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MONITORING REPORT

ON THE STATE OF JUDICIARY IN SERBIA 2021

OPEN DOORS OF JUDICIARY

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2021 MONITORING CYCLE REPORT

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INTRODUCTION

Report on monitoring of the situation in judiciary for 2021 arrives at the moment when the focus of the public is directed at the systemic changes in judiciary, recently implemented referendum on constitutional amendments with the goal of strengthening the judicial institutions, higher guarantees of independence, all in order to improve the rule of law. The cause of these changes, which envisions the reform of the composition and jurisdiction of the High Judicial Council and the High Prosecutorial Council (until now, State Council of Prosecutors), and particularly significant change in respect of the method for election of judges and public prosecutors, are linked to the progress of the Republic of Serbia on the path of access to the European Union and the need, even the necessity, to implement these changes in order to achieve set criteria in this process and meet the required European standards. Thus, the paradigm of European integrations is still the key driving factor and the main political and strategic reason for implementation of systemic changes in the judiciary. At the same time, simultaneously with this latest wave of systemic reform endeavours, the regular work of judicial institutions is unfolding, as well as the proceedings where the parties try to exercise or protect their subjective rights.

The main goal of this report is to shed light on the existing situation in respect of the norms and the practice of judicial bodies, especially from the point of view of the individuals, citizens, who require and expect judicial protection of their rights. How exercising of judicial protection really works, what obstacles do the citizens encounter in their access to court, how predictable is the court practice, are there suitable mechanisms of legal aid, how the court proceedings unfold from the perspective of the parties in the proceedings, are some of the possible questions this report seeks and finds the answers to.

The Report has been prepared on the platform of civil society organisations cooperation and the project *Open Doors of Judiciary*, gathered around the common value of the rule of law improvement through strengthening of the mechanism of judicial legal protection of the citizens. The preconditions for achieving these values are independent judiciary, professionalism and impartiality of judges, unselective and independent actions of public prosecutors, and the series of material, technical and organisational conditions for successful and efficient functioning of the judiciary. Based on the special, original research methodology, all systemic preconditions are observed and evaluated in the context of the real environment and achieving protection of the citizens' rights in the court proceedings.

This Report is a result of the second cycle of monitoring of the situation in judiciary, one year as of the first cycle and publishing the baseline Report on the situation in judiciary for 2020, that is, it covers the reporting period concluding with the end of 2021. It contains independent and objective evaluation of the situation, based on the identical indicators and standards as the previous report, thus providing information on possible changes noted in the period between two reports. The next report shall include a two-year cycle and process the data and changes during 2022 and 2023. This is the period when more significant changes of the observed indicators and standards should be expected, particularly in regards to implementation of recently adopted constitutional amendments, upcoming harmonisation of judicial legislation with these constitutional changes, and implementation of new legal solutions in the context of realising judicial and prosecutorial function in practice..

SUBJECT, PURPOSE AND METHODOLOGY OF THE REPORT

The subject of this Report is the analysis of the situation in Serbian judiciary based on the available data for 2021, that is, one year after publication of the baseline Report. The Report contains the evaluations and findings of the current legal framework, existing organisational and institutional solutions and real opportunities where protection of citizens in the proceedings before the courts is exercised, as well as exercising of other rights and interests of the citizens within the judicial system, including judicial services. The purpose of this Report is to serve as an independent mechanism for monitoring judicial reforms progress from the point of view of the citizens and real conditions for their access to justice, which provides objective evaluation of the situation and recommendations for improvement, based on the facts and independent professional evaluations, and based on the specially developed methodology. The Report constitutes an extension of the process of continuous monitoring of the situation in judiciary, relying on the previous Report on the situation in judiciary for 2020. It provides both statistical review and the possibility of monitoring and dynamics for exercising special functions of this system.

Methodology of the Report is identical as in the previous cycle of monitoring and reporting. 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*. 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, partially or fully, 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 organisations on the project, based on their expertise and analytical and practical experience in the field of judicial reform in Serbia, and based on the available studies and research and international standards in the field of justice. The methodology places structured and thematic standards within sub-indicators, as the basis for measuring the progress of the judicial reform, which have predefined methods for measuring and calculation of the values. The method for measuring and evaluation of the standards is set out in a special methodological document for evaluating 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 points, for additional and less crucial requirements, as well as for public perceptions. If the standard is assessed as fulfilled, 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, a value of 0.5 points 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 points, 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 fulfilment 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.

Within the second cycle of the monitoring, the research was done in the period from June to December 2021, including in the field research, collection of data based on the request for access to the information of public importance, public surveys, focus groups and other research activities. The findings of the research include the latest available data on the work of judicial bodies during implementation of the research, predominantly referring to 2021, depending on availability of data for certain reporting segments. Stated methodology of this Report is unique, originally created for the needs of continuous monitoring of the situation in judiciary by the coalition of the civil society organisations. Having this in mind, with implementation of the research activities and preparation of the report in the first, and now second cycle of monitoring, we are also piloting this specific methodology, which will be the subject to further im-

provements and development during future activities of monitoring in the upcoming cycles. The following cycle should be implemented in two years, based on the situation and data for 2022 and 2023, in order to maintain continuity of objectivized monitoring of the progress in different segments of the judicial reform.

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[1]. General goal of the project is strengthening 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:

i. establishing 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;
ii. discovering citizens' priorities in respect of the judicial reform through strengthening of the supervision of the civil society;
iii. improvement of the judicial integrity through the mechanisms that have an impact on establishing the responsible judiciary.

The network of the civil society organisations that take part in implementation of the project *Open Doors of Judiciary*, which has prepared and presents 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 Committees 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.

Implementation of the project *Open Doors of Judiciary* is led by the Lawyers' Committee for Human Rights (YUCOM), and the European Policy Centre (CEP) is the leading organisation for the component of monitoring and proposing methodology development, coordination of collection of analytical contribution and compiling of the Report.

LIMITATIONS AND CONDITIONINGS

Thematic framework of the research is methodologically adapted to a "civic-centric" approach and does not cover all the aspects of the judicial system functioning, 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 organisations participating in this complex and extensive endeavour, 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 (*expert opinion*), judges, prosecutors and attorneys, and the independent experts from partner civil society organisations 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.

During the second monitoring cycle, the same as in the first cycle, the pandemic of Covid-19 virus impacted exercising of the monitored functions in judiciary, and both the work dynamics and the capacities of partner organisations, so there is a possibility of deviations compared to the data and evaluation that could be given under regular circumstances.

This Report is a synthesis of the research conducted by partner organisations from the mentioned network of civil society organisations that implement

1 *Constituencies for Judicial Reform in Serbia*

the mechanism. The contributions that were purposefully collected by the partner organisations in the network were taken as sources of verification for the data, findings and assessments in this Report, including individual research and analyses done by these and other organisations that were available at the time of the monitoring. Local civil society organisations also took part in some research activities, based on a special small grant scheme. Each organisation individually and on its own behalf bears the responsibility for evaluations, correctness of data, findings and sources used for the contributions to the Report in the areas where the activities were undertaken, as well as personal standpoints, conclusions and opinions arising from those materials.

THANK YOU NOTES

The Report on the monitoring is a result of the work of a great number of researchers and other associates, within the network of the civil society organisations gathered on the project *Open Doors for Judiciary*, who collected and processed the data and prepared individual contributions for the Report. This includes the findings and evaluations summarised 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 Vasic, attorney, Natalija Solic, attorney, Katarina Golubovic, PhD, attorney, Katarina Toskic, legal advisor, Milan Filipovic, legal advisor, Velimir Petrovic, project coordinator, Momcilo Zivadinovic, project manager (Lawyers' Committee for Human Rights); Dusan Protic, program manager, Katarina Grga, researcher (European Policy Centre); Marina Matic Boskovic, PhD, president of the program council, Jelena Kostic, PhD, associate (Association of Public Prosecutors and Deputy Public Prosecutors in Serbia); Marko Dejanovic, head of the office, Darko Mlinar, legal associate, Nadja Micic, associate (Judges' Association of Serbia); Nemanja Nenadic, program director, Robert Sepi, legal advisor (Transparency Serbia); Marija Pavlovic, junior researcher, (Belgrade Centre for Human Rights); Damjan Mileusnic, junior researcher and lawyer, Ana Toskic Cvetinovic, executive researcher, Nastasija Stojanovic, project and administrative coordinator, Kristina Kalajdzic, researcher (Partners for Democratic Change Serbia); Goran Sandic, associate, Dusan Pokusevski, program coordinator (Belgrade Centre for Human Rights); Sofija Mandic, legal advisor (Judicial Research Center); Snezana Marjanovic, judge at the High Court in Belgrade, Nebojsa Djuricic, judge at the High Court in Belgrade, Aleksandra Lozic, lawyer, Milica Jovanovic, lawyer (Forum of Judges of Serbia).

We would like to thank Milena Lazarevic, program director of European Policy Centre (CEP) and Jelena Miletic, associate at CEP for coordination of the preparation and implementation of the research methodology. Jovana Knezevic, project manager at CEP provided special contribution during organisation and implementation of the planned 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 inquiries 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 International Development (USAID) and their representatives in Serbia during implementation of the project. This type of cooperation between the civil society organisations or this Report could have not been not be possible without their help.

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 contains 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 organisations 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 the 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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SUB-INDICATOR 1.1: ADEQUACY OF LEGAL NORMS REGULATING LEGAL AID

SUB-INDICATOR STANDARDS	POINTS	2020
1. The law clearly regulates what free legal aid includes	1/1	1/1
2. The law clearly defines the providers of free legal aid	0/0.5	0/0.5
3. The law clearly defines beneficiaries of free legal aid and conditions for its approval	0.5/1	0.5/1
4. The law sets justified limitations in provision of free legal aid	0/0.5	0/0.5
5. The law enables clear and fair decision making on the request for provision of free legal aid	0/0.5	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	0/0.5
7. Legal framework that regulates position of legal profession defines the standards for provision of legal aid	0.5/0.5	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	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	0.5/0.5 ▲	0/0.5
10. The law that regulates the criminal procedure envisions mandatory defence and defence of the poor, and the conditions for their appointment meet the interest of fairness in the procedure	0.5/0.5	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	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	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	0/0.5
TOTAL NUMBER OF POINTS	3.5/8 ▲	3/8

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

Despite the recommendations from the previous Report on monitoring of the situation in judiciary, there have been no changes to the Law on Free Legal Aid in the previous period, including changes to the procedural laws. Based on the recommendations given by YUCOM in the process of revision of the Action Plan for Chapter 23, as well as in publication *Law on Free Legal Aid – First six months of implementation*"[2], the Action Plas been amended[3] and the additional activity 3.5.1.1. has been added, which refers to the analysis of the needs to harmonise procedural laws and the Law on Free Legal Aid and subsequent changes. In the first half of 2021, the process of changes and amendments to the Civil Procedure Law was suspended under the public pressure, due to the proposed provisions that would condition access to court by payment high court fees, and due to the lack of transparency in the work of the working group of the Ministry of Justice that had presented proposed solutions.

In accordance with the division to primary and secondary legal aid from the legal practice comparable with the Law on Free Legal Aid, the division of free legal assistance and free legal aid has been introduced.[4]

Free legal aid includes provision of legal advice, drafting submissions, representation and defence, while free legal assistance includes provision of general legal information, filling out the forms, preparation of notarial documents and mediation in disputes resolution.[5]

The difference between general legal information (in previous drafts called initial legal advice) and the legal advice is small and can hardly be applied in the practical work with the parties. Another problem has been observed in practice, being the significant difference in the number of requests submitted to different units of local self-government, which can be described by different approaches in records keeping, that is, including verbal addresses of the citizens for free legal advice in the submitted requests, for which the request is not submitted and the decision is rendered (e.g. general legal information and legal advice). The problem of records keeping has been noted in the report of the Ministry of Justice, and organisation of the additional training in this respect has been recommended.

Thus, the Law clearly defines what the free legal aid includes, with the exception of the difference between general legal information and legal advice, which could hardly be applied in the practical work with the parties. Thus, this standard is considered as fulfilled. [1/1 point]

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

According to the Law on Free Legal Aid, free legal assistance 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 laws governing the right to asylum and non-discrimination.[6] The law provides a clear list of free legal aid and assistance providers, but omits certain institutions that provide certain forms of free legal aid in their work, such as local ombudsmen and trade unions.

Having in mind that the law clearly defines providers of free legal aid but omits to include as the providers some of the institutions that provide certain forms of free legal aid in their work with the citizens, such a local ombudsman and trade union, this standard cannot be considered as fulfilled. [0/0.5 points]

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

The authorizations of individual providers of free legal aid and assistance in regards to the forms of legal aid and assistance which could be provided are not sufficiently clearly defined, thus making the Law incomprehensible to laymen, who should be provided access to justice.

2 M. Filipovic, Law on Free Legal Aid – First six months of implementation, Belgrade, 2020, https://www.yucom.org.rs/wp-content/uploads/2020/07/Primena-zakona-BPP-2.pdf
3 Action Plan, Chapter 23, Judiciary and Fundamental Rights, July 2020, https://www.mpravde.gov.rs/files/Revidirani AP23 2207.pdf
4 Law on Free Legal Aid ("Official Gazette of the RS", no. 87/2018), Article 3
5 Law on Free Legal Aid, Article 4 and Article 11
6 Law on Free Legal Aid, Article 9

This particularly refers to the issue of who provides legal aid on behalf of the association since one paragraph[7] stipulates that those are attorneys, while the following one[8] states that the lawyers from the associations could provide free legal aid within the authorizations given to the persons with BA in law pursuant to the law stipulating relevant proceeding.

While on one hand, the 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. At the same time, an association may provide free legal assistance (providing general legal information and filling out the forms) in much broader scope than solely discrimination and asylum.

In order to remove this unjustified difference, it is necessary to amend the Civil Procedure Code in part that refers to the representatives[9] , including the amendments to the Law on Free Legal Aid. Draft Law on Amendments to the Civil Procedure Code of 2021 envisioned a possibility for the registered providers of free legal aid to represent citizens at court. Such a decision would decrease the workload of the free legal aid services that do not employ lawyers with passed Bar exam, and the employed lawyers without this exam would be able to represent the citizens at court. Having in mind that certain municipalities have not allocated funds for hiring attorneys or have allocated very small amounts, this solution would enable a greater number of citizens to be represented at court. The conditions for provision of free legal aid are not sufficiently clearly defined, which may lead to more difficult understanding of the Law on Free Legal Aid by the beneficiaries. Therefore, this standard is partially fulfilled. [0.5/1 point]

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

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. An insufficiency has been observed in the Law on Free Legal Aid and its incoherence with the Law on Prevention of Domestic Violence.[10] Namely, this Law guarantees legal aid for the victims of criminal offences related to domestic violence.[11] The Law contains an open list of criminal offences associated with domestic violence[12], which are not covered by the Law on Free Legal Aid. This means that the victims of these criminal offences, which have domestic violence as a consequence, could exercise the right to free legal aid only in case they also fulfil the criteria in regards to the amount of salary and property. There is a problem in implementation, since the Regulation on Tariff for Provision of Free Legal Aid[13] does not stipulate the compensation when it comes to representation of the injured parties in criminal proceedings.

In accordance with the Law on Free Legal Aid, a right to free legal aid could be exercised by: 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, and the Law envisions a list of persons who could exercise this right in certain situations.[14] 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. Additionally, it could be disputable in practice that for other categories of persons[15] not all the costs of proceedings, which could be significant, are counted, but only the costs of legal aid. In accordance with the Rulebook

7 Law on Free Legal Aid, Article 9(4)
8 Law on Free Legal Aid, Article 9 (5)
9 Civil Procedure Code ("Official Gazette of the RS", no. 87/2018 and 18/2020), Article 85 (2)
10 M. Vasic, M. Filipovic, Right to free legal aid of the victims of gender related violence in Serbia during 2020, YUCOM, Belgrade, 2020, https://www.yucom.org.rs/wp-content/uploads/2021/10/Pravo-na-besplatnu-pravnu-pomoc-zrtve-rodno-zasnovanog-nasilja-2.pdf
11 Law on Prevention of Domestic Violence ("Official Gazette of the RS", no.. 94/2016), Article 12
12 Law on Prevention of Domestic Violence, Article 4
13 Regulation on Tariff for Provision of Free Legal Aid ("Official Gazette of the RS", no.. 74/2019)
14 Law on Free Legal Aid, Article 4
15 Law on Free Legal Aid, Article 4 (1) (2)

on the layout and detailed contents of the form for the approval of free legal aid, the conditions for free legal aid, associated with property and income, are significantly decreased. Thus, the right to free legal aid could be exercised by the applicant if his/her income is not higher than minimum salary[16], if the real estate owned by him/her is used for housing or business activity dedicated to support the applicant or a family member[17], and if the value of the owned vehicle does not exceed the annual amount of the minimum monthly income[18]. However, this matter needs to be regulated on the level of the Law as well, since the bylaws do not provide sufficient grantees for the rights of citizens.

