment of court fees and costs in the relevant legislation, because there are parallel legal regimes that differently regulate the key terms and conditions, which creates confusion in application and makes financial access to courts more difficult.
2. It is necessary to eliminate restrictions of the Law on Official Use of Language and Script regarding the right to conduct court proceedings in a national minority language in the areas where they make a significant majority of population. It is necessary to start keeping records and publishing data on the use of national minority languages and other languages in court proceedings for the purposes of regular monitoring of implementation of these obligations.
3. In order to examine economic impact of the amount and structure of court costs on access to courts, and having in mind negative perception of the citizens who have had an experience of being a party in a procedure, it is necessary to conduct thematic examination of the issue of financial access to court, especially having in mind the relation between amount of fees and costs of procedure and purchasing power of citizens, as well as identification of social groups and categories of persons who are especially economically sensitive and for whom these costs create insurmountable obstacles to their access to court.
4. When it comes to physical access to courts, it is necessary to adapt the facilities and communication systems to persons with disabilities and movement difficulties, as well as to provide necessary support to vulnerable social groups, including persons with disabilities and movement difficulties, at court facilities. It is necessary to provide more funds in the court budgets for adaptation of facilities for these purposes.
5. It is necessary to include the provisions in the Court Rules of Procedure stipulating the obligation to ensure technical conditions for unrestricted movement and access for persons with disabilities and elderly persons, in line with the prescribed technical requirements.

KEY AREA IV: JUDICIAL EFFICIENCY

INDICATOR 1: JUDICIAL EFFICIENCY

SUB-INDICATOR 1.1. ADEQUACY OF LEGAL NORMS GOVERNING THE PROCEDURAL ASPECT OF COURT PROCEEDINGS

SUB-INDICATOR STANDARDS	POINTS
1. The applicable laws regulate the right to a trial within a reasonable time	0.5/1
2. The procedural rights of parties and participants in court proceedings are regulated by law	0.5/1
3. The procedural rights of parties and participants in court proceedings are protected by law	0.5/1
4. There are provisions in place regulating procedural discipline for parties and participants in court proceedings	0.5/1
TOTAL NUMBER OF POINTS	2/4

S1: THE APPLICABLE LAWS REGULATE THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME [1 POINT]

The right to a fair trial as guaranteed by the Constitution of the Republic of Serbia[275] encompasses, among other things, the right to a trial within a reasonable time.[276] In addition to the Constitution, this standard is prescribed by other legal instruments such as the European Convention for the Protection of Human Rights and Fundamental Freedoms,[277] the Civil Procedure Code,[278] and Law on Protection of the Right to a Trial within a Reasonable Time.[279] The last provides for several remedies for the protection of this right, namely complaint,[280] appeal,[281] and

[275] Constitution of the Republic of Serbia ("Official Gazette of the RS", No. 98/2006), Article 32
[276] Constitution of the Republic of Serbia, Article 32 (1)
[277] European Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro, No. 9/2003, 5/2005, and 7/2005 - corr. and "Official Gazette of the RS" – International Treaties, No. 12/2010 and 10/2015), Article 6 (1)
[278] Civil Procedure Code, Article 10 (1)
[279] Law on Protection of the Right to a Trial within a Reasonable Time ("Official Gazette of the RS", No. 40/2015), Article 1
[280] Law on Protection of the Right to a Trial within a Reasonable Time, Articles 3 and 5-13
[281] Law on Protection of the Right to a Trial within a Reasonable Time, Articles 3 and 5-21

claim for just satisfaction.[282] The right to just satisfaction includes the right to obtain monetary compensation, the right to publication of the State Attorney's Office's statement in writing establishing that a party's right to a trial within a reasonable time has been violated, and the right to publication of the judgement establishing that a party's right to a trial within a reasonable time has been violated.[283] The law provides for strict liability of the state with regard to these rights[284] and the State Attorney's Office and courts, when determining just satisfaction, are bound by decisions of court presidents establishing that the party's right to a trial within a reasonable time has been violated.[285] Law on Protection of the Right to a Trial within a Reasonable Time does not specify which actions judges must take in order to protect this right. It is assumed that the rules and time limits stipulated in procedural laws apply. As regards the criteria for assessing whether or not a trial is conducted within reasonable time,[286] they are defined very broadly. The weakness of such a definition is that it does not specify how levels of urgency are to be graded nor does it provide instructions to judges on how to ensure that a trial is completed within reasonable time. This regulation lays down the procedure for control of and sanctioning the state for violations of this right, but does not address prevention. The Civil Procedure Code provides instructions to judges regarding the time limits within which they must act, but these time limits are not binding and often impossible to meet due to substantial differences in workloads among courts and judges.[287] The Civil Procedure Code does not provide guidelines or mechanisms for such situations, including guidelines for judges, court presidents and even the state.

The examination of and decision upon complaints fall within the competence of the president of the court that has conducted the proceedings.[288] In annual work schedules, court presidents designate one or more judges, who will, together with the court president, handle and decide on complaints.[289] The judge examining a complaint determines what caused the violation of a right and instructs the judge hearing the case to undertake procedural actions that will effectively accelerate the proceedings,[290] including the deadline by which the judge is obliged to undertake them,[291] and an appropriate deadline for the judge to report on the actions taken.[292]

The law provides for the possibility of filing a motion for settlement.[293] The just satisfaction procedure is a litigation procedure conducted under the rules governing small claim disputes.[294] The motion is filed in the jurisdiction where the plaintiff resides, but not necessarily so.[295] The law also mentions the category of more serious violations of the right to a trial within a reasonable time, but the application of this provision in practice is difficult, as it is unclear which violations are to be considered to be more serious violations. The seriousness may both refer to the action giving rise to the violation and to the effects of the violation.

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[282] Law on Protection of the Right to a Trial within a Reasonable Time, Articles 3, 22, and 23

[283] Law on Protection of the Right to a Trial within a Reasonable Time, Articles 3 and 23 (1)

[284] Law on Protection of the Right to a Trial within a Reasonable Time, Articles 3 and 23 (2)

[285] Law on Protection of the Right to a Trial within a Reasonable Time, Articles 3 and 23 (3)

[286] As defined by the Law on Protection of the Right to a Trial within a Reasonable Time, Article 4: *„ all circumstances of the case at hand are taken into consideration, especially the complexity of factual and legal issues, the entire duration of the proceedings and the conduct of the court, public prosecutor's office or other state authority, the nature and type of the subject of the trial or investigation, the importance of the trial or investigation for a party, special respect for procedural rights and obligations, respect for the order of resolving cases and statutory time limits for scheduling hearings and the trial and drafting written decisions."*

[287] When it comes to case handling, there is a huge difference between judges dealing with less than 100-200 cases and those dealing with a heavy caseload of 500-1000. This is particularly evident in basic courts' labor disputes departments and in higher courts with special jurisdictions, which are required by law to act urgently.

[288] Law on Protection of the Right to a Trial within a Reasonable Time, Article 7 (2)

[289] Law on Protection of the Right to a Trial within a Reasonable Time, Article 7 (2)

[290] Depending on circumstances, especially if the proceedings are urgent, the court president may prioritize decision-making, and then remove a judge from a case and transfer the case to another judge if the parties right has been violated due to a case overload or prolonged absence of the judge; *See* Law on Protection of the Right to a Trial within a Reasonable Time, Article 11 (3)

[291] Which may not be shorter than 15 days and longer than four months.

[292] Law on Protection of the Right to a Trial within a Reasonable Time, Article 11

[293] Law on Protection of the Right to a Trial within a Reasonable Time, Article 24

[294] Law on Protection of the Right to a Trial within a Reasonable Time, Article 27

[295] Law on Protection of the Right to a Trial within a Reasonable Time, Article 28

While significantly improving the control of the work of the judiciary, provisions of Law on Protection of the Right to a Trial within a Reasonable Time do not always offer clear instructions. Yet, the organization of the work of judges and courts and mechanisms to cope with an increased workload as a result of which a court is clearly unable to complete a trial within reasonable time is something that falls out of the scope of this law. The problems impeding the exercise of this right are being addressed through the Backlog Clearance Program, although not to a sufficient degree. Moreover, when it comes to the obligation of courts to act within a reasonable time, there are no clear statutory mechanisms for the prevention of and swift reaction to violations of this right. Given all of the above, this standard could be confirmed as partially fulfilled [0.5/1 point].

S2: THE LAW REGULATES THE PROCEDURAL RIGHTS OF PARTIES AND PARTICIPANTS IN THE PROCEEDINGS [1 POINT]

The procedural rights of parties and participants in the proceedings make it possible for them to exercise the right to a fair trial. Under the Constitution, everyone is entitled to have his/her rights and obligations, reasonable suspicions that gave rise to proceedings against them and charges against them decided upon in a fair public hearing held within a reasonable time by an independent and impartial tribunal established by law.[296] The Constitution guarantees the right to free assistance of a translator and interpreter and, by way of exception and where legal conditions are met for such a measure, the right to the exclusion of the public from court.[297] In addition, the Constitution provides for the right to have equal protection of the law and the right to a remedy, which guarantee equal protection of parties' rights before courts and other government bodies, entities exercising public powers, and bodies of the autonomous province or local self-government units.[298] Further, everyone has the right to an appeal or other remedy against any decision on their rights, obligations or lawful interests.[299] The Civil Procedure Code, for its part, closely regulates the right of parties and other participants in proceedings. The parties are entitled to equitable and fair protection of their rights[300] and are free to dispose of their claims.[301] The principles of oral, direct and public proceedings are the guiding principles in civil proceedings.[302] The parties are required to submit all the facts on which they base their claims and propose evidence.[303]

Even though the Civil Procedure Code adequately provides for strict control of the time limits for adjournment of hearings,[304] this control is not often performed in practice. Although efficiency and judicial economy are the principles inherent in litigation process, the Civil Procedure Code often fails to regulate these matters more adequately. Provisions relating to the appointment of an attorney to receive documents are an example of a procedural rule which may delay the proceedings. The code stipulates that the judge presiding a panel of judges, in the course of the preparation of the trial and after receiving response to the statement of claim, may hand down a verdict, if he/she finds that there are no disputed facts between the parties and other obstacles to reaching the verdict.[305] The party's right to be informed of the case is somewhat hindered in practice despite the explicit provision of the Civil Procedure Code stipulating the right of a party/attorney to see, make a photocopy or photograph the case file pertaining to the lawsuit he/she participates in.[306] In practice, however, to be able to do so, the parties are required to file a special request to be approved by the relevant judge, who then issues a special order. All these steps place an additional burden on judges and

[296] Constitution of the Republic of Serbia ("Official Gazette of the RS", No. 98/2006), Article 32
[297] Constitution of the Republic of Serbia, Article 32
[298] Constitution of the Republic of Serbia, Article 36
[299] Constitution of the Republic of Serbia, Article 36
[300] Civil Procedure Code, Article 2
[301] Civil Procedure Code, Article 3 (2)
[302] Civil Procedure Code, Article 4 (1)
[303] Civil Procedure Code, Article 7 (1)
[304] Civil Procedure Code, Article 108
[305] Civil Procedure Code, Article 291 (2)
[306] Civil Procedure Code, Article 149

court administration, in addition to not being listed among judges' responsibilities the courts rules of procedure.

As preliminary hearing is often unnecessary, the Civil Procedure Code provision that stipulates that preliminary hearing may not take place,[307] promotes the efficiency of proceedings. However, this provision is linguistically inconsistent with the provision providing for the possibility for judges to hand down judgements based upon admission, waver, or default or to accept on the record the settlement reached by parties during the preparation of the trial.[308] Both cases refer to situations where there are no disputed facts between the parties, but the phrase "or if the dispute is simple" is not quite clear. The right to a remedy but also the right to a fair trial, as rights stemming from the general principles of the litigation procedure, may be jeopardized in some situations. The Civil Procedure Code article dealing with disputes over disturbance of possession stipulates that the plaintiff shall loose the right to request enforcement of the decision ordering the defendant to carry out a certain action, if he/she fails to request enforcement within 30 days following the expiry of the deadline set in the decision for enforcement.[309] In practice, however, it may happen that the plaintiff is not aware that a decision has been made and in the meantime, the deadline has already expired.

Based on the above considerations, it can be concluded that there are procedural safeguards in place but they need to be improved in certain segments. Some procedural provisions, although properly worded, in practice may create situations where the enjoyment of rights by parties to the proceedings are undermined or hindered, thus undermining the basic principles of litigation process. This standard is therefore considered to be partially fulfilled [0.5/1 point].

S3: THE LAW SAFEGUARDS THE PROCEDURAL RIGHTS OF PARTIES AND PARTICIPANTS IN PROCEEDINGS [1 POINT]

The rights of participants in the proceedings are a guarantee of a fair trial. On the other hand, the responsibility of the court and the judge to act provides a basis for the exercise of the rights of the parties. The Constitution of the Republic of Serbia lists a catalog of guarantees[310] that are later further worked out in greater details by appropriate procedural laws. The Civil Procedure Code and the Court Rules of Procedure prescribe procedural safeguards for parties and participants in the proceedings through rules of court operation and conduct. Courts are obliged to act lawfully, equally, and fairly,[311] to conscientiously and carefully assess the evidence,[312] to conduct the proceedings without delay, to set a time frame and abide by the principle of judicial economy.[313] Courts are under a duty to prevent and punish any abuse of the rights of the parties.[314] The Law on Judges provides for state liability for the damage caused by unlawful or improper work of a judge,[315] and imposes an obligation on judges to compensate the damage if it is caused willfully.[316] The law also enunciates the party's right to have his/her case completed without delay.[317] The judge is obliged to inform the court president of reasons why the first-instance proceedings took more than one year to complete and subsequently inform him every three months on the further course of the proceedings. The law also lays down other obligations and deadlines relating to the reporting on the duration of proceedings.[318]

Any person may submit a request for termination of judge's mandate.[319] The procedure for termination of mandate is initiated by the High Court Council either *ex officio* or at the proposal of a court president, president of the next

307 Civil Procedure Code, Article 302
308 Civil Procedure Code, Article 291
309 Civil Procedure Code, Article 453
310 Constitution of the Republic of Serbia ("Official Gazette of the RS", No. 98/2006), Articles 27-37
311 Civil Procedure Code, Article 2
312 Civil Procedure Code, Article 8
313 Civil Procedure Code, Article 10 (2)
314 Civil Procedure Code, Article 9 (2)
315 Law on Judges ("Official Gazette of the RS", No. 47/2017), Article 6 (1)
316 Law on Judges, Article 6 (2)
317 Law on Judges, Article 6 (2)
318 Law on Judges, Article 28
319 Law on Judges, Article 64

higher court, president of the Supreme Court of Cassation, bodies responsible for reviewing the performance of judges and the Disciplinary Commission.[320] A judge may be disciplined for violating the principle of impartiality if, among other things, he/she fails to recuse himself/herself from a case if grounds for recusal exist, or if he/she unduly delays the drafting of a ruling, fails to process cases in the order in which they were received without justification, unduly delays the proceedings, accepts gifts in disregard of conflict of interest regulations, and so on.[321] The Case Backlog Clearance Program[322] adopted by the Supreme Court of Cassation sets forth the measures needed to expedite the clearing of the backlog and prevent the recurrence of backlogs. In addition, court efficiency is promoted by Law on Protection of the Right to a Trial within a Reasonable Time itself[323].

The complaint is a mechanism that is immensely helpful for identifying system weaknesses, analysis, and taking the appropriate measures. The judicial administration, specifically the High Court Council and the Ministry of Justice, are responsible for overseeing the work of courts and protection of procedural rights of parties and participants in court proceedings.[324] The complaint is a means for the participants in proceedings to assert their rights[325] if they see the proceedings as being unduly delayed, improperly conducted, or if they perceive any undue influence on the course or the outcome of the proceedings.[326] The court president has a duty to examine the complaint, after which he/she submits it to the judge it concerns for opinion, and, within 15 days of receipt of the complaint, notifies the complainant and the president of the next higher court about the merits of the complaint and the actions taken.[327] A complaint may be also be filed through the Ministry, the next higher court, or the High Court Council.[328] Courts keep a separate record of justified complaints.[329] The court president monitors the proceedings in which a justified complaint has been filed until their completion and, if necessary, undertakes measures to accelerate them.[330] A higher court monitors the actions taken by a lower court upon complaint and if it finds that the lower court's report does not contain all data necessary for deciding whether or not the complaint I justified, in which case the higher court request the lower court to supply the missing data, and undertakes other steps to rectify the error made by the lower court.[331]

Procedural rights of parties are laid down and safeguarded by procedural regulations. In parallel with this, courts and judges are made responsible for the exercise of these rights. However, the procedural law fails to specify clear mechanisms for the monitoring of systemic disturbances in the judicial work, remedial actions to be taken, and obligations arising from this. There are no rules in place to enable the development and improvement of the organization and the administration and management systems. Complaint, as a mechanism available to parties, is not a system mechanism for preventing delays in the proceedings. In the light of the above, this standard is found to be partially fulfilled [0.5/1 point].

S4: THERE ARE PROVISIONS REGULATING PROCEDURAL DISCIPLINE OF PARTIES AND PARTICIPANTS IN COURT PROCEEDINGS
[1 POINT]

Procedural discipline of the parties and participants in court proceedings is essential for the proper functioning of court proceedings. The parties are obliged to use the rights

[320] Law on Judges, Article 64 (2)
[321] Law on Judges, Article 90
[322] *See* Amended Backlog Clearance Program 2016-2020
[323] Law on Protection of the Right to a Trial within a Reasonable Time
[324] Law on Organization of Courts, Article 70
[325] Law on Organization of Courts, Articles 9, 9a, 9b, 9v, and 10.
[326] Court Rules of Procedure ("Official Gazette of the RS", No. 43/2019 and 93/2019), Article 9
[327] Law on Organization of Courts, Article 55 (1)
[328] Law on Organization of Courts, Article 55 (5)
[329] Court Rules of Procedure, Article 9b (1)
[330] Court Rules of Procedure, Article 9b (2)
[331] Court Rules of Procedure, Article 9v

accorded to them by the Civil Procedure Code in a conscientious manner, and the court is obliged to prevent and punish any misuse of these rights.[332] In addition, parties are entitled to have their requests and motions made in the course of proceedings decided upon by the court within a reasonable time.[333] Judges are obliged to conduct the proceedings immediately, in accordance with pre-established timeframes for undertaking litigious actions, and at a lowest possible cost.[334] Failure of a judge to do so is grounds for disciplinary proceedings in accordance with the Law on Judges.[335] Non-compliance with procedural discipline by participants in the proceedings is sanctioned under the Civil Procedure Code, which provides for fines in situations where participants offend the court, parties or other participants in the proceedings or misuse their procedural powers. The law also provides for fines for witnesses and expert witnesses who fail to appear in court as summoned without justification etc.[336] An appeal against the decision on the fine does not suspend enforcement of the decision.[337] In addition to fines, the court may order reimbursement of expenses incurred by other participants in the proceedings.[338] According to the Criminal Procedure Code, the enforcement of fines is regulated by the provisions governing the enforcement of criminal sanctions.[339] Fines, their amount and imposition, are a guarantee of procedural discipline. Though they are not often used in practice, fines are clearly defined and adequate. Failure to comply with these provisions where necessary results in violations of the right to a fair trial and the right to a trial within a reasonable time, as the court is under a duty to maintain procedural discipline and make use of legally prescribed punishments to punish inappropriate behavior.[340] Therefore, it can be concluded that provisions regulating procedural discipline and the conduct of parties and participants in court proceedings are clear and provide for appropriate measures. However, the application of these measures would be more efficient if judges were obliged to use them instead of using them on their own discretion. For that reason, this standard is considered to be partially fulfilled [0.5/1 point].

[332] Civil Procedure Code, Article 9
[333] Civil Procedure Code, Article 10
[334] Civil Procedure Code, Article 10 (2)
[335] Law on Judges, Article 25 (2)
[336] Civil Procedure Code, Article 333
[337] Civil Procedure Code, Article 333 (4)
[338] *See, e.g.,* Civil Procedure Code, Articles 257 (4) and 267 (6)
[339] Civil Procedure Code, Article 190
[340] *See* SCC decision Rz g 1382/2015 of September 9, 2015

SUB-INDICATOR 1.2. ADEQUACY OF LEGAL NORMS REGULATING THE QUALITY OF JUDICIAL DECISION-MAKING

SUB-INDICATOR STANDARDS	POINTS
1. The law prescribes that judgments must be drafted in such a way to comply with the reasoned judgment standard	1/1
2. The regulations provide for pre-service (initial) and in-service (continuous) multidisciplinary training of judges, judicial assistants and trainees	1/1
3. The regulations allow for appropriate allocation of human, financial and material resources	0/0.5
4. The law provides for dissenting opinions when making court decisions	0.5/0.5
5. The law provides for the evaluation of judges' performance	0.5/1
6. The regulations provide for consistent and predictable court decisions	1/1
TOTAL NUMBER OF POINTS	4/5

S1: THE LAW PRESCRIBES THAT JUDGMENTS MUST BE DRAFTED IN SUCH A WAY AS TO COMPLY WITH THE REASONED JUDGMENT STANDARD
[1 POINT]

The reasoned judgment standard stems from the constitutional right to a fair trial, the content of which essentially mirrors the European Convention for the Protection of Human Rights and Fundamental Freedoms.[341] In that regard, for a trial to be considered fair, the court decision must be correct not only in terms of the merits but also from the procedural aspect, and the duty to state the reasons for a judgment is an essential element of procedural law. The Civil Procedure Code, among other things, prescribes the content of the court decision, as well as the content of the statement of reasons, which forms part of the judgment,[342] but does not prescribe the methodology of judgment drafting or legal argumentation. In the Constitutional Court of Serbia's practice so far, two criteria have crystalized for assessing whether or not a decision is reasoned:[343] the first, whether a decision is based on an arbitrary interpretation or application of the substantive and procedural law, and the second, whether it is adequately reasoned. The cited legal provision is of a general character and it prescribes the necessary elements of the reasoning part of a court decision. Other guidelines should also be used for the proper application of the reasoned judgment standard. A guide for drafting court decisions has been issued, which aims "to underline the importance of a reasoned court decision and to provide users with information regarding the common elements that various types of first-instance decisions must contain in order for special legal mechanisms to be applied uniformly, which will enable more efficient protection in the proceedings where a lower court's decision is reviewed by a higher court".[344] Having in mind the significance of the case law of the Constitutional Court of Serbia and the jurisprudence of the European Court of Human Rights regarding the application of this right, special and more

[341] Constitution of the Republic of Serbia, Article 32, and ECHR, Article 6
[342] Civil Procedure Code, Article 355.
[343] Decisions Uz-4717/2013 of May 26, 2016 and Uz-2048/2009 of February 22, 2012
[344] *Vodič za izradu prvostepenih sudskih odluka iz građanske materije s osvrtom na navođenje presuda Evropskog suda za ljudska prava [A Guide to Drafting First-Instance Court Decisions in Civil Matters with Guidelines on Citing and Referencing Judgements of the European Court of Human Rights*], Lj. Milutinovic, S. Andrejevic, Council of Europe, Belgrade, 2016, p. 8.

detailed legal regulation of this standard is not needed. Methodologically speaking, the cited provision of the Civil Procedure Code is properly worded and inclusive enough for an act regulating civil proceedings. Nonetheless, judges need to be adequately trained and committed to keeping track of and applying the Constitutional Court's and ECHR's decisions. This standard is considered as fulfilled [1/1 point].

S2: THE REGULATIONS PROVIDE FOR PRE-SERVICE (INITIAL) AND IN-SERVICE (CONTINUOUS) MULTIDISCIPLINARY TRAINING OF JUDGES, JUDICIAL ASSISTANTS AND TRAINEES
[1 POINT]

Under the Law on the Judicial Academy, which regulates judicial training, the Judicial Academy is the institution in charge of providing the initial and continuous training for judges and judicial assistants and trainees.[345] Training of judges includes the initial and continuous training, the former not being mandatory. Persons who have not completed the initial training may be appointed judges, provided that they have passed a special exam before the High Court Council.[346] In addition to judges, this law provides for training of judicial assistants and trainees. Training programs for these two groups of judicial staff are adopted by the Academy at the proposal of its Program Council. Legislation of the Republic of Serbia provides for training of judges and other judicial staff. This standard is considered to be fulfilled [1/1 point].

S3: THE REGULATIONS PROVIDE FOR APPROPRIATE ALLOCATION OF HUMAN, FINANCIAL AND MATERIAL RESOURCES
[0.5 POINT]

The appropriate allocation of human, financial and material resources is not adequately regulated by law. The interim benchmarks for Negotiating Chapter 23 seek to improve the efficiency of the judiciary through the adoption and implementation of a human resources strategy for the entire judiciary and implementation of the national case backlog clearance program. However, the recently adopted National Judicial Development Strategy failed to address this thematic area.[347] Hence, appropriate allocation of human and financial resources in the judiciary has not yet been regulated by positive regulations nor covered by the relevant plans. Because of this, this standard is considered not to be fulfilled [0/0.5 point].

S4: THE LAW PROVIDES FOR DISSENTING OPINIONS WHEN MAKING COURT DECISIONS
[0.5 POINT]

The procedural laws provide for dissenting opinions both in civil and criminal procedure. This matter is regulated in greater detail by the Court Rules of Procedure. Therefore, this standard is considered fulfilled [0.5/0.5 point].

S5: THE LAW PROVIDES FOR THE EVALUATION OF JUDGES' PERFORMANCE
[1 POINT]

The evaluation of judges' performance should increase their motivation, recognition of their work and predictability in the promotion of judges. According to the applicable regulations, the main criteria for evaluating the quality of judicial work is the percentage of overturned decisions and the amount of time needed for drafting decisions, with the main quantitative criterion being the number of decisions rendered, the so-called monthly performance standard.[348] Several factors are taken into account in the review and evaluation of judicial performance, including the number of old cases resolved, the number of overturned decisions, but excluding extrajudicial activities such as lectures, the number of works published, provision of training for judicial assistants, and the like. Moreover, the question of the link between

[345] Law on the Judicial Academy ("Official Gazette of the RS", No. 106/2015)
[346] Law on Judges, Article 45a
[347] The 2020-2025 Judicial Development Strategy ("Official Gazette of the RS", No. 101/2020)
[348] Rulebook on the criteria, benchmarks, procedure and bodies responsible for evaluating the performance of judges and court presidents ("Official Gazette of the RS", No. 81/14, 142/14, 41/15, and 7/16)

judicial promotion and performance evaluation is insufficiently regulated, as a result of which promotions are to a great extent non-transparent and judicial performance evaluation is left to the discretion of the High Court Council. Positive regulations regulate performance evaluation of judges but do not fully accomplish the purpose of the evaluation nor establish the criteria for promotion. This standard is therefore found to be partially fulfilled [0.5/1 point].

S6: THE REGULATIONS PROVIDE FOR CONSISTENT AND PREDICTABLE COURT DECISIONS
[1 POINT]

The constitutional right to equal protection under the law, among other things, means that courts must similarly treat similar factual and legal situations. Consistency and predictability of court decisions is achieved through harmonization of the national judicial practice, which as a result leads to enhanced public confidence in the judicial system. The Law on Organization of Courts entrusted this task to the highest courts in the country – the appellate courts and, of course, the Supreme Court of Cassation. The need for ensuring judicial independence and uniformity of judicial decisions seem to be two conflicting principles, as one of is always achieved at the expense of the other. Enabling courts to adjudicate cases according to their convictions means to open the way for different decisions in the same or similar factual situations, whether within the same court or between different courts of the same rank. This freedom affects the proclaimed principle of equal protection under the law. On the other hand, uniformity of decisions (treating similar factual situations equally) may reduce the opportunity for judges to adjudicate cases according to their personal convictions. The Law on Organization of Courts in its provisions relating to the adoption of legal opinions at department sessions and the adoption of general legal positions at the General Session of the Supreme Court of Cassation seeks to make court decisions more predictable while safeguarding judicial autonomy. The legislation provides an adequate legal framework for meeting this standard so this standard is found to be fulfilled [1/1 point].

SUB-INDICATOR 1.3. JUDGES'/COURTS' ACTS IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS
1. The share of justified citizens' complaints regarding the work of courts in the total number of complaints	1/1
2. The share of justified citizens' complaints regarding the work of judges in the total number of complaints	1/1
3. The share of first-instance courts' judgments overturned on grounds of procedural violation in the total number of judgments delivered	0.5/1
4. The share of successful extraordinary remedial appeals for violations of procedural laws in the total number of appeals filed	0.5/1
5. The share of successful constitutional appeals for violations of procedural rights of parties in the total number of constitutional appeals filed	0/1
6. The share of ECHR cases in which the ECHR has found a violation of a procedural right or rights in the total number of applications against Serbia submitted with the ECHR	0.5/1
7. System beneficiaries perceive that the judge acts efficiently, in compliance with the time frame and the legislative framework	0.5/1
TOTAL NUMBER OF POINTS	4/7

S1: THE SHARE OF JUSTIFIED CITIZENS' COMPLAINTS REGARDING THE WORK OF COURTS IN THE TOTAL NUMBER OF COMPLAINTS
[1 POINT]

In order to ensure the efficient court performance, the legislation of the Republic of Serbia provides for the right to complain - as a legal means that citizens can use to accelerate the court proceedings, they participate in. The Law on Organization of Courts stipulates that the party and other participants in the proceedings have the right to complain about the work of the court if they believe that the proceedings are delayed, if they perceive any irregularities or any undue influence on the course and outcome of the proceedings. The court president decides on the merits of complaints.[349] The Court Rules of Procedure lay down the manner of keeping records of justified complaints, specifying that cases in which a justified complaint is filed for an excessive duration of the proceedings, should bear a label "urgent - justified complaint" on the case file cover.[350] This very obligation to keep records of such cases has made our analysis easier.