The limitations in regards to provision of free legal aid are not justified. This primarily refers to prohibitions envisioned by Article 7 of the Law on Free Legal Aid, which prohibit provision of free legal aid in certain cases under the threat of a high misdemeanour fine. Although this misdemeanour fine refers only to the cases when the free legal aid is financed from the budget, breach of the ban constitutes the grounds for deletion from the register of providers.[19]

This is particularly problematic for the associations that traditionally provide free legal aid in the specified cases. In addition, in accordance with Article 15 of the Law on Free Legal Aid, this prohibition applies even to free legal assistance. In addition to the reasons for introduction of this incrimination being unclear, consistent application of this provision may lead to deletion from the register for banal reasons. Thus, someone could be punished due to provision of general legal information contrary to prohibition of provision of free legal aid during the establishment of legal entities. There is a particularly problematic provision[20], which envisions that free legal aid is not permitted "*in the proceeding where it is obvious that the applicant for free legal aid does not have a chance of success, particularly if his/her expectations are not based on the facts and evidence that he/she presented or they are contrary to relevant regulations, public order and good customs*." In practice, this is the most common reason for rejection of the request for provision of free legal aid. The ability of a lawyer with three years of experience who cannot represent the parties before the court nor has experience in it, to perform the analysis of the success rate is dubious. Additionally, the Article leaves a very broad field of the estimate since the person in the unit of local self-government is actually not limited by the other part of the sentence, which begins with the separate adverb "particularly". The existence of the mechanism for prevention of frivolous disputes is justified, but the method of norming accidentally includes the situation when the associations use their own funds to lead so called strategic disputes which most often do not have the prospect of success in the country, but only before the European Court of Human Rights.

Therefore, based on all above stated, the Law clearly defines the conditions for approval of free legal aid, but by associating these conditions with the right to social assistance, this service remains out of reach of the part of the citizens that really need it. Therefore, this standard cannot be considered as fulfilled. [0/0.5 points]

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

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 Rulebook on the layout and detailed contents of the form for the approval of free legal aid[21] 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, and electronically, which in practice can facilitate the sub-

16 Rulebook on the layout and detailed contents of the form for the approval of free legal aid ("Official Gazette of the RS", no.. 68/2019), Article 6 (2) (1)
17 Rulebook, Article 6 (3) (5)
18 Rulebook, Article 6 (4) (4)
19 Law on Free Legal Aid, Article 19 (1) (4)
20 Law on Free Legal Aid, Article 7 (1) (6)
21 Rulebook on the layout and detailed contents of the form for the approval of free legal aid ("Official Gazette of the RS", no.. 68/2019)

mission 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 points]

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

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.

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. It is necessary to amend the procedural laws that would envision suspension of procedural deadlines during decision making on the free legal aid, that would leave enough time for the citizens in case of rejection of the request.

There is no special remedy for the situation in which it is considered that the applicant has given up because he/she failed to submit additional documentation within the set deadline.[22] If there are legal conditions, the party, in accordance with the Law on General Administrative Procedure[23] may request restitution *in integrum* or may address the Ministry of Justice with a complaint, for the purpose of supervision of the work of a unit of local self-government. The research also noted that certain persons in charge of deciding on the requests do not make the difference between rejection of the request and suspension of the proceeding (when a party fails to deliver requested evidence within the set deadline or withdraws the request). The efficiency of the legal remedy in case of rejection of the request for provision of free legal aid is decreased due to lack of suspension of procedural deadline during deciding upon the request for provision of free legal aid. Based on all above stated, this standard cannot be considered as fulfilled in this reporting period either. [0/0.5 points]

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

By establishing the duties of the attorneys, the Law on Legal Profession[24] sets the standards in provision of legal assistance. Article 15 of the Law stipulates that an attorney is under obligation to provide legal assistance professionally and conscientiously, in accordance with the law, Statute of the Bar Association and the Attorneys' Code of Professional Ethics. The same Article stipulates that 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 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. The Statute of the Bar Association of Serbia regulates essentially the same matters as those in the Law on Legal Profession, with a more elaborated description in certain segments. The Attorneys' Code of Professional Ethics, as the set of rules on professional – ethical duties of the attorneys, provides detailed explanation of the obligations of the attorneys during provision of legal aid.

Along with the above referred standards, the Attorneys' Code of Professional Ethics provides detailed definition of confidentiality between an attorney and a client, incompatibility of functions with the legal profession, responsibility of the attorneys, attorneys' obligation to keep a secret and how it is done and the conditions for disclosure of the attorney's secret.

Chapter IV which regulates illegal gain of clients, also stipulates prohibition of advertising, prohibition of disloyal competition, prohibition of dishonesty or other illicit acquisition of clients.

Chapter B of the Code B in Chapter I – Representation, provides a detailed definition of the representation of the clients by the attorneys. It specifically regulates: process of acceptance of the representation, refusal

22 Law on Free Legal Aid, Article 32 (5)
23 Law on General Administrative Procedure ("Official Gazette of the RS", no.. 18/2016 and 95/2018 - authentic interpretation)
24 Law on Legal Profession ("Official Gazette of the RS", no.. 31/2011 and 24/2012 - Decision of CC)

to represent, what is considered justified, and what unjustified reasons for refusal to represent, what an attorney needs, and when he/she must refuse to represent, procedure for issuing power of attorney by a client, and special attention has been dedicated to the treatment of the client by an attorney.[25] Specific Articles regulate how the attorneys should handle the valuables of the clients and cancellation of the power of attorney.

Although 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, both legal acts refer to the observance of the Attorneys' Code of Professional Ethics, which thoroughly regulates the standards for provision of legal aid by an attorney, so this standard can be considered as completely fulfilled. [0.5/0.5 points]

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

Previous report on monitoring of the situation in judiciary established the omission in rendering of the decisions of disciplinary prosecutors in bar associations on rejection or refusal of the proposal of the parties for initiation of the disciplinary proceedings against the attorneys, that is, that these decisions were not explained. That is precisely why the recommendation was given to amend the Law on Legal Profession and introduce the obligation to adopt explained decisions.[26] However, the Law on Legal Profession has not been subject to any changes in the previous period.

This regulation provides detailed rules for work of the attorneys - from fulfilling the conditions for practising of the law, to the rights and obligations of the attorneys, the Bar Association of Serbia and its chambers. The Law defines the legal profession as an independent and individual service of providing legal aid to individuals and legal entities.[27]

Examination of the actions of the attorneys is regulated by the provision on disciplinary responsibility referred to in the Law on Legal Profession and the Statute of the Bar Association of Serbia. Articles 240 and 241 of the Statute list major and minor breaches of the duty and respect of the lawyers. There are as many as 44 major breaches. The Law on Legal Profession generally regulates disciplinary responsibility, disciplinary procedure and disciplinary bodies of the Bar Association. The Statute of the Bar Association of Serbia provides a more detailed explanation of disciplinary responsibility – from submission of the report until imposing disciplinary sanction and the right of the attorney and the party to a legal remedy.

The issue that arises in respect of implementation of disciplinary responsibility is the fact that the disciplinary procedure is initiated by the disciplinary prosecutor of the Bar Association, where the 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*. 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 request, 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 POINTS]

In the year behind us, there were no changes to the legal framework in the segment that refers to appointment of free legal representatives. The process of amending the Civil Procedure Code, which was suspended under public pressure, referred to introduction of the deadline for the decision upon request for exemption from the costs of the proceeding and deletion of the provision on free legal representative, which is rarely applied in practice.

25 Attorneys' Code of Professional Ethics ("Official Gazette of the RS", no. 27/2012 and 159/2020 - Decision of CC)
26 Report on monitoring of the situation in judiciary for 2020, Belgrade, 2021, pg. 30, http://otvorenavratapravosudja.rs/media/ovppolazni-zvestaj-o-pracenju-stanja-u-pravosudju-za-2020-godinu.pdf
27 Law on Legal Profession, Article 2

The Civil Procedure Code regulates the right of the party to a free legal representative, as well as the conditions and procedure for his/her appointment in Articles 170-173.

The Civil Procedure Code stipulates that the court shall recognize a party the right to free legal aid during the entire course of the proceeding, when the party is fully exempt from payment of the proceeding costs, if that is necessary for the protection of the party's rights, that is, if that is stipulated by a special law.[28] The condition for the appointment of a free legal representative is for the party to be exempt from payment of the court fees.[29] Exemption from payment of the proceeding costs includes exemption from payment of the fee and exemption from payment of the advance payments for the costs of witnesses, court experts, investigation and court announcements, but the court may exempt the party only from payment of the court fee, in accordance with a special law.[30] 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.[31]

There is a problem with implementation of this regulation, given that it is not harmonised with later adopted Law on Free Legal Aid[32]. In addition to economically vulnerable citizens, the Law on Free Legal Aid 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 they paid free legal aid. Unlike these rules, the Civil Procedure Code envisages a suspension of procedural deadlines until the court decides on the award of a free legal representative.

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 the rights of vulnerable groups, such as persons with disabilities or victims of domestic violence, so they remain unrecognised 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. Thus, this standard cannot be considered fulfilled [0/0.5 points]

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

The Criminal Procedure Code provides for cases in which the defence of the defendant is mandatory, defence *ex officio*, as well as the defence of the poor.[33] These three types of defence can exist independently of each other, when the defendant personally hires a defence counsel, and they can be intertwined (in case a defendant does not have the means to hire a defence attorney, he/she shall be assigned on *ex officio*, if the defence is mandatory, and the defendant submits a request for a defence attorney on the basis of "the right of the poor"). The Code clearly defines the situations in which the defendant must have a defence 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 personally appoint a defence counsel in cases where the defence is mandatory, he/she will be appointed one *ex officio.*

As for the defence of the poor, it is stipulated that a defendant who, according to the financial situation, cannot pay the defence attorney's fees and expenses, will be assigned a defence counsel at his/her request, although there are no reasons for mandatory defence in criminal proceedings for an offence pun-

28 Civil Procedure Code, Article 170
29 *See* Civil Procedure Code, Article 168
30 Civil Procedure Code, Article 168
31 *Ibid*
32 Law on Free Legal Aid
33 Criminal Procedure Code ("Official Gazette of the RS", no.. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - Decision of CC and 62/2021 - Decision of CC), Articles 74, 76 and 77

ishable by imprisonment of more than three years or due to the reasons of fairness.[34] In that case, the costs of the defence 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 defence 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 defence attorney would have the status of the *ex officio defence attorney.*[35] 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 court expert and appointed expert advisor, if their payment would jeopardise the livelihood of the defendant or the persons under his/her care.[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 defence and the right to defence of the poor, this standard is considered as fulfilled. [0.5/0.5 points]

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 POINTS]

Despite the recommendation from the previous reporting cycle that it should be "precisely and clearly determined as of which procedural moment the minor as an injured 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 the situations when the perpetrator is unknown"[37], there have been no amendments to this regulation.

The Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors prescribes that a minor must have a defence counsel during the first hearing, but also during the entire proceeding, and if there is none, he/she will be appointed one *ex officio* from the attorneys who have special knowledge in the field of children's rights and juvenile delinquency.[38] This Law stipulates similar rules for the minors in the capacity of an injured party. Such a 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 of 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 points].

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 POINTS]

The Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors prescribes that all persons involved in this proceeding (which are primarily attorneys, judges in the cases regarding minors, 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.[40] Therefore, the standard is considered as fulfilled. [0.5/0.5 points]

34 Criminal Procedure Code, Article 77
35 *Ibid.*
36 Criminal Procedure Code, Article 264
37 Report on monitoring of the situation in judiciary for 2020, Belgrade, 2021, pg. 30, http://otvorenavratapravosudja.rs/media/ovppolazni-zvestaj-o-pracenju-stanja-u-pravosudju-za-2020-godinu.pdf
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
40 *See* Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors, Articles 44, 49, 57, 60

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

Territorial distribution of legal aid providers is important for equal access to justice for all the citizens.

The Law on Legal Profession regulates the existence, status and organisation 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.[41] 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.[42] 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 points]

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. Free legal aid is equally territorially distributed in the units of local self-government	0.5/0.5	0.5/0.5
2. Free legal aid by the attorneys is equally territorially distributed	0.5/0.5	0.5/0.5
3. Licensed representatives of the minors in the criminal procedure are equally territorially distributed	0.5/0.5	0.5/0.5
TOTAL NUMBER OF POINTS	1.5/1.5	1.5/1.5

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

The Law on Free Legal Aid recognizes certain categories of persons as the providers of free legal aid.[43] 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.[44] Out of the total of 167 units of local self-government[45], 142 of them responded to the sent request. Out of that number, 42 units of local self-government responded that they had established a service for free legal aid in accordance with the Law on Free Legal Aid[46], and 70 units of local self-government stated that they had appointed person(s) in charge of direct provision of free legal aid to the citizens. Compared to the previous year, a bigger number of the units of local self-government responded to the requests for free access to the information of public importance.

Compared to the previous year, it has been established that a total of 183 individuals have been engaged in the activities of provision of free legal aid, out of which 141 are lawyers, and the number of lawyers with passed bar exam is 62. Average number of employed individuals, average number of lawyers and lawyers with passed bar exam is not different from the results of the previous year. When we observe these results compared to the total number of analysed municipalities, including those that have not responded to the sent request for free access to

41 Law on Legal Profession, Article 64
42 Law on Legal Profession, Article 64
43 Law on Free Legal Aid, Article 9
44 Internet page of the Ministry of Justice of the Republic of Serbia, List of registered providers of free legal aid, which includes the units of local self-government, city municipalities and associations, available at https://www.mpravde.gov.rs/tekst/26370/spisakregistrovanih-pruzalaca-besplatne-pravne-pomoci-lokalne-samouprave-i-udruzenja.php
45 161 units of local self-government, without the City of Belgrade where free legal aid is provided on a municipal level and city municipalities in Nis and Novi Sad, where free legal aid is provided on a city level
46 ("Official Gazette of the RS", no.. 87/2018)

information (167), we come to the conclusion that 29.58% of the total number of municipalities has an established service for free legal aid, while 49.3% have a designated persons in charge of provision of free legal aid. Compared to the previous reporting cycle, the percentage of the units of local self-government that have organised a service for provision of free legal aid has increased by 10 percent. On the other hand, the percentage of those units which have a person designated for provision of this type of aid has decreased.

Out of the total number of units of local self-government that have responded to the request, 62 persons underwent training for provision of free legal aid. However, in only 8% of the entities, thus in 12 municipalities and cities, provision of free legal aid is the only duty of the relevant persons.

When we speak about other providers of free legal aid, the total of 22 associations have been registered, out of which 11 in Belgrade, 5 from Nis and Niska Banja, 1 in Novi Sad, 3 in Subotica, 2 in Leskovac, 1 in Valjevo, 1 in Novi Becej and 1 in Kraljevo. It should be noted that a certain number of associations, despite being registered in bigger centres in Serbia, provide free legal aid in small towns, such as the case with the associations in Novi Sad and some associations in Belgrade.[47] Compared to the previous year, there is an increase in the number of registered associations for provision of aid, and Novi Becej is now on the list of towns with an organisation for provision of free legal aid, making the outreach of this activity bigger compared to the previous year.

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 points]

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

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 Internet page of the Ministry.[48] 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

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 11,405. In addition, according to the Bar Association of Serbia, 5,312 attorneys are registered in the Belgrade Bar Association, 2,475 attorneys in Vojvodina Bar Association, 1,285 in the Bar Association of Nis, 857 in Cacak, 289 in Pozarevac, 191 in Zajecar, 583 attorneys in the Bar Association of Kragujevac and 413 attorneys in the Bar Association of Sabac. In respect of the attorneys registered to provide free legal aid, the total number is 4,141 attorneys in the Republic of Serbia. In the Bar Association of Belgrade, the number of attorneys providing free legal aid is 936, in the Bar Association of Vojvodina, the number of attorneys providing free legal aid is 1,079, in Nis 590, in Cacak 380, in Pozarevac 289, in Zajecar 111, in Kragujevac 583 and in the Bar Association of Sabac 173 attorneys.