The analysis of the collected material of representative courts from the sample has provided data on citizens' complaints about the work of the courts in the field of civil, labor, family law, as well as in non-litigious proceedings. Based on the courts' responses to our requests for access to information of public importance, it was established that a total 1,271 complaints were filed against representative courts, of which 188 or 14.16% were found to be justified. This standard is therefore deemed to be fulfilled [1/1 point].

S2: THE SHARE OF JUSTIFIED CITIZENS' COMPLAINTS RELATING TO THE WORK OF JUDGES IN THE TOTAL NUMBER OF COMPLAINTS
[1 POINT]

The conduct of judges as persons presiding over court proceedings, whose procedural decisions

[349] Law on Organization of Courts, Article 8
[350] Court Rules of Procedure, Article 9b

affect the efficiency of the proceedings, can also be the subject of scrutiny in the complaint procedure. In this respect, requests for access to information of public importance were made to representative courts with the following questions: *What is the total number of complaints filed regarding the work of judges in all cases (excluding criminal and enforcement cases)?*, and *How many of these complaints were found to be justified, in terms of Articles 9, 9a and 9b of the Courts Rules of Procedure?*

Based on the responses obtained, it was established that a total of 673 complaints were submitted in 2019, of which 86.5 were justified, which means that 12.85% were found to be justified. It should be noted that the Higher Court in Belgrade and the Basic Court in Pirot failed to submit the information requested, stating they do not keep a separate record of complaints. Nonetheless, this standard is found to be fulfilled [1/1 point].

S3: THE SHARE OF FIRST-INSTANCE JUDGMENTS OVERTURNED ON GROUNDS OF PROCEDURAL VIOLATION IN THE TOTAL NUMBER OF JUDGMENTS [1 POINT]

The following results were obtained through analyzing the data received from representative courts from the sample: the total number of appeals submitted against judgments rendered by courts selected for analysis is 22,737, while the number of decisions overturned on grounds of procedural flaws was 3,014, or 13.25%. It should be noted that the data for the Higher Court in Belgrade and the First Basic Court in Belgrade were obtained from the Annual Report of the Supreme Court of Cassation, after these courts said that they could not supply the requested data due to some technical problems and that the only information they could provide is the number of cases that were returned to these courts by the Appellate Courts in Belgrade after deciding on appeals. Although these two courts did not provide the requested data, this standard is considered to be partially fulfilled [0.5/1 point].

S4: THE SHARE OF SUCCESSFUL EXTRAORDINARY REMEDIAL APPEALS CLAIMING VIOLATIONS OF PROCEDURAL LAWS IN THE TOTAL NUMBER OF APPEALS [1 POINT]

The assessment of the level of compliance with this standard is based solely on the data obtained from the following courts: Basic Court in Smederevo, Basic Court in Bujanovac, Higher Court in Krusevac, First Basic Court in Belgrade, Higher Court in Novi Sad and Higher Court in Nis. These are the only courts that responded to our requests for access to information of public importance. Other courts from the sample said they did not keep records of such data, which suggests that the most reliable data would only be obtained if experts on the project physically searched cases in selected courts to ascertain the true reasons for overturning their judgments (procedural or substantive error; in more complex situations these two may coincide so the real reason is not always easy to determine).

The total number of extraordinary remedial appeals submitted against judgments of representative courts stands at 471,117 of which refer to violations of procedural rights, which means that upheld extraordinary remedial appeals make up 24.84% of the total number of appeals. Therefore, this standard is found to be partially fulfilled [0.5/1 point].

S5: THE SHARE OF SUCCESSFUL CONSTITUTIONAL APPEALS CLAIMING VIOLATIONS OF PROCEDURAL RIGHTS OF THE PARTIES IN THE TOTAL NUMBER OF CONSTITUTIONAL APPEALS [1 POINT]

In reply to our request form information of public importance, the Constitutional Court clearly stated that, given the large numbers of constitutional appeals, filings and cases, this court keeps a record of data pertaining to violations of constitutionally guaranteed rights only for cases that have been adjudicated on the merits. That is why Constitutional Court does not possess data on the total number of constitutional appeals claiming a violation of a constitutionally guaranteed right. The data this court does possess relate to the number of filings received and the number of cases originating

from constitutional appeals, as well as merit decisions rendered in cases involving violations of these rights. In addition, given the high number of resolved cases, the Constitutional Court only keeps a record of violations of constitutionally guaranteed rights and freedom, not of violations of procedural rights of citizens. However, such a systematic approach in terms of constitutional appeals could contribute to a higher level of transparency of the judicial system in the future, and it is recommended to the competent bodes to consider this possibility from now on. In the light of the Constitutional Court's reply, this standard cannot be considered as fulfilled [0/1 point].

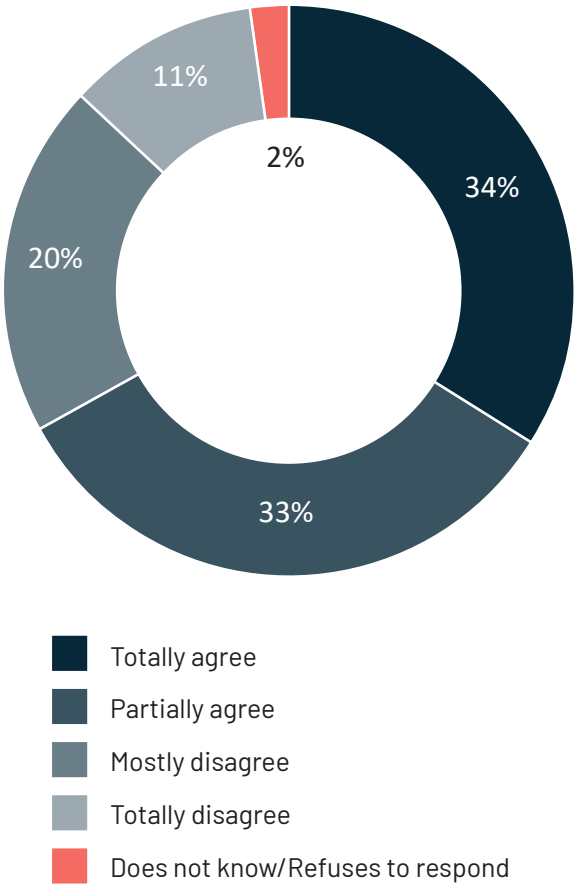
S6: THE SHARE OF ECHR JUDGMENTS FINDING A VIOLATION OF PROCEDURAL RIGHTS IN THE TOTAL NUMBER OF APPLICATIONS AGAINST SERBIA SUBMITTED WITH THE ECHR
[1 POINT]

The assessment of the level of compliance with this standard was performed based on the data received from the Constitutional Court in response to our requests for access to information of public importance concerning the number of ECHR decisions finding a violation of procedural laws.

It is established that in 2019, the European Court of Human Rights handed down 23 judgments concerning applications submitted against the Republic of Serbia, 21 of which established a violation of one or more ECHR rights. In two cases, violations of both procedural and substantive law were found and in one only a violation of a procedural right. As three out of 21 case, or 14.28%, concern violations of procedural rights, this standard is considered to be fulfilled [0.5/1 point].

S7: SYSTEM BENEFICIARIES PERCEIVE THAT THE JUDGE ACTS EFFICIENCY, IN ACCORDANCE WITH THE TIME FRAMES AND THE LEGISLATIVE FRAMEWORK
[1 POINT]

When assessing the level of compliance with this standard, we asked judicial system beneficiaries to indicate their agreement or disagreement with the following proposition: *During the proceedings, the judge performed all actions efficiently and in accordance with the prescribed time limits and legal framework*. Based on the collected data, the following conclusions were reached: 67% of citizens agree with the proposition - 33.8% totally agree, and 33.2% partially agree. The majority of respondents who agree are those with higher education or university degree, with an average income of over 18,000 dinars per household member per month. 31.2% of citizens said they disagreed. They mostly include respondents with primary school or less, from Southern or Eastern Serbia, whose average income is up to 18,000 dinars per household member. Of this percentage, 11% totally disagree with the proposition, while the remaining 20.2% mostly disagree. Given that 67% agree with the proposition, this standard is considered to be partially fulfilled [0.5/1 point].



During the proceedings, the judge performed all actions efficiently and in accordance with the prescribed time limits and legal framework

SUB-INDICATOR 1.4. THE LENGTH OF COURT PROCEEDINGS

SUB-INDICATOR STANDARDS	POINTS
1. The share of resolved civil cases in relation to the total number of cases classified as old cases according to the criteria set out in the Backlog Clearance Program of the Supreme Court of Cassation and the Court Rules of Procedure	0/1
2. The share of resolved cases in the total number of enforcement cases classified as old cases according to the criteria set out in Backlog Clearance Program of the Supreme Court of Cassation	0/1
3. The share of granted requests for the protection of the right to a trial within a reasonable time in civil cases in the total number of requests filed	1/1
4. The share of granted requests for the protection of the right to a trial within a reasonable time in enforcement cases in the total number of requests filed	0.5/1
5. The share of granted requests for the protection of the right to a trial within a reasonable time in relation to the total number of appeals submitted with the Constitutional Court	0/1
6. The share of ECHR judgments finding a violation of the right to a trial within a reasonable time in the total number of applications submitted with the ECHR against Serbia	0.5/1
7. System beneficiaries consider that the time frames and the length of proceedings standards were observed	0.5/0.5
TOTAL NUMBER OF POINTS	2.5/6.5

S1: THE SHARE OF RESOLVED CIVIL CASES IN RELATION TO THE TOTAL NUMBER OF CASES CLASSIFIED AS OLD CASES ACCORDING TO THE CRITERIA SET OUT IN THE BACKLOG CLEARANCE PROGRAM OF THE SUPREME COURT OF CASSATION AND THE COURT RULES OF PROCEDURE
[1 POINT]

The Court Rules of Procedure distinguish between several categories of backlogs. Namely, according to this document, cases that are pending for longer than two years from the date when they are instituted are to be marked "old cases", cases that are pending for over five years from the date of filing of the initial act are to be marked "urgent – old cases", while cases that are pending for over ten years from the date of filing of the initial act are to be marked "particularly urgent - old cases".[351] The Supreme Court of Cassation has the duty to keep a record of case backlogs and know the exact number of old cases at any time in order to organize and schedule hearings in such a manner as to enable the prompt disposal of backlogs.

In 2019, there was a backlog of 132,258 civil cases with 11,134 cases or 8.42% having been disposed of. It should be noted that data on the total number of old cases was taken from the Annual Report of the Supreme Court of Cassation. Such a low percentage of resolved cases clearly shows how much of an extra effort is needed to tackle this notorious problem of the Serbian judiciary. Given the above, this standard has not been fulfilled [0/1 point].

S2: THE SHARE OF RESOLVED CASES IN RELATION TO THE TOTAL NUMBER OF ENFORCEMENT CASES CLASSIFIED AS OLD CASES ACCORDING TO THE CRITERIA SET OUT IN THE BACKLOG CLEARANCE PROGRAM
[1 POINT]

The enforcement rate of judicial decision is the best indicator of the efficiency of court proceedings. By introducing public enforcement officers and by making sweeping changes to civil procedure laws concerning the enforcement of

[351] Court Rules of Procedure, Article 166a

court decisions, the Serbian judiciary have greatly lessened the burden on Serbian courts. However, according to the collected data, the total number of pending enforcement cases that are classified as old cases according to the criteria set out in the Backlog Clearance Program of the Supreme Court of Cassation is 275,187, while the number of old enforcement cases disposed of stood at 19,632, i.e. 7.13%, which clearly shows that serious problems still exist with resolving these pending cases. It should be noted that only data on basic courts were taken into account for the analysis. The data regarding the total number were determined using the data from the 2019 Annual Report of the Supreme Court of Cassation. Given all of the above, this standard is found not to be fulfilled [0/1 point].

S3: THE SHARE OF GRANTED REQUESTS FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME IN CIVIL MATTERS IN THE TOTAL NUMBER OF REQUESTS FILED FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME
[1 POINT]

Law on Protection of the Right to a Trial within a Reasonable Time[352] has been adopted with the view to facilitate the exercise of the right to a fair trial laid down in Article 32 of the Constitution of the Republic of Serbia, and it provides for the request for the protection of this right as a legal means available to parties to assert their right to have a fair trial.

Upon compiling and analyzing the data obtained from courts from the representative sample through requests for access to information of public importance, the following conclusions were drawn: 1,259 requests were made, 131 of which, or 10.40%, were granted. It should be noted that the Higher Court in Belgrade does not keep a record of granted appeals, but only of cases disposed of regardless of their outcome. As the absence of the said data does not significantly affect the results of this analysis, this standard is found to have been fulfilled [1/1 point].

S4: THE SHARE OF GRANTED REQUESTS FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME IN ENFORCEMENT PROCEEDINGS IN THE TOTAL NUMBER OF REQUESTS FILED FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME
[1 POINT]

For the purpose of this analysis, Article 22 (2) of the Law on Organization of Courts[353] was analysed, which focuses on basic courts when it comes to enforcement cases. Therefore, this analysis also focuses on basic courts. Based on the information collected, it was established that the number of requests for the protection of the right to a trial within a reasonable time in this type of cases in 2019 was 1,461, and that the number of granted request was 494, or 33.81%. Taking into account the evaluation of standards relating to old cases, the number of pending old cases, and the percentage of requests submitted, it can be said that citizens are insufficiently informed about their rights as shown by the low number of available legal remedies used by citizen to expedite the proceedings they participate in. On the basis of all data presented above, it can be concluded that this standard is partially fulfilled [0.5/1 point].

S5: THE SHARE OF GRANTED CONSTITUTIONAL APPEALS AGAINST COURT DECISIONS FOR VIOLATIONS OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME IN THE TOTAL NUMBER OF CONSTITUTIONAL APPEALS SUBMITTED WITH THE CONSTITUTIONAL COURT
[1 POINT]

As pointed out in the section dealing with Sub-indicator 1.3, standard 5, due to the large number of incoming submissions and cases originating from constitutional appeals, the Constitutional Court does not keep separate statistics on the number of appeals received for a violation of the right to a trial within a reasonable time (prior to the beginning of application of Law on Protection of the Right to a Trial within a Reasonable Time), but only of cases adjudicated on the merits. Therefore, it was not possible to obtain the said data, but only

[352] Law on Protection of the Right to a Trial within a Reasonable Time ("Official Gazette of the RS", No. 40/2015)
[353] Law on Organization of Courts, Article 22 (2)

data on the number of merit decisions rendered on appeals claiming violations of the right to a trial within a reasonable time. Thus, according to the only data available, until the beginning of the application of Law on Protection of the Right to a Trial within a Reasonable Time (January 1, 2016), the Constitutional Court found a violation of the right to a trial within a reasonable time in 3,215 of its decisions.

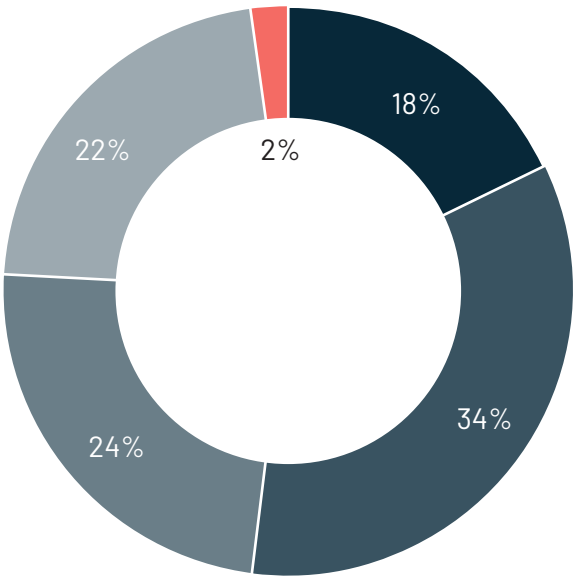
Given the importance of keeping statistics of this type of cases for the transparency of the Serbian judicial system, keeping a record of these cases should be considered. As the data were not available, this standard cannot be considered as fulfilled [0/1 point].

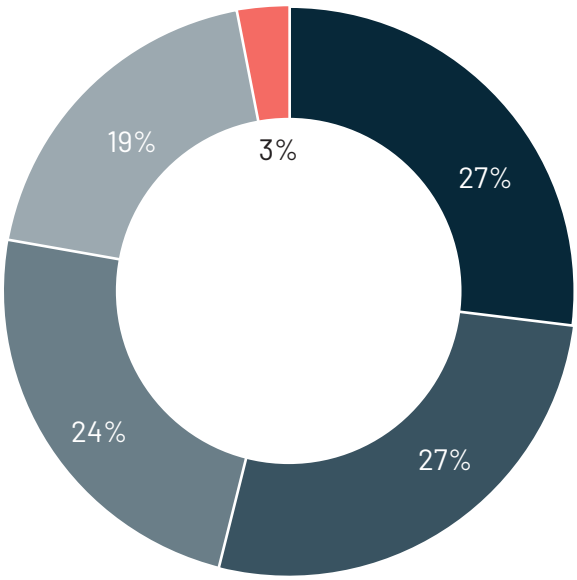
S6: THE SHARE OF ECHR JUDGMENTS FINDING A VIOLATION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME IN THE TOTAL NUMBER OF APPLICATIONS FILED WITH THE ECHR AGAINST SERBIA [1 POINT]

The values for this standard have been obtained through the analysis of the Constitutional Court statistics, which are based on "Analysis of statistics 2019" and "Serbia - Press country profile" published in January 2020 on the website of the European Court of Human Rights, in connection with applications against the Republic of Serbia. Based on this data, the total number of applications that concerned violation of the right to a trial within a reasonable time in 2019 was 24, while the total number of cases where the ECHR has found a violation of the right to a trial within a reasonable time was 10, or 41.67%, so this standard is considered partially fulfilled [0.5 / 1 point].

S7: SYSTEM BENEFICIARIES CONSIDER THAT TIME FRAMES AND THE LENGTH OF PROCEEDINGS STANDARDS WERE OBSERVED DURING THE PROCEEDINGS [0.5 POINT]

Based on a survey conducted with system beneficiaries, it was established as follows: 52.4% of respondents answered that they were satisfied with the duration of court proceedings, while 45.8% said they were dissatisfied. When asked to indicate whether they agree with the statement that the proceedings were unduly long, 54% of respondents agreed and 43% disagreed. As in both cases the percentage of yes answers was over 50, this standard is considered to be fully met [0.5/0.5].





Totally agree | Partially agree | Mostly disagree | Totally disagree | Does not know /Refuses to respond

Duration of my court proceeding was satisfactory

The trial lasted longer than it should have

SUB-INDICATOR 1.5. QUALITY OF JUDICIAL DECISION-MAKING

SUB-INDICATOR STANDARDS	POINTS
1. The share of upheld appeals against decisions of first-instance courts for misapplication of the law in the total number of first-instance courts' decisions	0/1
2. The share of upheld extraordinary remedial appeals for violations of substantive regulations in the total number of appeals	0/1
3. The share of upheld constitutional appeals for violation of constitutionally guaranteed rights and freedoms excluding those relating to trial within reasonable time in the total number of appeals for violations of constitutionally guaranteed rights and freedoms	1/1
4. The share of ECHR judgments finding a violation of an ECHR right excluding the right to a trial within a reasonable time in the total number of applications against Serbia filed with the ECHR	1/1
5. Judicial system beneficiaries consider that a court/judge's decision is clear and intelligible.	0.5/0.5
TOTAL NUMBER OF POINTS	2.5/4.5

S1: THE SHARE OF UPHELD APPEALS AGAINST DECISIONS OF FIRST-INSTANCE COURTS FOR MISAPPLICATION OF THE LAW IN THE TOTAL NUMBER OF FIRST-INSTANCE COURTS' DECISIONS
[1 POINT]

Since courts do not keep separate statistics of this type of appeals, at this point it is not possible to accurately determine the value of this standard. The only data available is that on the total number of overturned and modified decisions, but there are no specific data on the number of decisions overturned because of misapplication of the law. Because of the absence of such statistics, and because of the importance of such statistics for the transparency of the judicial system, this standard is found to not have been fulfilled [0/1 point].

S2: THE SHARE OF UPHELD EXTRAORDINARY REMEDIAL APPEALS FOR VIOLATIONS OF SUBSTANTIVE REGULATIONS IN THE TOTAL NUMBER OF EXTRAORDINARY REMEDIAL APPEALS SUBMITTED
[1 POINT]

It was impossible to determine the value of this standard as there are no official court statistics on this type of appeals. Yet, interest has been expressed for keeping this type of statistics in the future in order to bring the judicial system closer to citizens with the view of increasing legal certainty. As this type of statistics is does not yet exist, this standard cannot be considered to be fulfilled [0/1 point].

S3: THE SHARE OF UPHELD CONSTITUTIONAL APPEALS FOR VIOLATION OF CONSTITUTIONALLY GUARANTEED RIGHTS AND FREEDOMS EXCLUDING THOSE RELATING TO TRIAL WITHIN REASONABLE TIME IN THE TOTAL NUMBER OF APPEALS FOR VIOLATIONS OF CONSTITUTIONALLY GUARANTEED RIGHTS AND FREEDOMS
[1 POINT]

The compliance with this standard was assessed through the analysis of the statistical data obtained from the Constitutional Court. In 2019, there were 14,112 constitutional appeals against court decisions. It is important to point out that the number of individual constitutional appeals is much higher, but the Constitutional Court, in order to make their handling of so-called "typical cases"[354] more efficient, merged 10 or more constitutional appeal cases into one single case. On the other hand, the total number of

[354] Typical cases include constitutional appeals by various appellants that all claim a violation of the same guaranteed right in the same proceedings or with regard to the same challenged individual act.

upheld constitutional appeals for a violation of constitutionally guaranteed rights and freedoms with the exception of those concerning the right to a trial within a reasonable time is 676. It should be noted that the Constitutional Court estimated the upheld constitutional appeals for a violation of constitutionally guaranteed right and freedoms to be roughly 4.79%, so this standard is found to have been fulfilled [1/1 point].

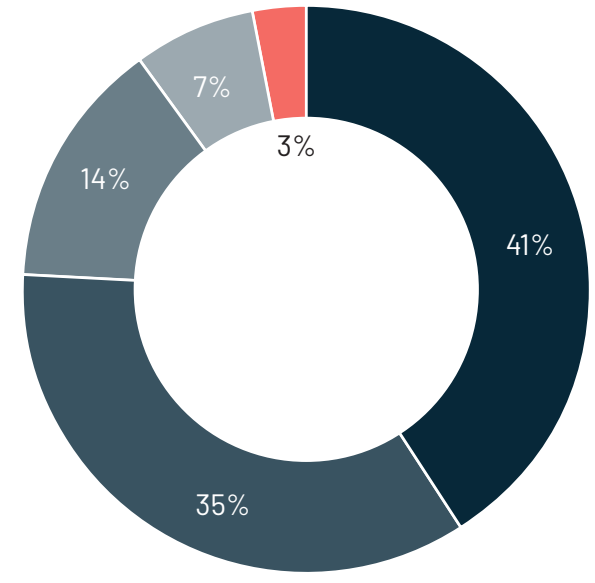
S4: THE SHARE OF ECHR JUDGMENTS FINDING A VIOLATION OF AN ECHR RIGHT EXCLUDING THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME IN THE TOTAL NUMBER OF APPLICATIONS AGAINST SERBIA FILED WITH THE ECHR
[1 POINT]

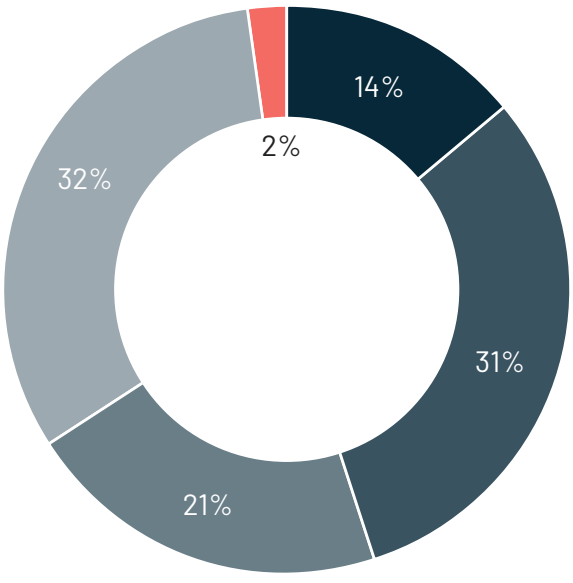
An analysis of the statistical data obtained from the Constitutional Court, which are based on "Analysis of statistics 2019" and "Serbia – Press country profile" published on the website of the European Court of Human Rights in January 2020 established as follows: a total of 127 applications against Serbia claiming a violation of the rights and freedoms (not including the applications concerning the right to a trial within a reasonable time) were filed with this court against Serbia in 2019. Of these, 11 applications, or 8.66 %, resulted in judgments finding a violation of an ECHR right or rights. Therefore, this standard is found to have been fulfilled [1/1 point].

S5: JUDICIAL SYSTEM BENEFICIARIES CONSIDER THAT THE COURT DECISION IS CLEAR AND INTELLIGIBLE
[0.5 POINT]

Compliance with this standard was assessed based on the results of the survey of the judicial system beneficiaries. Surveyed citizens were asked to indicate whether they agreed or disagreed with the following statements: *Judge's decision was intelligible?* and *I had to hire an attorney to interpret the court decision?*

75.6% of respondents agreed that the judgment was intelligible and 21.2% disagreed. As to the second statement, 53.6% of respondents disagreed while 44,8% said they needed to hire an attorney to interpret the decision. Therefore, this standard is found to be fulfilled [0.5/0.5 point].





Totally agree | Partially agree | Mostly disagree | Totally disagree | Does not know /Refuses to respond

Judge's decision was intelligible

I had to hire a attorney to interpret the court decision

EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**27** *(The sum of the maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**15** *(The sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-5.5	6-11.5	12-16.5	17-22.5	23-27
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**3**				

Regulations relating to the quality of judicial decision-making are to a significant extent in line with set standards, which is not the case with the procedural laws. As regards procedural legislation, a need for improvement has been identified in order to fulfil all these standards, specifically with regard to prescribed mechanisms for ensuring trial within reasonable time, which safeguard and guarantee the exercise of procedural rights of parties and participants in the proceedings, and the regulations relating to procedural discipline of parties to the proceedings. In terms of normative conditions for the quality of court decision-making, shortcomings were identified in the rules for the allocation of human and material resources in the judiciary and their coverage by relevant planning documents.

The practice of courts and judges is rated relatively positively from the procedural aspect, viewed through the prism of data on citizens' complaints about their work, overturned first-instance judgements on appeals, extraordinary remedial appeals for violation of procedural rules, and the number of European Court of Human Right's judgments finding a violation of procedural rights. Unfortunately, the manner of record keeping and systematizing constitutional appeals does not allow for an adequate assessment from the point of view of the practice of the Constitutional Court. On the other hand, the opinion poll showed that citizens rated the procedural aspect of courts' work neither entirely positively nor negatively. They expressed a similar, relatively positive opinion concerning the efficiency and length of court proceedings. However, according to the given standards of court proceedings, the general rating of the length of court proceedings, based on the data on the number of so-called old cases, the number of granted requests for protection of the right to a trial within a reasonable time, the number of upheld constitutional appeals for violation of the right to a trial within a reasonable time, as well as the number of ECHR judgments finding a violation of this right, is unsatisfactory.

RECOMMENDATIONS

1. At the normative level, further harmonization of the Law on the Protection of the Right to a Trial within a Reasonable Time with the procedural legislation is needed. Among other things, it is necessary to provide more informative and precise instructions for judges, specify the manner of urgency gradation, as well as harmonize the instructional deadlines of procedural legislation with the obligations concerning efficient court proceedings.
2. It is necessary to identify opportunities for organizational and technical improvements that would ensure a more efficient conduct of court proceedings, further development of mechanisms envisaged in the current Backlog Clearance Program, as well as of mechanisms to prevent the built up of large backlogs.
3. It is necessary to introduce the obligation to keep records on the number of upheld constitutional appeals for violation of procedural rights of the parties.
4. It is necessary to introduce the obligation to keep records on the number of justified complaints about the work of courts and judges, upheld extraordinary remedial appeals according to the type of violation, as well as the number of overturned and modified decisions of first instance courts on grounds of misapplication of law by the competent judicial authorities.
5. It is necessary to further improve the training of judges to help them acquire and perfect the skill of writing a reasoned decision, with greater and more versatile involvement of the Supreme Court of Cassation so that it can fulfil its task and the role it has in the legal system.
6. Citizens need to be better informed about the possibility of filing a request for protection of the right to a trial within a reasonable time, the procedure for protection of the right to a trial within a reasonable time, and the purpose of this mechanism.