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

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

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 defence counsel of minors.[49] 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 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

47 Internet page of the Ministry of Justice of the Republic of Serbia, List of registered providers of free legal aid, which includes the units of local self-government, city municipalities and associations, available at https://www.mpravde.gov.rs/tekst/26370/spisak-registrovanih-pruzalaca-besplatne-pravne-pomoci-lokalne-samouprave-i-udruzenja.php
48 Register of providers of free legal aid and free legal assistance (mpravde.gov.rs)
49 Law on Minors Perpetrators of Criminal Acts and Legal Protection of Minors, Article 49 (3)

by the Bar Association of Serbia includes 6,104 attorneys with a place of business. The Bar Association of Belgrade (2002) has the highest number of these trained attorneys, as well as the Bar Association of Vojvodina (1464). The least number of attorneys with this type of licence is registered in the Bar Association of Pozarevac, 247 and the Bar Association of Zajecar with only 109 licensed attorneys.

The areas of jurisdiction of the bar associations, i.e. Higher Courts were taken as a criterion for assessing the equal territorial accessibility of licensed representatives of minors in criminal proceedings. 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 organisation of Courts.[50] Based on the analysis of the 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 11,405, 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, Kragujevac, Nis and Sabac, at least 70% of registered attorneys also have a licence for minors. More precisely, in the Bar Association of Pozarevac, this percentage is as high as 85%, 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 licence is 59%, and in Cacak 63%. Finally, although according to available data, the Bar Association of Belgrade has the highest number of attorneys with a licence 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 the licence – 38%.

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 licence, without exception, and it can be considered that this standard, in terms of prevalence, is fulfilled. Compared to the previous reporting period, although there have been smaller changes in the absolute numbers, the ratios and percentages fully depict the situation that was also present in the previous period. [0.5/0.5 points]

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. System beneficiaries believe that the average amount of costs for payment of legal aid (e.g. hiring of attorneys) is accessible	0/1	0/1
2. It is clear to the beneficiaries what free legal aid is and under which conditions it could be requested	0.5/1 ▲	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	0.5/1
TOTAL NUMBER OF POINTS	1/3 ▲	0.5/3

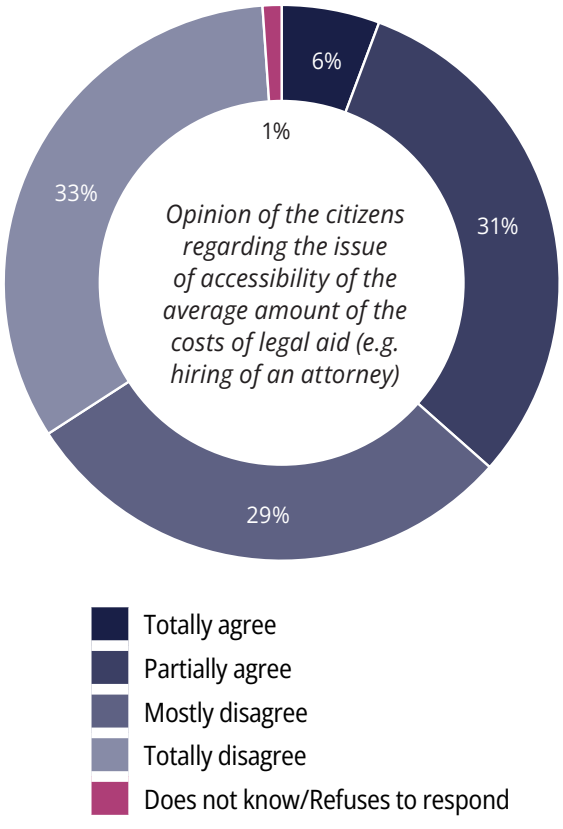
50 Law on organisation of Courts ("Official Gazette of the RS", no. 87/2018 and 88/2018 - Decision of CC), Article 23 (1) (3)

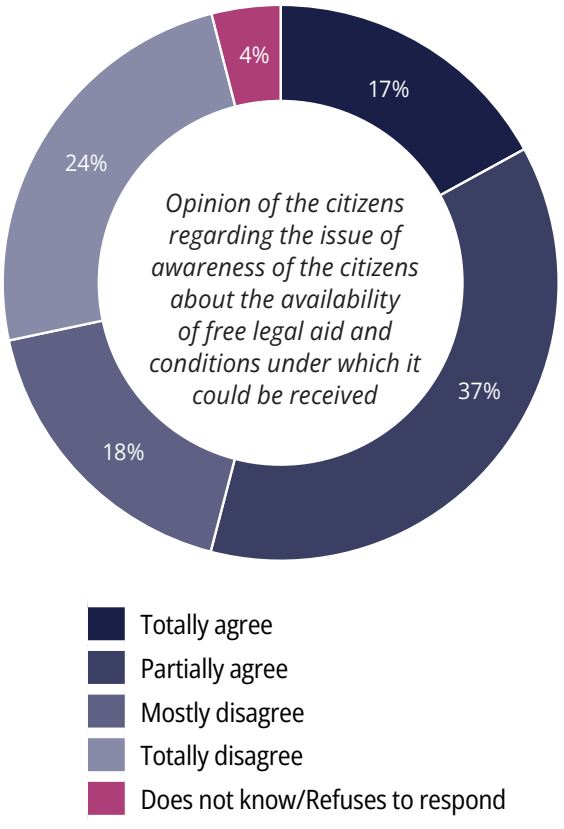
S1: SYSTEM BENEFICIARIES BELIEVE THAT THE AVERAGE AMOUNT OF COSTS FOR PAYMENT OF LEGAL AID (E.G. HIRING OF ATTORNEYS) IS ACCESSIBLE
[1 POINT]

Based on a survey conducted among system beneficiaries, the following findings were established. 36.6% of the respondents believe that the costs of hiring an attorney for legal aid in Serbia are appropriate – where 30.8% of them expressed the standpoint that they partially agreed with the claim, and 5.7% of them fully agreed. However, the percentage of those who do not agree with this statement is much higher and it amounts to as much as 62.3%. 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 (43.8%) have higher education, come from urban areas, and are predominantly from the capital city, with above average incomes. Bearing in mind that as many as 62.3% 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. Compared to the previous reporting cycle, the evaluation of this standard has remained unchanged. [0/1 point]

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. 42% of the respondents answered that it was not clear to them under which conditions they could receive free legal aid. A significant number of persons who responded this way have a primary or lower level of education. In terms of territorial distribution, the respondents who responded this way came from both urban and rural areas, and equally from the territory of the capital, Vojvodina, Sumadija and Southern / Eastern Serbia. On the other hand, 54% of respondents stated that they were aware of the conditions under which they could receive free legal aid – out of which, 17% of the respondents completely agreed with the claim, and 37% partially agreed. These are mostly the respondents with high, higher or the highest level of education. However, 4% of respondents did not know, or refused to comment on this topic. Given that 54% of the respondents had a positive opinion on this statement, this standard could be considered partially fulfilled, which is the difference compared to the previous reporting cycle when this standard was considered not fulfilled. [0.5/1 point]

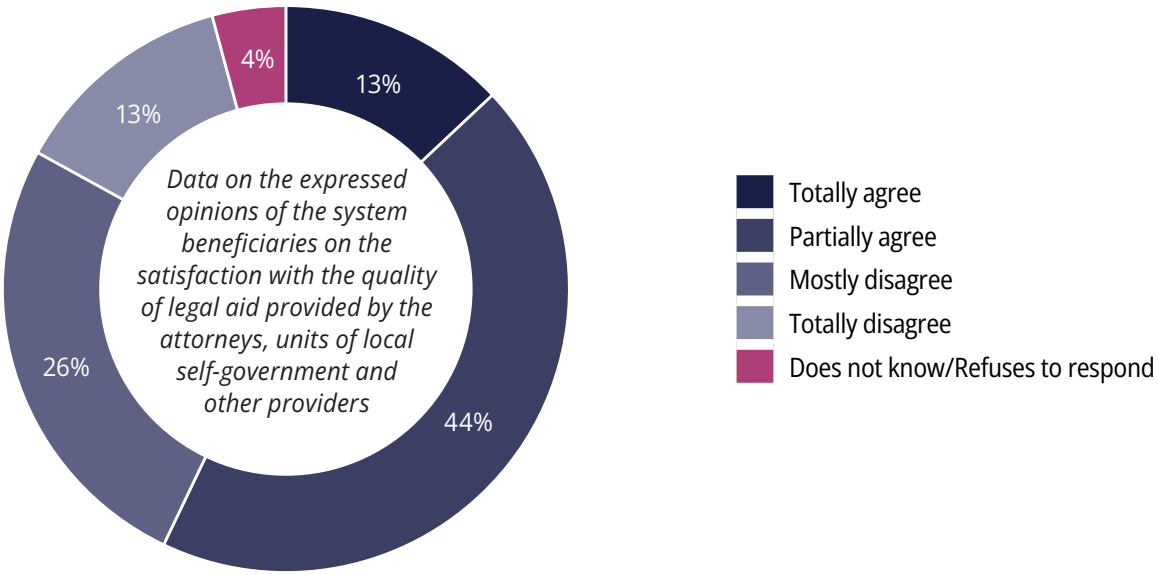




S3: THE BENEFICIARIES ARE PLEASED WITH THE QUALITY OF LEGAL AID PROVIDED BY THE ATTORNEYS/UNITS OF LOCAL SELF-GOVERNMENT AND OTHER PROVIDERS [1 POINT]

When determining the results on this topic, the respondents were asked to comment on the quality of legal aid provided by the attorneys, units of local self-government and other providers. Based on the performed survey among the beneficiaries of the system, it was established that out of the total number of respondents, majority of them, as high as 57.1% were satisfied with the quality of legal aid provided by the attorneys, units of local self-government and other providers, while 38.7% disagreed. It should be noted that most of the respondents who disagreed were persons with monthly income below 18000 RSD, and that in terms of distribution of the respondents in rural and urban places in relation to their expressed opinions, this distribution is even.

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 aid, and that this standard can be considered partially fulfilled. Compared to the previous reporting period, there have been no changes in the values of the standard. In addition, it should be noted that this time, the analysis of the total satisfaction of the beneficiaries of free legal aid was done, while in the previous period this had been done in each of the categories individually, and the average value was calculated. However, as previously stated, this standard is once again considered partially fulfilled. [0.5/1]



SUB-INDICATOR 1.4:
DELOTVORNOST SISTEMA PRAVNE POMOĆI

SUB-INDICATOR STANDARDS	POINTS	2020
1. Share of the Approved requests for provision of free legal aid compared to the total number of requests.	1/1	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	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	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	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	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	0/0.5
TOTAL NUMBER OF POINTS	3/4.5	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 the data in 167 units of local self-government, it was determined that the total number of submitted requests for free legal aid was 3929. Out of that number, 3069 requests were submitted in the civil proceedings. This number should be considered with caution, since there was a significant difference in the number of requests submitted to units of local self-government. Thus, Novi Sad received only 36 in the period in which Cuprija, with eight times less citizens, received 295 requests. This difference could be attributed to the method the records are kept, that is, by counting in all the addresses of the citizens for the forms of free legal aid where the request is not submitted, nor is the fulfilment of conditions checked nor is the decision rendered (e.g. general legal information and legal advice).

In the criminal proceedings, the number of submitted requests is 160. Compared to the total number of submitted requests, 2831 were adopted in civil and criminal proceedings, i.e. in 72% of the cases, the decision on the adoption of the request was made. Having in mind the number of submitted requests in the civil proceedings, for 87% of them (i.e. 2676) the decision on adoption was made, while in the criminal proceedings, that share is 96.87%.

The decision on rejection was made in the total of 2.9% cases, i.e. in respect of 114 submitted requests. When we talk about the percentage of rejected requests in the civil proceedings, a decision was made in 86 cases, which represents a percentage of 75.4% of the total number of rejection decisions. In the criminal proceedings, a total of 6 requests were rejected, which represents only 6.97% of the total number of rejected decisions. It should be emphasised that in another 195 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]. Furthermore, in 4.30% of the cases, the applicant withdrew the request, so that the request was not supplemented within the set dead-

51 See Law on Free Legal Aid, Article 32 (4)

line, 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 damages for the applicant or if the deadline within which he/she has the right to take action in the proceeding expires, the administrative body has the duty to make a decision on the request within three days of receipt.[53] Compared to the previous year, the number of responses was increased in respect of the reasons for rejection and most frequently the response is that the free legal aid was requested in the cases when it is not permitted (11) or that the applicants did not meet the conditions (8). Other reasons are jurisdiction of the bodies (3), possibility to exercise the right in accordance with the other law (1), inability to confirm the identity of the applicant (1) and ambiguity of the request (1). Based on the delivered data, it is clear that certain individuals in charge of deciding on the requests do not differentiate between rejection of the request and suspension of the proceeding (when a party fails to deliver requested evidence within an additional granted period or when an applicant withdraws the request).

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. 7 out of 9 submitted requests were answered. That is one more than in the previous reporting cycle. 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. Thus, in the Bar Association of Pozarevac, 14 requests were submitted, and the same number of the proceedings were initiated, requests were rejected and the decisions were made.

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 points]

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 POINTS]

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, there was no precise data for the majority of the bar association. Only the Bar Association of Pozarevac had the data on 14 adopted decisions. Therefore, as there is insufficient information on the outcomes of disciplinary proceedings, this standard cannot be considered as fulfilled. [0/0.5 points]

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

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 POINTS]

Based on the conducted analysis in 167 municipalities and towns in the Republic of Serbia, the following data were generated. Out of the total number of observed municipalities and towns, 142 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 183 persons, with the average of 1.61 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 the 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 62, which is an average of 0.56, while there are more law graduates without a bar exam and it amounts to 141 people, or 1.27 law graduates per municipality or town. Thus, the total number of lawyers is 169, while the support staff is smaller (9 persons). Thus, since the average number of the employees working on free legal aid is 1.61, so, below previously defined parameter of 3 employees, this standard cannot be considered as fulfilled [0/0.5 points]

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	**9** ▲ *(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**				

Compared to the previous reporting period, there have been slight changes in regards to the evaluation of the indicator values. However, as it has been shown by the evaluation system, those changes have not resulted in change of the final evaluation on the level of the indicators. As mentioned in the previous report, 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, as in the previous reporting period, significant shortcomings can already be noticed on the normative level. The same as the last year, for example, 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. Despite having no significant changes on the level of normative solutions compared to the previous year, an improvement has been noticed in respect of legal possibility for the award of a free attorney and fairness of the process of decision on this appointment.

Furthermore, an improvement has been observed in regards to the perception of the beneficiaries of the free legal aid, so this reporting period is characterised by an improved perception of the beneficiaries regarding the term of free legal aid and the conditions to receive it. However, the same as in the previous period, the perception is that the costs of the attorneys are unsuitable. There have been no changes or different findings in respect of the efficiency of the system of legal aid.

RECOMMENDATIONS FOR THIS AREA

- As in the previous reporting period, the recommendations regarding amending the Law on Free Legal Aid, in respect of the standard of existential vulnerability, so as not to be equated with the conditions for receiving social assistance, still remain. It is still recommended to perform the general revision of the law, in order to specify and concretize certain principles and provisions, especially in the part related to the prohibition to provide free legal aid, as well as the status of the associations registered for provision of free legal aid.
- 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 suspension in procedural deadlines or a special reason for restitution in integrum in these situations.
- It is necessary to amend the Civil Procedure Code, in order to allow for the possibility that a law graduate with passed bar exam could represent a natural person as the provider of free legal aid registered in accordance with the law, thus providing easier access to free legal aid for the citizens.
- 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, but also update the data on disciplinary proceedings led by the bar associations in order to get a clearer picture about the situation in this field of legal profession.
- As in the previous period, it is recommended 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 an injured 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.
- It is required to increase the number of employees working on provision of free legal aid in the units of local self-government, thus making this form of legal aid more accessible for the citizens.

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	2020
1. The Law regulates consistent publishing of judgement summaries, especially for the cases of public importance related to public authority bodies and officials	0/1	0/1
2. Laws or special regulations stipulate mandatory publishing of information on court proceedings completed with final decision	1/1	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	1/1
TOTAL NUMBER OF POINTS	2/3	2/3

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

Legal regulations that constitute the source of verification in this area do not regulate the obligation of publishing judgement summaries. Publishing of court decisions or conclusions about disputable legal matters is regulated only in respect of the highest judicial instances.