INDICATOR 2: LEGAL CERTAINTY

SUB-INDICATOR 2.1. ADEQUACY OF LEGAL NORMS REGULATING THE HARMONIZATION OF JUDICIAL PRACTICE

SUB-INDICATOR STANDARDS	POINTS
1. The legal framework envisions mandatory monitoring of implementation of court action plans relating to harmonization of judicial practice	0.5/1
2. The law prescribes the obligation to maintain and publish case-law databases	1/1
3. The law specifies the competences and procedure for harmonization of judicial practice	0.5/1
4. The law allows for first-instance courts to initiate requests for resolving controversial legal issues	0.5/1
TOTAL NUMBER OF POINTS	2.5/4

S1: THE LEGAL FRAMEWORK ENVISIONS MANDATORY MONITORING OF IMPLEMENTATION OF COURT'S ACTION PLANS RELATING TO HARMONIZATION PRACTICE [1 POINT]

The legal system of the Republic of Serbia follows the tradition of the continental law where, formally speaking, court decisions are not a source of law and the legal views of courts of higher instances are not binding upon lower courts. In this regard, the Constitution of the Republic of Serbia stipulates that court decisions are based on the Constitution, law, ratified international treaties, and regulations adopted based on law.[355] Article 1 of the Law on Judges further emphasizes that judges adjudicate cases on the basis of the Constitution, laws and other general acts, ratified international treaties, and universally accepted rules of international law.[356] Nonetheless, as the legal views contained in decisions of higher courts are usually observed by judges of other courts, court decisions can *de facto* become a source of law. Judges should therefore be familiar with the relevant case law and take it into account when making their decisions. When making a decision, judges should be acquainted with the arguments set out in the decisions of the courts of higher instances, especially with the decisions of the appellate and republic courts. If a judge makes a decision that deviates from the views set out in the decisions of higher court instances, he/she is required to explain the reasons behind the deviation. It is precisely by the force of arguments presented in a decision deviating from the harmonized case law that a judge asserts his/her authority and makes his/her views accepted. Accordingly, making decisions in accordance with previous decisions of courts of higher instances is grounded upon their arguments and the authority of legal views concerning the interpretation of legal norms. This authority, alongside uniform regulations applied by judges, ensures predictability of judicial decisions, and, as a result, equality before the law and legal certainty. However, in order for a judge to make a right decision, either in accordance with previous court decisions or by making a well-argued case for departing from harmonized judicial practice, he/she needs to be independent in acting and decision-making.[357] Only a judge who is independent in acting and decision-making decisions can render a decision that is fair and thus further legal certainty.

Pursuant to international standards and the domestic law of the Republic of Serbia, judges,

[355] Constitution of the Republic of Serbia ("Official Gazette of the RS", No. 98/2006), Article 145
[356] Law on Judges, Article 1 (2)
[357] Law on Judges Article 1

when making decisions, rely on the case law of courts of the highest instances, which have the role of ensuring the uniformity of judicial practice. The Law on Organization of Courts stipulates that the Supreme Court of Cassation, as the highest court in Serbia, has special powers in this regard and therefore ensures uniform judicial application of the law and equality of parties in the proceedings.[358] The Supreme Court of Cassation has a case law department that keeps track of and examines the case law, initiates reviews of adopted legal views, informs judges and court advisors about the legal views of court departments and determines which data and documentation need to be monitored in order to improve the court practice, and specifies the manner of their recording, processing and inclusion in publications, in order to ensure uniform judicial application of the law.[359] In order to harmonize the case law, this court also hands down legal views in situations where there exist "profound and long-term differences in court practice", as a systemic disorder which has led to a violation of the right to legal certainty or undermines public confidence in the judicial system, publishes decisions handed down in so-called repeated cases and established operative parts of decisions. The Supreme Court of Cassation is obliged to dedicate two conferences a year to controversial legal issues, as well as to organize a multidisciplinary debate on controversial legal issues with the participation of representatives of all courts of the republic rank, appellate courts and legal scholars.[360] Any court in Serbia may raise issues to be discussed at these debates.[361]

Uniform judicial practice is promoted also at the level of appellate courts. These courts hold joint meetings and inform the Supreme Court of Cassation about controversial issues of relevance for promoting the uniformity of judicial practice.[362] Prior to informing the Supreme Court of Cassation, appellate court departments present their opinions, reports and supplementary reports at the meetings held by departments in which a controversial issue has emerged, as well at joint meetings of all the departments.[363] Conclusions reached at these meetings are then submitted to the Supreme Court of Cassation for opinion and adoption, and the conclusions adopted by the Supreme Court of Cassation are published by appellate courts at their respective websites.[364] In addition to the Supreme Court of Cassation, appellate courts and courts with a large number of judges have case law departments, in accordance with the Court Rules of Procedure. These departments are headed by a judge designated to perform this job.[365] The case law departments are tasked with the following and studying the case law of courts and international judicial authorities and informing judges, judicial assistants and trainees about the courts' legal views.[366] Courts keep a general register of legal views, which includes legal views issued in decisions that are of relevance for case law, and a separate register of decisions of courts of higher instances, and international courts, tribunals and institutions.[367] Given all of the above, this standard is found to be fulfilled [0.5/1 point].

S2: THE LAW PRESCRIBES THE OBLIGATION TO MAINTAIN AND PUBLISH CASE LAW DATABASE [1 POINT]

The obligation of courts to maintain and publish case law databases is laid down in laws and by-laws. The Supreme Court of Cassation is required by law to publish its decisions that are relevant for court practice in the form of a separate case-law collection, and to publish all its decisions including those made on extraordinary remedial appeals against decisions of the Serbian courts and in other matters as specified by law. In addition, it is prescribed that courts with a large number of judges should have a case law department

[358] Law on Organization of Courts, Article 3
[359] Rulebook on Organization and Operation of the Supreme Court of Cassation ("Official Gazette of the RS", No. 74/2018), Article 38
[360] Rulebook on Organization and Operation of the Supreme Court of Cassation, Article 47
[361] Supreme Court of Cassation Action Plan for Judicial Practice Harmonization (I CY-724/2014 of April 1, 2014), p. 6
[362] Law on Organization of Courts, Article 24
[363] Court Rules of Procedure, Article 29a
[364] Court Rules of Procedure, Article 29a
[365] Court Rules of Procedure, Article 27
[366] Court Rules of Procedure, Article 27
[367] Court Rules of Procedure, Article 28

without specifying any further details other than that this matter will be regulated in greater detail by courts' rules of procedure. The Rulebook on Organization and Operation of the Supreme Court of Cassation specifies the manner of operation and the composition of the case law department at this court, as well as other important matters such as the title of its case law publication (Case Law Bulletin). The case law databases are available on the Supreme Court of Cassation's website. The 2013-2018 National Judicial Reform Strategy[368] of July 1, 2013 stipulates that the Supreme Court of Cassation and appellate courts should publish on their websites court decisions that are deemed relevant for court practice, but does not provide precise criteria for deciding which decisions are to be published. As a result, a limited number of decisions have been made available to the general public, but there is no centralized database containing the case law of the Supreme Court of Cassation and appellate courts.[369] As the applicable regulations prescribe the obligation to maintain and publish a database of case law, the maximum number of points is assigned to this Sub-indicator and the standard is considered as fulfilled [1/1 point].

S3: THE LAW PRESCRIBES THE COMPETENCES AND PROCEDURE FOR COURT PRACTICE HARMONIZATION
[1 POINT]

In April 2014, the Supreme Court of Cassation adopted the action plan for the harmonization of court practice. This document lists all the activities that need to be taken to achieve greater uniformity of court practice both of the Supreme Court of Cassation and all other courts. As for the Supreme Court of Cassation itself, the document envisages that uniformity of court practice is to be achieved through decisions on extraordinary remedial appeals in individual cases, issuance of legal views, publishing decisions made in recurring cases and publishing established operative parts of decisions.[370] Depending on the court type and instance, the action plan envisions a number of measures aimed at horizontal and vertical harmonization of court practice.[371] Neither the Law on Organization of Courts nor the action plan enunciate the obligation to monitor the implementation of the courts' action plans for the harmonization of court practice. However, since under the law, the Supreme Court of Cassation is responsible for ensuring the uniform application of the law, it is a given that this obligation also falls within the scope of work of the Supreme Court of Cassation. Yet, as the legal framework does not specifically provide for the obligation to monitor the implementation of the action plans, but only stipulates the obligation of the Supreme Court of Cassation to ensure the uniform application of the law, it may be concluded that this standard is partially fulfilled [0.5/1 point].

S4: THE LAW PROVIDES FOR COURTS OF FIRST INSTANCE TO INITIATE REQUESTS FOR RESOLVING CONTROVERSIAL LEGAL ISSUES
[1 POINT]

A controversial legal issue refers to a situation where in a large number of cases heard by courts of first instance a need arises to adopt a stance on a legal matter of relevance for decision making.[372] In such situations, the court of first instance, either *ex officio* or at the proposal of a party, by filing a request for resolving a controversial legal issue with the Supreme Court of Cassation initiates the proceedings for resolving a controversial legal issue.[373] According to its action plan, this court is obliged to dedicate two conferences a year to controversial legal issues.[374] The first conference is organized in the form of a multidisciplinary discussion with the participation of representatives of all state and appellate courts and legal scholars.[375] Controversial issues for discussions may be raised by any court and the Supreme Court of Cassation decides which of

[368] The 2013-2018 National Judicial Reform Strategy of July 1, 2013
[369] The 2013-2018 National Judicial Reform Strategy of July 1, 2013, p. 21.
[370] Supreme Court of Cassation Action Plan for Judicial Practice Harmonization (I CY-724/2014) of April 1, 2014.
[371] *See* Supreme Court of Cassation Action Plan for Judicial Practice Harmonization, Chapter IV
[372] Civil Procedure Code, Article 180
[373] Civil Procedure Code, Article 180
[374] Supreme Court of Cassation Action Plan for Judicial Practice Harmonization
[375] Supreme Court of Cassation Action Plan for Judicial Practice Harmonization, p. 2

them will be discussed. The second conference is the Annual Judges' Conference.[376] In addition, appellate courts are designated to serve as mediators in the process of harmonization of the practices of basic, higher and commercial courts. This is a two-fold process: delegations of higher courts hold meetings with delegations of competent appellate courts, of which they inform the Supreme Court of Cassation, and the latter also conducts a survey among basic and commercial courts about controversial legal issues, after which it decides which court is to resolve which controversial legal issue and report back to the Supreme Court of Cassation.[377] It is important to note that the Law on Organization of Courts previously provided for the Supreme Court of Cassation to adopt general legal views. However, following an opinion of the Venice Commission, this provision was deleted from the law as it was considered to jeopardize the independence of the judiciary and the separation of powers by allowing for the possibility of the Supreme Court of Cassation *de facto* becoming a legislator. Due to omissions, a similar provision remained in the Civil Procedure Code. Therefore, it follows from all of the above that courts of first instance are allowed by law to raise a controversial legal issue, so the standard is partially fulfilled [0.5/1 point].

SUB-INDICATOR 2.2. CASE LAW ACCESSIBILITY

SUB-INDICATOR STANDARDS	POINTS
1. The case law database is publicly accessible	1/1
2. Access to the case law database is free of charge	1/1
3. The case law database is regularly updated and expanded which is a prerequisite for predictable and uniform application of the law	0.5/1
4. User interface case management systems (The Automated Case Management System (AVP) and the Standardized Software Application for the Serbian Judiciary (SAPS)) facilitate easier exchange of case law via an intranet.	0.5/0.5
5. Case law exchange is made possible via intranet	0/0.5
TOTAL NUMBER OF POINTS	3/4

S1: THE CASE LAW DATABASE IS PUBLICLY ACCESSIBLE [1 POINT]

The Supreme Court of Cassation and all four appellate courts in the Republic of Serbia have publicly accessible databases. This is not the case with other types of courts. Only seven of the total of 25 higher courts[378] and only five out of 66 basic courts in the Republic of Serbia have publicly accessible databases.[379] It is important to note that accessibility of decisions of courts of higher instances is of greater importance for achieving uniformity of court practice. Therefore, since the courts' databases are publically accessible, this standard is found to be fulfilled [1/1 point].

[376] *Idem*
[377] *Idem*
[378] Higher Court in Sabac, Higher Court in Novi Sad, Higher Court in Sombor, Higher Court in Nis, Higher Court in Leskovac, Higher Court in Vranje, and Higher Court in Valjevo.
[379] Basic Court in Uzice, Basic Court in Sombor, Basic Court in Pozega, Basic Court in Novi Sad, and Basic Court in Nis.

S2: ACCESS TO CASE LAW DATABASES IS FREE OF CHARGE [1 POINT]

As in the case of standard 1, it is established that the Supreme Court of Cassation and all four appellate courts have publicly accessible databases at their respective websites. Also, seven higher courts[380] and five basic courts[381] have publicly accessible databases. All the databases can be accessed free of charge. In addition to publicly accessible case law database on the courts' websites, there are specialized websites offering all these databases, such as www.sudskapraksa.sud.rs, which is accessible to all citizens, and www.sudskeodluke.sud.rs, accessible only to courts. Both are accessible free of charge. There are also commercial, subscription-based portals, such as www.sudskapraksa.com, www.pravno-informacioni-sistem.rs, www.propisi.net and others which offer court decisions and case law bulletins of several Serbian courts for download. Given the above data, this standard is considered as fulfilled [1/1 point].

S3: CASE LAW DATABASES ARE REGULARLY UPDATED AND EXPANDED, WHICH IS A PREREQUISITE FOR PREDICTABLE AND UNIFORM APPLICATION OF THE LAW [1 POINT]

Upon visiting the websites of the Supreme Court of Cassation and all four appellate courts, it was established that all these courts have a case law database that is regularly updated and expanded. However, only three[382] out of 25 analysed higher courts, and one basic court, the one in Novi Sad, out of 66 analysed, regularly update their databases. It should be noted that none of the databases provide access to all court decisions, but only to a select number of decisions. Yet, although relatively current, case law databases of some courts contain merely a few operative parts of judgments. It is therefore recommended that this standard should be improved in the future by making a larger amount of case law accessible, in a consistent manner, and regularly updating case law databases in order to provide a better insight into the case law development in Serbia. Given all of the above and the availability of data, this standard is considered as fulfilled [0.5/1 point].

S4: USER INTERFACE CASE MANAGEMENT SYSTEMS (THE AUTOMATED CASE MANAGEMENT SYSTEM (AVP) AND THE STANDARDIZED SOFTWARE APPLICATION FOR THE SERBIAN JUDICIARY (SAPS)) FACILITATE EASIER EXCHANGE OF CASE LAW VIA INTRANET [0.5 POINT]

The analysis of publicly accessible case law databases of courts of all three instances showed that all court cases are managed by automated systems through the existing interfaces. For this reason, this standard is considered fully fulfilled [0.5/0.5 point].

S5: EXCHANGE OF CASE LAW IS FACILITATED VIA INTRANET [0.5 POINT]

The analysis of publicly accessible case law databases of courts showed that exchange of case law via intranet is not made possible. Although, as indicated above, there was an initiative to make the exchange possible, this has not been done due to concerns that it would violate the provisions of the Law on Personal Data Protection.[383] Therefore, as the case law exchange is not possible, this standard cannot be considered as fulfilled [0/0.5 point].

[380] Higher Court in Sabac, Higher Court in Novi Sad, Higher Court in Sombor, Higher Court in Nis, Higher Court in Leskovac, Higher Court in Vranje, and Higher Court in Valjevo.
[381] Basic Court in Uzice, Basic Court in Sombor, Basic Court in Pozega, Basic Court in Novi Sad, and Basic Court in Nis.
[382] Higher Court in Sabac, Higher Court in Novi Sad, and Higher Court in Valjevo
[383] Law on Personal Data Protection ("Official Gazette of the RS" No. 87/2018)

SUB-INDICATOR 2.3. UNIFORM APPLICATION OF THE LAW

SUB-INDICATOR STANDARDS	POINTS
1. The proportion of adopted legal opinions in the total number of requests for resolution of controversial legal issues submitted to the Supreme Court of Cassation	0/1
2. Legal opinions adopted by the Supreme Court of Cassation and joint legal opinions adopted by appellate courts have an impact on uniformity of court practice	0.5/1
3. Binding instructions of the State Public Prosecutor's Office have an impact on uniformity of prosecutors' handling of cases	0.5/1
4. Constitutional Court's decisions have an impact on uniformity of courts practice	1/1
5. Prosecutors apply the law uniformly to all persons in similar situations	0/1
TOTAL NUMBER OF POINTS	2/5

S1: THE PROPORTION OF ADOPTED LEGAL OPINIONS AND THE TOTAL NUMBER OF REQUESTS FOR RESOLUTION OF CONTROVERSIAL LEGAL ISSUES SUBMITTED TO THE SUPREME COURT OF CASSATION
[1 POINT]

Between 2010 and 2020, the Supreme Court of Cassation received 277 cases originating from requests for resolution of controversial legal issues. Of these, 41 requests were granted, 74 were dismissed, 133 were rejected, and 29 were otherwise resolved. In 2019 alone, the Supreme Court of Cassation received 14 cases relating to requests for resolution of a controversial legal issue, and adopted two legal opinions and two legal conclusions concerning these cases. As the proportion of adopted legal opinions in below 30%, this standard cannot be considered as fulfilled [0/1 point].

S2: LEGAL OPINIONS ADOPTED BY THE SUPREME COURT OF CASSATION AND JOINT LEGAL OPINIONS ADOPTED BY APPELLATE COURTS HAVE AN IMPACT ON UNIFORMITY OF COURT PRACTICE
[1 POINT]

Data obtained from structured interviews conducted in appellate courts and legal opinions adopted by the Supreme Court of Cassation that have had an impact on court practice harmonization over the past two to three years were used to determine the value of this standard.

The interviewees included seven judges handling civil cases, one judge handling criminal cases, six of whom work at the Appellate Court in Belgrade, one at the Appellate Court in Kragujevac, and one at the Appellate Court in Novi Sad. Interviewed judges on average adjudicate 260 cases a year. Appellate courts' judges have access to legal opinions of the Supreme Court of Cassation via the Internet or the internal website of the Supreme Court of Cassation, and also through information sent to them by the court administration or case law department. Constitutional Court's rulings are available on the Constitutional Court's website. Judges are informed on joint legal opinions of appellate courts verbally, at departments' meetings. All interviewed judges handled cases in which a joint legal opinion of appellate courts was handed down, but their number was not significant.

All judges handling civil cases have heard cases in which a legal opinion of the Supreme Court of Cassation was handed down. These several legal opinions of the Supreme Court of Cassation may have an impact on a small or large number

of court decisions, depending of the subject matter of a case. For example, the adopted legal opinions affect a large number of court decisions in labor law disputes. In 20-30% of labor cases, a legal opinion of the Supreme Court of Cassation has been handed down. Yet, there are problems with these opinions, one being a low level of generalization, and the absence of adequate argumentation and/or reasoning in situations where the legal opinions are inconsistent with the decisions of the Constitutional Court being the other. Another problem arises when the Supreme Court of Cassation alters its previous legal opinions.

Nearly all interviewed judges believe that it is possible to depart from a Supreme Court of Cassation's opinion if such a departure is properly explained. However, such situations are rather rare. Disagreement with the arguments supporting a legal opinion handed down by the Supreme Court of Cassation and differences in legal or factual situation are most often the reasons for departing from the highest courts' legal opinions. Judges of the appellate courts mostly accept legal opinions of the Supreme Court of Cassation, provided they do not contradict the opinions of appellate courts and the rulings of the Constitutional Court. Lower courts are more prone to accept Supreme Court of Cassation's legal opinions if they are aware of them. All interviewed judges stated that some Constitutional Court's rulings affected their decisions.

As regards the impact of joint legal opinions of appellate courts on court practice harmonization, the opinions of interviewed judges somewhat diverged. While some of them said they fully accept joint legal opinions of appellate courts, others do not see these opinions as contributing to a greater uniformity of court practice. In addition, it is not rare that appellate courts do not succeed in agreeing a joint legal opinion at their joint meetings due to their differences in approach, which perpetuates divergent court practices.

Given all of the above and that, 62% of interviewed judges fully positively rated the impact of Supreme Court of Cassation's decisions on court practice, this standard is found to be partially fulfilled [0.5/1 point].

S3: BINDING INSTRUCTIONS OF THE STATE PUBLIC PROSECUTOR'S OFFICE HAVE AN IMPACT ON UNIFORMITY OF PROSECUTORIAL DECISIONS
[1 POINT]

Because of frequent changes made to national regulations and inconsistencies in case law, public prosecutors are likely to act inconsistently. Having in mind the possibility of discretionary application of the mechanism of deferred criminal prosecution by public prosecutors, it is essential that the State Public Prosecutor issue general instructions in that area (but also in other areas depending on the assessment). The Law on Public Prosecutor's Office[384] stipulates that the State Public Prosecutor issue general binding instructions in writing for all public prosecutors in order to achieve legality, efficiency and uniformity of prosecutorial work.

Assuming that due to insufficient transparency of the general instructions of the State Public Prosecutor there is no consistency in their application, a survey was conducted among public prosecutor's offices of different instances (three higher public prosecutor's offices and eighteen basic public prosecutor's offices). Different prosecutorial instances were chosen in order to assess whether all lower public prosecutor's offices fulfilled their obligation to go by the general instructions of the State Public Prosecutor.[385] Compliance with one such instruction (Instruction O. No. 2/19 from July 22, 2019) was taken as a test. This instruction refers to the obligation of public prosecutors, when applying the mechanism of deferred prosecution[386] in cases involving *illegal possession of drugs*, to offer the suspect to undergo drug rehabilitation and treatment program when legal conditions for this are met and when the circumstances of the specific case (statement of the suspect, medical records, etc.) so require, and having in mind State Public Prosecutor's

[384] Law on Public Prosecution, Article 25(1)
[385] Law on Public Prosecution, Article 25 (1)
[386] Law on Public Prosecution, Article 283 (1) (5)

act A. No. 478/10 of February 24, 2011 which sets forth the obligation of a prosecutor to offer the suspect to fulfil one or more obligation as a precondition for obtaining deferred prosecution also in cases of illegal possession of marijuana in the quantity of five grams. This instruction of the State Public Prosecutor stipulates that prosecution may not be deferred in cases involving the criminal act of *tax evasion*, as this offense is punishable by imprisonment and a fine, which excludes the possibility of deferral of prosecution. In order to assess the application of this instruction, 10-question questionnaires were designed and sent out to prosecutor's offices with different levels of jurisdiction. Responses were received from twenty-one deputy public prosecutors (eighteen deputy public prosecutors from basic public prosecutor's offices and three deputy public prosecutors from higher public prosecutor's offices). Seventeen deputy public prosecutors said that they did not apply the mechanism of deferred prosecution to criminal offenses punishable cumulatively by imprisonment and a fine. Three deputy public prosecutors stated that they always applied the said mechanism in such cases, while one deputy stated that he sometimes applied this mechanism to criminal offenses punishable cumulatively by imprisonment and a fine. Even though the majority of public prosecutors said that they acted in accordance with the law and the general instruction of the State Public Prosecutor of 2019, it can be concluded that there is no consistency in deputy public prosecutors' actions despite the existence of the legal provision and the general instruction of 2019.

Having in mind that the general instruction of the State Public Prosecutor was issued on a relatively recent date, it can be concluded that its application by public prosecutors is not consistent. While most basic public prosecutors act in accordance with the general instruction of 2019, higher public prosecutor's offices do not act in accordance with it or the relevant legal provisions. Moreover, some public prosecutors indicated that they go by the principle of opportunity, rather than provisions of the law or the general instruction. Therefore, this standard is partially fulfilled. [0.5/1 point].

S4: CONSTITUTIONAL COURT'S DECISIONS HAVE AN IMPACT ON COURT PRACTICE UNIFORMITY
[1 POINT]

Constitutional Court's decisions have a significant impact on uniformity of judicial practice. Interviews conducted with judges of the appellate courts asked them to indicate whether decisions of the Constitutional Court influenced their decisions. All interviewed judges said that there were decisions of the Constitutional Court that influenced their decisions. For this reason, this standard is considered to have been fulfilled [1/1 point].

S5: PROSECUTORS APPLY THE LAW UNIFORMLY TO ALL PERSONS IN SIMILAR SITUATIONS
[1 POINT]

The value of this standard was determined on the basis of the results of a survey of a certain number of attorneys about their perception of uniform application of the law by public prosecutors in the Republic of Serbia. The attorneys were asked to give their opinion on several key questions relating to public prosecutors' uniform application of the law with respect to: legality of criminal prosecution, deferred criminal prosecution, dismissal of a criminal complaint, legal qualification of an offense, proposed criminal sanction, especially detention, and entering into a plea agreement with a defendant under the conditions prescribed by law. Out of 7 questions asked, only the question about the legal qualification of the criminal offense that is the subject of prosecution was answered in the affirmative by more than half of polled attorneys. Specifically, 58.3% of respondents agreed that public prosecutors applied the law uniformly. It is interesting to note that even in this case a significant 41.7% answered in the negative. The situation is even clearer with other questions. For example, 75% of respondents do not think that public prosecutors in the Republic of Serbia uniformly apply the rules on legality of criminal prosecution laid down in Article 6 of the Criminal Procedure Code.[387] In addition, 75% of respondents do not think that the rules on

[387] Criminal Procedure Code, Article 6

deferred criminal prosecution are applied uniformly to all persons, while 8.3% said that in most cases they are applied uniformly. When it comes criminal complaint dismissal, 83.3% of respondents expressed the opinion that rules were not applied uniformly. As regards uniform application of the law in situations where detention is proposed, 83.3% answered in the negative. 66.7% believe the rules regulating the conclusion of a plea agreement with a defendant are not applied uniformly. Lastly, 91.7% of respondents believe that public prosecutors do not apply the law uniformly when proposing a criminal sanction for an offence that is the subject of prosecution. Given all of the above, this standard cannot be considered as fulfilled [0/1 point].

EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**13** *(The sum of the maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**7.5** *(The sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-2.5	3-5.5	6-8.5	9-11	11.5-13
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**3**				

As regards predictability in the work and decision-making of judicial authorities, especially with regard to the rules on harmonization of judicial practices, a high degree of compliance with set standards is found. Certain normative improvements are needed, especially as regards the implementation and monitoring of action plans for harmonization of court practice. Also, the overall rating of the accessibility of case law data is positive. The practice of courts and, to a certain extent, of prosecutor's offices, aimed at ensuring uniform application of substantive and procedural legislation in individual cases, does not measure up with the standards set. Weaknesses have been identified in the determination and implementation of legal opinions by competent courts as well as inconsistent prosecutorial handling of similar situations.

RECOMMENDATIONS

1. It is necessary to add precision to the legal framework that regulates the manner of monitoring the implementation of court action plans for harmonization of court practice, as well the competences and procedure for the harmonization of court practice.
2. The statistical parameters need to be changed and improved so that the grounds for overturning or modifying decisions of courts of first instance can be more accurately captured and classified and in order to introduce other parameters that enable more precise and thorough analyses of court practice, such as links to applicable substantive regulation, classification by types of disputes which currently do not have their separate registry books, stratification of categories of parties to the proceedings etc.
3. It is necessary to strengthen the internal capacities of courts in order to facilitate access to case law by judges, as well as to improve the existent applications in order to enable automatic search of case law by legal area, applicable substantive regulations, case title, categories of prosecutors and defendants and keywords.
4. It is necessary to strengthen and intensify the practice of adopting legal opinions and stances, improve the accessibility of these opinions and views for judges, and strengthen the mechanisms that contribute to the harmonization of court practice.
5. It is necessary to improve the mechanisms for the harmonization of the prosecutorial practice, primarily through general instructions of the State Public Prosecutor, which should be made fully available to the public, so that attorneys and the professional community would be informed in a timely manner about formulated recommendations.