Namely, the Law on organisation of Courts stipulates that the decisions of the Supreme Court of Cassation relevant to the court practice 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.[54] The same Article prescribes the obligation of publishing of the decisions on the website of the Supreme Court Cassation 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.[55] Thus, the Supreme Court of Cassation publishes the judgements on its website. This obligation is also envisioned by the Rulebook on replacement and omission (pseudonymization and anonymization) of data in court decisions, stipulating that "all the decisions of the Supreme Court of Cassation are to be published fully on the Internet page of the Supreme Court of Cassation, but the data on the parties whose identity has been established or could be established by comparison with other available data, is to be replaced or omitted."[56]

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."[57] Paragraph 5 of the same Article stipulates the obligation for the courts to "keep a separate register of legal opinion for each segment of court work in chronological order and which could be published in a special collection or on the Internet page of the court." Thus, there is no specific obligation to publish summaries of the decisions and legal opinions. The Court Rules of Procedure also envision that the disputable legal matters shall be discussed at the joint sessions based on report or co-report of the reporting judges, and adopted conclusions are delivered to the Supreme Court of Cassation, along with the reports, co-reports and minutes from these meetings, for their response, within 15 days as of the date of the joint session.[58] In addition, the same Article stipulates that the appellate courts shall publish conclusions adopted by the Supreme Court of Cassation on their Internet page. However, despite the above described provisions, the obligation of publishing the summaries of the judgements for basic and Higher Courts is not recognized in the legal regulations or bylaws.

Since only the Supreme Court of Cassation publishes its judgements, and the law does not recognize the obligation to publish judgement summaries for basic and Higher Courts which are the focus of this analysis, this standard could not be considered fulfilled. In comparison with the previous reporting period, there have been no changes to the legal framework, so there are no changes in respect of the evaluation of the standard. [0/1 point]

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

The Court Rules of Procedure stipulate that the information on finally completed proceedings before this court must be published when stipulated so by the law or special regulation, as well as in the cases when the public is particularly interested.[59] The same Article specifies that the information and data delivered to the public must be accurate and complete.

It also envisions the obligation for the courts to deliver legal opinions entered in the register to the

54 Law on organisation of Courts, Article 33
55 Law on organisation of Courts, Article 33
56 Rulebook on replacement and omission (pseudonymization and anonymization) of data in court decisions, Su-1 176/16 of December 20, 2016, Article 1(2)
57 Court Rules of Procedure ("Official Gazette of the RS", no.. 93/2019), Article 28 (1)
58 Court Rules of Procedure, Art. 29a
59 Court Rules of Procedure, Art. 28 (1)

Supreme Court of Cassation, for the needs of the state judicial information system.[60] General and special register of legal opinions are kept separately for each segment of the judicial work, in a chronological order, and could be published in a special collection or on the Internet page of the court.[61] Disputable legal matters shall be discussed at the joint sessions based on report or co-report of the reporting judges, and adopted conclusions are delivered to the Supreme Court of Cassation, along with the reports, co-reports and minutes from these meetings, for their response, within 15 days as of the date of the joint session.[62]

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 not to be disclosed.[63] In that sense, there are important provisions of the Law on Data Secrecy defining classified data, as well as the concept of publicity in the proceedings defined by relevant regulations. The data that are considered secret are the data of interest for the Republic of Serbia, which are labelled with a certain level of secrecy pursuant to the law, other regulation or decision of the competent body adopted in accordance with the law.[64] A court may exclude the public in the civil proceedings in the cases defined by the law.[65]

Therefore, based on all above stated, relevant special regulations in the Republic of Serbia stipulate the 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. Compared to the previous reporting period, there have been no changes to the legal framework or the value of the standard. [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 decisions 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 the 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.[66] In Article 58, the Court Rules of Procedure explicitly prescribe the obligation to publish information on these cases completed with final decision before the court, when the law or other regulation stipulate so, as well as in the cases when the public is particularly interested. Importance of monitoring completion of the cases that are of interest to the public is also confirmed by the provision of the Rulebook on internal organisation and systematisation 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. However, current regulations do not define the criteria for establishing the situations when there is a special interest of the public, that is, whether that means interest of the media, wider population or mandatory existence of public interest.

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 standard is considered as fulfilled. Compared to the previous reporting period, there have been no changes to the legal framework or bylaws, including no changes in the evaluation of this standard. [1/1 point]

60 Court Rules of Procedure, Art. 28 (5)
61 Court Rules of Procedure, Art. 28 (3)
62 Court Rules of Procedure, Art. 29a (5)
63 Court Rules of Procedure, Art. 58 (4)
64 Law on Data Secrecy ("Official Gazette of the RS", no.. 104/2009), Article 2 (1) (2)
65 Civil Procedure Code, Article 322
66 Constitution of the RS ("Official Gazette of the RS", no.. 98/2006), Article 51

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. The Law ensures access to information of public importance as the citizen's right guaranteed by the Constitution	0.5/0.5	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	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	0.5/0.5
4. Legal framework clearly defines the concept of official document and information of public importance	0/0.5	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	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	0.5/0.5
7. The Law has precisely regulated limitations to free access to information of public importance	0.5/0.5	0.5/0.5
8. Special law clearly and unambiguously determines classification of classified data related to judicial bodies	0.5/0.5	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	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	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	0.5/0.5
TOTAL NUMBER OF POINTS	5/5.5	5/5.5

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

The right to free access to the information of public importance is one of the fundamental human rights. Access to the information of public importance and freedom of expression constitute the foundations of open and democratic society based on the rule of law.

The Constitution guarantees that everyone shall have the right to access information kept by state bodies and organisations with delegated public powers, in accordance with the law.[67] Based on such a formulation, we could conclude that this refers to legal organisation on the specifics of the application of the law. 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 the obligation to respect this right.[68]

The Law on Free Access to Information of Public Importance[69] 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.[70] This regulation 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.[71] As previously stated, based on the formulation from the Constitution,

67 Constitution, Article 51(2)
68 Constitution, Article 51(1)
69 Law on Free Access to Information of Public Importance ("Official Gazette of the RS", no.. 105/2021)
70 Law on Free Access to Information of Public Importance, Article 1
71 Law on Free Access to Information of Public Importance, Article 2 (1)

we can conclude that there is a legal regulation of this issue and that the constitutional standard is realised through a law that guarantees the right to access the information of public importance. The latest amendments to the Law on Free Access to Information of Public Importance stipulate that in order to enable exercising of the right of the public to know, all the bodies of public government should publish and thus make publicly available all the information on their work, which, pursuant to the provisions of this law, are considered as information of public importance.[72] Thus, the area of proactive transparency of public bodies is additionally regulated and the legal obligation of the public bodies to publicly disclose data of their work, which is of interest for the public, is stipulated. Additionally, the fines for the offences defined by the law have been increased, that is, have been harmonised with the Law on Misdemeanours[73], and additional authorizations of the Commissioner have been introduced in the situations when the public bodies fail to respond to the request of the applicant. Namely, the Commissioner receives the possibility to issue misdemeanour orders in the amount of up to 30,000 dinars to those public bodies that fail to act on the request of the applicants within legally defined deadlines.[74] It is expected for these amendments to have a positive effect on securing access to information of public importance.

Thus, based on all above stated, we conclude that this standard has been completely fulfilled. [0.5/0.5 points]

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

The Law on Free Access to Information of Public Importance clearly and unequivocally describes the procedure before a public authority[75] and the second-instance proceeding before the Commissioner for Information of Public Importance and Personal Data Protection.[76] The Commissioner is an autonomous government body, independent in the exercise of its powers that protects exercising the right to free access to information of public importance.[77] There is also a guaranteed right to institute an administrative dispute against the decisions and conclusions of the Commissioner.[78] Implementation of this law is supervised by the administrative inspectorate of the Ministry of State Administration and Local Self-Government,[79] while enforcement of the Commissioner's decisions is ensured by the Government of the Republic of Serbia.[80]

New amendments to the Law, the application of which starts as of February 17, 2022, envision a possibility of forced penalty of a public body that fails to act based on the decision of the Commissioner, which is binding, final and enforceable.[81] The amendments stipulate that the Commissioner shall force the public body to fulfil the obligations referred to in the Commissioner's decision in indirect enforcement, through the decision where this independent body issues a pecuniary fine.[82] Pecuniary fine may be issued in the range from 20,000 to 100,000 dinars, including several times (the Law does not specify maximum number of times, nor the maximum pecuniary amount of the fine).[83]

Another significant amendment is the provision which stipulates that the requester of the information shall not be able to submit the request for initiation of the misdemeanour proceeding against public bodies before completion of the proceeding upon appeal before the Commissioner, that is, before completion of the administrative dispute in the appeal to the Commissioner is not permitted.[84] The explanation for introduction of this change is the intent to remove possibilities for abuse of the Law, since the previous provisions (which are still applied, until the mentioned date the amendments start applying)

72 Law on Free Access to Information of Public Importance, Article 1 (3)
73 Law on Misdemeanours ("Official Gazette of the RS", no.. 91/2019 and 91/2019 - other law)
74 See Law on Free Access to Information of Public Importance, Article 24 and Article 47
75 Law on Free Access to Information of Public Importance, Articles 15-21
76 Law on Free Access to Information of Public Importance, Article 22
77 Law on Free Access to Information of Public Importance, Article 1 (2)
78 Law on Free Access to Information of Public Importance, Article 27
79 Law on Free Access to Information of Public Importance, Article 45
80 Law on Free Access to Information of Public Importance, Article 28 (4)
81 Law on Free Access to Information of Public Importance, Article 28a
82 Ibid.
83 Law on Free Access to Information of Public Importance, Article 28a
84 Law on Free Access to Information of Public Importance, Article 28b

divided the submission of the request for initiation of misdemeanour proceeding from the proceedings upon appeal. In practice, this led to a great number of these requests submitted by the information requesters, through their attorneys, and without previous or simultaneous submission of the legal remedy against the decision, that is, against the actions of the public body, which led to additional burden for the misdemeanour courts and the budget of the Republic of Serbia. 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, which has been partially amended and made more precise by the amendments to the Law. Thus, the standard is considered as fulfilled. [0.5/0.5 points]

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 POINTS]

The Law on Free Access to Information of Public Importance stipulates that the term public body includes a state body, territorial autonomy body, a local self-government body, as well as an organisation vested with public authority, and a legal person founded by or funded wholly or predominantly by a state body.[85] The amendments to the Law provide additional precision that includes the term of public body which are also subject to the Law, but this circle of entities is expanded to certain commercial entities.[86] Thus, this way, the circle of the entities that are subject to this Law is expanded, but also the churches and the religious communities are excluded from the circle of the public bodies the Law on Free Access to Information of Public Importance applies to. Therefore, the court and public prosecutor's office are included in the definition of the public bodies and are obliged to act in line with the prescribed obligations. Thus, the law guarantees the citizens access to information of public importance in courts and public prosecutor's offices. Additional precise information and amendments to the law have not led to changes in respect of the fulfilment of the standard and evaluation, so this standard is considered completely fulfilled, the same as in the previous reporting period. [0.5/0.5 points]

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

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 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 it is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and outweigh the interest of accessing the information.[88] New amendments to the Law on Free Access to Information of Public Importance, envision 7 instead of the existing 5 bases for limitation of the rights. Completely new grounds for limitation refer to protection of the intellectual property or industrial property rights, threatening protection of artistic, cultural and natural goods, threatening the environment or rare plants and animal species.[89] The Law on Data Secrecy defines the data of interest for the Republic of Serbia and classified data.[90] However, the Law on Free Access to Information of Public Importance itself does not provide a precise definition of an official document. The amendments to the Law do not offer a more precise definition of what the official document means.

Therefore, 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 points].

85 Law on Free Access to Information of Public Importance, Article 3
86 See Law on Free Access to Information of Public Importance, Article 3
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 9 (1) (6) i (7)
90 Law on Data Secrecy, Article 2

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 POINTS]

The Law on Free Access of Information has recognized the interest of the public to know. 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.[91] Therefore, citizens are allowed to access information of public importance without having to prove their legal interest to access such data. Namely, if the applicant requests the information from the public authority body, which include judicial bodies, there is a legal presumption that there is a justified interest of the public to know. When this refers to the information in possession of the public authority body, and that refers to threat to or protection of health of the population and the environment, there is an irrefutable presumption that the right of the public to know does exist. On the other hand, when we talk about the other information, there is a presumption of the right of the public to know, but in this case, it is refutable, and that public authority body needs to prove the contrary, that is, that disclosure of certain information would infringe some more predominant interest. The citizens are enabled to access the information of public interest without the obligation to prove that they have a legal interest to access that data, that is, the burden of proof is on the public authority body refusing to provide the requested information and it must justify its reasons for refusal. Hence, 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 points].

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

It is not enough just to have an ability to access information, but it is necessary to specifically stipulate prohibition of discrimination in exercising this right. In accordance with the Law on Prohibition of Discrimination, each differentiation or unequal treatment, that is, omission, in open or hidden way, and which is based on personal characteristics, membership or certain affiliation of the applicant questing information or his/her close persons,[92] cannot be the basis for a 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 the requestors.[93] In line with this, there is an important issue of legal prohibition of discrimination of the 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.[94] Therefore, 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, this standard is considered completely fulfilled. [0.5/0.5 points]

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

Free access to information of public importance also has certain limitations. All the limitations of the right to free access to information 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 conduct-

91 Law on Free Access to Information of Public Importance, Article 2 and Article 4
92 Law on Prohibition of Discrimination ("Official Gazette of the RS", no. 52/2021), Article 2 (1) (1)
93 Law on Free Access to Information of Public Importance, Article 6
94 Law on Free Access to Information of Public Importance, Article 7
95 Law on Free Access to Information of Public Importance, Article 8

ing criminal and other legal proceedings, detection, trial and punishment of criminal offences, as well as interests of national defence and security, international relations, economic relations, official, commercial and other secrets the disclosure of which could cause serious consequences to legally protected interests.[96] Amendments to the Law on Free Access to Information of Public Importance have introduced certain changes in the provisions that refer to limitations of the rights of the requestors. The relevant Article has been expanded with two new grounds for limitation of the right[97], while Article 13, which refers to the abuse of the rights, was completely deleted. In addition, mentioned Article 9 that refers to limitations, has been redacted so instead of the previous: "*public authority body is not under obligation to provide a requestor the access to the information of public importance*", is now "*public authority body may prevent the requestor from accessing the information of public importance*".[98] This change is important since defined limitations do not have absolute character, but along with the existence of the other interest which is collision with the right to access information of public importance, it is required from the public authority body to also prove that in the specific case some of the interest defined in the limitations prevails over the right to access information, that is, that disclosure of the specific information would lead to a serious infringement of that other interest.

Article 10, which states that the public authority body does not have to enable the requestor to exercise the right to access information of public importance if that information has already been published or available, has remained unchanged. Article 13, which refers to abuse of the right by the requestors of information has been deleted. Article 13 was as follows: *"A public authority body shall not allow the applicant to exercise the right to access information of public importance, if the applicant is abusing the right to access information of public importance, especially if the request is irrational, frequent, when the same or already obtained information is being requested again, or when too much information is requested."* From the perspective of the applicants, this change is affirmative, since the public authority bodies often referred precisely to this Article as an argument for failure to deliver requested information. In the elaboration for deletion of this Article, the proposer stated, among other things, that the abuse as the reasons for rejection of the request had been defined by the law in a wide and insufficiently clear way, and that there was a threat in practice to become inadequately applicable by the bodies that act upon request, having in mind that it was the subject to subjective evaluation of the bodies in practice, such as for example frequent submission of the requests.[99]

The law also recognizes that in certain situations, it is required to protect the right to privacy, right to protection of personal data, right to reputation or some other right of the persons to which requested information referred to. Disclosing of such data is permitted in case the person agrees to it, in case the person or the event is of public interest, and particularly if that is a public official in the context of the law regulating prevention of the conflict of interest when performing public functions (referral to the regulations in the field of prevention of the conflict of interest is a result of the latest amendments to the Law) and if the relevant information is associated with execution of the public function, as well as the case when a person gave reasons for request of this information by his/her actions.[100] Finally, the amendments to the Law provide additional precise information that the public authority body should enable access to requested information even when it is located in the document which also contains personal data, and if the body is able to simultaneously provide the right of public to know and the right to personal data protection.[101] Based on the above stated, it is clear that the new grounds for limitations refer to the protection of the intellectual property rights and industrial property rights, threat to the protection of artistic, cultural and natural goods, threat to the environment and rare plants and animal species, while the essence of the other grounds for limitation of the rights remained the same as in the previous version of the Law.

The law clearly defines limitations, and the burden of proof is on public authority to show that it is possible

96 Law on Free Access to Information of Public Importance, Article 9
97 These include the infringements of intellectual property or industrial property rights, threatening protection of artistic, cultural and natural goods, threatening the environment or rare plants and animal species.
98 Law on Free Access to Information of Public Importance, Article 9(1)
99 Draft Law on Amendments to the Law on Free Access to Information of Public Importance, pg. 21
100 Law on Free Access to Information of Public Importance, Article 14
101 Law on Free Access to Information of Public Importance, Article 14 (2)

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 points]

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

Classification of data secrecy is important for the protection of sensitive data in the judiciary . Classified data means 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.[102] Data of interest for the Republic of Serbia means 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, defence, internal affairs and foreign affairs.[103] Secret data are the data of interest for the Republic of Serbia, the disclosure of which would cause damage to an unauthorised person, 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.[104] It is also stipulated that such data must have a certain level of secrecy: "state secret", which is imposed for the purpose of avoiding irreparable damages for the interests of the Republic of Serbia, "top secret", which is imposed for the purpose of avoiding significant damages for the interests of the Republic of Serbia, "confidential", which is imposed for the purpose of avoiding damages for the interests of the Republic of Serbia, "internal", which is imposed for the purpose of avoiding occurrence of the damages for work, that is, performing of the duties and activities of the public authority bodies that have set them.[105] The 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 – "state secret", "top secret", "confidential" and "internal" kept by the president or person designated by the president, contains classified court administration data and the received documents marked by a sender as "state secret", "top secret", "confidential", and "internal"[106] The same classification, with reference to the relevant law, is stated in the Rulebook on Administration in Public Prosecutor's Offices.[107]

The new amendments to the Law on Free Access to Information of Public Importance also stipulate that in case the request refers to the access, and/or receipt of the copy of the document that contains the information which constitutes the classified data set by the other public authority body, the authority body shall, within 8 days as of the date of the receipt, deliver the request to the authority body that set the classified nature of the data to act upon the request and inform the applicant of it.[108] The deadline referred to in this Article to act upon the request by the authority body that set the classified nature of the data shall commence as of the date of delivery.[109]

Thus, there are no separate standards for data secrecy classification in judiciary, but a general classification from the Law on Data Secrecy is applied and it clearly and precisely stipulates what classified data are and regulates their classification. Therefore, this standard is considered as fulfilled. [0.5/0.5 points].

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

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 requester does not need to state the reasons for that request.[110] Since there is an explicit definition of this standard, maximum value is awarded [0.5/0.5 points].

102 Law on Data Secrecy, Article 2 (1) (2)
103 Law on Data Secrecy, Article 2 (1) (1)
104 Law on Data Secrecy, Article 8
105 Law on Data Secrecy, Article 13
106 Court Rules of Procedure, Article 264
107 Rulebook on Administration in Public Prosecutor's Offices ("Official Gazette of the RS", no. 57/2019), Article 73b
108 Law on Free Access to Information of Public Importance, Article 16 (5)
109 *Ibid.*
110 Law on Free Access to Information of Public Importance, Article 15 (4)

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 POINTS]

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 the law. Public authority must respond to a request within 15 days of the receipt of the request; however, this timeframe may be extended in certain situations if the public authority is unable to provide a response for justified reasons.[111] 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.[112] If the governmental body fails to respond within the set deadline, the requester of the information may file an appeal with the Commissioner.[113] 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. Therefore, this standard has been completely fulfilled. [0.5/0.5 points]

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 POINTS]

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 a decision.[114] 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.[115] 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 points].

111 Law on Free Access to Information of Public Importance, Article 16
112 Law on Free Access to Information of Public Importance, Article 16 (3)
113 Law on Free Access to Information of Public Importance, Article 16 (4)
114 Law on Free Access to Information of Public Importance, Article 16 (12)
115 Law on Free Access to Information of Public Importance, Article 22

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. Courts have accessible websites	1/1	1/1
2. Courts have regularly (at least once a month) updated websites	0.5/1	0.5/1
3. Courts' websites are also available in languages of national minorities	0/0.5	0/0.5
4. Courts' websites are adapted for visually impaired persons	0/0.5	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	0/1
6. Public prosecutor's offices have accessible websites	1/1	1/1
7. Public prosecutor's offices have regularly (at least once a month) updated websites	0/1	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	0.5/1
9. Courts regularly publish judgement summaries on their websites, which is a minimum for cases of public importance	0/1	0/1
10. Courts regularly publish on their official websites annual work reports and reports	0.5/1 ▲	0/1
11. Public prosecutor's offices regularly publish on their official websites annual work reports and progress reports	0.5/1 ▼	1/1
12. Professional biographies of judges including their career development are available to the public	0/0.5	0/0.5
13. Professional biographies of public prosecutors including their career development are available to the public	0/0.5	0/0.5
14. Court work reports contain complete information	0/0.5	0/0.5
15. Public prosecutor's office work reports contain complete information	0.5/0.5	0.5/0.5
TOTAL NUMBER OF POINTS	**4.5/12**	**4.5/12**

S1: COURTS HAVE ACCESSIBLE WEBSITES
[1 POINT]

Compared to the previous reporting period, the analysed sample of courts was expanded from 17 to 31 courts. This way, a broader picture of the concrete situation is obtained. Based on the analysis conducted on 31 court websites sampled from territorial jurisdictions of different appellate courts [116], the following conclusions were drawn. Out of 31 courts from the sample that consist of basic and Higher Courts on the territories of the jurisdiction of all four appellate courts, 29 have the websites, which are functional, open without any problems and can be accessed via clearly defined address. Two courts that do not have the websites are Basic Court in Brus and Basic Court in Raska. Thus, since the majority of the analysed courts from the sample fulfil the set conditions, this standard is considered completely fulfilled. [1/1 point]

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

Out of 31 analysed Basic and Higher Courts from the territorial jurisdiction of appellate courts in the Republic of Serbia, 24 of them provided precise re-

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

sponses to the submitted query, stating in their response whether website update is performed daily, weekly, or monthly. On the other hand, 3 courts – Basic Court in Ub, Basic Court in Raska and Basic Court in Brus have not responded to the request, while in 4 cases[117] failed to provide a sufficiently precise response to the asked questions. Out of the courts that responded precisely to the asked question, 17 of them update their websites at least once a month, and sometimes even more frequently. Moreover, the Higher Court in Belgrade and the Basic Court in Sabac Basic Court in Jagodina and Basic Court in Valjevo update their websites almost daily. On the other side, a smaller number of courts (4 courts) update their websites quarterly.[118] For this reason, this standard is considered partially fulfilled. Although the sample of the analysed courts was increased compared to the previous reporting cycle, evaluation of this standard has not changed. [0.5/1 point]

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

When we talk about accessibility of websites in languages of national minorities, it must be noted that only certain courts from the sample of courts were examined, since those courts are in the territory with a multiethnic population and those communities have one or more national minority languages in official use. Out of the courts in the sample, which includes the courts on the territory where the percentage of the specific minority population is over 15%, the following courts are taken as relevant for this standard: Basic Court in Becej, Basic Court in Boljevac, Basic Court in Zagubica, Basic Court in Kucevo, Basic Court in Sombor, Higher Court in Sombor, Basic Court in Novi Sad, Basic Court in Senta, Basic Court in Subotica, Higher Court in Novi Sad, Higher Court in Subotica, Basic Court in Prijepolje, Basic Court in Sjenica, Basic Court in Novi Pazar, Higher Court in Novi Pazar, Basic Court in Dimitrovgrad and Basic Court in Bujanovac. Importance of evaluation of this standard is seen through a prism of providing equal opportunities to all the citizens to access information on court activities. However, after the conducted analysis, it is determined that none of these courts have websites available in national minority languages. Moreover, in 5 cases[119], the analysed courts did not even have a website. Thus, this standard has not been fulfilled. [0/0.5 points]

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

Out of the total number of analysed courts from the sample (31), in most of the cases websites are not adapted for blind and visually impaired persons. Namely, 3 courts did not respond to the sent requests for free access to information – Basic Court in Brus, Basic Court in Raska and Basic Court in Ub. In addition, the website of the Higher Court in Novi Pazar is adjusted, while the website of the Higher Court in Krusevac "has been partially adjusted". All the remaining 26 courts from the sample do not have adjusted websites for the blind and visually impaired persons. Therefore, this standard cannot be considered as fulfilled. Despite the increased sample compared to the previous reporting cycle, the results have not changed at all. [0/0.5 points]

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 courts of different instances from the sample, 13 contain all the necessary information easily available to the citizens, at no more than three clicks. There is no relevant information for the Basic Court in Brus and Basic Court in Raska. In the remaining 10 cases, there is at least one key information missing, if not more. More precisely, 3 courts do not have easily accessible information on territorial jurisdiction, and in 7 cases more pieces of information are missing, such as useful forms, or costs of basic services and court data (account number and other payment informa-

117 The courts that provided imprecise responses to the asked questions about regular updates of the websites of the courts are: First Basic Court in Belgrade, Higher Court in Zrenjanin, Higher Court in Nis and Basic Court in Subotica

118 Those are the following courts: Basic Court in Pancevo, Basic Court in Mladenovac, Basic Court in Kikinda and Higher Court in Kraljevo.

119 These are the courts in question: Basic Court in Dimitrovgrad, Basic Court in Prijepolje, Basic Court in Kucevo, Basic Court in Zagubica and Basic Court in Boljevac

tion) at no more than 3 clicks from the court's homepage. Unlike the previous reporting cycle, there have been some improvements, and for example, the information of the working hours of all analysed courts from the sample is easily accessible for the citizens (at no more than three clicks). Therefore, based on everything above stated, this standard is still considered unfulfilled, the same as in the previous reporting cycle. [0/1 point]

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

The analysis was conducted on the sample of 30 public prosecutor's offices belonging to various instances and in territorial jurisdictions of 4 appellate prosecutor's offices in the Republic of Serbia. Namely, all public prosecutor's offices from the sample have their own website. These are newer, uniform websites, visually and structurally standardised. They have clear and logical structure, Cyrillic and Latin versions. 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 Council of Prosecutors created during 2019. Only the Basic Public Prosecutor's Office in Pozarevac has its own version of the site. Therefore, this standard is completely 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 analysed prosecutor's offices, 20% have regularly updated websites, that is, 6 prosecutor's offices have them, while the other 24 do not. This assessment was made by reviewing posts on the websites and was not based only on responses to submitted requests to access information. Namely, 8 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 only 20%, this standard may not be considered as fulfilled. Although the sample was expanded compared to the previous reporting cycle, the results of the analysis, and thus the evaluation of the standard have remained unchanged. [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 one click from the homepage. Yet, when it comes to territorial jurisdiction, the situation is quite different – only 4 prosecutor's offices (13.33%) provide this information on their website, while 12 of them give this information in their progress report. If we count the progress reports, then the total of 12 prosecutor's offices fulfils the standard, and the percentage is also higher.

When it comes to payment information, only 2 offices have their account numbers provided. Another 4 offices give their account numbers in their progress 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). Based on all above stated, it is confirmed that this standard is partially fulfilled, the same as in the previous reporting cycle. [0.5/1 point]

S9: COURTS REGULARLY PUBLISH JUDGEMENT 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 31 courts in the Republic of Serbia, 25 courts do not publish judgement summaries. Three court have not responded at all[120], and three more courts partially responded to the sent request. Thus, the Basic Court in Mladenovac only posts on the electronic notice board the decisions in the enforcement procedures in regards to sale of the real estate. The Higher Court

120 These courts are Basic Court in Raska, Basic Court in Novi Sad and Basic Court in Ub.

in Novi Sad posts only in the cases that have media coverage. Also, the Higher Court in Belgrade 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. Compared to the previous reporting period, there have been no changes to the existing situation. [0/1 point]

S10: COURTS REGULARLY PUBLISH ON THEIR OFFICIAL WEBSITES ANNUAL WORK REPORTS AND 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 later. If neither of these criteria have been met, it is considered that the courts have not made this information available on their websites. After checking the data available on the websites of the sampled courts in the Republic of Serbia, it was established that 9 out of 31 did not publish annual reports on their work.[121] Also, there is no data about two courts, Basic Court in Brus and Basic Court in Raska. If we observe the completeness of all the analysed courts in the appellate territories, more than half of the analysed courts regularly publish these data, so we can state that this standard has been partially fulfilled. [0.5/1 point]

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

Of the total sample of 30 prosecutor's offices, 56.67%, that is, 17 offices regularly publish their annual progress reports. None of the prosecutor's offices published annual work reports since they do not have this obligation. Instead of that, the obligation comes down to delivery of the annual report to the directly superior public prosecutor's office. One segment of the summary information is published with the progress report. Compared to the previous reporting period, when this standard was completely fulfilled, considering a bigger sample in this cycle, the results have changed, and this standard is now partially fulfilled. [0.5/1 point]

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

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 31 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 groups of cases, and they need to provide certain types 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. There has been no change of the status compared to the previous reporting cycle, and the results have remained the same. [0/0.5 points]

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

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 progress reports. On the other hand, 7 offices have a list of prosecutors' names and surnames on their websites, and 30 offices have those in their progress reports. Only one prosecutor's office has the photographs of the staff, including the prosecutors. 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. There has been no change of the status compared to the previous reporting cycle, and the results have remained the same. [0/0.5 points]

121 These courts are the Basic Court in Valjevo, Basic Court in Vrsac, Basic Court in Sabac, Basic Court in Becej, Higher Court in Zrenjanin, Higher Court in Kraljevo, Basic Court in Pozega, Higher Court in Prokuplje and Higher Court in Nis.