KEY AREA V: JUDICIAL ETHICS

INDICATOR 1: THE INTEGRITY OF A JUDGE

SUB-INDICATOR 1.1. ADEQUACY OF LEGAL NORMS ON THE INTEGRITY OF A JUDGE

SUB-INDICATOR STANDARDS	POINTS
1. The Constitution and the law determine the independence of judges in their proceedings and decision-making processes	1/1
2. There is an adequate mechanism which guarantees the right to an impartial judge	1/1
3. The law and the Court Rules of Procedure regulate the principle for random assignment of cases	1/1
4. The Law on Judges and the Rulebook on Disciplinary Procedures regulate the system of disciplinary liability for violating the code of conduct by a judge	0.5/1
5. The Law on Judges regulates the procedure for assessing the incompatibility of the duty of judges with other affairs	0.5/1
6. The law regulates the manner of prosecuting a judge in a criminal procedure for a criminal offense committed by a judge	0.5/1
TOTAL NUMBER OF POINTS	4.5/6

S1: THE CONSTITUTION AND THE LAW DETERMINE THE INDEPENDENCE OF JUDGES IN THEIR PROCEEDINGS AND DECISION-MAKING PROCESSES
[1 POINT]

As regards the standard that stipulates that the Constitution and the law determine the independence of judges in their proceedings and decision-making processes, it should be noted that the Constitution of the Republic of Serbia explicitly prescribes the independence of the judiciary. Elaborating this principle further on, at the level of bodies and individual office holders, the Constitution and the law determine that courts are independent and autonomous in their work, and judges are independent in performing judicial duties. However, in addition to this basic principle, as an additional guarantee, the constancy of the

judicial duty is prescribed, the key role of the High Court Council in the process of election and termination of judicial office, precisely and exhaustively stating reasons for termination of judicial office, and the principle of immovability of a judge. Important guarantees are the provisions on the financial status of a judge, which should ensure financial independence, as well as the provisions on functional independence, according to which a judge is not obliged to explain his/her legal understandings and established facts to anyone, including other judges or the president of the court, except to explain the reason behind the decision or when the law specifically requires it. These constitutional and legal guarantees can be assessed as adequate, therefore this standard is considered as fulfilled. [1/1 point]

S2: THERE IS AN ADEQUATE MECHANISM THAT GUARANTEES THE RIGHT TO AN IMPARTIAL JUDGE
[1 POINT]

The law provides adequate mechanisms that guarantees the right to an impartial judge (exclusion and recusal). Namely, the exclusion/recusal of the appointed judge who acts in a case may be requested by both the parties and their legal representatives. The request can be submitted immediately upon discovering that there is a reason for that, and at the latest until the end of the phase of the procedure in which the exclusion/recusal has been requested. The parties and their legal representatives are obliged to clarify the request by stating the evidence and facts based on which they believe that there are some of the reasons for exclusion/recusal, which are prescribed by the law. The request for exclusion/recusal is in the function of enabling the right to a fair trial, more precisely it should contribute to an objective and impartial trial. This standard, including the precise reasons, deadlines, procedure and authorization, is adequately regulated, therefore it is considered as fulfilled. [1/1 point]

S3: THE LAW AND THE COURT RULES OF PROCEDURE REGULATE THE PRINCIPLE FOR RANDOM ASSIGNMENT OF CASES
[1 POINT]

The standard that requires that the law and the Court Rules of Procedure regulate the concept of random assignment of cases, actually represents the right to the so-called natural judge, one of the fundamental principles of access to justice and a fair trial. The principle of random assignment of cases is in accordance with and closely related to the principle of independence of the judiciary, i.e. it directly arises from the principle that only the judiciary can assign cases to judges according to the pre-established rules. At the same time, the assignment of cases is performed in order to ensure equal workload of all judges. This principle is concretized by the provisions of the Court Rules of Procedure, which stipulate that the clerk's office assigns cases, in such an order that newly received cases are first classified according to their urgency and type of procedure, and then assigned according to the astronomical calculation of the time of admission, by the method of randomly determined judge.[388] Individual cases are arranged manually, by writing in the register according to the order of admission and ordinal number, or by using business case management software. Therefore, at the level of the prescribed rules of acting in the court, the standard has been fully fulfilled. [1/1 point]

S4: THE LAW ON JUDGES AND THE RULEBOOK ON DISCIPLINARY PROCEDURES REGULATE THE SYSTEM OF DISCIPLINARY LIABILITY FOR VIOLATING THE CODE OF CONDUCT BY A JUDGE
[1 POINT]

Regarding the question of whether the law and bylaws regulate the system of disciplinary liability for violating the code of conduct by a judge, it should be noted that the law prescribes types and forms of disciplinary liability, while bylaw regulates in more detail the conditions and procedure for determining it.[389] The lack is the fact that the disciplinary proceedings are,

[388] Court Rules of Procedure, Article 49

[389] Rulebook on the Procedure for Determining the Disciplinary Liability of Judges and Court Presidents ("Official Gazette of the RS", no. 41/2015)

as a rule, closed to the public, unless the judge in respect of whom the proceedings are conducted does not require the proceedings to be public, while the applicant is not considered as a party in the proceedings nor has the opportunity to participate in the proceedings in any other way. In this manner, external control of the work of disciplinary bodies is not provided, nor specifically control of whether they act (un)equally in the same matters, i.e. whether standardization of practice is performed. Therefore, the standard is considered as partially fulfilled. [0.5/1 point]

S5: THE LAW ON JUDGES REGULATES THE PROCEDURE FOR ASSESSING THE INCOMPATIBILITY OF THE DUTY OF JUDGES WITH OTHER AFFAIRS
[1 POINT]

The standard of legal guarantee of incompatibility of the duty of judges with other affairs is implemented by the Law on Judges, by its provisions stipulating that the judicial office is incompatible with other public functions, political activities, as well as other services, affairs and procedures that are contrary to the dignity and independence of judges or it damages the reputation of the court.[390] The law foresees disciplinary liability in the event that the High Court Council determines the existence of incompatibility of the duty of judges with another affair or service. In addition, the general conditions for supervising the work of public officials and performing incompatible duties are also applied to judges, in accordance with the Law on Prevention of Corruption.[391] However, the prescribed incompatibility criteria are not clear and precise enough, and the procedure of testing incompatibilities before the High Court Council has not been precisely regulated, in accordance with the specificities of this institute, therefore the standard has been partially fulfilled. [0.5/1 point]

S6: THE LAW REGULATES THE MANNER OF PROSECUTING A JUDGE IN A CRIMINAL PROCEDURE FOR A CRIMINAL OFFENSE COMMITTED BY A JUDGE
[1 POINT]

Respecting the legal regulation of the manner of prosecuting judges in criminal procedure, it should be kept in mind that there are two basic types of criminal liability of judges: for criminal offenses outside the judicial duty, general rules of criminal procedure and criminal liability are applied to judges. On the other hand, if the criminal offense is related to the judicial duty, the procedural immunity of the judge takes place. The High Court Council is in charge of deciding on the issues of immunity of judges who are at a permanent position, while the competent committee for mandate-immunity issues of the National Assembly is in charge of judges who are elected to that position for the first time. Therefore, prosecuting a judge in criminal procedure is prescribed and legally possible, provided that it can be assessed that the immunity of a judge from criminal prosecution is extremely narrow and does not provide a sufficient degree of legal protection from unfounded impact through criminal charges for violating judicial duty. In addition, there are doubts about the scope of protection of a judge from criminal prosecution for expressing an opinion or voting on the occasion of making a court decision, whether it refers only to voting when decision needs to be made or to the entire court proceeding when that decision is made. Therefore, the standard is considered as partially fulfilled. [0.5/1 point]

[390] Law on Judges, Article 30

[391] Law on Prevention of Corruption ("Official Gazette of the RS", no. 35/2019 and 88/2019), applies as of September 1, 2020, when the Law on the Agency for the Prevention of Corruption ceased to be valid ("Official Gazette of the RS", no. 97/08, 53/10, 66/11 - US, 67/13 - US, 108/13 – another law, 112/13 – authentic interpretation and 8/15 - US)

SUB-INDICATOR 1.2. POLITICAL OR OTHER IMPERMISSIBLE INFLUENCE ON THE WORK OF A JUDGE

SUB-INDICATOR STANDARDS	POINTS
1. Representation of reactions of professional associations that indicate impermissible influences on the work of a judge	0.5/1
2. Proportion of reactions of the High Court Council in regard to the total number of public reactions of professional associations regarding the media writings and politicians' statements assessed as *pressure* on *independence*	0/0.5
3. Number of complaints submitted by judges to the High Court Council due to impermissible influence on the work of judges	0/0.5
4. System beneficiaries think that there is not any impermissible influence on the judiciary	0/0.5
5. System beneficiaries think that the integrity of judges is at the suitable level	0/0.5
TOTAL NUMBER OF POINTS	0.5/3

S1: REPRESENTATION OF REACTIONS OF PROFESSIONAL ASSOCIATIONS THAT INDICATE IMPERMISSIBLE INFLUENCES ON THE WORK OF A JUDGE
[1 POINT]

Based on the conducted research of reactions of independent professional associations that indicate impermissible influences on the work of judges, it is concluded that public announcements of these associations (Judges' Association of Serbia, Forum of Judges of Serbia) were mostly related to various types of impermissible influence on the work of judiciary (out of 36 reactions, in 14 cases, i.e. 38%), and the next most common topic was the opinion on the announced constitutional amendments that the Government had prepared, which were assessed to affect the independence of the judiciary. The standard is considered as partially fulfilled. [0.5/1 point]

S2. PROPORTION OF REACTIONS OF THE HIGH COURT COUNCIL IN REGARD TO THE TOTAL NUMBER OF PUBLIC REACTIONS OF PROFESSIONAL ASSOCIATIONS REGARDING THE MEDIA WRITINGS AND POLITICIANS' STATEMENTS ASSESSED AS *PRESSURE* ON *INDEPENDENCE*
[0.5 POINT]

The analysis focused on the ratio of the number of reactions of the High Court Council and the number of public reactions of professional associations regarding the media writings and politicians' statements, which were assessed as *pressure on independence*, on an annual level. Of the total number of announcements by the High Court Council (283 in the period 2018, 2019 and part of 2020), only 3% refer to the statements of certain state or party officials about the work of judges, which are assessed as impermissible pressure. In addition, of the 17 cases that had been criticized in those statements, only 3 coincided with the reactions of independent judicial associations. Therefore, a large discrepancy is noticed between certain cases in which there is a public reaction of the High Court Council, on one hand, and professional associations of judges, on the other hand, as well as an extremely small share of the High Court Council's announcements that are thematically focused on media writing and politicians which are assessed as pressure on independence. Therefore, this standard has not been fulfilled. [0/0.5 point]

S3: NUMBER OF COMPLAINTS SUBMITTED BY JUDGES TO THE HIGH COURT COUNCIL DUE TO IMPERMISSIBLE INFLUENCE ON THE WORK OF JUDGES
[0.5 POINT]

In 2019, 7 judges appealed to the High Court Council, in 6 cases on the basis of reporting

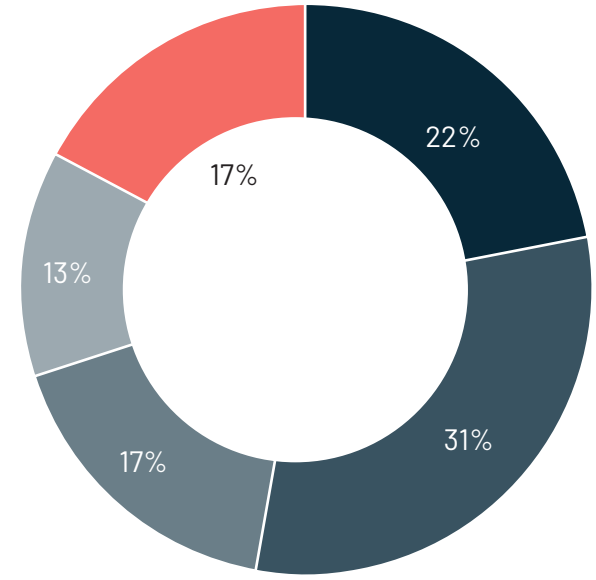
impermissible influence (Article 29 of the Law on Judges).[392] Sources and circumstances related to impermissible influence in individual cases are not visible from the data in the annual report on the work of the High Court Council, but it can be stated that impermissible influence is by far the most common reason why the judges have addressed the High Court Council. Therefore, this standard cannot be considered as fulfilled. [0/0.5 point]

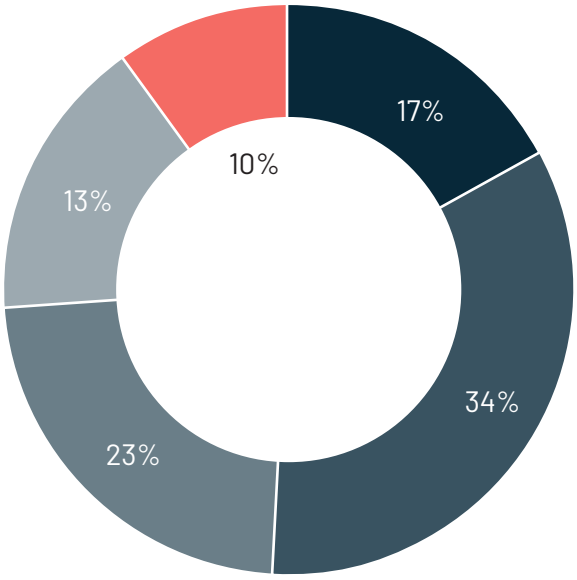
S4: SYSTEM BENEFICIARIES THINK THAT THERE IS NOT ANY IMPERMISSIBLE INFLUENCE ON THE JUDICIARY [0.5 POINT]

In regard to the perception of system beneficiaries about the presence of impermissible influence on the judiciary, based on data from a survey conducted among citizens as users of the judicial system, most citizens think that the political influence on proceedings and decision-making processes (52.8%) is visible within the work of judges in Serbia, while a lower percentage of respondents (29.8%) on this issue do not think that this is the case. Therefore, this standard has not been fulfilled.[393] [0/0.5 point]

S5: SYSTEM BENEFICIARIES THINK THAT THE INTEGRITY OF JUDGES IS AT THE SUITABLE LEVEL [0.5 POINT]

On the other hand, the perception of system beneficiaries about the integrity of judges is more favorable, but it is not at a satisfactory level. Slightly more than half of the surveyed citizens think that the integrity of judges is at a high level (51.6%). As the target value for meeting this standard is, by the research methodology, set at 60%, it is concluded that this standard has not been fulfilled. [0/0.5 point]





Totally agree | Partially agree | Mostly disagree | Totally disagree | Does not know /Refuses to respond

Assessment that the political influence on the work of judges is visible

Assessment that the integrity of judges is at a high level

[392] The Annual Report on the Work of the High Court Council for 2019
[393] Survey

SUB-INDICATOR 1.3. PROFESSIONALISM OF A JUDGE DURING THE COURT PROCEEDINGS

SUB-INDICATOR STANDARDS	POINTS
1. Proportion of well-founded complaints about the work of a judge submitted to the president of the court	1/1
2. System beneficiaries think that the judge acts professionally during the proceedings	1/1
3. Proportion of the adopted general opinions of the Ethics Committee of the High Court Council in the number of submitted initiatives for giving opinions	0/1
4. System beneficiaries think that the judge acts politely during the proceedings	0.5/0.5
5. System beneficiaries think that the judge acts with dignity during the proceedings	0.5/0.5
TOTAL NUMBER OF POINTS	3/4

S1: PROPORTION OF WELL-FOUNDED COMPLAINTS ABOUT THE WORK OF A JUDGE SUBMITTED TO THE PRESIDENT OF THE COURT
[1 POINT]

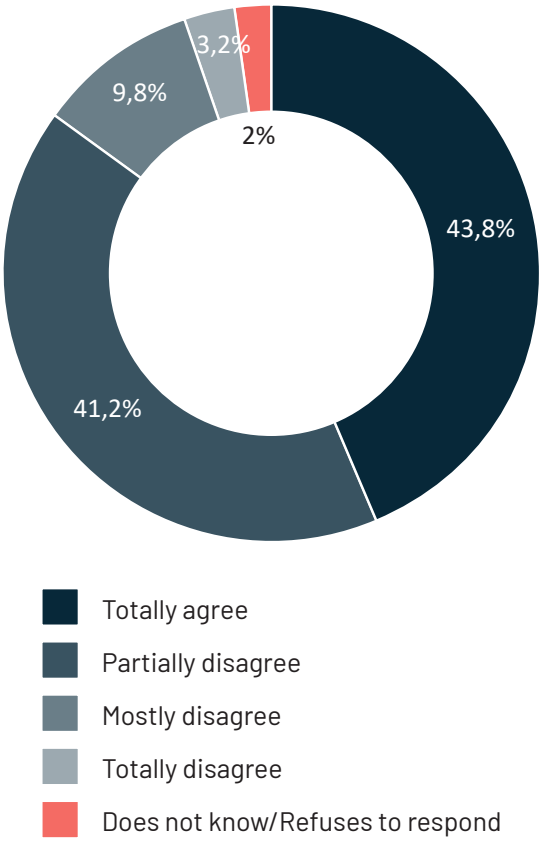
The value of this standard was determined on the basis of the analysis of the report of the High Court Council, which, among other things, contains data on complaints about the work of a judge submitted to the president of the court. As stated in the Report of the High Court Council for 2019,[394] out of 1,144 newly formed cases, 866 cases represent cases based on submitted complaints of parties or other participants in the proceedings,[395] which the president of the court is then obliged to consider, submit to the judge, who it refers to, for a statement and to inform the complainant about its merits and measures undertaken, as well as the president of the immediately higher court within 15 days from the day of receiving the complaint. The president of the court assessed that the complaint was founded in 68 of those cases. Also, in 338 cases, it was assessed that the complaints were not founded. In 34 cases, the complaints were rejected, while for 94 complaints, the president of the court did not evaluate the submission. In addition, it is important to note that in 23 cases involving disciplinary offenses committed by judges, such as, *inter alia*, violation of the principle of impartiality, failure of a judge to recuse from cases where there is a reason for recusal, unjustified delay in decision making process, etc.,[396] submission forwarded to the Disciplinary Prosecutor of the High Court Council under its jurisdiction.[397] Therefore, as the percentage of well-founded complaints about the work of judges in regard to the number of complaints received is 7.85%, this standard is considered as fulfilled. [1/1 point]

S2: SYSTEM BENEFICIARIES THINK THAT THE JUDGE ACTS PROFESSIONALLY DURING THE PROCEEDINGS
[1 POINT]

Based on a public opinion survey conducted among citizens who have had recent experience in court proceedings (system beneficiaries), the vast majority assess that a judge acted professionally during the proceedings, 85% of respondents "totally agree" and "partially agree".[398] Regionally observed, the most favorable assessment of the professional attitude of a judge

[394] Annual Report on the Work of the High Court Council for 2019, February 2020, available at https://vss.sud.rs/sites/default/files/attachments/IZVESTAJ%202020.%20za%20sednicu.pdf , p. 38-39
[395] Law on Organization of Courts, Article 55 (1)
[396] *See* the Law on Judges, Article 90
[397] Annual Report on the Work of the High Court Council for 2019, p. 39
[398] Survey

in the proceedings is in Vojvodina, where 63.9% of citizens gave a "fully professional" grade, while it is relatively lowest in Southern and Eastern Serbia, where only 23.8% of surveyed citizens confirmed that grade. Therefore, the standard is considered as fulfilled. [1/1 point]



Citizens' assessment that the judge acts professionally during the proceedings

S3: PROPORTION OF THE ADOPTED GENERAL OPINIONS OF THE ETHICS COMMITTEE OF THE HIGH COURT COUNCIL IN THE NUMBER OF SUBMITTED INITIATIVES FOR GIVING OPINIONS
[1 POINT]

Although the analysis of this standard should be based on the selected sample of opinions of the Ethics Committee of the High Court Council, which will determine the exact number of decisions of the Ethics Committee of the High Court Council in relation to the total number of requests, it was not possible to determine these data. Namely, it seems that the Ethics Committee of the High Court Council, despite being established, does not fully exercise its competencies. Evidence for these claims can be found in the GRECO Second Compliance Report of Fourth Evaluation Round on Serbia, adopted at the end of October 2020. Namely, the report states that the Ethics Committee should, among other things, provide written guidelines on ethical issues and exercise its other competencies.[399] In addition, it is established that the Ethics Committee of the High Court Council has not yet started to implement the mandate regarding judicial ethics, that the Code of Ethics for prosecutors has not yet been adopted, and that further measures should be undertaken to effectively transfer ethical issues to judges and prosecutors and to provide guidelines and confidential advice.[400] Therefore, this standard cannot be considered as met, since, in accordance with the presented cited report, it is first necessary to undertake the required steps, make the work of the Ethics Committee more transparent, and then, based on existing data, draw appropriate conclusions. [0/1 point]

S4: SYSTEM BENEFICIARIES THINK THAT THE JUDGE ACTS POLITELY DURING THE PROCEEDINGS
[0.5 POINT]

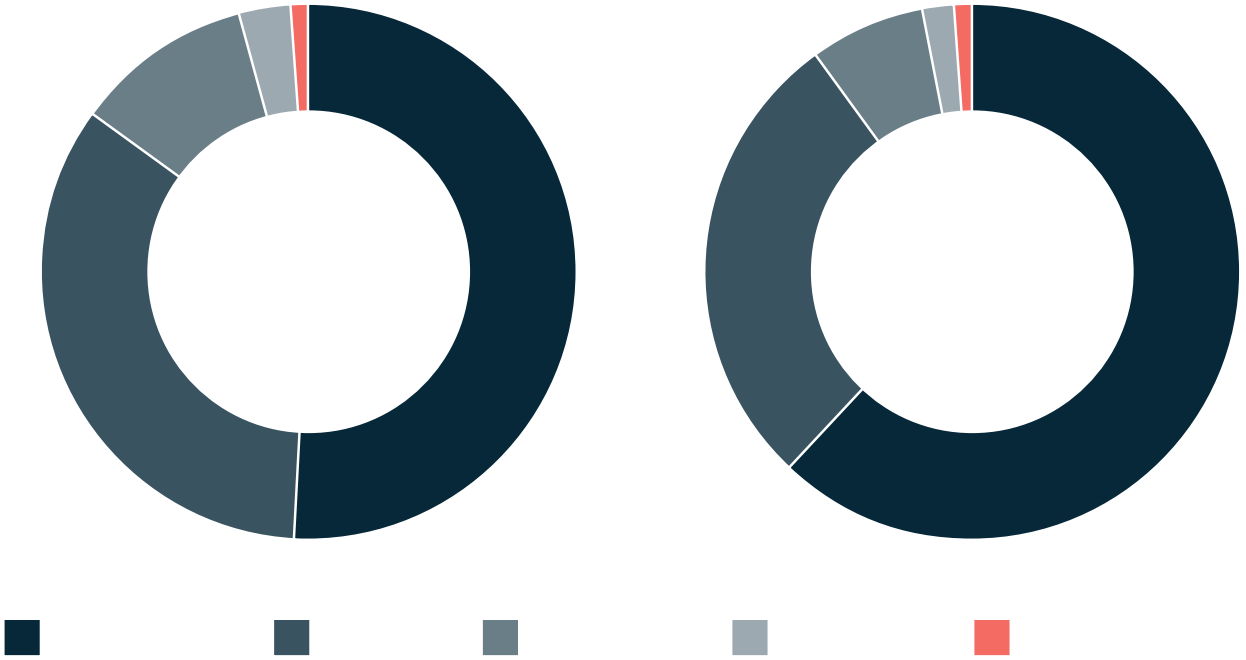
Regarding the manner of verbal communication of a judge with the party in the proceedings, decency, kindness and respect, the results of the conducted public opinion survey show that citizens with personal experience assess it positively, a total of 84.8%. However, differences in this assessment can be found between groups of citizens with lower and higher incomes per household member. Namely, 78.3% of respondents from households with lower incomes gave a positive assessment ("totally agree", "partially agree"), while citizens with middle and higher incomes had a better opinion about judges' acting in the courtroom compared to party (87%). Therefore, this standard is considered as fulfilled. [0.5/0.5 point]

[399] Second Compliance Report of Fourth Evaluation Round on Serbia – Corruption prevention in respect of members of the Parliament, judges and prosecutors, GRECO, Council of Europe, GrecoRC4(2020)12, adopted October 29, 2020, published November 26, 2020, point 43

[400] Second Compliance Report of Fourth Evaluation Round on Serbia – Corruption prevention in respect of members of the Parliament, judges and prosecutors, GRECO, Council of Europe, GrecoRC4(2020)12, adopted October 29, 2020, published November 26, 2020, point 84

S5: SYSTEM BENEFICIARIES THINK THAT THE JUDGE ACTS WITH DIGNITY DURING THE PROCEEDINGS
[0.5 POINT]

Citizens who had experience in court proceedings, by a large majority, positively assess the dignity of judge's acts and attitude in the courtroom (89.8% of respondents). A very small number of citizens gave a completely negative grade (1.6%), while women, comparing to men, gave a slightly higher and completely positive grade. It is repeated that according to the regional criteria, the most favorable perception is in Vojvodina (79.7% completely agree with the assessment of dignified acting), and a slightly smaller number of citizens in Southern and Eastern Serbia assessed it similarly (45.2% completely agree). Therefore, this standard can be considered as fulfilled. [0.5/0.5 point]



EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**13** *(The sum of the maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**8** *(The sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-2.5	2.5-5	5.5-8	8.5-10.5	11-13
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**3**				

The normative guarantees of the integrity of judges, referring to the independence of judges in their proceedings and decision-making processes, to the mechanism that guarantees the right to an impartial judge and which has developed the principle of random assignment of cases, were assessed as competent and complete. Certain insufficiencies of the legal framework were noticed in terms of how the system of disciplinary liability for violating the code of conduct by a judge is regulated, the procedure for assessing the incompatibility of judicial and other affairs, as well as the manner of prosecuting a judge in a criminal procedure for a criminal offense committed by a judge. However, the assessment of the current situation in terms of political and other impermissible influences on the work of judges is significantly different. Observed through the reactions of professional associations that indicate impermissible influences on the work of judges and their relative attitude to the reactions of the High Court Council in regard to media writings and politicians' statements that were assessed as pressure on independence, as complaints which judges have submitted to the High Court Council due to impermissible influence and reactions of the High Court Council to these complaints, the general assessment is unsatisfactory. The public perception of this issue is similar, because citizens who have had the status of system beneficiaries, mostly assessed that there is impermissible influence on the judiciary and that the integrity of judges is not at a high level.

With reference to the issue of judges' professionalism during court proceedings, based on data on the proportion of well-founded complaints about the work of a judge submitted to the president of the court, and based on a survey of system beneficiaries, it can be concluded that the judges act professionally in their work. The perception of system beneficiaries is also favorable in terms of how the judge acts and treats the parties in the proceedings, as well as the dignity and attitude of the acting judge. The assessment, which is based on the reactions of civil society organizations, regarding individual cases of judges' misconduct and based on the practice of the Ethics Committee of the High Court Council, is not satisfactory.

RECOMMENDATIONS

1. t is required for the High Court Council to provide stronger support for judges' integrity and react to all forms of pressure on the independence of the work of judges, including media pressure and politicians and public officials' statements. The High Court Council should, by its acts and responses, fully assume and fulfill its legal role of an independent and autonomous body that ensures and guarantees the independence and autonomy of the courts and judges, which is currently not the case.
2. It is required to intensify and make the work of the Ethics Committee of the High Court Council more transparent, in order for its decisions and practices to ensure greater impact of the rules and more successful implementation of the Code of Ethics. It is necessary for the Ethics Committee to provide general opinions on the conduct of judicial office holders in relation to the rules of the Code of Ethics, to issue written instructions and practical guidelines, and in particular to conduct confidential consultations with the initiators.