S14: COURT WORK REPORTS CONTAIN COMPLETE INFORMATION[122]
[0.5 POINTS]

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.[123] It is also prescribed what elements these reports must include[124], 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.[125] 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, organisational 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, 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, information on requesting free access to information of public importance, etc. 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 31 analysed basic and higher courts, which were observed based on the territories of jurisdiction of the appellate courts, it was established that 12 out of the total of 31 courts had progress reports that did not include all required elements. Besides this, there is no data for two courts. Thus, incomplete reports were published by Basic Courts Valjevo, Vrsac, Sabac, Pancevo, Lebane, Kikinda, Jagodina, but also the Higher Court in Nis, Prokuplje, Negotin, Belgrade, Zrenjanin and Kraljevo. On the other hand, the remaining courts (17 of them) fulfil this criterion and their progress reports are complete. However, since methodology was used to establish the census for this standard of 60% courts, which contained required information in their progress reports, we can conclude that this standard has not been fulfilled, regardless of the increased sample compared to the previous reporting cycle, and there are no changes in the results this year. [0/0.5 points]

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

24 prosecutor's offices from the sample have all the segments from the progress report. Six of them have reports with incomplete contents or without certain sections listed, but the relevant information is in the texts of the reports, so we can still consider that the criterion is met in these cases. Five prosecutor's 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 six prosecutor's offices with incomplete information, only three offices have the progress report but without half of the required sections. Since as many as 82.4% of prosecutor's offices have complete annual progress reports, we can consider this standard as fulfilled, despite inconsistencies in some cases. There have been no changes to the results compared to the previous year. [0.5/0.5 points]

122 The information is complete if it fully describes the real status and there is nothing to add to that description. Complete information is also an objective information because it does not hide unfavorable facts. Complete information is also an objective information because it does not hide unfavorable facts.
123 Law on Free Access to Information of Public Importance, Article 39
124 *Ibid.*
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	2020
1. Job classification document or annual court activity schedule includes persons in charge of responding to requests for access to information of public importance	0/1 ▼	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	0/1
3. In courts, there is a designated person authorisedauthorized to respond to requests for access to information of public importance	0.5/0.5	0.5/0.5
4. In prosecutor's offices, there is a designated person authorisedauthorized to respond to requests for access to information of public importance	0.5/0.5	0.5/0.5
5. Persons authorisedauthorized to act upon requests for access to information of public importance in judicial bodies are trained to protect privacy while processing information	0/0.5 ▼	0.5/0.5
6. Courts provide timely response to requests for access to information of public importance	1/1 ▲	0.5/1
7. Prosecutor's offices provide timely response to requests for access to information of public importance	1/1 ▲	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	0.5/0.5
9. Prosecutor's offices provide accurate and precise information in response to requests for access to information of public importance	0.5/0.5 ▲	0/0.5
10. In practice, courts do not require requestersrequestors to state reasons for requesting information of public importance	0.5/0.5	0.5/0.5
11. In practice, prosecutor's offices do not require from requestersrequestors to state reasons for requesting information of public importance	0.5/0.5	0.5/0.5
12. Courts appropriately apply legal grounds for limiting access to information of public importance	0.5/0.5	0.5/0.5
13. Prosecutor's offices appropriately apply legal grounds for limiting access to information of public importance	0/0.5	0/0.5
TOTAL NUMBER OF POINTS	5.5/8.5 ▲	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 31 courts of various instances that belong to 4 different appellate jurisdictions in the Republic of Serbia, the following has been concluded: thirteen courts out of the total number of analysed courts, designate a person in charge of responding to requests for access to information of public importance. Furthermore, all of these courts have this person designated in their Annual Activity Schedules, and one of the courts also has it on its website. Thus, although some of the courts do not provide this information in the Job Classification Document, but mostly in their annual activity schedules, this standard, due to the number of courts, cannot be considered as fulfilled. [0/1 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]

Only one public prosecutor's office has published the Job Classification Document on its website. Eleven more public prosecutor's offices submitted this document via request for free access to information. None of these available documents include a 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). Therefore, this standard cannot be considered as fulfilled. [0/1 point]

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

When we talk about persons authorised to respond to requests for access to information of public importance, 31 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 80.6%, that is, 25 out of 31 courts analysed have filled job positions for responding to requests to access information of public importance. When it comes to availability of the first and second names of persons in charge of responding to requests for information of public importance, websites of 25 out of 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 progress reports. In a 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 points]

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

None of the public prosecutor's offices have specified names of the persons authorised to respond to the requests for access to information of public importance on their website. The situation is better in the progress reports: 18 prosecutor's offices out of the total number of analysed courts have specified the first and last name of these persons. The same as in courts, job positions for responding to requests for information of public importance are mostly filled and it is possible to identify these persons in the public prosecutor's offices as well. In a smaller number of cases, this information is obtained through requests for information of public importance. Thus, this standard is considered fulfilled [0.5/0.5 points]

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

Based on the Judicial Academy's Report for 2020, it is established that not even one education, training or seminar has been organised that would cover the topic of personal data protection. Since the report for 2021 has still not been published, we confirm that there has been no other data in the meanwhile, except for those held in 2019, which was specified in the previous report. We should certainly have in mind specific circumstances related with the pandemic of the contagious disease Covid-19 in the previous years, which had an impact on normal and undisturbed organisation of different events worldwide, including this case as well. However, based on all above stated, we can conclude that this standard has not been fulfilled, unlike in the previous reporting cycle. [0/0.5 points]

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 31 courts of various instances and belonging to territorial jurisdiction of appellate courts in the Republic of Serbia, 24 courts responded to submitted requests for access to information of public importance. Four did not respond by the deadline, while 3 courts have not responded at all to the sent request for free access to information. It should be noted that although the legally prescribed deadline for response to this type of requests is 15 days as of the receipt of request[126], 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, since more than 60% of the analysed courts responded adequately to the sent requests in this reporting period, unlike in the previous cycle, this standard is considered as fulfilled. [1/1 point]

126 Law on Free Access to Information of Public Importance, Article 16 (1)

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

Out of 30 public prosecutor's offices, 5 offices have not delivered response to the request for free access to information. Twenty-two of the received responses are positive, complete or partial (only three prosecutor's offices have delivered complete documentation), and 2 were negative responses and one prosecutor's office requested presence in person in order to provide requested information. The requests were sent by post on August 19, and they specified that the response be delivered electronically. One prosecutor's office sent an email informing us that they needed more time to deliver the documents since they had a lack of employees (due to the Covid-19 pandemic) but did not deliver it after the expiration of the legally defined deadline. Twenty-three prosecutor's offices delivered their responses within the initial deadline of 15 days. Thus, unlike the previous period when this standard was partially fulfilled, now it can be concluded that this standard is completely fulfilled. [1/1 point]

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

Out of the total number of courts of various instances and belonging to territorial jurisdiction of one of 4 appellate courts in the Republic of Serbia, 24 courts provided accurate and precise information as per submitted requests for access to information of public importance. In the remaining 3 cases, the courts failed to provide complete documentation requested, while 4 courts partially responded to the sent requests for access to information of public importance. Thus, since a significant number of courts provided accurate and precise information, we can conclude that this standard is fulfilled. Compared to the previous reporting cycle, there have been no changes in the evaluation of these standards, despite having a bigger sample of the courts for the analysis. [0.5/0.5 points]

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

In the case of the prosecutor's offices, the situation is somewhat different. Out of the total number of prosecutor's offices which represent the sample, 25 offices responded to the submitted request. Out of that number, 23 prosecutor's offices responded accurately and precisely. Incorrect is, for example, when the data on the updating of the site do not correspond to the findings from the access to the contents of the site. Compared to the previous reporting cycle, we evaluate that this standard is fulfilled. [0.5/0.5 points]

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

When submitting a request for access to information of public importance, the requester is not required to state reasons for the request.[127] Purpose of this standard was to determine practical application of this principle. Out of the analysed courts of various instances belonging to territorial jurisdiction of various appellate courts in the Republic of Serbia, none of the courts requested from the applicants to state reasons for request for information of public importance. Thus, this standard is considered fulfilled. [0.5/0.5 points]

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

Situation is identical with the prosecutor's offices. Out of analysed prosecutor's offices, none of them asked for the reasons for the request, but one of the prosecutor's offices required personal presence at their premises in order to provide access to the documents, which does not exclude the intent to require the reasons for request of information in person. Having all this in mind, it can be concluded that this standard is fulfilled. [0.5/0.5 points]

127 Law on Free Access to Information of Public Importance, Article 15 (4)

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

When determining if this standard is fulfilled, we looked at whether the courts consistently applied legally prescribed reasons for limiting access to information of public importance. Namely, access to information of public importance may be limited if it would jeopardise life, health, safety or any other vital interest of a person, endanger, 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, defence, international relations or economic interests, as well as other rights and interests.[128] Since none of the courts requested special reasons for delivery of the requested information, and only the Higher Court in Belgrade clearly elaborated the reasons for failure to deliver the decision, while the Higher Court in Krusevac failed to do so, this standard is considered as fulfilled. [0.5/0.5 points]

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

None of the public prosecutor's offices referred to any of the legally envisioned grounds for limitation of access to information of public importance (Articles 9-14 of the Law on Free Access to Information of Public Importance) in their responses, so this standard cannot be evaluated. Instead, the responses were either not submitted (5 prosecutor's offices), and out of the received responses, failure to deliver certain information, and/or documents was either not justified (in 11 cases), or the explanation was the state of emergency (1) or the fact that they did not have documents in possession (in 8 cases, out of which 1 with referral to another competent body). Based on all above stated, this standard cannot be considered fulfilled. [0/0.5 points]

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. Judicial system beneficiaries believe that their "citizen's right to know" about the work of judicial bodies is fulfilled	1/1	1/1
2. Judicial system beneficiaries believe that information they receive from judicial bodies is complete	1/1	1/1
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	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	0/0.5
TOTAL NUMBER OF POINTS	3/4.5	3/4.5

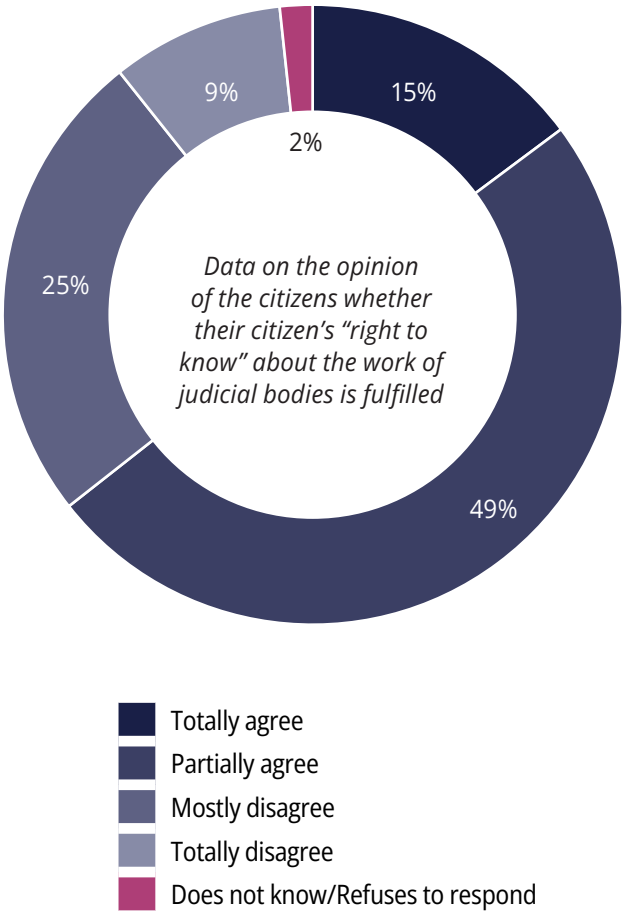
128 Law on Free Access to Information of Public Importance, Articles 9 -14

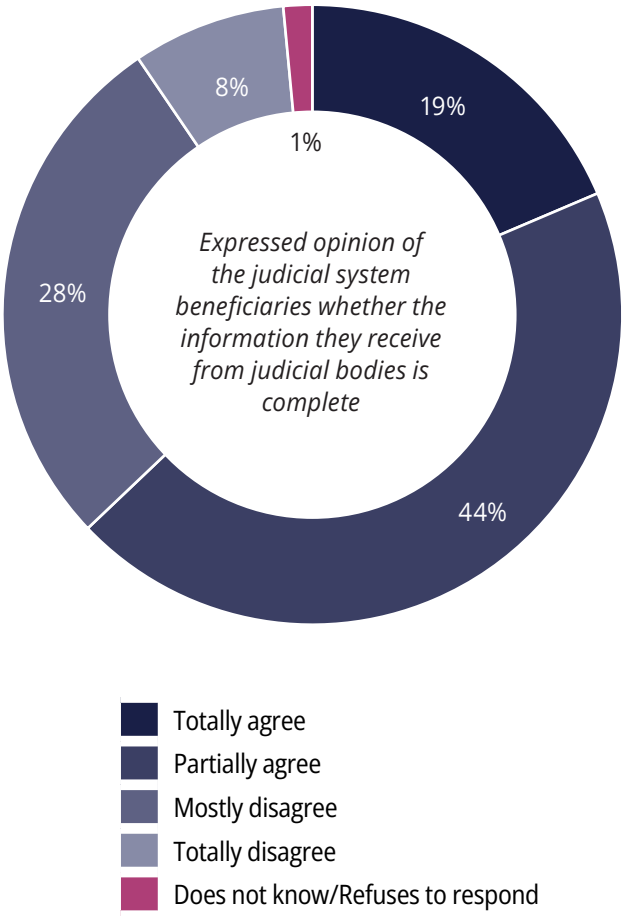
S1: JUDICIAL SYSTEM BENEFICIARIES BELIEVE THAT THEIR "CITIZEN'S RIGHT TO KNOW" ABOUT THE WORK OF JUDICIAL BODIES IS FULFILLED
[1 POINT]

Based on the survey conducted on fulfilment of the "citizens' right to know" by judicial bodies, the following results were obtained: 64.4% of the surveyed citizens agree that their citizens' right to be informed about the work of judicial bodies is fulfilled, while 33.9% of those surveyed do not agree with this claim. More precisely, 9% of the respondents completely disagreed, and 24.9% mostly disagreed with the given statement. Since the percentage of the persons surveyed who responded positively to this statement is 64.4% (so, below 75%), we consider this standard to be partially fullfeed. Compared to the previous reporting process, the evaluation of this standard remains unchanged. [0.5/1 point]

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

Citizens were asked to what extent they agreed with the statement that information they received from judicial bodies is 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 35.6% expressed disagreement. More precisely, 18.6% of the citizens totally agree, while 44.3% partially agree with this statement. On the other hand, 8% of citizens totally disagree, and 27.6% mostly disagree with this statement. Since the percentage of the surveyed persons who responded positively to this statement is 62.8% (under 75%), we believe that this standard is partially fulfilled, and that the evaluation remains unchanged compared to the previous year. [0.5/1 point]



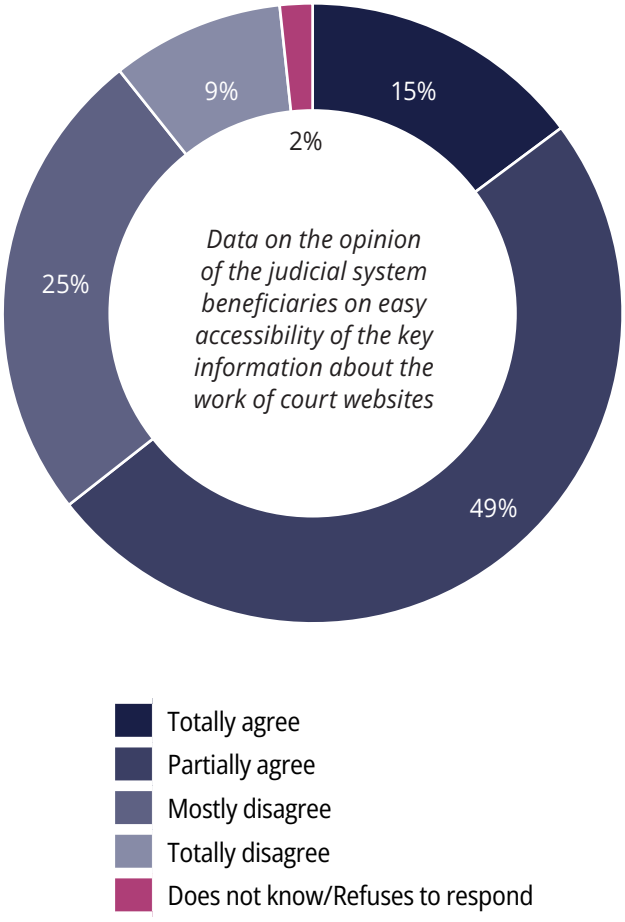


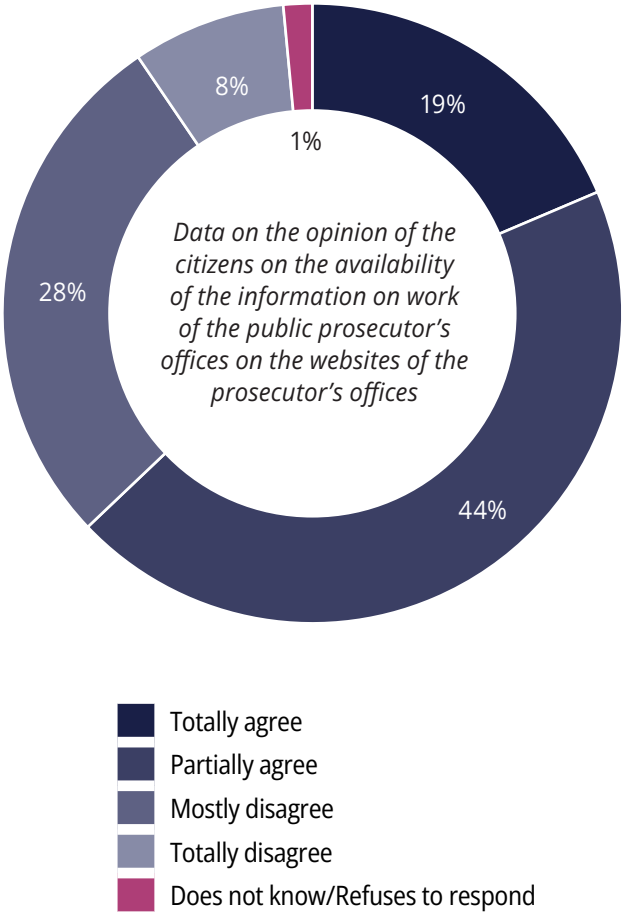
S3: JUDICIAL SYSTEM BENEFICIARIES BELIEVE THAT THE KEY INFORMATION ON COURTS' WORK IS EASILY ACCESSIBLE TO THEM (AT NO MORE THAN THREE CLICKS FROM HOMEPAGE) ON COURT WEBSITES
[0.5 POINTS]

Surveyed 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 surveyed, 56.5% of the citizens gave a positive response. Of that number, 17.4% totally agree, while 39.1% partially agree with this statement. On the other hand, 27.4% of the respondents believe that information of public importance is not easily accessible on court websites. Out of that number, 19% mostly disagree, and 8.4% totally disagree. In addition, it is important to note that up to 16% of the respondents did not know or refused to respond to this question. Because of all of this, we believe that this standard is not fulfilled, which is the identical result to the last year. [0/0.5 points]

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 POINTS]

The citizens were asked if the information of public importance was always easily accessible on the prosecutor's office websites. Out of the total number of those polled, up to 19.7% refused to respond, that is, they did not know how to respond to this question. Furthermore, 52.3% of those polled believe that information on prosecutor's office work is easily accessible on prosecutor's office websites. Of that percentage, 13.4% of the surveyed citizens totally agree, and 38.9% partially agree. Contrary to them, 28% of the surveyed citizens disagree with this statement. More precisely, 19.9% of beneficiaries mostly disagree, while 8% totally disagree with the given statement. Thus, this standard cannot be considered as fulfilled. Compared to the previous reporting cycle, the evaluation of this standard remains unchanged. [0/0.5 points]





EVALUATION OF THE INDICATORS:

Maximum sum of all Sub-indicators	**32** *(Sum of maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**18** ▲ *(Sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-6.5	7-13.5	14-19.5	20-25.5	26-31.5
	Final evaluation of indicators	**2**	**3**	**4**	**5**
FINALNA OCENA INDIKATORA	3				

Compared to the previous reporting period, there have been no changes in the value of individual standards, nor in evaluation of the relevant legal framework. Legal framework that defines availability of information about the work of the courts and public prosecutor's offices is to the great extent harmonised with the established standards. Once again, at this occasion the need for a more precise definition of the term of an official document in the law that regulates access to information of public importance was reconfirmed. Other than that, there have been no improvements in respect of the obligations to publish summaries of the judgements in the cases of interest for the public.

It has been observed that the standards deteriorated compared to the last year's reporting period in regards to proactive and reactive transparency of the courts and prosecutor's offices in certain segments. Namely, the result is worse for the value of the standard that treats regular publishing of annual progress reports and reports on the official websites of the prosecutor's offices. In addition, the result is worse this year in respect of designation of the person in charge to respond to the requests for access to information of public importance in job classification documents or in annual distribution of work, as well as in respect of their training for protection of privacy of the individuals during processing of information.

On the other hand, better results have been observed with the standards that treat accessibility of key information and regular publishing of annual progress reports and work reports on the websites of the courts. In addition, both the courts and prosecutor's offices provide timely responses to the requests for access to information of public importance, which is also visible in the increased value of the relevant standards. Also, there is a better result in evaluation of the accurateness and preciseness of information regarding the requests for information of public importance. It is important to note that in this reporting cycle, the sample of analysed courts was increased, and that it provided an overview of the work of 31 courts, instead of 17 so far. Also, the sample of analysed prosecutor's offices was also increased, so there are now 30 of them. There is still a need for greater accessibility of information in the languages of the national minorities, as well as for the needs of visually impaired persons. In addition, the citizens have not changed their perception of the judicial system and they still evaluate that the information of public importance about the work of the courts is not easily accessible. Thus, despite some changes and increased values of some standards, it is confirmed that all that has not led to more significant changes on the level of the entire area.

RECOMMENDATIONS:

- In respect of the reactive transparency, it is necessary to work further with the courts in this field and raise awareness of the employees of the courts who are in charge of responding to the requests which are legally defined by the Law on Free Access of Information of Public Importance. This reporting cycle has shown a favourable change, where none of the courts that responded to the requests for access to information of public interest asked for the reasons for delivery of information and documentation, which is an improvement compared to the research undertaken last year. In addition, none of the courts refused to deliver all of the requested decisions, but there are still some courts that refuse to deliver judgements that have not been finally completed. This requires additional education of the individuals acting upon the requests for free access so they would also deliver judgements that are not final in the future, having in mind that none of the laws limits them in that respect.
- In terms of proactive transparency, it is necessary to establish functional websites of all the courts on the territory of the Republic of Serbia. This is particularly problematic and directly disables individuals from accessing data on the work of the courts in their territory.
- The courts also need to adjust their websites to the languages of national minorities. Although contact information, address and working hours of the courts are available. There is still a significant percentage of the courts that do not post information on the prices of basic services, useful forms for the citizens, and even territorial jurisdiction of the courts. Thus, all these pieces of information need to be posted on the websites of the courts, so that the citizens could have easier access to this basic information.
- It is necessary to improve the practice of the courts in respect of publishing and regular updates of the progress report, so that the highest judicial bodies would not be directly infringing the law.
- Once again, we point to the significance and a necessity of establishing practice of publishing professional biographies of the judges which would, primarily, contain the data on their education, work and promotions, professional development of the judges, as well as other data on the professional career and executing of the judicial function, in a form and with the content of the professional biographies posted on the website of the Supreme Court of Cassation.

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	2020
1. The Law stipulates payment of court fees in civil proceedings and exemption from payment	1/1	1/1
2. The Law stipulates payment of court fees in criminal proceedings and exemption from payment	0.5/1	0.5/1
3. The Law stipulates that payment of court fees is not a requirement for conducting civil or criminal proceedings	1/1	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	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	0.5/0.5
6. Rules on exemption from payment of court fees and costs of procedures are mutually harmonised and coherent	0/0.5	0/0.5
7. The Law prescribes deadlines for submission of request for exemption from payment of court fees and other costs of procedure [129]	0/1	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	0.5/1
9. The Law stipulates possibility of exemption from payment of other court costs in civil procedure	0.5/0.5	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	0/0.5
11. The Law stipulates the possibility of exemption from payment of other court costs in criminal procedure.	0.5/0.5	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	0.5/0.5
TOTAL NUMBER OF POINTS	**5/8.5**	**5/8.5**

129 This standard does not refer to the costs of representation, because that is included in the indicator about legal aid, which refers to free legal aid.

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

During 2021, the Ministry of Justice published the draft Law on Amendments to the Civil Procedure Code. One of the significant suggestions related to financial accessibility and costs of the proceedings referred to the payment of court fees. The draft law envisions that the court fee for submission shall be paid within the due period stipulated by the law that regulates court fees, as well as sanctioning failure to pay court fees within due period (it shall be considered that the submission has been withdrawn) in order to enable more efficient collection of court fees. That means that in case the plaintiff or the defendant does not gather the money for payment of the court fee within a defined period, it shall be considered that his/her lawsuit or response to the lawsuit has been withdrawn, and he/she will bear the costs the other party accrued up to that moment. The presumption of withdrawal of a submission (lawsuit, response to the lawsuit and other submissions) is an extreme measure that in many cases includes the right to judicial protection of some right, and only due to the failure to fulfil the administrative obligation of payment of the fee or advance payment of the costs of the proceeding. The Draft Law stipulates that the plaintiff must make advance payment of the costs of appointment and work of a temporary representative within the deadline imposed by the court in the decision on appointment of the temporary representative. If the plaintiff does not make advance payment of the costs of appointment and work of the temporary representative within the deadline set by the court in the decision on appointment of temporary representative, the lawsuit shall be considered withdrawn. Such measures would drastically decrease accessibility of the court by the citizens and threaten the right of citizens to access the court. After protests by bar associations and the public, the public debate on the proposed amendments to the law was postponed, although the draft has not been formally withdrawn.

In respect of the current situation in Serbian judiciary, in accordance with the Law on Court Fees[130], the court fees are paid in the proceedings before the courts. Court fee is a financial amount intended to cover the costs of the courts regarding undertaking of the proceedings[131] and is paid for the submissions defined by the Tariff numbers of the same Law.[132] Their predictability in the law, as well as defining special categories of the individuals (including vulnerable social groups as well) that could be exempt from payment, under legally defined conditions, present the standard that must be provided by a modern judicial system open to its beneficiaries.

The Law on Court Fees prescribes that a party pays a court fee for the filings when they are submitted to a court [133], and for court decisions when they are published.[134] In civil proceedings, fees are paid as per value of the subject of a dispute.[135] Fees prescribed by Fee Tariff are paid in court fee stamps or in cash.[136] If a party pays a higher fee than prescribed, they have the right to a refund.[137] 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 provides an extensive list of persons in this case. State and its institutions are exempt from payment of the fees.[138] Before making a decision, a court will evaluate all the circumstances and specifically take into account the applicable amount of a fee to be paid, total income of the party and members of his/her household, and the number of persons the party supports financially.[139] Special law may also prescribe exemption from court fees, so according to the Law on Consumer Protection, in a consumer dispute, court fees for a lawsuit shall not be charged if the value of the dispute does not exceed 500,000 dinars.[140] 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.[141] Thus, based on all the above mentioned, this standard is considered as fulfilled. [1/1 point]

130 Law on Court Fees ("Official Gazette of the RS", no. 95/2018)
131 Law on Court Fees , Article 1
132 Law on Court Fees , Article 3
133 Law on Court Fees , Article 3 (1) (1)
134 Law on Court Fees , Article 3 (1) (3)
135 Law on Court Fees , Article 21 (1)
136 Law on Court Fees , Article 6 (1)
137 Law on Court Fees , Article 43 (1)
138 Law on Court Fees , Article 9 (1)
139 Law on Court Fees , Article 10 (2)
140 Law on Protection of Consumers ("Official Gazette of the RS", no.. 88/2021), Article 148
141 Law on Free Legal Aid, Article 4

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

In criminal proceedings, the 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 the costs of proceeding. However, although stipulated by law, these fee amounts are small. In Serbia, a fee also is paid in criminal cases per private lawsuit. 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.[142] Since the Law on Court Fees prescribes payment of a fee in criminal proceedings per private lawsuit, as well as conditions for exemption from payment of the fees, the standard for inclusion of these provisions in criminal proceedings is partially fulfilled. [0.5/1 point]

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

In most of the judicial systems, court proceedings get 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.[143] Upon a party's request, the court is obliged to receive unpaid or underpaid petitions.[144] 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.[145] 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.[146] 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.[147] 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 POINTS]

Two groups of individuals are *ex lege* exempt from paying fees – dependent persons [148] and persons requiring payment of minimum wage.[149] 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 the 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 as to endanger their social security.[150] 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 points]

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 POINTS]

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.[151] Before adoption of a decision, a court will evaluate all the circumstances and specifically take into account the applicable

142 Law on Court Fees , Article 13
143 Law on Court Fees , Article 7
144 Law on Court Fees , Article 7 (2)
145 Law on Court Fees , Article 37
146 Law on Court Fees , Article 37
147 Law on Court Fees , Article 40(1)
148 Dependent persons in regards to legal dependency are minors, adoptees, as well as children, or adoptees attending school full time or part time studies, if they are unemployed – until the age of 26, grandchildren, if they are not supported by the parents and if the live in the same household with the payer, marital partner, or parent, or adopters – *see* Law on Court Fees, Article 10
149 Law on Court Fees , Article 9 (1)
150 Law on Court Fees , Article 10 (1)
151 Law on Court Fees , Article 10 (2)

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.[152] 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 requests 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 are left with a possibility to make discretionary decisions on a party's exemption from payment of fees, which leads to uneven court practice and inconsistencies in access to justice.[153] However, since the law prescribes clear conditions for individuals to exercise their right to exemption from payment of court fees, this standard is considered as fulfilled. [0.5/0.5 points]

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

In addition to the Law on Court Fees [154], Civil Procedure Code[155], Criminal Procedure Code[156] and Law on Misdemeanours[157] prescribe a possibility for exemption from payment of the costs of proceedings. 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 the law)[158], Civil Procedure Code defines them as persons not capable to bear expenses[159], and the Criminal Procedure Code and the Law on Misdemeanours define them as persons whose support would be threatened[160] or as persons supported by the defendant[161]. Application of the social criterion is the basis for exemption from costs of the court proceedings. The Civil Procedure Code stipulates that in a ruling on exemption from payment of costs of the proceeding, a court can exempt a party only from payment of the fees.[162] In such cases, the problem is that the court sees such a decision as complete approval of the 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 the appeal is not allowed. In addition, in a civil proceeding, the court may *ex officio* collect necessary data and information about the financial situation of a party requesting exemption from payment of costs.[163] This provision leads to inconsistent practical application of the rule for proving fulfilment of conditions for acknowledgment of the right to exemption from costs in practice.

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 a civil procedure.[164] This right can be exercised only when a party is fully exempt from payment of the costs of the proceedings.[165] In that sense, an additional problem is that there is no defined deadline in civil proceedings for the court to rule upon request for exemption from payment of the costs of proceedings, 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[166], a parallel system has been established for acquiring free legal aid in completely separated administrative procedures 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.[167] Thus established parallel systems for exercising of

152 Law on Court Fees , Article 10 (2)
153 Functional analysis of judiciary in Serbia, Multi Donor Trust Fund for Justice Sector Support, Belgrade, 2014, pg. 187.
154 Law on Court Fees
155 Civil Procedure Code, Article 168
156 Criminal Procedure Code, Article 264 (4)
157 Law on Misdemeanours ("Official Gazette of the RS", no.. 91/2019 - other law), Article 141
158 Law on Court Fees , Article 9
159 Civil Procedure Code, Article 168 (1)
160 Criminal Procedure Code, Article 264 (4)
161 Law on Misdemeanours, Article 145
162 Civil Procedure Code, Article 168 (3)
163 Civil Procedure Code, Article 169 (3)
164 Civil Procedure Code, Article 170
165 Civil Procedure Code, Article 170 (1)
166 Law on Free Legal Aid
167 Law on Free Legal Aid, Articles 27 and 46

the rights may create confusion and hinder access to courts for individual beneficiaries. Rules of exemption from payment of court fees and costs of procedure are not sufficiently harmonised, so this standard may not be considered as fulfilled. [0/0.5 points]

S7: THE LAW PRESCRIBES DEADLINES FOR SUBMISSION OF REQUEST FOR EXEMPTION FROM PAYMENT OF COURT FEES AND OTHER COSTS OF PROCEDURE [168]
[1 POINT]

The Civil Procedure Code and the Law on Court Fees do not contain explicitly preclusive deadlines for submission of a request. In most cases, parties are not informed by anyone that they could request fee exemption. They usually submit requests after court decisions come into force since, by the rule, that is when courts send out fee payment warnings. This gap results in courts setting their inconsistent practices and the citizens fail to meet the deadlines and thus lose the right to exemption from payment of the costs of proceedings. In a criminal procedure, the defendant pays the costs once the court pronounces them guilty. In addition to its judgement, the court also adopts a decision on payment of costs.[169] However, even after adoption of such a decision, the court may, through a special decision, exempt the defendant from payment of the costs of criminal procedure, in line with the Criminal Procedure Code.[170] Possible exemption from costs is similarly regulated in a misdemeanour procedure.[171] Thus, based on the aforementioned, the Law on Court Fees and the Civil Procedure Code do not prescribe deadlines for submission of requests 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 a 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 as to endanger their social security.[172] Before making a decision, a court will evaluate all the circumstances and specifically take into account the 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.[173] In order to exercise this right, the parties need to submit proof of their financial situation [174], and the court may obtain and verify the needed data *ex officio* [175]. If a court rejects a request, a party may appeal that decision before the second-instance court. The Court's decision to approve the request for exemption from payment of fees may not be appealed.[176] 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]

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

The Law defines civil proceeding costs as the costs incurred during the course of, or in relation to the proceeding[177], which also include remuneration for the work of attorneys and other persons entitled to remuneration pursuant to the law.[178] In a civil pro-