KEY AREA VI: ACCESS TO JUSTICE IN CRIMINAL PROCEEDINGS

INDICATOR 1: PROTECTION OF PARTY'S RIGHTS IN THE PROCEDURE

SUB-INDICATOR 1.1. ADEQUACY OF LEGAL NORMS ON PROTECTION OF DEFENDANT'S RIGHTS

SUB-INDICATOR STANDARDS	POINTS
1. The law guarantees access to an attorney to any detained and accused person	0.5/1
2. The regulations guarantee the right to any detained person to be informed of reasons for detention in a language which he/she understands	0.5/0.5
3. The law guarantees to a defendant the right to be informed of charges filed against him/her as well as the nature and cause of the accusation	0.5/1
4. The law guarantees the possibility to a defendant to collect and present evidence in the manner equal to that of the prosecutor	0.5/1
5. The regulations guarantee an adequate manner of assigning an attorney *ex officio*	0.5/0.5
TOTAL NUMBER OF POINTS	2.5/4

S1: THE LAW GUARANTEES ACCESS TO AN ATTORNEY TO ANY DETAINED AND ACCUSED PERSON
[1 POINT]

The guarantee of access to an attorney to any detained and accused person stems from the constitutional right to defense and the right to an attorney of one's own choosing, with whom communication should not be obstructed at any time while adequate time and facilities for preparation of defense are available. A defendant who does not have sufficient means to pay for legal assistance is entitled to it free of charge when the interests of justice so require in line with the law[401]. A person detained without prior court decision is immediately informed of the right to remain silent and not to be interrogated without presence of an attorney whom he/

[401] The Constitution of the Republic of Serbia, Article 33 (2) and (3)

she personally selected, or an attorney who will provide free legal assistance in case the defendant is not able to afford it[402]. The Criminal Procedure Code prescribes that, prior to the initial interrogation at the latest and in a language he/she understands, the defendant must be informed of the charge filed against him/her, as well as the nature and cause of accusation, that anything he/she says may be used as evidence in the proceedings and that an attorney may be present at the interrogation[403]. However, such wording of the law allows for the defendant not to be informed of his/her rights immediately upon detention, i.e. within the first 48 hours of being detained by the police, which could result in irreparable damage for the defense, as observed in the practice of the European Court of Human Rights.[404] The law also stipulates the so-called confidential conversation with the attorney prior to being interrogated, which is subjected to a visual, but not an audio supervision[405], and raises the question of how will the defendant become familiar with these rules at the initial stages of the proceedings if he/she does not have any knowledge of the law. Court decision cannot be based on the defendant's statement if he/she has not been properly instructed or provided with the right to legal assistance[406]. The standard is considered as partially fulfilled. [0.5/1 point]

S2: THE REGULATIONS GUARANTEE THE RIGHT TO ANY DETAINED PERSON TO BE INFORMED OF REASONS FOR DETENTION IN A LANGUAGE WHICH HE/SHE UNDERSTANDS
[0.5 POINT]

The law guarantees to any detained person the right to be informed of reasons for detention, in a language which he/she understands, as well as the offense with which he/she is being charged and the rights to immediately inform a person of their own choice of the detention[407]. In case the defendant does not understand the language of the procedure, he/she is guaranteed the right of being interrogated by using services of a translator. If the defendant suffers from a hearing loss, questions shall be asked in written form, if the defendant lacks the ability to speak, he/she shall reply to questions in written form, and if he/she suffers from blindness, the content of written evidence material shall be presented verbally during interrogation.[408] Such action enables the preparation of defense in a timely manner, irrespective of whether the defendant has chosen to defend himself/herself or to use legal assistance (a defense counsel). Therefore, the regulations contain adequate provisions that guarantee to any detained person the right to be informed of reasons for detention in a language, which he/she understands. This standard is considered as fully fulfilled. [0.5/0.5 point]

S3: THE LAW GUARANTEES TO A DEFENDANT THE RIGHT TO BE INFORMED OF CHARGES FILED AGAINST HIM/HER AS WELL AS THE NATURE AND CAUSE OF THE ACCUSATION
[1 POINT]

The Constitution guarantees the defendant's right to be informed of the nature and cause of the accusation, promptly, in line with the law, in detail and in a language he/she understands, as well as of all collected evidence against him/her. The Criminal Procedure Code defines this right in a somewhat different manner, prescribing the obligation to inform the defendant, prior to the initial interrogation and in a language which he/she understands, only of the offense with which he/she is being charged and the nature and cause of the accusation, while he/she gets to know of evidence only upon receiving the indictment or a private lawsuit. As per the Criminal Procedure Code, the defendant does not have the option of familiarizing himself/herself with evidence collected against him/her in the early stages of the proceedings, which impedes the possibility

[402] The Constitution of the Republic of Serbia, Article 29
[403] The Criminal Procedure Code, Article 68 (2)
[404] *Öcalan v. Turkey* (GC), 46221/99 dated May 12, 2005, related to the application of Article 6 of the European Convention on Human Rights
[405] The Criminal Procedure Code, Article 69 (1) (2)
[406] The Criminal Procedure Code, Article 85 (5)
[407] The Criminal Procedure Code, Article 69
[408] The Criminal Procedure Code, Article 87

of preparing defense, contrary to the relevant standard of the European Human Rights Law[409]. This standard is considered as partially fulfilled. [0.5/1 point]

S4: THE LAW GUARANTEES TO A DEFENDANT THE POSSIBILITY TO COLLECT AND PRESENT EVIDENCE IN THE MANNER EQUAL TO THAT OF THE PROSECUTOR [1 POINT]

Change of the Criminal Procedure Code, whose implementation started in 2013, introduction of prosecutor's investigation, as well as aborting the previous principle of material truth in favor of the so-called formal truth, all led to a significant change in the concept of criminal procedure, which greatly impacted the defendant's position and rights in the proceedings. The principle of "equality of arms" makes the constituent part of this approach, but also of the right to a fair trial in general, and it refers to an equal treatment of parties in the proceedings in terms of presenting their case before the court, and particularly in terms of accessing, viewing and presenting evidence[410]. Based on this principle, in general, the defendant's rights of collecting and presenting evidence should be equal to those of the public prosecutor. However, inequality of parties in terms of having a possibility to present evidence already occurs with the rule that says that the defendant states his/her with regard to the allegations from the indictment, as well as presents evidence related to those allegations[411]. A problem could occur in the course of the proceedings because only evidence related to the disputed part of the charges is presented, as well as evidence presented at the very beginning of the proceedings, related to the indictment. Furthermore, the defendant and his/her attorney have the right to review documents and evidence, but they do not have the lawful right to make copies of certain files and documents which would be important for preparation of defense. A particular problem occurs with expertise, as a mean of providing evidence, which is carried out during the investigation stage upon the prosecution's request, and which, once the formal charge comes into effect, gains the status of expert's evidence, while on the other hand, such expert's assistance is not always available to the defendant and may depend on his/her financial status. Defense can independently collect evidence for itself and has the right to contact persons who might provide information useful for the defense process, as well as to collect written statements and notifications.

Therefore, the lack of mandatory legal assistance to the defendant for every individual case, the inability of each defendant to hire a legal assistant, the inability to make copies of files and documents for the purpose of preparing defense upon viewing such files and collected evidence, are some of the most critical limitations of the equality principle of parties in the proceedings. This standard is considered as partially fulfilled. [0.5/1 point]

S5: THE REGULATIONS GUARANTEE AN ADEQUATE MANNER OF ASSIGNING AN ATTORNEY *EX OFFICIO* [0.5 POINT]

The Criminal Procedure Code allows the possibility for a defendant to opt for an attorney of his/her own choosing.[412] Nonetheless, if a defendant does not select an attorney or loses one in the course of the criminal procedure (according to the Criminal Procedure Code, defense is mandatory[413]) or if a defendant does not reach an agreement with other defendants over a common attorney, and does not select one on his/her own, the public prosecutor or the president of the acting court will issue a decision under which an attorney will be assigned *ex officio*, according to the order on the list of attorneys submitted by the competent bar association.[414]

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409 Contrary to Article 6 para. 2. item b) of the European Convention on Human Rights

410 The above mentioned principle is contained in the provision of Article 6 item 3. of the European Convention on Human Rights, according to which the defendant has the right to examine or have examined witnesses against him/her and to obtain attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her.

411 The Criminal Procedure Code, Article 349

412 The Criminal Procedure Code, Article 68

413 The Criminal Procedure Code, Article 74

414 The Criminal Procedure Code, Article 76

During 2018, the Bar Association of Serbia signed the Protocol on exchange of data in the procedure for appointing attorneys *ex officio* with the Ministry of Justice, the Supreme Court of Cassation and the State Public Prosecutor's Office.[415] Upon signing this Protocol, a call center was set up and a software, which is used for assigning attorneys from the Bar Association's list, was developed. The body, which appoints an attorney *ex officio*, can be the court, public prosecutor's office or a competent body of internal affairs. According to the Protocol, if the court wishes to hire an attorney *ex officio*, the president of the court contacts the Bar Association's call center, the acting public prosecutor or his/her deputy does it on behalf of the public prosecutor's office, while a police officer on duty does it on behalf of the Ministry of Interior. Such procedure helps avoid assigning an attorney *ex officio* according to personal preferences of the prosecutor, a police officer and the police, and also reduces the possibility of misusing the procedure.

Based on the data entered into the application, it is possible to search information and statistical reports on each individual attorney, each body which appointed an attorney *ex officio*, as well as to obtain information on all attorneys appointed and assigned *ex officio* at a daily, monthly or annual level. This way, favoring one attorney over others when assigning cases is avoided. The list of attorneys who have been assigned cases in this manner can be found in the regularly updated report on the website of the Bar Association of Serbia.[416]

Even though the Criminal Procedure Code prescribed a mandatory assigning of attorneys from the list submitted to the competent body by the Bar Association, there used to be a possibility of misuse. Signing the Protocol on exchange of data in the procedure for appointing attorneys *ex officio* with the Ministry of Justice, the Supreme Court of Cassation and the State Public Prosecutor's Office has enabled a more effective application of the prescribed rules.

Therefore, we can conclude that the national regulations guarantee an adequate manner of assigning attorneys *ex officio* and that this standard can be considered as fulfilled. [0.5/0.5 point]

[415] More on this topic is available at: https://www.drzavnauprava.gov.rs/vest/21370/potpisan-protokol-o-razmeni-podataka-u-postupku-postavljanja-branioca-po-sluzbenoj-duzNo.ti.php

[416] *See* the Bar Association of Serbia's Call center, https://aks.org.rs/sr_lat/kol-centar-aks-dnevni-izvestaj-o-redosledu-pozivanja-8/

SUB-INDICATOR 1.2. ADEQUACY OF LEGAL NORMS ON PROTECTION OF INJURED PARTY'S RIGHTS

SUB-INDICATOR STANDARDS	POINTS
1. The law provides legal instruments for protection of rights and interests of an injured party during preliminary criminal investigation	0.5/1
2. The law provides legal instruments for protection of rights and interests of an injured party during criminal procedure	0.5/1
3. The law guarantees to an injured party participation in the decision-making process regarding opportunity principle and the agreement on the admission of guilt	0/0.5
4. The law prescribes the right of an injured party to assume criminal prosecution	0.5/1
TOTAL NUMBER OF POINTS	1.5/3.5

S1: THE LAW PROVIDES LEGAL INSTRUMENTS FOR PROTECTION OF RIGHTS AND INTERESTS OF AN INJURED PARTY DURING PRELIMINARY CRIMINAL INVESTIGATION [1 POINT]

The principal legal instruments for protection of rights and interests of an injured party in preliminary criminal investigation are complaint and property claim. An injured party has the right to submit a complaint if the public prosecutor decides to dismiss charges, discontinue the investigation or abandon criminal prosecution of an offense prosecuted *ex officio*.[417] The injured party can submit a property claim, which refers to indemnifying loss, return of items or cancellation of a legal transaction, occurred as a consequence of committed criminal offense, at any given moment during the proceedings, but no later than by the completion of the main hearing before a first instance court.[418] Moreover, an injured party has the right to submit evidence, examine case files and evidence, as well as to be notified of public prosecutor's decision to dismiss charges or to abandon criminal prosecution. On the other hand, unlike defense, an injured party is not entitled to submit a complaint to any irregularities during investigation. Furthermore, the law prescribes the obligation for the injured party to be notified of public prosecutor's decision to dismiss charges or to abandon criminal prosecution, but also of all relevant circumstances in the course of the investigation, therefore, with regard to this matter, there is no adequate legal instrument. This standard is considered as partially fulfilled. [0.5/1 point]

S2: THE LAW PROVIDES LEGAL INSTRUMENTS FOR PROTECTION OF RIGHTS AND INTERESTS OF AN INJURED PARTY DURING CRIMINAL PROCEDURE [1 POINT]

With regard to legal instruments for protection of rights and interests of an injured party in criminal procedure, the injured party has the right to decide on his/her rights and interests at a public hearing, fairly and in reasonable time, to represent accusation in the criminal procedure and to submit proposal and evidence for realizing property claim, as well as to propose temporary measures for providing such claim.

Furthermore, the injured party is entitled to grant power of attorney to a proxy and request

[417] The Criminal Procedure Code, Article 51
[418] The Criminal Procedure Code, Article 254

appointment thereof, and if he/she assumes criminal prosecution, he/she has all the rights equal to those of the public prosecutor, apart from the rights which the public prosecutor has a government body. Lacks of the process and legal framework refer to measures which would allow for visual contact between injured parties (victims) and defendants during presentation of evidence to be avoided, but which are not in place, as well as other measures of protecting personal integrity of the injured party and preventing exposure to additional mental and moral pressure, particularly during hearings. Furthermore, the manner of submitting relevant information to the injured party during proceedings lacks clarity. Considering all of the above, this standard can be deemed as partially fulfilled. [0.5/1 point]

S3: THE LAW GUARANTEES TO AN INJURED PARTY PARTICIPATION IN THE DECISION-MAKING PROCESS REGARDING OPPORTUNITY PRINCIPLE AND THE AGREEMENT ON THE ADMISSION OF GUILT
[0.5 POINT]

With regard to the matter of an injured party being guaranteed participation in the decision-making process of the agreement on the admission of guilt, the law does not prescribe participation nor consent of the injured party during conclusion and approval of the agreement, not even participation in the trial hearing during which the agreement is reviewed. Even if an injured party got to know of the time when trial hearing is taking place, he/she would not be able to attend, as it is prescribed that trial hearings take place without the presence of general public, while the court's decision on the agreement on the admission of guilt is only submitted to the parties and defense attorney, but not to the injured party.

The injured party does not have the right to submit a complaint in case of dismissal of criminal charges due to the defendant fulfilling his/her liability on the basis of conditional opportunity (postponement of criminal prosecution), as well as in case of dismissal of criminal charges on the basis of suitability. Therefore, this standard has not been fulfilled. [0/0.5 point]

S4: THE LAW PRESCRIBES THE RIGHT OF AN INJURED PARTY TO ASSUME CRIMINAL PROSECUTION
[1 POINT]

The law prescribes the right of an injured party to assume criminal prosecution by declaring it during the hearing at which the public prosecutor announced his/her decision to dismiss charges, or within eight days from the date of being notified of the option to assume criminal prosecution and represent defense, or within three months from the date of dismissal, if the injured party was not notified of it.[419] The way that the current law governs this matter, in comparison to the previous one, is specific in terms of possibility to assume criminal prosecution only once the indictment has been formally issued. The legal instrument available to the injured party prior to issuance of indictment is a complaint. This standard is considered as partially fulfilled. [0.5/1 point]

[419] The Criminal Procedure Code, Article 52

SUB-INDICATOR 1.3. PROTECTION OF DEFENDANT'S RIGHTS IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS
1. Defendant is clearly informed of the charges filed against him/her, the nature and cause of accusation, as well as that anything he/she says may be used as evidence in the proceedings	0.5/1
2. Defendant is informed that he/she can choose not to answer certain questions at his/her own free will, freely present his/her defense and admit or not admit guilt	1/1
3. During interrogation, the defendant is provided with means to contact and notify an attorney at his/her own choosing and request attorney's presence	1/1
4. Defendant is taken before a court in the shortest possible time	1/1
5. Prior to initial interrogation, the defendant is enabled to read the criminal charge, records from the scene of the crime and expert's finding and opinion	0/1
6. Defendant is provided with sufficient time and facilities to prepare defense	0.5/1
7. Defendant's defense team is provided access to files and evidence	0.5/1
8. Defendant is enabled to collect and present evidence for his/her own defense without obstructions	0.5/1
9. Defendant can make statements on all facts and evidence presented against him/her and present facts and evidence in his/her favor without obstructions	0.5/0.5
10. Defendant is enabled to utilize all legal instruments and legal remedies available at that moment	1/1
TOTAL NUMBER OF POINTS	6.5/9.5

S1: DEFENDANT IS CLEARLY INFORMED OF THE CHARGES FILED AGAINST HIM/HER, THE NATURE AND CAUSE OF ACCUSATION, AS WELL AS THAT ANYTHING HE/SHE SAYS MAY BE USED AS EVIDENCE IN THE PROCEEDINGS
[1 POINT]

The conclusions of the survey conducted among attorneys are as follows: 100 % of participants have said that this standard is generally met in practice. However, the most common reproach refers to qualitative execution of this standard, and the fact that the defendant is formally informed of the charges filed against him/her, but at times very formally though and insufficiently clearly. Several inconsistencies have been pointed out with regard to the ways in which the law governs this matter, which often leave the injured party with insufficient information. Although it was specified that this standard is formally adhered to, 30% of participants have criticized the manner in which the bodies of interior affairs act when carrying out this standard. However, based on the data collected from the survey conducted among attorneys, this standard is considered to be partially fulfilled. [0.5/1 point]

S2: DEFENDANT IS INFORMED THAT HE/SHE CAN CHOOSE NOT TO ANSWER CERTAIN QUESTIONS AT HIS/HER OWN FREE WILL, FREELY PRESENT HIS/HER DEFENSE AND ADMIT OR NOT ADMIT GUILT
[1 POINT]

While determining standards, a survey was conducted among attorneys. All attorneys who participated in this survey confirmed that this standard was fulfilled. However, as in the previous case, participants had certain comments and

suggestions regarding the manner in which this standard is carried out by different bodies. Namely, they mentioned that the court complies with this standard with no exception. As per the prosecutor's office, two out of ten participants stated that, in practice, they encountered certain deviations, which surely does not mean that this standard is not generally adhered to by the prosecutor's office. Similar answers were given with regard to the police, while highlighting that deviations can only happen before the prosecutor gets involved, as well as that the information delivered to defendants by the police is more concise, which can lead to confusion. This standard, however, with all of the above mentioned comments, is considered to be fulfilled. [1/1 point]

S3: DURING INTERROGATION, THE DEFENDANT IS PROVIDED WITH MEANS TO CONTACT AND NOTIFY AN ATTORNEY OF HIS/HER OWN CHOOSING AND REQUEST ATTORNEY'S PRESENCE
[1 POINT]

Based on the conducted survey, the following was established: only one out of 10 attorneys who participated confirmed that he/she had encountered a situation where the above mention standard had not been adhered to. On the other hand, although certain participants had indirect information from some of their colleagues who encountered such situation, even from such position, the remaining 7 attorneys pointed out that they had not encountered issues regarding adherence to this standard in practice. Therefore, based on all of the above, this standard can be considered as fulfilled. [1/1 point]

S4: DEFENDANT IS TAKEN BEFORE A COURT IN THE SHORTEST POSSIBLE TIME
[1 POINT]

Based on the survey conducted among attorneys, it was determined that, in practice, defendant is taken before a preliminary proceedings judge in the shortest possible time. However, participants expressed concern that preliminary investigations against detained persons last unnecessarily long and that shortage of staff in the prosecutor's office might be one of the reasons for it. Therefore, a maximum value was attributed in this case as well and the standard is fulfilled. [1/1 point]

S5: PRIOR TO INITIAL HEARING, THE DEFENDANT IS ENABLED TO READ THE CRIMINAL CHARGES, RECORDS FROM THE SCENE OF THE CRIME AND EXPERT'S FINDING AND
[1 POINT]

While determining compliance with this standard, attorneys' perception of adherence to this principle was established. All participants are of the opinion that, in practice, this standard is not always fulfilled. One half of participants rated this standard as partially fulfilled, emphasizing the fact that, in practice, things do not always happen in the same manner. One half of participants also highlighted that they had to intervene themselves in order to be given access. As a confirmation of the fact that, in practice, things do not always happen in the same manner, they stated that a lot of it depended on the will of the person who appeared on behalf the acting body. They expressed concern about situations in which defendants do not have legal assistance, because participants had no knowledge of whether the standard is adhered to in practice in this type of situation. According to one participant's experience, this right is denied to those who are not familiar with it. Attorneys themselves, acting in the capacity of defense counsels, encounter issues while attempting to gain access to all of the said documents.

Considering a very clear perspective which attorneys have regarding this matter, as well as the fact that one half of participants in the survey expressed negative opinion, this standard was not fulfilled. [0/1 point]

S6: DEFENDANT IS PROVIDED WITH SUFFICIENT TIME AND FACILITIES TO PREPARE
[1 POINT]

While determining compliance with this standard, it was established that one half of participants in the survey finds this standard to be adhered to. The remaining ones, i.e. the other half, disagreed

and found that defendant is not provided with sufficient time and facilities to prepare defense. However, in majority of cases, participants did not decidedly state their opinion, but instead left the option open for this standard to be adhered to in certain cases. Furthermore, one participant pointed out the difference and stated that the principle is not adhered to during investigation procedure, unlike all other stages of the proceedings.

Therefore, based on the said point of view of participants in the survey, this standard can be considered as partially fulfilled. [0.5/1 point]

S7: DEFENDANT'S DEFENSE TEAM IS PROVIDED ACCESS TO FILES AND
[1 POINT]

The results based on the conducted survey are as follows: in general, adherence to this standard was rated positively by all attorneys who participated in the survey. However, majority of them had additional comments that provided us with a wider picture of the particular situation. Namely, 6 out of 10 participants were of the opinion that the principle is adhered to, or that adherence ratio in practice is 50:50, but that it also largely depends on the stage in which proceedings are at the time, as well as the acting body. However, as the participants' general conclusion is that this principle is still adhered to in practice (with certain disagreements), the standard was partially fulfilled. [0.5/1 point]

S8: DEFENDANT IS ENABLED TO COLLECT AND PRESENT EVIDENCE FOR HIS/HER OWN DEFENSE WITHOUT OBSTRUCTIONS
[1 POINT]

Out of 10 attorneys who participated in the survey, 8 of them were of the opinion that defendant is enabled to collect and present evidence for his/her defense without obstructions. On the other hand, two attorneys rated this standard as partially fulfilled in practice. As the main issue they highlighted the fact that they were not able to see evidence before it was presented, as well as the fact that prosecutors tend to disregard their duty of collecting evidence both for and against the defendant. Therefore, this standard is considered to be partially fulfilled. [0.5/1 point]

S9: DEFENDANT CAN MAKE STATEMENTS ON ALL FACTS AND EVIDENCE PRESENTED AGAINST HIM/HER AND PRESENT FACTS AND EVIDENCE IN HIS/HER FAVOR WITHOUT OBSTRUCTIONS
[0.5 POINT]

Only one attorney, out of all participants in the survey, rated this standard as not fulfilled in practice. As a reason for it, he specified that the defendant has an attorney and the attorney should be the one who makes statements in the proceedings. It is necessary to point out that the survey replies were based on cases where defendants had attorneys, but it remains unknown what the situation was like in cases where defendants did not have attorneys, because such cases constitute a significant portion of all criminal cases. One of the participants named such cases as an issue. However, given that 9 out of 10 attorneys believe that this principle is adhered to in practice, this standard must be considered as fulfilled. [0.5/0.5 point]

S10: DEFENDANT IS ENABLED TO UTILIZE ALL LEGAL INSTRUMENTS AND LEGAL REMEDIES AVAILABLE AT THAT MOMENT
[1 POINT]

Eight out of ten participants in the survey decidedly rated this standard as fulfilled in practice. One attorney rated it as partially fulfilled in practice, while one participant stated that he was not able to answer with certainty, but that legal remedies were satisfactory in majority of cases. It is necessary to point out that the survey replies were based on cases where defendants had attorneys, but it remains unknown what the situation was like in cases where defendants did not have attorneys, because such cases constitute a significant portion of all criminal cases.

Given that majority of participants expressed positive attitude and are of the opinion that defendant is able to utilize all legal instruments and legal remedies available at any given moment, this standard is considered to be fulfilled. [1/1 point]

SUB-INDICATOR 1.4. PROTECTION OF INJURED PARTY'S RIGHTS IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS
1. Injured party has received written confirmation of the filed criminal charges	0/1
2. Injured party is informed of actions taken by the prosecutor's office in line with the law	0/1
3. Injured party is informed of the time and place of witnesses and expert witnesses examination	0/1
4. Injured party is granted access to files and enabled to present evidence in line with the Criminal Procedure Code	1/1
5. Judgment was submitted to injured party	1/1
6. Injured party is familiar with the right to submit a property claim	0.5/0.5
7. Injured party is informed of the defendant's release	0/1
8. Injured party is provided with the right of translation and interpretation	0.5/1
TOTAL NUMBER OF POINTS	3/7.5

S1: INJURED PARTY HAS RECEIVED WRITTEN CONFIRMATION OF THE FILED CRIMINAL CHARGES [1 POINT]

Based on the survey conducted among attorneys who perform activities on the territory of Serbia, the following results were obtained. This is considered to be a very sensitive topic, and very often inconsistently applied in practice, hence the results are very diverse. 4 out of 10 attorneys who participated in the survey decidedly stated that this standard is not met in practice, while another 4 rated it as partially fulfilled. These attorneys explained that the standard is generally adhered to if attorneys themselves submit the written confirmation. Out of the remaining two participants, only one expressed positive opinion regarding adherence to this standard, while the other one stated that he did not know how to answer this question.

Therefore, taking into consideration the overall opinion of the participants, this standard cannot be considered as fulfilled. [0/1 point]

S2: INJURED PARTY IS INFORMED OF ACTIONS TAKEN BY THE PROSECUTOR'S OFFICE IN LINE WITH THE LAW [1 POINT]

When rating this standard, 9 out of 10 attorneys stated that it was not fulfilled in practice. One attorney specified that this standard was met in less than 50% of cases. One of remarks was that this standard used to be fulfilled, at the time when the court carried out the investigation, instead of the way it is currently done by the prosecutor's office. Therefore, considering all of the above, this standard cannot be considered as fulfilled. [0/1 point]

S3: INJURED PARTY IS INFORMED OF THE TIME AND PLACE OF WITNESSES AND EXPERT WITNESSES' EXAMINATION [1 POINT]

Seven out of ten attorneys who participated in the survey stated that, according to their experience, this standard is rarely adhered to and those who do get notified can be viewed as exceptions.

Two attorneys were of the opinion that this standard is generally, i.e. mostly met, while one attorney stated that he did not have any knowledge of the general practice regarding this matter. Therefore, this standard cannot be considered as fulfilled. [0/1 point]

S4: INJURED PARTY IS GRANTED ACCESS TO FILES AND ENABLED TO PRESENT EVIDENCE IN LINE WITH THE CRIMINAL PROCEDURE CODE
[1 POINT]

Based on the survey conducted among attorneys, it was established that 8 out of 10 participants found this standard to be generally, or mostly met in practice, but they also expressed certain concerns. They drew attention to issues in the prosecutor's office, and particularly in court cases, which are ruled, based on the opportunity principle. Therefore, given the overall opinion of participants regarding this matter, this standard can be considered as fulfilled. [1/1 point]

S5: JUDGMENT WAS SUBMITTED TO INJURED PARTY
[1 POINT]

While rating this standard, 9 out of 10 attorneys confirmed that it is adhered to and that, as per the rule, the judgment is submitted to injured party. One attorney also added that, according to his experience, judgments are regularly submitted in cases when the injured party submitted a property claim. Therefore, based on all of the above, this standard is fulfilled. [1/1 point]

S6: INJURED PARTY IS FAMILIAR WITH THE RIGHT TO SUBMIT A PROPERTY CLAIM
[0.5 POINT]

All attorneys rated this standard as met in practice, but they highlighted that injured parties usually do not understand what they are being asked by the court, unless clarified by attorneys themselves, and pointed out that criminal courts almost never rule based on property claims. Therefore, notwithstanding attorney' remarks and comments with regard to injured parties being informed and able to understand this matter, this standard is essentially still considered as fulfilled. [0.5/0.5 point]

S7: INJURED PARTY IS INFORMED OF THE DEFENDANT'S RELEASE
[1 POINT]

According to data obtained from the conducted survey, all participants are of the opinion that injured parties are not informed of the defendant's release, even though they should be. Therefore, this standard is not fulfilled. [0/1 point]

S8: INJURED PARTY IS PROVIDED WITH THE RIGHT OF TRANSLATION AND INTERPRETATION
[1 POINT]

Five out of ten attorneys stated that they could not answer this question, as they never had cases, which required injured party's right of translation to be provided. In regard to the remaining 5 participants, they described this standard as fulfilled. Such opinion was based on personal experience, or, indirectly, on experience of their colleagues who dealt with cases, which required injured party's right of translation and such right, was provided. Therefore, this standard can be considered as partially fulfilled. [0.5/1 point]

EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**24.5** *(The sum of the maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**13.5** *(The sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-4.5	5-9.5	10-14.5	15-19.5	20-24.5
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**3**				

The overall adequacy of legal framework which governs the protection of rights of defendants and injured parties in criminal procedure is evaluated as average. Legal guarantee of access to an attorney for a detained person and defendant, defendant's right to be advised of charges filed against him/her, as well as the nature and cause of accusation, and the possibility to collect and present evidence in the manner equal to that of the prosecutor, on one hand, and guaranteed legal instrument for protection of defendant's rights and interests during preliminary criminal investigation and criminal procedure, as well as injured party's right to assume criminal prosecution are all standards which were set and which are included in the legislation, but are not entirely adequate. Provisions regarding the manner in which attorneys are assigned *ex officio* were rated positively, while a complete lack of guarantee regarding defendant's participation in the decision-making process related to opportunity principle and the agreement on the admission of guilt was observed.

Protection of defendant's rights in practice is for the most part compliant with standards which were set, however certain insufficiencies were observed with regard to initial interrogation of the defendant and his/her opportunity to prepare defense. The situation is completely different when it comes to protection of injured party's rights in practice, particularly with regard to filing criminal charges, notifying the injured party of actions taken by the prosecutor's office, time and place of witnesses and expert witnesses examination, as well as of defendant's release.

RECOMMENDATIONS

1. In regard to the norms, it is necessary to change the Criminal Procedure Code so that it prescribes for an arrested or detained person to be immediately advised of the right to legal assistance, as well as to be familiarized with evidence collected against him/her even prior to submission of the indictment.
2. It is required to change the Criminal Procedure Code in order to provide mandatory defense for a defendant in each and every case, and by doing so, ensure full adherence to the principle of "equality of arms".
3. It is necessary to improve protection of injured party's rights in criminal procedure, in terms of both norms and practice, in order to ensure a more active role of the injured party during the evidentiary proceeding, which would provide him/her with information on actions taken by the prosecutor's office and adequate legal instruments for protection of his/her rights and interests. It is particularly important to enable injured party to assume prosecution even if the public prosecutor dismisses the charges prior to submission of the indictment. Furthermore, it is necessary to legally prescribe participation of injured party in the decision-making process regarding the opportunity principle and the agreement on the admission of guilt.

INDICATOR 2:
INTEGRITY AND QUALITY OF THE WORK OF PUBLIC PROSECUTORS

SUB-INDICATOR 2.1. ADEEQUACY OF LEGAL NORMS ON THE INTEGRITY OF THE WORK OF PUBLIC PROSECUTORS

SUB-INDICATOR STANDARDS	POINTS
1. The law determines independence of public prosecutors/deputies in their proceeding and decision-making process	0.5/1
2. The law obliges a prosecutor to adhere to the Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the State Prosecutorial Council in his/her work	0.5/1
3. There is an adequate mechanism which guarantees impartiality and governs recusal of prosecutors	0.5/1
4. The Law on Public Prosecutor's Offices and the Rulebook on Disciplinary procedures regulate the system of disciplinary liability for violation of code of conduct	0.5/1
5. The law prescribes an obligation of public prosecutor's office to take action with regard to criminal offenses prosecuted *ex officio*	0.5/1
6. The law prescribes a control and sanction mechanism in case public prosecutor's office violates the obligation stipulated under the standard no. 5	0/0.5
7. The law contains mechanisms which prevent political or any other impermissible influence on prosecutor's office	0.5/1
8. The law determines legal instruments which are available to a public prosecutor in case he/she receives unlawful or unfounded instruction	0.5/1
9. The law prescribes an obligation for all instructions of the State Public Prosecutor's Office to be in written form and made public	0.5/1
TOTAL NUMBER OF POINTS	4/8.5

S1: THE LAW DETERMINES INDEPENDENCE OF PUBLIC PROSECUTORS/DEPUTIES IN THEIR PROCEEDING AND DECISION-MAKING PROCESS
[1 POINT]

Independence of public prosecutors/deputies' proceeding and decision-making process of public prosecutor's offices are guaranteed under the constitutional provisions which pertain to election of public prosecutors in the National Assembly, as well as position, structure and appointment of the State Prosecutorial Council (SPC).[420] Government nominates public prosecutors from the list of proposals submitted by the SPC, while deputies are appointed at the SPC's proposal. The SPC elects deputies of public prosecutors, who are appointed to a position permanently. Public prosecutors account to State Public Prosecutor and the National Assembly on the work of public prosecutor's office, which they are in charge of, as well as on their own work.[421] Basic public prosecutors account for their work

[420] Constitution of the Republic of Serbia, Articles 160 and 164
[421] Law on Public Prosecutor's Offices, Articles 74 and 75

to their immediately superior higher public prosecutor, while deputy public prosecutors account to public prosecutors. The said provisions do not fully guarantee independence, considering the potential influence of political power on the work of public prosecutors through the National Assembly and the Government, as well as via the SPC, which has the minister competent for judiciary activities and the president of the competent board of the Parliament as its members. Reproaches and concerns referring to the manner, in which the independence of public prosecutor's office is organized, along with solutions in the proposed amendments to the constitution in the segment that refers to organization of public prosecutor's office, are shown in the opinions of the Consultative Council of European Prosecutors and Venice Commission.[422] Furthermore, GRECO recommends a reform of the procedure for appointment and promotion of public prosecutors and deputy public prosecutors in Serbia, which should include removal of the National Assembly from the appointment procedure, along with limitations of the Government's discretionary authority.[423] The Law allows devolution, i.e. for all activities under the competency of basic public prosecutor to be transferred to higher public prosecutor, without limitations, unless it is unfounded (without cause and reason), which results in limitation of independence of basic public prosecutors' work.[424] Therefore, the current manner in which the Constitution and the Law regulate this matter enables political influence on the work of public prosecutor's office, while due to hierarchical system of authorizations of the public prosecutor in relation to the work of deputy public prosecutors, it is possible to influence their independence when working on particular cases. This standard is considered to be partially fulfilled. [0.5/1 point]

S2: THE LAW OBLIGES A PROSECUTOR TO ADHERE TO THE CODE OF ETHICS OF PUBLIC PROSECUTORS AND DEPUTY PUBLIC PROSECUTORS OF THE STATE PROSECUTORIAL COUNCIL IN HIS/HER WORK
[1 POINT]

The law obliges prosecutors to adhere to the Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the State Prosecutorial Council in his/her work, by prescribing it explicitly.[425] The Code of Ethics determines for public prosecutors and their deputies to perform their duty in a manner that is law-abiding, just, impartial and dedicated, while respecting human rights and dignity and protecting both public interest and the interest of an individual in the proceedings. The said document prescribes the obligation to comply with the principle of independence, impartiality, to respect the right of responsible and professional performance during tenure of office, along with acknowledging public interest and preserving dignity of public prosecutor's position. In case of doubt that there was or there could be a violation of the Code of Ethics, public prosecutor and deputy public prosecutor can refer to the Ethics Committee of the SPC for explanation of any provision, advice or clarification of facts[426]. Even though a large part of the content of the Code of Ethics is compliant with the European standards, some of its provisions require additional compliance. Furthermore, the Law prescribes disciplinary liability only in case of a serious violation of the Code of Ethics' provisions, but it does not provide guidelines on how to determine what constitutes a serious and recurring violation.[427] This standard is considered to be partially fulfilled. [0.5/1 point]

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[422] Opinion of the Consultative Council of European Prosecutors dated March 27, 2019, CCEP-BU(2019)2 on Amendments to the Constitution of the Republic of Serbia no. XXVI and XIX, and opinion of the Venice Commission on European standards which refer to independence of the judiciary system (part II - prosecution, CDL-AD(2010)040), which highlights the necessity to provide not only an independence standard in the work of public prosecutor's office, but that of autonomy as well.

[423] Report from the 68th plenary meeting of GRECO held in Strasbourg (June 15-19, 2015)

[424] Law on Public Prosecutor's Offices, Article 13

[425] Law on Public Prosecutor's Offices, Article 47

[426] Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the Republic of Serbia ("Official Gazette of the RS", no. 87/2013)

[427] Law on Public Prosecutor's Offices, Article 104

S3: THERE IS AN ADEQUATE MECHANISM THAT GUARANTEES IMPARTIALITY AND GOVERNS RECUSAL OF PROSECUTORS
[1 POINT]

In regard to an adequate mechanism which guarantees impartiality and governs recusal of a prosecutor, according to provisions of the Criminal Procedure Code, public prosecutor and deputy public prosecutor can be recused due to the same circumstances as those in which a judge or a juror in a particular case would be recused. Public prosecutor decides on recusal of persons who are authorized by the law to take his/her place in proceedings, while the SPC decides on recusal of the State Public Prosecutor, based on opinion obtained from the State Public Prosecutor's Office. The Law determines jurisdiction over deciding on conflict of interest of public prosecutor and deputy public prosecutor, as well as the manner in which the process is initiated. Public prosecutor or deputy public prosecutor could be discharged or undertake disciplinary liability based on violation of any provision related to the conflict of interest.[428] The said provisions of the Law determine an adequate mechanism which enables impartiality and recusal of a public prosecutor in case there is a conflict of interest, although they lack a mechanism which would enable compliance with regulations referring to prevention of corruption, when determining and sanctioning any conflict of interest, taking into consideration the fact that public prosecutors and deputy public prosecutors hold public office. Considering all of the above, this standard is deemed as partially fulfilled. [0.5/1 point]

S4: THE LAW ON PUBLIC PROSECUTOR'S OFFICES AND THE RULEBOOK ON DISCIPLINARY PROCEDURES REGULATE THE SYSTEM OF DISCIPLINARY LIABILITY FOR VIOLATING CODE OF CONDUCT
[1 POINT]

The Law on Public Prosecutor's Offices provides the definition of disciplinary offense, determines disciplinary offenses, disciplinary sanctions, disciplinary bodies, procedure, disciplinary prosecutor's decisions, regulates the position of public prosecutor or deputy public prosecutor in a disciplinary action, disciplinary committee's and the SPC's decisions. The Rulebook on Disciplinary Procedures and disciplinary liability of public prosecutors and deputy public prosecutors regulates in more detail the system of disciplinary liability for violating the code of conduct[429]. However, provisions that regulate the system of disciplinary liability also contain certain insufficiencies: the procedure for discharge due to disciplinary responsibility is unjustifiably determined as a separate procedure in relation to disciplinary action procedure. Additionally, another issue is the manner in which a disciplinary offense is defined, while the language in which offenses were described lacks precision. The SPC is competent for both first instance and second instance proceedings. At times, the law lacks precision and logic in the segment referring to disciplinary responsibility of prosecutors, while the Rulebook, which regulates in more detail the system of disciplinary responsibility, needs certain changes for the purpose of improving efficiency and justness of the procedure, as well as to prevent political influence in the decision-making process related to determining liability, because in second instance proceedings the representatives of the executive and legislative powers are the ones who make decisions as members of the SPC. Based on all of the above, this standard is considered to be partially fulfilled. [0.5/1 point]

S5: THE LAW PRESCRIBES AN OBLIGATION OF PUBLIC PROSECUTOR'S OFFICE TO TAKE ACTION WITH REGARD TO CRIMINAL OFFENSES PROSECUTED *EX OFFICIO*
[1 POINT]

The law prescribes an obligation of public prosecutor's office to take action with regard to criminal offenses prosecuted *ex officio*, in line with the principle of legality of criminal prosecution. However, some exceptions are also prescribed, as there is no obligation to take action with regard to all criminal offenses prosecuted *ex officio*. Public prosecutor can postpone criminal prosecution of criminal

[428] Law on Public Prosecutor's Offices, Articles 66 and 67

[429] The Rulebook on Disciplinary Procedures and Disciplinary Liability of Public Prosecutors and Deputy Public Prosecutors ("Official Gazette of the RS", no. 64/2012, 109/2013 and 58/2014)

offenses punishable with fines or imprisonment of up to five years if the suspect agrees to fulfill some of the prescribed obligations.[430] The main issue is the inability of injured party to participate, as his/her consent is not required in the public prosecutor's decision-making process regarding postponement of criminal prosecution. Furthermore, public prosecutor is entitled to dismiss criminal charges if it is related to an act of little importance, when perpetrator's level of guilt is not deemed as high, harmful consequences are non-existent or insignificant and the general purpose of criminal sanctions does not require imposing criminal sanction.[431] These provisions can solely be applied to criminal offenses punishable with imprisonment of up to three years or with fines. Moreover, taking into account different interpretations of postponement of criminal prosecutions (opportunity principle) while applying it in practice, more detailed and precise instructions are needed from the State Public Prosecutor. Considering all of the above, this standard is deemed to be partially fulfilled. [0.5/1 point]

S6: THE LAW PRESCRIBES A CONTROL AND SANCTION MECHANISM IN CASE PUBLIC PROSECUTOR'S OFFICE VIOLATES THE OBLIGATION STIPULATED UNDER THE STANDARD NO. 5

The law prescribes a control and sanction mechanism in case public prosecutor's office violates the obligation stipulated under the standard no. 5, primarily through the above mentioned disciplinary liability in case of violation of the Code of Ethics. However, the Law on Public Prosecutor's Offices does not explicitly prescribe how the control of adherence to the Code of Ethics by public prosecutors and deputy public prosecutors is carried out and by whom, although it does prescribe that the Ethics Committee of the SPC supervises the implementation of the Code of Ethics and the promotion of professional ethics. Therefore, it is necessary to further expand provisions pertaining to supervision of implementation of the Code of Ethics and competencies of the Ethics Committee of the SPC. At this moment, this standard cannot be considered as fulfilled. [0/0.5 point]

S7: THE LAW CONTAINS MECHANISMS THAT PREVENT POLITICAL OR ANY OTHER IMPERMISSIBLE INFLUENCE ON PROSECUTOR'S OFFICE
[1 POINT]

In regard to the mechanism which prevents political or any other impermissible influence on prosecutor's office, we should primarily focus on constitutional provisions referring to the independence of prosecutor's office which prosecutes perpetrators of criminal and other punishable offenses and protects constitutionality and legality. Political activism of public prosecutors and deputy public prosecutors is impermissible for the reason of preventing political influence[432]. Public prosecutor and deputy public prosecutor must remain independent while performing their duties. This same provision prohibits the executive and legislative power from influencing in any way the work of public prosecutor's office and the manner in which a certain case is handled, by using public power, the media, or in any other way, which would jeopardize the independence of public prosecutor's office[433]. Therefore, public prosecutor and deputy public prosecutor must refuse any action, which would have influence on the independence of public prosecutor's office. As per law, deputy president of the SPC notifies the SPC of any political or other impermissible influence on public prosecutor's office, and acts in the capacity of the Commissioner for autonomy.[434] However, the manner in which the Commissioner proceeds seems to be insufficiently regulated and leaves space for improvement in terms of norms. Instruments, which provide full independence and autonomy of the Commissioner, are missing, as well as instruments, which regulate his/her, rapport with the SPC. This can be rectified by adopting special Rules of procedure of the Commissioner for autonomy, which would define his/her rapport with the SPC. This standard is considered to be partially fulfilled. [0.5/1 point]

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[430] Criminal Procedure Code, Article 283
[431] Criminal Procedure Code, Article 18
[432] Constitution of the Republic of Serbia, Article 163
[433] Law on Public Prosecutor's Offices, Article 5
[434] Rules of Procedure of the State Prosecutorial Council ("Official Gazette of the RS", no. 29/2017 and 46/2017), Article 9

S8: THE LAW DETERMINES LEGAL INSTRUMENTS, WHICH ARE AVAILABLE TO A PUBLIC PROSECUTOR IN CASE HE/SHE RECEIVES AN UNLAWFUL OR UNFOUNDED INSTRUCTION
[1 POINT]

In regard to the standard which requires that the law should stipulate legal instruments available to a public prosecutor in case he/she receives an unlawful or unfounded instruction, we should confirm that a basic public prosecutor has the right to submit a complaint with explanation to the State Public Prosecutor within eight days from the date of receiving mandatory instruction from a higher public prosecutor, which he/she founds unlawful or unfounded.[435] The same legal instrument is available to a deputy public prosecutor who submits it directly to a higher public prosecutor. The issue related to this legal instrument is the cumulative feature of the two mentioned reasons, as well as the lack of suspensive effect of complaint. Such legal regulation is contrary to the European standard, according to which the prosecutor should be released from further proceeding in such situation.[436] Taking into account that issuance of individual instructions represents an influence on the independence of proceeding, it is necessary for the law to stipulate special conditions, under which an individual instruction can be issued, or even to completely rule out such option.[437] Therefore, even though the legal instrument does exist, the mechanism of protecting public prosecutor or deputy public prosecutor, with the aim to additionally protect independence of their position, is not strong enough, hence this standard is considered to be partially fulfilled. [0.5/1 point]

S9: THE LAW PRESCRIBES AN OBLIGATION FOR ALL INSTRUCTIONS OF THE STATE PUBLIC PROSECUTOR'S OFFICE TO BE IN WRITTEN FORM AND MADE PUBLIC
[0.5 POINT]

In regard to the matter of whether the law prescribes an obligation for instructions of the State Public Prosecutor to be in written form and made public, there is a provision which prescribes authorization of an immediately superior higher public prosecutor to issue to a basic public prosecutor a mandatory instruction for proceeding in certain cases when there is doubt about effectiveness and legality of his/her actions, while the State Public Prosecutor can issue it to any public prosecutor[438]. According to the said provision, mandatory instruction is issued in written form and must contain the reason and explanation for its issuance. It is also prescribed that the State Public Prosecutor issues general mandatory instructions for proceeding, in written form, to all public prosecutors in order to achieve legality, efficiency and uniformity in the proceeding[439]. The law does not prescribe for these instructions to be public. If there were an obligation to make such general instructions public, it would guarantee their legality and admissibility, hence the legality of actions taken public prosecutor's offices, particularly considering the fact that it is not permitted to submit complaints to general instructions of the State Public Prosecutor. Taking into account that the law prescribes mandatory written form of instructions, but that general instructions of the State Public Prosecutor are not made public, this standard can be considered as partially fulfilled. [0.5/1 point]

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435 Law on Public Prosecutor's Offices, Article 18

436 Recommendations of the Committee of Ministers of the Council of Europe on the Role of Public Prosecutors in the Criminal and Legal System Rec(2000)19

437 Individual instructions are impermissible in France and Slovenia.

438 Law on Public Prosecutor's Offices, Article 18

439 Law on Public Prosecutor's Offices, Article 48

SUB-INDICATOR 2.2. PREVENTION OF IMPERMISSIBLE INFLUENCE ON THE WORK OF PUBLIC PROSECUTORS

SUB-INDICATOR STANDARDS	POINTS
1. There are functional mechanisms in place which protect public prosecutors from impermissible political and other influences	0.5/1
2. Experts are familiar with the work and reactions of the Commissioner for autonomy of prosecutors in cases when public office holders make public comments on criminal procedure	0.5/0.5
TOTAL NUMBER OF POINTS	1/1.5

S1: THERE ARE FUNCTIONAL MECHANISMS IN PLACE WHICH PROTECT PUBLIC PROSECUTORS FROM IMPERMISSIBLE POLITICAL AND OTHER INFLUENCES [1 POINT]

The report of the Commissioner for autonomy from the SPC was analysed for the purpose of researching adherence to this standard, and the functional analysis titled Reinforcement of integrity in public prosecutor's offices from 2019 was consulted as well.[440]

In regard to the Report of the Commissioner for autonomy from the SPC, in the Report on the work of the SPC for 2019, it is stated that the Commissioner for autonomy had a total of 19 cases in 2019. He submitted reports on 3 cases to the SPC where he was of the opinion that the SPC needed to take measures within its competencies to ensure independence of public prosecutors in situations when they were exposed to criticism which crossed the limit of permitted and necessary; in three cases, the Commissioner informed the petitioners that contents of the files did not indicate that there was any political or other impermissible influence in the particular cases; in one case, he forwarded the petition to the State Public Prosecutor for further action, and in eight cases he requested submission of files for inspection in order to determine whether there had been any political or other impermissible influence. Moreover, based on the functional analysis titled Reinforcement of integrity in public prosecutor's offices from 2019, it was observed that public prosecutors found the mechanisms meant to prevent influence on their work inadequate.[441] Based on all of the above, this standard is considered as partially fulfilled. [0.5/1 point]

S2: EXPERTS ARE FAMILIAR WITH THE WORK AND REACTIONS OF THE COMMISSIONER FOR AUTONOMY OF PROSECUTORS IN CASES WHEN PUBLIC OFFICE HOLDERS MAKE PUBLIC COMMENTS ON CRIMINAL PROCEDURE [0.5 POINT]

In an attempt to determine adherence to this standard, a number of attorneys were asked to participate in a survey as experts, in order to establish whether they were familiar with the role of the Commissioner for autonomy of prosecutors in cases when public office holders made public comments on criminal procedure, as well as with his work and public reactions. Only 2 out of 10 attorneys answered that they were not familiar with the work and reactions of the Commissioner for autonomy of prosecutors. Therefore, given that attorneys, as experts whose

[440] *Reinforcement of Integrity in Public Prosecutor's Offices in Serbia*, Goran Ilic, PhD, Marina Matic Boskovic, PhD, Svetlana Nenadic, Lidija Komlen Nikolic, the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, 2019, available at: https://www.uts.org.rs/images/2019/jacanje_integriteta_13.pdf

[441] *Reinforcement of Integrity in Public Prosecutor's Offices in Serbia*

work and influence in the judicial system and client relations represent a significant aspect of functioning, were familiar with the role, work and reactions of the Commissioner for autonomy of prosecutors in cases when public office holders made public comments on criminal procedure, this standard is considered as fulfilled. [0.5/0.5 point]

EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**10** *(The sum of the maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**5** *(The sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-1.5	2-3.5	4-6	6.5-8	8.5-10
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**3**				

Legal framework which governs the integrity of work of public prosecutors cannot be rated as fully adequate, as there were multiple insufficiencies observed, such as those regarding guarantees of independence of public prosecutors and deputy public prosecutors' proceeding, the obligation to comply with the Code of Ethics, system of disciplinary liability for violation of the code of conduct, mechanism which controls and sanctions violations of obligation of prosecutor's office to act upon criminal offenses prosecuted *ex officio*, as well as legal instruments and mandatory instructions which must be in written form. Prosecutor office's practice was, however, rated as satisfactory, regarding the question of non-selective approach to proceeding with criminal offenses prosecuted *ex officio* and application of the opportunity principle. At the same time, no significant presence of other impermissible political influence on the work of public prosecutors was observed and it was concluded that the experts were familiar with the work of the Commissioner for autonomy.

In addition to the above mentioned standards of integrity and quality of work of public prosecutors, initial research methodology included and assessment of the non-selective approach of public prosecutor's offices when taking actions, as well as when taking actions in the so-called high-profile cases shown in the independent investigative media, which indicate initiation of criminal procedure against public office holders or persons of high political rank. However, in the course of this research, it was established that the manner and the conditions of accessing data were not adequate, i.e. that conclusions based solely on the stories from the media were not reliable enough, and that other relevant data on the assessed cases were not made available to public. These questions remain in the scope of research for the next monitoring cycle, when it would be necessary to provide all relevant data in order to obtain a more reliable rating of this sensitive topic.

RECOMMENDATIONS

1. It is necessary to adopt amendments to the Constitution of the Republic of Serbia, which would guarantee independence, and autonomy of public prosecutor's office from the executive and legislative powers. Independence alone is not sufficient guarantee of functional autonomy of public prosecutors.
2. It is required to change the Law on Public Prosecutor's Offices in terms of appointment, termination of tenure of office and discharge of public prosecutors in accordance with the recommendations of the Consultative Council of European Prosecutors and GRECO.
3. It is necessary to limit the devolution principle and determine situations in which a basic public prosecutor's cases can be transferred to a higher public prosecutor under the Law on Public Prosecutor's Offices.
4. In regard to the rule on disciplinary liability, it is required to change the Code of Ethics in accordance with the European standards and clarify what types of conduct can be viewed as a basis for disciplinary liability of public prosecutors and deputy public prosecutors. The language in which the provisions of the Law on Public Prosecutor's Offices that prescribe disciplinary offenses are written needs to be clearer, and it is necessary to prescribe exceptions when it is not possible to act in line with certain provisions. It is also necessary to ensure a complete two-instance nature of the proceedings, so that the SPC does not make decisions in both first and second instance.
5. It is necessary to define the manner in which the Commissioner for autonomy performs his/her activities, as well as to ensure that his/her position and competencies are governed by the law. In addition, the Rules of Procedure of the Commissioner for autonomy should be adopted in order to define his/her rapport with the SPC.
6. It is necessary to additionally reinforce the mechanism of protection of public prosecutors or deputy public prosecutors in order to additionally reinforce the independence of their position. Taking into account that an unlawful and unfounded instruction can be put in connection with a political or other unlawful influence on their work, it is necessary to expand provisions of the Rulebook on Administration in public prosecutor's offices so that the SPC could be notified of submission of complaints, as well as to introduce mandatory keeping of records of submitted complaints in case any such complaint is not submitted to a higher body, considering that it is submitted via public prosecutor who issued the instruction in the first place.

INDICATOR 3:
QUALITY OF PENAL POLICY

SUB-INDICATOR 3.1. ADEQUACY OF LEGAL NORMS ON SANCTIONS

SUB-INDICATOR STANDARDS	POINTS
1. Normative conditions for imposing criminal sanctions for five most common criminal offenses are in accordance with the practice of the EU member states	0.5/1
2. Types and duration of sanctions, prescribed by laws which govern criminal and legal domain, are in accordance with the European standards and international conventions	0.5/1
3. Normative conditions for imposing alternative sanctions for five most common criminal offenses are in accordance with the practice of the EU member states	0.5/1
TOTAL NUMBER OF POINTS	1.5/3

S1: NORMATIVE CONDITIONS FOR IMPOSING CRIMINAL SANCTIONS FOR FIVE MOST COMMON CRIMINAL OFFENSES ARE IN ACCORDANCE WITH THE PRACTICE OF THE EU MEMBER STATES
[1 POINT]

A research of Croatian, Slovenian and German legislation was conducted as a part of the legal analysis of normative conditions for imposing criminal sanctions for five most common criminal offenses, with regard to the matter of compliance with the legislative practice of the EU member states. Croatia and Slovenia were selected, as they are both, like Serbia, former member republics of the SFR Yugoslavia, have similar legal tradition and they are both members of the EU. Provisions of the German legislation are the subject of a comparative analysis, as Germany is considered to be an important EU member state and has the legal system of European continental law, which had a significant historical impact on the Serbian legislation, including its criminal law. This research included the following criminal offenses: domestic violence, failure to provide alimony, illegal drug possession, endangering traffic safety and theft[442]. The subject of this research was the comparative legal analysis of description of elements which constitute the said criminal offenses, or qualifications which designate such criminal offenses, in case a particular national legislation does not recognize an identical criminal offense, precision and clarity of qualifications, as well as adequacy of prescribed sanction in relation to how serious and dangerous to the society the offense is and the purpose of sanction. Key findings of the conducted comparative legal analysis are shown hereafter. In order to obtain a more efficient penal policy, some provisions require additional harmonization for the purpose of obtaining a more adequate manner of determining elements of a criminal offense and more effective protection of crime victims. Changes are needed in the provision of Article 195 of the Criminal Code[443], which prescribes the criminal offense of *failure to provide alimony*, in order to more precisely describe the elements of the criminal offense and any grave consequences arising from failure to provide maintenance. With regard to the said criminal offense, criminal law of the Republic of Serbia, as well as Croatian legislation, shows preference for fulfillment of maintenance obligation over imposing criminal sanction. The Criminal Procedure Code of the Republic of Serbia, under Article 283, prescribes the possibility of postponement of criminal prosecution, as well as dismissal thereof if the maintenance debtor fulfills all unpaid maintenance obligations and

[442] Five most common criminal offenses in Serbian courts are determined based on the report of the Statistical Office of the Republic of Serbia on adult perpetrators for the last five years.
[443] Criminal Code ("Official Gazette of the RS", no. 35/2019), Article 195

continues to fulfill all due obligations. However, the change of the said provision of the Criminal Procedure Code needs to be modeled on Article 206 D, para. 1, item 3) of the Croatian Penal Code, which prescribes mandatory consent of the victim or the injured party before the public prosecutor decides on postponement or dismissal of criminal prosecution. It is necessary to decriminalize the criminal offense *illegal possession of drugs* in the segment that refers to keeping drugs for own use, modeled on Croatian and Slovenian legislation. Possession of drugs with the intention to sell them or enable another person to consume them should remain a basis for criminal and legal sanctioning, but within the criminal offenses listed under Article 246 of the Criminal Code *illegal manufacture and distribution of drugs* and Article 247 *enabling drug consumption*. The remaining segments of provisions, which determine criminal offense for five most common criminal offenses in the Serbian courts' practice, are for the most part compliant with provisions of the EU member states that determine same or similar criminal offenses, but taking into account the above mentioned deviations, this standard is considered to be partially fulfilled. [0.5/1 point]

S2: TYPES AND DURATION OF SANCTIONS, PRESCRIBED BY LAWS THAT GOVERN CRIMINAL AND LEGAL DOMAIN, ARE IN ACCORDANCE WITH THE EUROPEAN STANDARDS AND INTERNATIONAL CONVENTIONS
[1 POINT]

A large number of relevant international documents was considered while assessing and evaluating the standard, which refers to type and duration of sanctions prescribed by laws that govern criminal and legal domain and its compliance with the European standards. A particular issue was observed with regard to the inability to be released on parole before serving 27 years of sentence, in cases of life imprisonment for serious crimes, prescribed under the amendment to the Serbian Criminal Code from 2019. Such provision differs from the standards found in Recommendation R(2003)22 of the Committee of Ministers of the European Council on release on parole from 2003, as well as from the opinion of the European Court of Human Rights which requires for national legislation to prescribe a mechanism which would put in place a review of the life imprisonment sentence after serving a certain number of years (not more than 25 years), in order to determine whether there have been significant changes in the offender's life and if any improvement has been achieved, in line with Article 3 of the European Convention on Human Rights. Furthermore, Article 110, paragraphs 3 and 5 of the Statute of the International Criminal Court prescribes mandatory review of conditions for parole when the person has served two thirds of the sentence, or 25 years in case of life imprisonment. In regard to other sentences which imply imprisonment, according to Article 46 of the Criminal Code, the national legislation is compliant with the above mentioned standards, because it prescribes that a convicted person who served two thirds of the sentence can be released on parole by the court if such person improved to the extent that is reasonable to assume that he/she will display good conduct once released, and particularly if he/she does not commit any other crimes until the end of the imposed sentence.

Rule no. 58 of The UN Standard Minimum Rules for the Treatment of Prisoners from 1955 and rule no. 41 of the Nelson Mandela Rules from 2015 say that imprisonment sentences should only be applied when justified as a mean of protection of the community from crimes and reduction of recidivism, while the time spent in prison should be used with the aim to help convicts' social reintegration upon release, to enable them to respect the laws and to take care of their own needs in line with the law. In the course of the analysis, the following international standards were considered: Recommendation R(92)17 of the Committee of Ministers to member states concerning consistency when sentencing (recommendation 26), that prison sanctions should be considered as the last resort and only imposed when any other type of sanction would be inadequate with respect to the seriousness of the crime; Recommendation R(86) 12 of the Committee of Ministers to member states concerning measures to prevent and reduce the excessive workload in the courts; Recommendation R(87)18 of the Committee of Ministers to member states concerning the simplification of criminal justice; Memorandum to Recommendation R(92)16, which determines that it is necessary to establish a relation between the community, the offender and the victim when

selecting criminal sanctions; Recommendation R(99)22 of the Council of Europe concerning prison overcrowding and prison population inflation with offenders serving short-term sentences, which establishes the need to recourse to non-custodial sanctions in order to keep penal institution resources available for a more efficient approach to convicted persons; this same recommendation says that prosecutors and judges should be more involved in the process of devising penal policies in relation to prison overcrowding and prison population inflation; the Tokyo Rules or The UN Standard Minimum Rules, although not legally binding, play an important role in the process of imposing non-custodial measures.

Based on the said standards, we can conclude that the prison sentence should be the last resort, while criminal sanctions should not be retributive. Their aim is the reintegration of an offender, while taking into account interests of both the offender and the injured party and the wider community. Considering all of the above, we can conclude that the national standards are not fully compliant with the European standards from the said domain. Based on such conclusions, this standard is considered to be partially fulfilled. [0.5/1 point]

S3: NORMATIVE CONDITIONS FOR IMPOSING ALTERNATIVE SANCTIONS FOR FIVE MOST COMMON CRIMINAL OFFENSES ARE IN ACCORDANCE WITH THE PRACTICE OF THE EU MEMBER STATES [1 POINT]

The Republic of Serbia prescribes the following alternative criminal sanctions: supervised probation, house arrest, community service and confiscation of driving license. Alternative forms of sanctions are not directly related to individual criminal offenses, but to the severity of penalty that could be imposed, while they do not apply at all to certain criminal offenses. The following European standards have particular significance in this area: Recommendation R (92)16 of the Council of Europe, i.e. the European Rules and their amendment no. R (2000)22, which say that no alternative sanction or measure can be of indefinite duration. The offender's cooperation and consent are required in order to carry out alternative sanctions. This would help develop responsibility towards the community and the victim of the crime. Recommendations of the Council of Europe, as well as Recommendation R(99)2 of the Committee of Ministers to the member states concerning prison overcrowding and prison population inflation, emphasize the need for social reintegration of an offender. Furthermore, Recommendation R(2010)1 concerning probation, adopted by the Committee of Ministers, as well as Recommendation R(2014)4 concerning electronic monitoring, say that the member states should, by means of their national legislation, establish probation services and electronic monitoring in accordance with the guidelines. The legal analysis also included Croatian, Slovenian and German legislation, with regard to prescribing and imposing alternative criminal sanctions.

Based on the conducted legal analysis, it was established that the court needs to provide specific explanation of its decision to impose sanction of imprisonment, if there was a possibility of an alternative sanction (which is the case in Croatia and Germany). The general conclusion was that the Serbian legislation does contain an adequate legal framework for imposing alternative types of criminal sanctions instead of short-term prison sentence. Alternative sanctions can be applied on basic forms of the above mentioned five most common criminal offenses in the practice of Serbian courts. However, the national legal framework for applying alternative sanctions is not fully and adequately finalized. Based on the above, this standard can be considered as partially fulfilled. [0.5/1 point]

SUB-INDICATOR 3.2. PERCEPTION OF JUSTNESS OF THE IMPOSED CRIMINAL SANCTIONS

SUB-INDICATOR STANDARDS	POINTS
1. Participants in criminal procedure are of the opinion that there is a consistency in imposing criminal sanctions for individual criminal offenses	0/1
2. Participants in criminal procedure are of the opinion that all defendants are treated equally in terms of penal policy, irrespective of their personal and social status	0/1
3. Participants in criminal procedure are of the opinion that conflicts of laws do not impact the consistency in imposing criminal sanctions	0/0.5
TOTAL NUMBER OF POINTS	0/2.5

S1: PARTICIPANTS IN CRIMINAL PROCEDURE ARE OF THE OPINION THAT THERE IS A CONSISTENCY IN IMPOSING CRIMINAL SANCTIONS FOR INDIVIDUAL CRIMINAL OFFENSES
[1 POINT]

As it was very difficult to conduct a survey among persons who had the status of a defendant in any recently terminated criminal procedure, or had a criminal sanction imposed against them in any such proceedings, during this research, attorneys who specialize as defense counsels or who mostly practice criminal law were interviewed instead, as well as a small number of public prosecutors, for the purpose of obtaining a qualitative evaluation of adherence to the standards which refer to the courts' penal policy in practice. Findings show that 90% of interviewed attorneys do not think that there is a consistency in imposing criminal sanctions for individual criminal offenses. Interviewed public prosecutors are of somewhat different opinion, but they all agree in rating the consistency as partial.[444]

A previously conducted judicial functional review points out the issue of wide range of sanctions included in the criminal laws, which allow judges to make discretionary decisions.[445] The same document also points out the different perspectives that prosecutor's offices and attorneys have on this issue, where prosecutors believe that judges by default tend to select a less severe sanction, while attorneys highlight the legal unpredictability as the key issue, because for the same type of offense and in similar types of cases, defendants can get different sanctions, more or less severe, and it largely depends on the court council's discretionary decision. Considering all of the above, this standard cannot be deemed as fulfilled. [0/1 point]

S2: PARTICIPANTS IN CRIMINAL PROCEDURE ARE OF THE OPINION THAT ALL DEFENDANTS ARE TREATED EQUALLY IN TERMS OF PENAL POLICY, IRRESPECTIVE OF THEIR PERSONAL AND SOCIAL STATUS
[1 POINT]

Just like with the previous standard, when asked about equal treatment of defendants, based on their personal and social status, all attorneys agree that this is not the case in practice.[446] Public prosecutors again have a slightly different view on this matter, but they agree that discrimination of defendants based on their personal and social status cannot be completely excluded. They do however believe that these situations can be viewed as exemptions in court's practice. Furthermore, findings from the functional analysis titled Reinforcement of integrity in public

[444] All interviewed public prosecutors agree that, if having to rate adherence to this standard from 1 to 5, they would rate it as 3.
[445] Serbia Judicial Functional Review, World Bank Group, 2014, page 147; a new functional review is expected to be published soon, containing data for 2019, but it has not been published until the completion of this report.
[446] 90% of interviewed attorneys disagree with the statement from this standard, while 10% partially agree.

prosecutor's offices in Serbia also point out certain factors for inconsistency of penal policy in terms of defendants' status.[447] Considering all of the above, this standard cannot be deemed as fulfilled. [0/1 point]

S3: PARTICIPANTS IN CRIMINAL PROCEDURE ARE OF THE OPINION THAT CONFLICTS OF LAWS DO NOT IMPACT THE CONSISTENCY IN IMPOSING CRIMINAL SANCTIONS [0.5 POINT]

With regard to the impact the conflicts of applicable laws might have on consistency in imposing criminal sanctions, attorneys' opinion is slightly more positive than with previous standards, but a large majority of them still believe that normative conflicts do have an impact on imposing sanctions in court's practice.[448] Interviewed prosecutors agree for the most part with this point of view. In their opinion, the main issue is the frequent change of the Criminal Code, as well as the fact that it does not include all criminal offenses and that a large part of the criminal law is still prescribed by special legislation. They also mention conflicts between criminal and misdemeanor legislation, like in the case of identical descriptions of the manners in which certain criminal offenses and misdemeanors are committed. Considering all of the above, this standard cannot be deemed as fulfilled. [0/0.5 point]

EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**5.5** *(The sum of the maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**1.5** *(The sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-0.5	1-1.5	2-2.5	3-3.5	4-5.5
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**2**				

This report concluded that the segment of criminal legislation, which regulates criminal sanctions, is for the most part compliant with the defined comparative and international standards. Certain insufficiencies were observed with regard to prescribed rules concerning type and duration of the sanction. Nonetheless, courts' penal policy received a very low grade, from the point of view of attorneys who specialize as defense counsels or who mostly practice criminal law. They believe that there is no consistency in imposing criminal sanctions for individual criminal offenses, that penal policy does not treat all defendants equally and that there are conflicts of laws which impact the consistency of imposing criminal sanctions.

[447] *Strengthening of integrity in the public prosecutor's office in Serbia*
[448] 80% of interviewed attorneys disagree with the statement from this standard.

RECOMMENDATIONS

1. In regard to the harmonization of criminal legislation with those of the EU member states, it is necessary to consider the possibility of decriminalizing the criminal offense of illegal possession of drugs, in the segment which refers to keeping drugs for own use, modeled on the Croatian and Slovenian legislation.
2. It is required to further improve provisions which prescribe alternative sanctions, and, in line with the European standards, include mandatory consent of the offender to the fulfillment of obligations imposed with probation and supervised probation, as such consent would represent an additional guarantee of his/her readiness to meet these obligations.
3. In regard to the life imprisonment sentence, the provision of the Criminal Code should be changed, in line with the European standards, so that parole can be approved upon completing 25 years of sentence, and not 27.

KEY AREA VII: ACCESS TO JUDICIAL SERVICES

INDICATOR 1: THE QUALITY OF WORK OF PUBLIC ENFORCEMENT OFFICERS

SUB-INDICATOR 1.1. ADEQUACY OF LEGAL NORMS ON THE WORK OF PUBLIC ENFORCEMENT OFFICERS

SUB-INDICATOR STANDARDS	POINTS
1. An effective legal instrument which provides legal protection of debtors is prescribed	1/1
2. An effective legal instrument which provides legal protection of third parties is prescribed	0.5/1
3. The law enables debtors and third parties to present evidence	0.5/0.5
4. Guarantees of an objective and equal legal treatment of parties by public enforcement officers are prescribed/ preferential status of creditors in the process is not prescribed	0/1
5. Distribution of jurisdiction which enables the court and public enforcement officers to proceed correctly and efficiently is prescribed	0.5/0.5
6. Requirements for an equal distribution of cases among public enforcement officers are prescribed	0/0.5
7. A reliable manner of submitting official documents in the proceedings and notifying parties of all circumstances relevant to the proceedings is prescribed	0.5/0.5
8. Legal guarantees against misuse in the receivables collection process are in place	0.5/0.5
9. An effective supervision of the work of public enforcement officers is prescribed	0.5/0.5
10. Person who filed a complaint about the work of a public enforcement officer has the right to access data and the outcome of the inspection	0/0.5
TOTAL NUMBER OF POINTS	4/6.5

S1: AN EFFECTIVE LEGAL INSTRUMENT THAT PROVIDES LEGAL PROTECTION OF DEBTORS IS PRESCRIBED [1 POINT]

An effective legal instrument that provides legal protection of debtors in the enforcement proceedings is prescribed in order to carry out the constitutional guarantee to an appeal or any other legal instrument used to contest the decision that decides on an individual right, obligation or an interest based on the law. The Law on Enforcement and Security[449] determines appeal as the principal instrument for contesting a decision of execution, which can be used to contest the said decision in the following cases: the validity of the enforcement document has expired, the deadline for an enforcement debtor to meet his/her obligations has not yet expired, claim from the enforcement document ceased to be valid on another basis, the enforcement against an object is not permitted or it is not possible to execute enforcement against the said object, as well as for other legal reasons. If the appeal is upheld, the possible options are the termination of the enforcement proceedings, change of the first instance decision of execution and rejection of motion to enforce, or the cancelation of first instance decision of execution and rejection of motion to enforce. Objection is the principal legal instrument used to contest a decision of execution based on a credible document, including cases which pertain to utility services, and it can be submitted if what is being claimed in a credible document never took place, if the content of a credible document is incorrect, if the claim was never submitted, if the liability was met or in any other manner ceased to be valid, if the claim has expired, or for any other reason stipulated under this or a special law. Objection postpones the enforcement, and if upheld, the case is then sent for litigation before the competent basic court. Considering all of the above, an enforcement debtor has effective legal instruments at his/her disposal, namely appeal, as the principal legal instrument, which enables devolution and the possibility of examining legality of acts adopted in the procedure, and objection, whose result is litigation during which one can examine contents and admissibility of the claim, therefore this standard is considered to be fulfilled. [1/1 point]

S2: AN EFFECTIVE LEGAL INSTRUMENT THAT PROVIDES LEGAL PROTECTION OF THIRD PARTIES IS PRESCRIBED [1 POINT]

As for an effective legal instrument which provides legal protection of third parties, any person who believes to have a right which would prevent enforcement, primarily the property right or any other right over the object of enforcement, can submit an objection to the public enforcement officer, in which he/she requests for enforcement over such object to be deemed not permitted.[450] Objection of a third party, unlike appeal, does not enable devolution. In case of dismissal or rejection of objection, third party can initiate civil legal proceedings against the enforcement creditor, within 30 days from the date of receiving the decision on objection, for the purpose of determining that the enforcement over such object is not permitted. However, initiation of civil legal proceedings does not postpone the enforcement. Furthermore, third party must specify the reasons for objection and immediately submit documents in which he/she proves his/her right, otherwise the objection will be rejected. On the other hand, when taking inventory and selling items belonging to an enforcement debtor, there is a legal presumption that all assets belonging to an enforcement debtor are owned by him/her and can be the object of enforcement, with prescribed exceptions according to the type and purpose of assets.[451] This procedure protects the interests of a creditor regarding an efficient execution of enforcement, while the protection of interests of a third party becomes significantly more difficult. The third party then has to prove that assets are owned by him/her and not the debtor, has to prove the ownership over those assets, as this circumstance is not presumed as probable, along with a very strictly

[449] Law on Enforcement and Security ("Official Gazette of the RS", no. 106/2015, 106/2016 – authentic interpretation, 113/2017 - authentic interpretation, 54/2019 and 9/2020 - authentic interpretation), Article 24

[450] Law on Enforcement and Security, Article 108

[451] Law on Enforcement and Security, Articles 221 and 218

prescribed written form in which evidence is submitted (*forma ad probationem*) during the objection submission stage, i.e. prior to the civil legal proceedings during which such evidence would be examined. As it is not simple to prove ownership, particularly over movable assets, third party can be put in a very inconvenient position – enforcement can be executed, movable assets can be sold, he/she could be faced with an uncertain outcome of long civil legal proceedings for which he/she is not responsible, bear expenses for such proceedings, and eventually the pecuniary amount obtained from selling assets in the enforcement process could be used for reimbursing and indemnifying the claim. Therefore, this standard is considered to be partially fulfilled. [0.5/1 point]

S3: THE LAW ENABLES DEBTORS AND THIRD PARTIES TO PRESENT EVIDENCE
[0.5 POINT]

As for the legal authorization of debtors and third parties to present evidence in the enforcement proceedings, the law does prescribe such possibility if it refers to allegations from submitted legal instruments, an appeal and/or an objection. Limitations regarding the burden of proof and certain advantages the enforcement creditor has are already mentioned, although there are no legal obstacles in the course of the proceedings to present evidence pertaining to relevant circumstances, which could be the subject of examination, if debtors or third parties have such evidence in their possession at the given moment and in the adequate form. The proceedings are based on the formal legality principle, which implies that the court and the public enforcement officer are obliged by an enforcement document or a credible document, hence the examination of admissibility of claim from the enforcement document cannot be included in the proceedings or in the process of presenting evidence. Therefore, this standard is considered to be fulfilled. [0.5/0.5 point]

S4: GUARANTEES OF AN OBJECTIVE AND EQUAL LEGAL TREATMENT OF PARTIES BY PUBLIC ENFORCEMENT OFFICERS ARE PRESCRIBED/ PREFERENTIAL STATUS OF CREDITORS IN THE PROCESS IS NOT PRESCRIBED
[1 POINT]

The law does not contain any specific rules that guarantee equality of all enforcement creditors and enforcement debtors, i.e. guarantees of preventing discrimination. Impartiality and equal treatment in the work of public enforcement officers is stipulated under the Code of Ethics of public enforcement officers,[452] in a general manner and on a professional requirement level. On the contrary, the law explicitly prescribes preferential treatment of certain categories of parties in certain situations – in particular, in the domain of utility and related services, an enforcement creditor has a preferential status in comparison with enforcement creditors in other domains, considering that an entire special procedure was created for the purpose of an efficient enforcement and collection, i.e. it was specially created in the interest of this category of creditors. Therefore, the guarantees of impartiality and equal treatment in the work of public enforcement officers are not regulated by the Law, but instead remain on the level of code of conduct, they are general and they do not provide an adequate level of legal protection from discrimination, i.e. from a different approach of public enforcement officers in identical situations, depending on the person participating in the proceedings. For that reason this standard cannot be considered fulfilled. [0/1 point]

S5: DISTRIBUTION OF JURISDICTION THAT ENABLES THE COURT AND PUBLIC ENFORCEMENT OFFICERS TO PROCEED CORRECTLY AND EFFICIENTLY IS PRESCRIBED
[0.5 POINT]

When it comes to legal distribution of jurisdiction for the purpose of enabling the court and public enforcement officers to proceed correctly and efficiently, the law does prescribe the jurisdiction of the court in the decision-making process regarding a motion for enforcement, based on an enforcement document and a credible document (with certain prescribed exceptions regarding

[452] Code of Ethics of Public Enforcement Officers ("Official Gazette of the RS", no. 105/2016), Article 6

utility related matters), while public enforcement officers have the jurisdiction over execution of enforcement (with certain prescribed exceptions when it is done by the court, as well as when the court renders a decision on utility related matters). Moreover, the court has the jurisdiction in the decision-making process related to legal instruments (with the prescribed exception concerning objection of a third party). We can conclude that the conceptual premise of distribution of jurisdiction, according to which the court renders decisions and public enforcement officers execute enforcements based on such decisions, was carried out with consistency, while all prescribed exceptions are logical and justified. Therefore, this standard is considered to be fulfilled. [0.5/0.5 point]

S6: REQUIREMENTS FOR AN EQUAL DISTRIBUTION OF CASES AMONG PUBLIC ENFORCEMENT OFFICERS ARE PRESCRIBED
[0.5 POINT]

The standard that determines requirements for an equal distribution of cases among public enforcement officers was not legally implemented. Enforcement is executed by a public enforcement officer who is competent for the given territory and selected by the enforcement creditor in his/her motion for enforcement, with the exception of collection of receivables in the proceedings referring to utility and related services. The principle of "random" assignment of a public enforcement officer, on one hand, and their competition which is present on the enforcement execution market on the other, are directly confronted. According to their legal status, public enforcement officers are entrepreneurs who provide public services, therefore the existing "market" model is in accordance with that status. On the other hand, the mechanism which is currently in place regarding utility cases could serve as a good model for assigning public enforcement officers in all enforcement cases, taking into account that they are authorized by the state to undertake actions and charge for their services according to the specified price list and debtor is the one who bears expenses in the final outcome, which is why the argument of a "competitive enforcement services market" is not reasonable. Therefore, this standard is not considered to be fulfilled. [0/0.5 point]

S7:A RELIABLE MANNER OF SUBMITTING OFFICIAL DOCUMENTS IN THE PROCEEDINGS AND NOTIFYING PARTIES OF ALL CIRCUMSTANCES RELEVANT TO THE PROCEEDINGS IS PRESCRIBED
[0.5 POINT]

As for the matter of prescribing a reliable manner of submitting official documents in the proceedings and notifying parties of all circumstances relevant to the proceedings, the Law on Enforcement and Security stipulates for all acts of the court and public enforcement officers, as well as other official documents, to be submitted by the public enforcement officer, unless the court has exclusive jurisdiction in the enforcement.[453] If the submission fails, the official document is published, within 3 days, on the electronic bulletin board of the court that rendered the decision on execution based on an enforcement document or a credible document. If the decision on execution is rendered based on the credible document, submission is repeated upon the expiry of the eight-day deadline from the previous submission, and if the repeated submission fails, the decision is published, within 3 days, on the electronic bulletin board of the competent court. The electronic bulletin board has been recently introduced into law and it opens up the legal option of improving technical solutions for an efficient and effective submission of notifications and memos, particularly electronically. Therefore, this standard is considered to be fulfilled. [0.5/0.5 point]

S8: LEGAL GUARANTEES AGAINST MISUSE IN THE RECEIVABLES COLLECTION PROCESS ARE IN PLACE
[0.5 POINT]

The law prescribes guarantees against misuse in the receivables collection process through rules that govern the procedure for inventory-taking, assessing and selling assets, or seizing and transferring the claimed amount. These rules

[453] Law on Enforcement and Security, Articles 36 and 37

govern in detail the actions that are to be taken in the process of collecting receivables and settling claims, which prevent public enforcement officers from making arbitrary and discretionary decisions. The principle of proportion should prevent misuse that occurs in cases of inventory-taking and selling assets, when the claim amount is significantly lower than the actual value of an asset, particularly when it comes to immovable assets. Furthermore, recent changes of the Law on Enforcement and Security have expanded the list of persons who cannot be buyers at an enforcement sale and a sale of immovable assets via electronic public auction was introduced as a response to discrepancies that were previously observed in practice. Upon adoption of the rulebook that regulates the organization of and the procedure for electronic public auctions the legal framework required to carry out this activity was completed. Therefore, this standard is fulfilled. [0.5/0.5 point]

S9: AN EFFECTIVE SUPERVISION OF THE WORK OF PUBLIC ENFORCEMENT OFFICERS IS PRESCRIBED
[0.5 POINT]

The law prescribes an effective supervision of the work of public enforcement officers, carried out by the competent Ministry and the Chamber of Public Enforcement Officers.[454] The Ministry carries out supervision at its own initiative, acting on a proposal of the president of the court to which a public enforcement officer was assigned, or acting on a complaint submitted by another public enforcement officer, party or participant in the proceedings. Work of a public enforcement officer is inspected by the Chamber of Public Enforcement Officers as well, at least once every two years (regular inspection), when the application of the Code of Conduct of Public Enforcement Officers is also verified. The Chamber also carries out unscheduled inspection after a complaint has been submitted by a party or a participant in the proceedings. Bylaws regulate in more detail the manner of supervision and the Code of Conduct. Therefore, this standard is considered to be fully fulfilled. [0.5/0.5 point]

S10: PERSON WHO FILED A COMPLAINT ABOUT THE WORK OF A PUBLIC ENFORCEMENT OFFICER HAS THE RIGHT TO ACCESS DATA AND THE OUTCOME OF THE INSPECTION
[0.5 POINT]

Complainant's right to access data and the outcome of the inspection is not adequately prescribed. Namely, the complainant does not have any authorizations in the process of inspection of public enforcement officer's work, initiated due to his/her complaint (unscheduled inspection), cannot act in the capacity of a participant in the said process, and does not have the right to access documents or to present evidence, apart from those already included in the complaint. The disciplinary prosecutor must notify the complainant, within 30 days from the date of receiving the complaint, of the actions taken, but is not obliged to notify the complainant of the outcome of the inspection that was initiated due to the said complaint. Therefore, this standard cannot be considered fulfilled. [0/0.5 point]

[454] Law on Enforcement and Security, Articles 523 and 524

SUB-INDICATOR 1.2. THE WORK OF PUBLIC ENFORCEMENT OFFICERS IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS
1. Parties in the enforcement proceedings are of the opinion that public enforcement officers adopt an unbiased and non-selective approach towards all categories of persons in the proceedings	0.5/1
2. Public enforcement officers play an active role as mediators between parties for the purpose of settling claims by agreement	0/1
3. The percentage of complaints about the work of public enforcement officers against the total number of handled cases during one calendar year	1/1
4. Parties in the enforcement proceedings are of the opinion that the costs of the public enforcement are predictable	0/0.5
5. Parties in the enforcement proceedings are of the opinion that the public enforcement officers' fees tariff is clear and unambiguous	0/0.5
6. Parties in the enforcement proceedings are of the opinion that the amount of advance payment can be predicted by the parties in the proceedings	0/0.5
TOTAL NUMBER OF POINTS	1.5/4.5

S1: PARTIES IN THE ENFORCEMENT PROCEEDINGS ARE OF THE OPINION THAT PUBLIC ENFORCEMENT OFFICERS ADOPT AN UNBIASED AND NON-SELECTIVE APPROACH TOWARDS ALL CATEGORIES OF PERSONS IN THE PROCEEDINGS
[1 POINT]

Based on the findings of the qualitative research regarding the experience of citizens who were involved in the procedure of enforced collection of receivables[455] and the qualitative research and study on the topic of access to justice in enforcement procedure,[456] published by the European Policy Center, we can observe that citizens display a high level of mistrust in the work of public enforcement officers. It is necessary to further examine the reasons, particularly among citizens who had experience with the enforcement, because their dissatisfaction is for the most part deemed personal. Enforcement proceedings are specific in the sense that, unlike civil proceedings, they target only one party, the debtor, which naturally causes his/her personal dissatisfaction, irrespective of the correctness and quality of the work of public enforcement officers. Public enforcement officers tell a completely opposite story – that their approach to work is unbiased and non-selective, while they mostly blame the media for the tarnished reputation they have in public, adding that the media generally portrays their profession in a bad light, always choosing to show only incidents and resorting to sensationalism.[457] Moreover, enforced collection of utility and other related claims constitutes a large percentage of all enforcements – according to data from the annual reports of public enforcement officers for 2019, utility cases made as much as 62% of the total number of received cases during that

[455] Focus groups, IPSOS

[456] *Problems and obstacles in access to justice in enforcement procedure from the perspective of consumer protection*, the European Policy Center, 2019 (USAID Rule of Law) available at: https://cep.org.rs/publications/problemi-i-prepreke-za-pristup-pravdi-u-izvrsnom-postupku-iz-perspektive-zastite-potrosaca/

[457] Interviews and roundtables were organized as a part of the research conducted by the European Policy Center, presented in the report titled *Problems and obstacles in access to justice in enforcement procedure from the perspective of consumer protection*, as well as a part of the research titled *Raising the level of citizens' understanding of their rights and obligations in the enforcement procedure at the local level* (USAID Rule of Law, 2020)

year.[458] In these cases, the decision of execution was rendered directly by a public enforcement officer, and not by the court, which creates additional animosity of citizens – debtors towards this profession.

Participants in the focus groups, who had experience as creditors, highlighted that they had had greater expectations regarding the collection of receivables, but that public enforcement officers had not displayed sufficient efficacy and that they had shifted their focus to collecting debts which citizens owed to utility companies, which is, according to them, a much smaller issue than the collection of receivables. As for the work of public enforcement officers, participants in the focus groups expressed a lot more negative than positive sentiments. The only positive thing they specified was the pace at which proceedings were resolved, compared to the "old court bailiffs". Interestingly, another positive thing they mentioned was the collection of debts ("financial discipline" of non-payers) from to those who do not have any financial struggles. However, at the same time we can observe that, among negatively rated issues, the last spot is taken by the selective approach, while issues like high costs, process shortfalls or manner of proceeding, are all positioned higher. Furthermore, the research on access to justice in enforcement procedure does not identify the public enforcement officers' selective approach to work as one of the key issues, but citizens' and consumers' organizations that participated in the roundtables occasionally expressed concerns regarding the "preferential" status of individuals in some circumstances, both as debtors and creditors.[459]

Considering all of the above, we can conclude that citizens, in general, do not have sufficient trust in the work of public enforcement officers, but it is not possible to say with certainty which specific actions regarding biased and selective approach of public enforcement officers are causing such dissatisfaction. Therefore, this standard can be considered partially fulfilled. [0.5/1 point]

S2: PUBLIC ENFORCEMENT OFFICERS PLAY AN ACTIVE ROLE AS MEDIATORS BETWEEN PARTIES FOR THE PURPOSE OF SETTLING CLAIMS BY AGREEMENT [1 POINT]

As for the active role the public enforcement officers play as mediators between parties for the purpose of settling claims by agreement, such data cannot be found in the annual reports on their work, or in any other report processed by the Chamber. According to results obtained from focus groups, apart from the payment of debt in installments, citizens do not have any knowledge of mediation between a creditor and a debtor performed by a public enforcement officer. We can observe that even though mediation between a creditor and a debtor is one of the public enforcement officer's duties prescribed by the law, in practice, it is insignificant or even non-existent. Therefore, this standard cannot be considered as fulfilled. [0/1 point]

S3: THE PERCENTAGE OF COMPLAINTS ABOUT THE WORK OF PUBLIC ENFORCEMENT OFFICERS AGAINST THE TOTAL NUMBER OF HANDLED CASES DURING ONE CALENDAR YEAR [1 POINT]

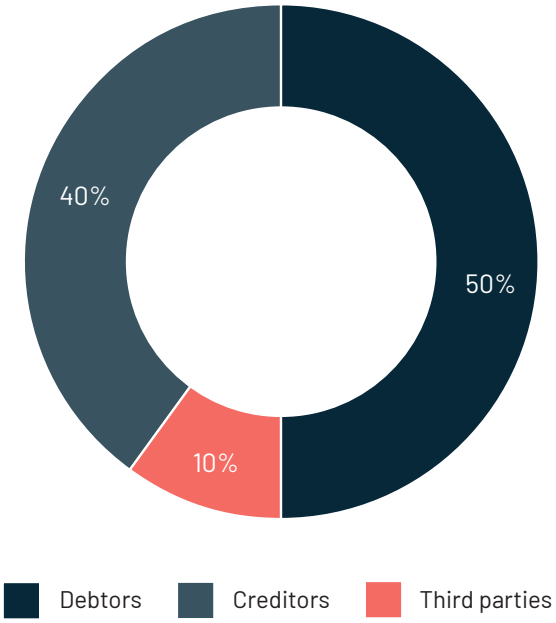
According to data obtained from the Chamber of Public Enforcement Officers, based on an enquiry about the quantity and structure of complaints, in the past year it received a total of 759 complaints about the work of public enforcement officers, of which 50% were submitted by debtors, 10% by creditors and 40% by other participants in the proceedings (third parties, other interested parties etc.).[460] In the same period, 505,678 new enforcement cases were received, while the total number of active cases in that calendar year amounted to 1,610,165. Although the data, which link complaints to individual cases, are not available, we can observe that the relative percentage of complaints against the total number of active cases on an annual level is 0.047% (less than 1 complaint per 5,000 active

[458] Data from the annual reports on the work of public enforcement officers for 2019 are available at https://www.komoraizvrsitelja.rs

[459] Roundtables were organized as a part of the research conducted by the European Policy Center

[460] Data for 2018 were obtained from a memo submitted by the Chamber of Public Enforcement Officers.

cases). The Chamber initiated 8 disciplinary proceedings in the given period, of which 5 resulted in disciplinary measures imposed on public enforcement officers. Therefore, this standard is fulfilled. [1/1 point]



Complainants on the work of public enforcement officers

S4: PARTIES IN THE ENFORCEMENT PROCEEDINGS ARE OF THE OPINION THAT THE COSTS OF THE PUBLIC ENFORCEMENT ARE PREDICTABLE
[0.5 POINT]

According to the focus group results, we can observe a tight connection between the level of knowledge a party has and the matter of predicting the public enforcement officers' fees tariff, taking into account that citizens know very little about it, despite the fact that some of the participants had experience with several enforcement proceedings in the last few years or even had experience as creditors and debtors. Those participants in focus groups who were better informed explained that the decision stated the debt amount and creditor's advance payment amount and that only the fee for a successful enforcement remained unknown at the beginning of the proceedings. The issue was the fact that this fee was determined only upon completion of enforcement, as well as that the amount varied from case to case and from officer to officer. One common remark of the citizens and consumer organizations is that public enforcement officers' fees are too high compared to the claimed amount, particularly in cases related to utility services.[461] On the other hand, certain creditors highlighted that they were surprised by the advance payment amounts. According to all of the above, there are two main reasons for citizens not being able to predict enforcement costs with enough certainty: one is related to the complexity of the manner in which fees, consisting of the work fee and the actual expenses, are calculated and collected and their amount in the given case, while the other is related to the citizens' general insufficient knowledge on the enforcement procedure and its particularities. Therefore, this standard cannot be considered as fulfilled. [0/0.5 point]

S5: PARTIES IN THE ENFORCEMENT PROCEEDINGS ARE OF THE OPINION THAT THE PUBLIC ENFORCEMENT OFFICERS' FEES TARIFF IS CLEAR AND UNAMBIGUOUS
[0.5 POINT]

Citizens often complain that they are unable to access the public enforcement officers' fees tariff, that they are not familiar with it or, maybe, that they have accidentally found it on the Internet.[462] However, the public enforcement officers' fees tariff is a regulation, adopted by the Minister of Justice, published in the "Official Gazette", and there is a legal presumption that all citizens are familiar with it.[463] Those citizens who did manage to access the tariff did not, however, manage to calculate the costs of the proceedings on their own, to determine which activities were charged for by the public enforcement officer, nor did they understand what other costs, apart from the actual debt, they had paid for. The fees tariff is available, even though citizens do not have sufficient information on where and how to find it,

[461] Study, page 36
[462] Focus
[463] The Public enforcement officers' fees tariff ("Official Gazette of the RS", no. 93/2019); the tariff is also available on the website of the Ministry of Justice, as well as on the website of the Chamber of Public Enforcement Officers, but at a location which is more difficult to reach.

but, in any case, it is not clear enough to parties in the proceedings, therefore this standard was not fulfilled. [0/0.5 point]

S6: PARTIES IN THE ENFORCEMENT PROCEEDINGS ARE OF THE OPINION THAT THE ADVANCE PAYMENT AMOUNT CAN BE PREDICTED BY THE PARTIES IN THE PROCEEDINGS
[0.5 POINT]

The issue of calculating and predicting the advance payment amount is a part of the issue regarding clarity and predictability of calculating the costs of the proceedings in general, in accordance with the public enforcement officers' fees tariff, therefore, the remarks and comments from the previous paragraph equally apply to the predictability of the advance payment amount. Certain citizens who participated in the focus groups criticized this matter, both from the perspective of a creditor (advance multiple instalments, an amount which was not precisely determined), and a debtor (adding unjustified creditor's expenses to the advanced payment, which are in the end borne by the debtor, sometimes in the amounts several times higher than the actual debt). The fees tariff stipulates the requirements for calculating and collecting the advance payment amount, but the participants believe that the calculation of advance payment amount largely depends on the discretionary decision of public enforcement officers, which is why the practice seems to be inconsistent. Therefore, this standard cannot be considered as fulfilled. [0/0.5 point]

EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**11** *(The sum of the maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**5.5** *(The sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-2.5	3-4.5	5-6.5	7-9	9.5-11
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**3**				

The system of enforcement was introduced less than a decade ago and it is based on the key role of one judicial profession, the public enforcement officers, who were entrusted by the law with certain public authorizations. This new system represented a radical turn, marked by legal, organizational and wider social consequences, of which the most significant one is the high level of certainty when it comes to execution of enforcement, which the previous system did not offer. In the meantime, the law was subjected to several changes, but we can still observe the need for further improvement, primarily in the segment of effectiveness of the legal instrument which provides legal protection of third parties in the proceedings, the possibility for debtors and third parties to prove their allegations, the guarantees of an objective and equal legal treatment of parties by public enforcement officers, as well as the possibility for complainants to access data collected during inspection and to be familiar with the outcome thereof. The lack of a completely unbiased and non-selective approach of public enforcement officers was observed in practice, as well as the lack of adherence to the legal obligation of mediation between parties for the purpose of settling claims. Moreover, the parties in the proceedings rated the costs of the proceedings as unpredictable.

RECOMMENDATIONS

1. It is required to improve the transparency of work of public enforcement officers, on one hand, and the level of knowledge the citizens have on the rules of the enforcement proceedings, on the other, in order to reduce the mutual mistrust, which often occurs as a consequence of the lack of reliable information.
2. It is necessary to consider a costs calculation model which would be clearer and more transparent to parties in the proceedings and which would enable a higher level of costs predictability.
3. It is required for public enforcement officers to offer a more solid assurance of their unbiased and non-selective approach and to apply mechanisms, such as mediation, which are directed at reducing the number of conflicts between parties and improvement of protection of debtors' interests.

INDICATOR 2:
THE QUALITY OF WORK OF NOTARIES

SUB-INDICATOR 2.1. ADEQUACY OF LEGAL NORMS ON THE WORK OF NOTARIES

SUB-INDICATOR STANDARDS	POINTS
1. Legal framework for the work of notaries provides adequate conditions for notarization of documents	0.5/1
2. The law prescribes a unified notaries' fees tariff	1/1
3. The law prescribes for the notaries' fees tariff to correspond to the provided service	0.5/1
4. The law prescribes the working hours of notaries to be organized in such manner which enables customers to access services even outside the regular working hours	0.5/1
5. The law allows to ethnic minorities the right to have a notarial document also written in a language which they understand, in places where such language is in the official use	1/1
6. The law prescribes an adequate reimbursement of losses and the manner in which such right is exercised in case of an oversight of a notary (when the statute of limitations has expired)	1/1
TOTAL NUMBER OF POINTS	4.5/6

S1: LEGAL FRAMEWORK FOR THE WORK OF NOTARIES PROVIDES ADEQUATE CONDITIONS FOR NOTARIZATION OF DOCUMENTS
[1 POINT]

As for the adequacy of the legal framework which governs the work of notaries with regard to providing adequate conditions for notarization of documents, we should specify that the term notarization means certifying personal documents, and by doing so, attributing characteristics of a notarial document to it. This primarily refers to agreements on real estate transactions, mortgage and statements of pledge, agreements on establishing actual and personal easements. The notarization conditions are defined in more detail under the change of the Law of 2015, in terms of form and content of the document certification clause and the manner in which it is drawn up. On the other hand, the Law on Notaries prescribes the obligation of a notary to notarize a personal document (only) when required by the law, i.e. when it represents a condition under which a legal transaction would become valid.[464] Therefore, a document cannot be notarized solely based on client's disposition, if the law does not prescribe it. This could be interpreted as a shortfall, taking into account that this judicial service is provided for the purpose of greater legal security and that clients might request to have notarized such personal documents whose notarization is not prescribed under any legal form. This standard is considered to be partially fulfilled. [0.5/1 point]

S2: THE LAW PRESCRIBES A UNIFIED NOTARIES' FEES TARIFF
[1 POINT]

The law prescribes a unified notaries' fees tariff, which is adopted by the Minister in an act, and which is unified for all notaries and on the entire territory of the Republic of Serbia. The notaries' fees tariff determines the remuneration for the

[464] Law on Notaries ("Official Gazette of the RS", no. 31/2011, 85/2012, 19/2013, 55/2014 – other law, 93/2014 – other law 121/2014, 6/2015 and 106/2015), Articles 93 and 93a

work of a notary and the reimbursement of costs incurred while performing activities of a notary, as well as the manner in which the performed activities are valued and the remuneration and reimbursement are calculated. Therefore, this standard is considered to be fulfilled. [1/1 point]

S3: THE LAW PRESCRIBES FOR THE NOTARIES' FEES TARIFF TO CORRESPOND TO THE PROVIDED SERVICE [1 POINT]

The law does not prescribe for the notaries' fees tariff to correspond to the provided service. However, the act on the notaries' fees tariff does prescribe that a notary is entitled to remuneration for work and reimbursement of costs incurred while performing activities, in the amount and in the manner established under the tariff of fees, prescribed by the competent Minister.[465] The remuneration is calculated according to the value of a particular legal transaction or activity, in the fixed amount and proportional to the time invested in preparation and performance of a certain activity. When calculating remuneration for a legal transaction, all actions related to the said legal transaction are considered, including preparatory actions. Notary is obliged to act in the most financially favorable manner for the client (unless otherwise requested by the client). Therefore, this standard is not regulated by the law, but instead implemented under a bylaw that determines a subsidiary application of the requirements related to the remuneration amount corresponding to the time spent and the value of the legal transaction. This standard is considered to be partially fulfilled. [0.5/1 point]

S4: THE LAW PRESCRIBES THE WORKING HOURS OF NOTARIES TO BE ORGANIZED IN SUCH MANNER THAT ENABLES CUSTOMERS TO ACCESS SERVICES EVEN OUTSIDE THE REGULAR WORKING HOURS [1 POINT]

As for this matter, once more, the applicable norms are not legally prescribed, but instead the competent Minister is authorized to determine the working hours in an act.[466] The Rulebook determines notary's working hours as 40 hours per week, from Monday to Friday, between 9AM and 5PM. The said article allows for certifying signatures and making photocopies of public and personal documents to take place until 7PM during working days, without an increase of remuneration as a consequence of working outside working hours. Moreover, upon receiving a request from a client, notary may perform an official activity outside working hours, as well as on holidays and other non-working days. However, this is once more a bylaw and the legal guarantee of the working hours suiting clients' needs is missing. This standard is considered to be partially fulfilled. [0.5/1 point]

S5: THE LAW ALLOWS TO ETHNIC MINORITIES THE RIGHT TO HAVE A NOTARIAL DOCUMENT ALSO WRITTEN IN A LANGUAGE THAT THEY UNDERSTAND, IN PLACES WHERE SUCH LANGUAGE IS IN THE OFFICIAL USE [1 POINT]

As for the standard regarding the law allowing to ethnic minorities the right to have a notarial document also written in a language which they understand, in places where such language is in the official use, in those areas of units of local self-government where the language and the script of an ethnic minority is in the official use, notaries are obliged to compile notarial documents in Serbian language, in the Cyrillic script, or in the language and script of the ethnic minority, or in both languages and scripts, according to the client's request.[467] Therefore, this standard is considered to be fully fulfilled. [1/1 point]

S6: THE LAW PRESCRIBES AN ADEQUATE REIMBURSEMENT OF LOSSES AND THE MANNER IN WHICH SUCH RIGHT IS EXERCISED IN CASE OF AN OVERSIGHT OF A NOTARY (WHEN THE STATUTE OF LIMITATIONS HAS EXPIRED) [1 POINT]

The law explicitly prescribes an obligation of reimbursement of losses due to an oversight

[465] The Notary's Public fees tariff ("Official Gazette of the RS", no. 91/2014, 103/2014, 138/2014, 12/2016, 17/2017, 67/2017, 98/2017, 14/2019, 49/2019, 17/2020 and 91/2020)
[466] The Rulebook on the Notaries' Office and Working Hours ("Official Gazette of the RS", no. 31/2012, 87/2014 and 15/2017)
[467] Law on Notaries, Article 18

of a notary.[468] It also prescribes that the notary is responsible for any loss caused by a notary's apprentice, associate and assistant, as well as any administration personnel working in the notary's office, irrespective of whether they are individually held responsible in accordance with the general rules of the law on contracts and torts. Therefore, the notary must pay particular attention when performing actions, in line with the code of conduct and customs. Considering all of the above, this standard is deemed fulfilled. [1/1 point]

SUB-INDICATOR 2.2. THE WORK OF NOTARIES IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS
1. Guidance provided to clients by notaries is impartial	0.5/1
2. Notaries act conscientiously when providing services	1/1
3. Notary's associates and assistants received proper training for providing services	1/1
4. The price of the service is adequate	0.5/0.5
5. Notaries' offices are equally distributed throughout the country and all citizens have equal access to them	0.5/1
6. Physical accessibility of notary's service is unobstructed	0.5/0.5
TOTAL NUMBER OF POINTS	4/5

S1: GUIDANCE PROVIDED TO CLIENTS BY NOTARIES IS IMPARTIAL
[1 POINT]

Based on the conducted field research of the customers' experience[469], 46% of service users confirmed that a notary or his/her assistant informed them of all their rights and obligations with regard to the service of notarization. 69% of users agreed that a notary or his/her assistant had clearly and precisely answered every question and clarified any uncertainty regarding the respective service. Based on the above, we can establish that the average rate of adherence to this standard is 57.5%, therefore, this standard is considered to be partially fulfilled. [0.5/1 point]

S2: NOTARIES ACT CONSCIENTIOUSLY WHEN PROVIDING SERVICES
[1 POINT]

Based on the conducted research of the customers' experience, it was established that a request for services of notary was submitted without difficulties (84% of participants agreed), the requested service was scheduled within reasonable time (92% agreed) and that notary's associates displayed courtesy and helpfulness at the office (100%). When asked if there was an adequate waiting area with seats provided and an easily understandable system for announcing the order in which clients should enter, 84% of users gave it a positive rate. 92% of users expressed their general satisfaction with the service

[468] Law on Notaries, Article 58

[469] The field research was conducted in the form of a survey with participants from 13 cities, during the months of June and July of 2020

provided by a notary (54% completely satisfied and 38% somewhat satisfied). Therefore, this standard is considered to be fulfilled. [1/1 point]

S3: NOTARY'S ASSOCIATES AND ASSISTANTS RECEIVED PROPER TRAINING FOR PROVIDING SERVICES [1 POINT]

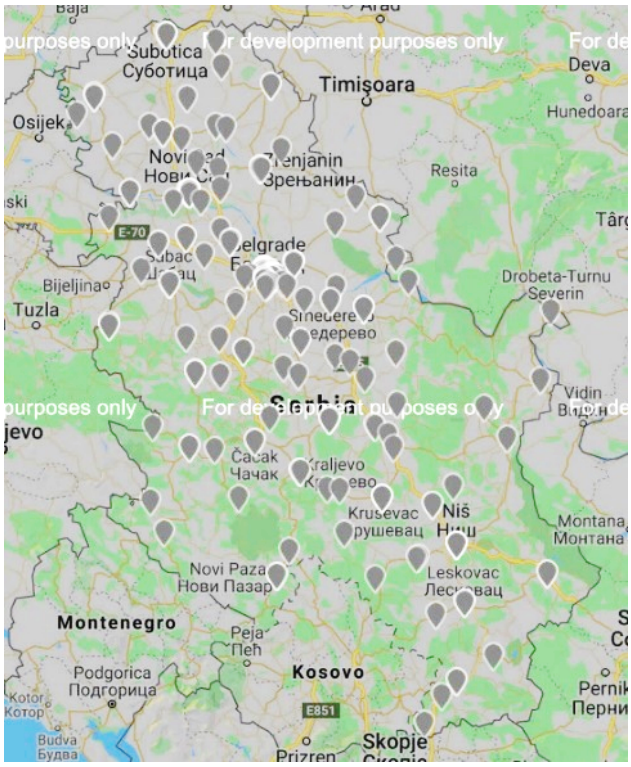
When asked if they believed the notary's associates and assistants to be fully trained to provide services, 38% of users totally agreed, while 54% partially agreed. As the total of 92% of users gave it positive rate, this standard is considered to be fulfilled. [1/1 point]

S4: THE PRICE OF THE SERVICE IS ADEQUATE [0.5 POINT]

As for the costs incurred when using services of notaries, 77% of participants agreed with the statement that the amount of costs corresponded to the service provided by a notary, considering the complexity of their work, time and effort required to complete an activity. When asked if the amount of fees paid for a service provided by a notary was a financial burden for their households, users rated it in the exact same way, considering the type of notarization. Therefore, this standard is considered to be fulfilled. [0.5/0.5 point]

S5: NOTARIES' OFFICES ARE EQUALLY DISTRIBUTED THROUGHOUT THE COUNTRY AND ALL CITIZENS HAVE EQUAL ACCESS TO THEM [1 POINT]

The Law on Notaries prescribes the rules on territorial distribution of notaries' offices, according to which the Minister determines the number of notaries' offices, upon obtaining the opinion of the Chamber. As per the rule, at least one notaries' office is assigned per each unit of local self-government, and in the areas with higher population density and more developed economic operations, the number of notaries' offices is determined by assigning one office per every 25,000 citizens.[470] According to the said legal requirements of territorial distribution and upon analyzing data regarding the number and locations of the notaries who were appointed and active at the time of compiling this report[471], the presence of notaries was established in 88 out of 145 towns and municipalities. Moreover, in units of local self-government which required appointments of more than one notary, in accordance with the above mentioned requirement related to the number of citizens, this criterion was not fulfilled in 23 cases. Therefore, the presence of notaries in all units of local self-government stands at 65%, while the adequate number of notaries in places where the number of citizens requires it stands at 74%, hence this standard is considered to be partially fulfilled. [0.5/1 point]



Map of the territorial distribution of notaries' offices

(Source: the website of the Chamber of Notaries of the Republic of Serbia)

[470] Law on Notaries, Article 15

[471] The list of notaries' offices available on the website of the Chamber of Notaries of the Republic of Serbia, at http://beleznik.org/index.php/sr/pronadi-svog-javnog-beleznika/spisak-javnih-beleznika-i-kontakti

S6: PHYSICAL ACCESSIBILITY OF NOTARIES' SERVICE IS UNOBSTRUCTED
[0.5 POINT]

Based on the research data, 93% of service users stated that the notary's office was situated at a location that was easily accessible. 77% of users stated that the notary's office was clearly marked in the public space (directions to the office are easy to identify and understand). The average value of the positive rates is 85%, which leads us to conclusion that the standard regarding physical accessibility of the notaries' office to system users is fulfilled. [0.5/0.5 point]

EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**11** *(The sum of the maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**8.5** *(The sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-2.5	3-4.5	5-6.5	7-8.5	9-11
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**4**				

Introduction of the notarial system has significantly improved the legal security related to notarizing contracts and other documents, in cases when it is required by the law. The legal framework that governs notarial activities is rated as adequate. Legislation needs to be improved in the segment that refers to the notarization fee amounts and working hours of notaries. No significant issues were observed in the work of notaries and their practice was positively rated, particularly regarding conscientious manner in which they take actions, proper training and physical accessibility.

RECOMMENDATIONS

1. It is required to further improve the legal framework regarding the implementation of the principle according to which the remuneration corresponds to the provided service, as well as regarding working hours that would better suit the citizens' needs.
2. It is necessary for notaries to provide to clients a more solid assurance of their unbiased and non-selective approach, as well as to provide services of notarization of personal documents upon the client's request, when permitted by the law.
3. It is required to improve territorial distribution of notaries' offices, in order to provide equal access to notarization services for all citizens in all parts of the country.

CONCLUSION

The Report on the monitoring of the situation in judiciary for 2020 is the first report prepared within the independent mechanism for monitoring progress of the judicial reforms in Serbia, by the coalition of civil society organizations, which provides an objective assessment of the situation and recommendations for improvement, based on facts and independent assessments, and according to especially developed methodology. The principle that is entwined in the entire report, and the monitoring mechanism as a whole, reflect the interests of the citizens, as individuals, in their access to justice. Collected and analysed data, experts' assessments and findings have been based on the defined standards, and are structured and presented in seven key areas: legal aid, access to data and transparency of courts and prosecutor's offices, access to courts, judicial efficiency, ethics in the judiciary, access to justice in criminal proceedings and access to judicial services.

The general assessment of the situation in the field of legal aid is not satisfactory. The issues have been identified in respect of the regulation of the free legal aid system, particularly regarding the conditions for exercising of this right, criteria for determining both the providers and recipients of that aid, as well as the issue of parallel flow of deadlines for deciding on the requests for free legal aid and procedural deadlines in the court proceedings. It has been confirmed that the legislation adequately regulates the legal position of the legal profession, but there is a need for improvement in terms of the procedure of their disciplinary liability, the problem of exclusivity of representation in litigation proceedings, and mandatory representation of minors. The deficiencies have also been established in terms of the territorial accessibility of legal aid, both free legal aid and the uneven territorial distribution of the attorneys. Citizens' perception of the quality of the provided legal aid is mostly positive. However, the citizens recognize high costs of attorney's fees and lack of knowledge about the conditions to receive free legal aid as the main obstacles in obtaining legal aid.

In the area of access to data and transparency of the work of courts and prosecutor's offices, the legal framework has been assessed as adequate, with recommendations for minor corrections and clarifications. On the other hand, the practice of informing the public about the work of courts and prosecutor's offices has received a lower grade, due to the observed need for greater availability of information in the languages of national minorities and the needs of visually impaired persons, availability of summaries of judgements, comprehensive leaflets, and especially better informing of the public about the work of prosecutor's offices. With regard to access to information of public importance, it has been confirmed that there is a lack of persons in charge of responding to these requests in some prosecutor's offices, as well as the need for easier access to this information.

The legal definition of access to court, especially the conditions for physical and linguistic accessibility, has been assessed to be largely adequate. Financial accessibility, both normatively and practically, has been evaluated somewhat less favorably, particularly in terms of predictability of possible costs of court proceedings and legal representation costs, adequacy of these costs considering the average income of citizens,

and insufficient knowledge of the rules and possibilities for exemption from these costs.

The area of judicial efficiency combines sub-indicators related to the efficiency of court proceedings and legal predictability. In the procedural legislation, there are some needs to improve the mechanisms that ensure the trial within a reasonable time, guarantee for the parties and the participants in the proceedings that they can exercise their procedural rights, as well as in the part of ensuring the procedural discipline of the parties. In terms of normative conditions for the quality of decision making of the courts, shortcomings have been noted regarding the rules for the allocation of human and financial resources in the judiciary and their justification by relevant planning documents. From a procedural point of view, the practice of courts and judges has generally received a positive evaluation, observed through the prism of data on complaints received from the citizens about their work, revoked first instance judgements on appeals and extraordinary legal remedies for breach of procedural rules, and the petitions submitted to the European Court of Human Rights where the judgments have been made. Citizens' perception of the efficiency of the courts is less positive, but provides a satisfactory assessment: based on a survey of system beneficiaries, 33.8% of the citizens fully agree, and 33.2% partially agree with the statement that during the proceedings the judge carried out all the actions efficiently, in accordance with the timeline and legislative framework.

According to the given standards on duration of the court proceedings, based on data on the number of so-called old pending cases, number of adopted requests for protection of the right to a trial within a reasonable time and the number of adopted constitutional complaints due to violation of the same right, as well as the number of petitions submitted to the European Court of Human Rights where the judgments have been made on that basis, the general assessment of the duration of the court proceedings is unsatisfactory.

In terms of legal predictability in the work and decision-making of judicial bodies, the need for certain normative improvements has been confirmed, especially in connection with the implementation and monitoring of court action plans in the field of harmonization of court practice. On a practical level, some issues have been observed in terms of establishing and application of the legal standpoints and understandings of the competent courts, including the matter of uniform actions of the prosecutor's offices in similar situations.

The findings in the field of ethics in judiciary indicate the existence of adequate normative guarantees of the integrity of judges, which relate to the independence of judges in their actions and rendering of decisions, the mechanism guaranteeing the right to an impartial judge and the principle of random distribution of cases. The assessment of the current situation in terms of political and other illicit influences on the work of judges is different, observed through the reactions of professional associations indicate illicit influences on the work of judges, and the need to further strengthen the mechanisms in order to protect the integrity of judges. The perception of the citizens who have used the judicial system is that there are illegal influences on the judiciary, as well as that the integrity of judges is not at a high level. On the other hand, there has been a positive assessment of professionalism in the conduct of judges in practice, and the perception of citizens in this regard is more favorable. The need for intensifying the work and greater transparency in the work of the Ethics Committee of the High Court Council has been noticed, in order for its decisions and practice to ensure more successful application of the Code of Ethics.

In the area of access to justice in criminal proceedings, it has been stated that half of the defined standards of the legal framework governing the protection of the rights of defendants and the rights of victims in criminal proceedings have been fulfilled. At the same time, the provisions on the manner of assigning *ex-officio* defense counsel have been positively assessed, while there are no guarantees of the injured party's participation in deciding on the opportunity and the agreement on the admission of guilt in the criminal proceeding. The practice of protection of the rights of the defendant is significantly in line with the set standards, and certain shortcomings have been noticed during the first hearing of the defendant and the ability to prepare his/her defense. On the contrary, the protection of the rights of the injured party in practice is described by problems in filing of a criminal complaint, informing about the actions taken by the prosecutor's office, and the

presented evidence, as well as informing about the release of the defendant from custody.

In respect of the integrity and quality of work of public prosecutors, the legal framework has not been assessed completely positively, since the series of normative shortcomings have been observed, especially regarding guarantees of independence in the actions of public prosecutors and their deputies, and the obligation to comply with the Code of Ethics. It has been assessed that the standard of functionality of the mechanism for protection of public prosecutors from illicit political and other influences has been partially fulfilled, and it was stated that the professional public was familiar with the work and reactions of the Commissioner for the Independence of Prosecutors. This Report, however, does not include the initially envisaged standards that refer to the examination of non-selectivity in criminal prosecution, nor does it cover the actions of the prosecution in the so-called high-profile cases that were previously presented in independent research media, due to shortcomings observed during this research in terms of ways and conditions for access to data, but these issues remain within the scope of research for the next monitoring cycle.

In respect of the matter of the quality of penal policy, it has been stated that the criminal legislation in the area of regulation of criminal sanctions has been largely harmonized with the defined comparative and international standards. However, the penal policy of the courts has been evaluated by extremely low grades, observed from the point of view of the experiences of the attorneys who act as defense attorneys or who predominantly work on criminal cases.

The quality of work of public enforcement officers and notaries has been examined in the area of access to judicial services. The legal framework for the work of public enforcement officers has been assessed mostly positively, with the need for further improvements in terms of the effectiveness of third party objections, the possibility of proving the allegations of debtors and third parties in enforcement proceedings, guarantee of objective and equal legal treatment of the parties, the possibility for the party submitting the complaint about the work of the public enforcement officer to inspect the data from the supervision and to be informed of its outcome. In practice, there is a lack of completely non-discriminatory and non-selective treatment of public enforcement officers, and the costs of the proceedings are assessed as unpredictable for the parties in the proceedings.

The legal framework governing the profession of notaries has been assessed as adequate, with the need for improvement of the legislation regarding the harmonization of notarization costs with the income of the citizens, and the working hours of notaries. There are no significant problems in the work of notaries and their practice has been favorably assessed, especially in terms of conscientious treatment and professional training, while there is a need to improve territorial accessibility.

These basic findings of the research have shed new light on the situation in the Serbian judiciary, which are not solely related to formalistic and statistical reports on the work of judicial bodies, but provides an objectified view of the issues and possible directions for solving them in order to enable better access to justice. Development of the special research methodology, conducting data collection and processing activities, formulating expert opinions and findings within a complex report structure, have presented a great challenge for a broad and diverse coalition of civil society organizations, which have implemented this monitoring mechanism. As the first cycle of implementation of the monitoring mechanism also presents the pilot of the methodology of the mechanism, there is a need for its further "fine-tuning", based on the obtained data and gained experiences. In addition, it should be borne in mind that during the implementation of analytical activities, participants in the research had the opportunity to expand and improve their knowledge about the conditions and work of judicial bodies, and the possibilities for exercising and protecting of the citizens. Direct communication and cooperation with the representatives of judicial bodies in data collection and conducting of the research activities has been a valuable experience for the researches from civil society organizations, which will improve the level of understanding of the processes taking place in the judicial system and enable better participation of these organizations in public policy making in the field of the rule of law.

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