168 This standard does not refer to the costs of representation, because that is included in the indicator about legal aid, which refers to free legal aid.
169 Criminal Procedure Code, Article 264 (1)
170 Criminal Procedure Code, Article 264 (4)
171 Law on Misdemeanours, Article 145
172 Law on Court Fees , Article 10 (1)
173 Law on Court Fees , Article 10 (2)
174 Law on Court Fees , Article 11 (1)
175 Law on Court Fees , Article 11 (5)
176 Law on Court Fees , Article 11 (6)
177 Civil Procedure Code, Article 150 (1)
178 Civil Procedure Code, Article 150 (2)

ceeding, the rule is that each party bears their own costs during that proceeding [179], and when it ends, the losing party must reimburse the costs of the other party, including the court fees[180]. The Law includes the exemption from payment of costs of the proceeding, exemption from payment of court fees and exemption from payment of deposit for costs of witnesses, expert witnesses, investigation, and court announcements.[181] However, the Civil Procedure Code does not include here exemption from payment of attorneys' remuneration. The right to free legal representative is regulated by the Law on Free Legal Aid[182]. However, despite adoption of the Law on Free Legal Aid, the Civil Procedure Code still includes a possibility to obtain free legal representation granted by the court[183]. The party requesting exemption from the costs must submit a request for exemption from costs of the proceeding to the first-instance court, which then renders the decision[184]. Besides that, it should be noted that the Civil Procedure Code also includes a possibility for appointment of a temporary representative[185] or a legal representative for receiving communications from the court[186], in certain situations. Although this right is rarely exercised in practice, there are still two legally regulated methods for exercising the right to a 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 an interpreter.[187] 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 [188], 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 proceeding. 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 points]

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

When it comes to reasons, procedures and deadlines for exemption from other court costs (such as court expertise) in civil proceedings, these matters 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.[189] Before ruling on exemption from payment of the costs of proceeding, a court will evaluate all the circumstances and specifically take into account the applicable amount of fee to be paid, number of persons that party supports and income and assets of the party and his/her family members.[190] The process is initiated upon the party's request.[191] The party requesting exemption from costs must state the facts in the request and submit proof of those facts.[192] The court may exempt a party completely or partially (only fees).[193] If, during the course of proceedings, the court 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 it was previously exempt from.[194] No appeal is permitted against the ruling of the court granting the request of a party [195], 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 proceeding are not

179 Civil Procedure Code, Article 151
180 Civil Procedure Code, Article 153
181 Civil Procedure Code, Article 168 (2)
182 Law on Free Legal Aid, Article 6
183 Civil Procedure Code, Article 170
184 Civil Procedure Code, Article 169 (2)
185 Civil Procedure Code, Article 82
186 Civil Procedure Code, Article 146
187 Civil Procedure Code, Article 95 (4)
188 Constitution, Article 32 (2)
189 Civil Procedure Code, Article 168 (1)
190 Civil Procedure Code, Article 168 (4)
191 Civil Procedure Code, Article 169 (1)
192 Civil Procedure Code, Article 169 (2)
193 Civil Procedure Code, Article 168 (3)
194 Civil Procedure Code, Article 172 (1)
195 Civil Procedure Code, Article 169 (4)

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 points]

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

In criminal proceeding, the costs include the expenses incurred in connection with the proceeding from its initiation until its conclusion[196] and they comprise of the costs of witnesses, expert witnesses, professional consultants, translators, interpreters and professionals, costs of inquests, costs of transport, 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.[197] Nominally, the defendant bears the costs of criminal proceedings when the court convicts them.[198] 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.[199] The 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 proceeding and the court must examine whether the defendant would jeopardise 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.[200] This exemption refers to all above mentioned expenses, except remuneration and necessary expenses of legal representatives and other persons, if it is justified by financial difficulties that a defendant could face.[201] 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 a criminal proceeding.[202] When criminal proceedings are discontinued, charges are dismissed, or a defendant is acquitted, costs of proceeding are paid by the court[203] or a private prosecutor.[204] The costs of translation and interpretation, as well as the costs of defence of an indigent person are free of charge.[205] On the other hand, defence 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 defence counsel although there are no reasons for mandatory defence 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 defence counsel shall be appointed and the costs of defence shall be borne by the court.[206]

Contrary to the defence of an indigent person, the costs of appointed defence counsel in cases of mandatory defence (if defence 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.[207] Based on the aforementioned, the Criminal Procedure Code stipulates that the defendant who is pronounced guilty shall bear the costs of the criminal proceeding. However, if the payment of the costs would jeopardise 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 proceeding. Thus, this standard can be considered as fulfilled. [0.5/0.5 points]

196 Criminal Procedure Code, Article 261 (1)
197 Criminal Procedure Code, Article 261 (2)
198 Criminal Procedure Code, Article 261 (1)
199 Criminal Procedure Code, Article 264 (4)
200 Criminal Procedure Code, Article 264 (4)
201 Criminal Procedure Code, Article 264 (4)
202 Criminal Procedure Code, Article 264 (4)
203 Criminal Procedure Code, Article 265 (1)
204 Still, a private prosecutor shall not cover the costs of the proceeding if the claim was rejected due to the death of the defendant or statute of limitations of the criminal prosecutor due to delays in the proceeding, which could be attributed to the actions of the private prosecutor – *See* Criminal Procedure Code, Article 265 (3)
205 Criminal Procedure Code, Article 261 (5)
206 Criminal Procedure Code, Article 77 (1)
207 Criminal Procedure Code, Article 266

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

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.[208] Thus, based on all of the above, this standard may be considered as fulfilled. [0.5/0.5 points]

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. The Law prohibits denial of rights (discrimination) based on personal characteristic, especially disability and age	1/1	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	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	1/1
TOTAL NUMBER OF POINTS	2.5/3	2.5/3

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

The Law on Prohibition of Discrimination, which defines the scope, conditions and method for protection against discrimination, was amended in 2021. However, it has remained unchanged in the key provisions that refer to prohibition of discrimination based on disability and age. Article 15, paragraph 1 guarantees the right to equal access and equal protection of rights before courts and public bodies. Prohibition applies to all the aspects of access to public authority bodies, from essential to procedural. Everyone is guaranteed the right to equal access to publicly used facilities, and on public surfaces, as stipulated by the law.[209] Discrimination against persons with disabilities is particularly defined – it exists if there are actions contrary to the principle of respect of equal rights and freedoms of the persons with disabilities in political, economic, cultural and other aspects of public, professional, private and family life.[210] During 2021, the Law on Prevention of Discrimination of Persons with Disabilities was not amended. Thus, the same as during the previously observed period, Article 13, paragraph 1 prohibits discrimination based on disability in terms of accessibility of services and access to publicly used facilities and public surfaces. In case of existence of discrimination, court protection and protection provided by the Commissioner for Protection of Equality[211] are available. The lawsuit may be used to establish discrimination, prohibition of discriminatory actions, removal of the consequences of discrimination, and the compensation of material and non-material damages.[212] Thus, Serbian legislation's normative solutions recognize the problem of discrimination and prohibit discriminatory behaviour based on personal characteristics, 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

208 Criminal Procedure Code, Article 264 (4)
209 Law on Prohibition of Discrimination, Article 17 (2)
210 Law on Prohibition of Discrimination, Article 26
211 Law on Prevention of Discrimination of Persons with Disabilities, ("Official Gazette of the RS", no. 33/2006 and 13/2016), Article 13 (1)
212 Law on Prevention of Discrimination of Persons with Disabilities, Article 43

regardless of their personal characteristics, and especially their movement difficulties. The Law on Planning and Construction[213] was amended in 2021, but the provisions that define the standards of physical accessibility remain unchanged. 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.[214] 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.[215] The Law on Planning and Construction stipulates misdemeanour responsibility of the investor in case of failure to provide access to the facility for persons with disability, in compliance with accessibility standards, but the fine for this violation is still extremely small and it amounts to 300.000 dinars (the fixed amount).[216] As stated in the previous report, more serious sanctioning of failure to fulfil the standard of accessibility has led to real application of the legal obligation of physical adaptation of the facilities. Thus, although the investors are normatively obliged to meet precisely defined accessibility standards for facilities during their construction or adaptation, the 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. In the section on the measures for incitement of equality of the persons with disabilities, the Law on Prevention of Discrimination of Persons with Disabilities has remained unchanged. In accordance with Article 35, the bodies of state administration, territorial autonomy and local self-government are 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. These measures particularly include disclosure of information to the persons with disabilities using suitable technology of simultaneous written text. Since the 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]

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

SUB-INDICATOR STANDARDS	POINTS	2020
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	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	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	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	1/1
TOTAL NUMBER OF POINTS	3.5/4	3.5/4

213 Law on Planning and Construction ("Official Gazette of the RS", no. 52/2021)
214 Law on Planning and Construction, Article 5 (1)
215 Law on Planning and Construction, Article 53a (8)
216 Law on Planning and Construction, Article 206

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 use of national minority languages during the entire course of the proceedings before the public administration bodies in the areas where those national minority languages are in official use, presents the fulfilment of constitutional guarantees referred to in Article 21. This primarily refers to the prohibition of direct or indirect discrimination, on any grounds, and particularly based on language. In addition, it is guaranteed that the members of national minorities shall have the right to use their language in the proceedings also conducted in their language before state bodies, organisations with delegated public powers, bodies of autonomous provinces and local self-government units, in areas where they make a significant part of the population.[217]

European Charter for Regional or Minority Languages obliges all the signatory states, under specific conditions and at party's request, to allow use of regional or minority languages in court proceedings. Since the Charter and the Constitution of the Republic of Serbia proclaim conducting of proceedings in a national minority language in areas where a national minority makes "significant part of the population", the Law on Official Use of Language and Script stipulates significant part of the population in the territory (local self-government) where members of national minority make at least 15% of the population according to the latest census.[218] Official use of language of national minorities includes, among other things, conducting of proceedings and use of national minority languages in administrative and court proceedings. However, although guaranteed, this right is subject to certain limitations, which are not based on the Constitution and ratified international treaties. Let's remind ourselves that Article 20, paragraph 1 of 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.

As in the previous reporting period, the Law on Official Use of Language and Script allows only for the first-instance proceeding to be led in the languages of national minorities.[219] Additionally, in order for a language of a national minority to be used in a first instance proceeding, it is necessary to fulfil more complex requirements – that there is a request of a party, in case there is only one party to the proceeding; in case there are more of them, that the parties agree on the language of the proceeding, if their languages are not the same; and if they fail to agree and one party requires undertaking of the proceeding in Serbian language, the proceeding will be done in Serbian language.[220] In case of the second-instance proceeding, the Law on Official Use of Language and Script stipulates that, in case of a request of a member of a national minority who is a party to the proceeding, the minutes or certain parts of it will be translated in the language of that national minority.[221]

We could confirm a certain type of change in the context of use of the languages of the national minorities in the public authority bodies through the analysis of the Law on Use of Serbian Language in Public Life and Protection and Preservation of Cyrillic Script, which came into force on September 23, 2021, but its application was postponed for six months. This Law does not explicitly encroach the rules stipulated by the Law on Official Use of Language and Script, but its provisions show a clear intention of the legislator to further narrow down the scope of application of the Serbian Latin script. This further decreases the chances for expansion of the use of the languages of national minorities in the work of the public authority bodies, in accordance with the recommendations stated in this report.

The solutions 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 proceedings 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]

217 Constitution, Article 79 (1)
218 Law on Official Use of Language and Script, ("Official Gazette of the RS", no.. 47/2018 and 48/2018 - corr.), Article 11 (2)
219 Law on Official Use of Language and Script, Article 12
220 Law on Official Use of Language and Script, Article 12
221 Law on Official Use of Language and Script, Article 17

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 a translation or an interpreter during a court proceeding should not bear these costs, but rather a competent body should. The Constitution of the Republic of Serbia, besides guaranteeing the right to a translator and an interpreter during a court proceeding to ensure its fairness, also guarantees in Article 32 that a participant in a proceeding shall have the right to free assistance of a translator or an interpreter.

The solutions of the Criminal Procedure Code[222] and the Civil Procedure Code[223] 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 proceeding does not speak Serbian, but some other language, which is in official use in the proceeding, this category also includes all the languages, including the languages of the national minorities not officially used by the court. In accordance with the Law on Official Use of Language and Script, 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.[224] Thus, the existing normative solutions fully guarantee the fulfilment 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]

The parties must be guaranteed the use of their own language during the entire course of the proceeding, as well as translation in case they do not speak or understand the language officially used in the court. The Constitution of the Republic of Serbia[225], which guarantees the right to fair trial, guarantees that everyone shall have the right to free assistance of an interpreter if a person does not speak or understand the language officially used in court. Additionally, Article 33 of the Constitution guarantees that any person charged with criminal offence 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. The Criminal Procedure Code further develops the constitutional guarantee and prescribes that parties, witnesses and other persons participating in a proceeding are entitled to use their own languages and scripts during the proceeding, and where the proceedings are not conducted in their language and unless, after being advised of their right to translation, they declare that they know the language in which the proceeding is conducted and that they waive their right to translation, 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.[226] One of substantial violations of criminal procedure is violation of the right of the defendant, defence counsel, injured party or private prosecutor to use their own language at the trial, which is one of the grounds for appeal referred to in Article 438 of the Criminal Procedure Code. The Civil Procedure Code, similarly, to the criminal procedure, stipulates that parties and other participants in the proceedings have the right to use their own language and script, and they have the right to translation assistance during the proceeding[227]. Translation costs in civil proceedings are included in the costs of a proceeding, and a special decision is adopted regarding that. Since normative solutions fully ensure fulfilment of the guarantees, maximum value is awarded here. [1/1 point]

222 Criminal Procedure Code, Article 261
223 Civil Procedure Code, Article 95
224 Law on Official Use of Language and Script, Article 11
225 Constitution, Article 32
226 Criminal Procedure Code, Article 11
227 Civil Procedure Code, Articles 6 and 95

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

The right to an interpreter for blind and visually impaired, deaf, hearing-impaired and mute persons during the entire court of the court proceeding is equal to the right to use one's own language in the proceeding. Article 32 of the Constitution of the Republic of Serbia, which guarantees the right to fair trial, 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 court and the right to free assistance of an interpreter if a person is blind, deaf, or mute. Article 87, 96 and 98 of the Criminal Procedure Code, guarantees interrogation and questioning through an interpreter, and the same applies to the civil proceedings where the Civil Procedure Code provides the same guarantees.[228] Thus, this standard is considered as completely fulfilled. [1/1 point]

SUB-INDICATOR 1.4.
COSTS OF COURT PROCEEDING IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS	2020
1. Consistent court practice regarding application of rules for proving fulfilment of conditions for recognition of rights to exemption from payment of costs of procedures	0/1	0/1
2. Ratio of collected court fees to the amount of court funds spent on exemption from payment of costs of procedures[229]	0/1	0/1
3. Beneficiaries believe they can estimate total costs till the end of procedure	0/0.5	0/0.5
4. Attorneys' tariff is predictable, affordable, and clear	0/0.5	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	0.5/1
6. Judicial system beneficiaries believe that costs of court proceedings are appropriate to their income	0/0.5	0/0.5
7. Judicial system beneficiaries believe that costs of court proceedings do not prevent access to justice	0/0.5	0/0.5
8. Harmonisation of court fees with average income in Serbia	0.5/0.5	0.5/0.5
9. Harmonisation of attorneys' tariffs with average income in Serbia	0/0.5	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	0/0.5
TOTAL NUMBER OF POINTS	1/6.5	1/6.5

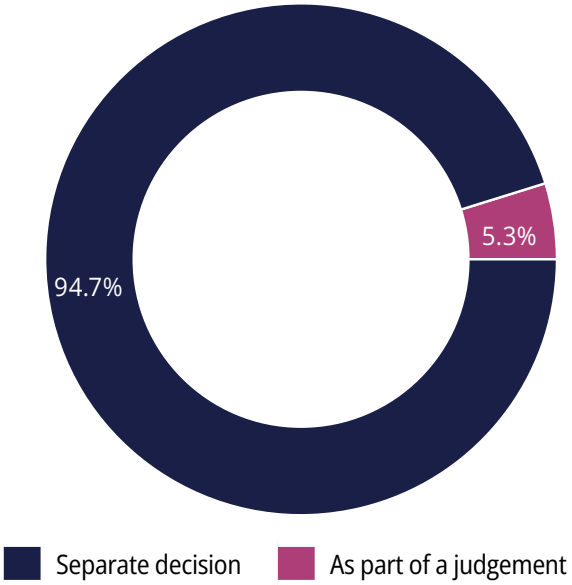
S1: CONSISTENT COURT PRACTICE REGARDING APPLICATION OF RULES FOR PROVING FULFILMENT OF CONDITIONS FOR RECOGNITION OF RIGHTS TO EXEMPTION FROM PAYMENT OF COSTS OF PROCEDURES
[1 POINT]

Based on a survey conducted among the judges, the following results were gathered. Due to unclear regulations, exemption from payment of the 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[230], some judges list the following as special criteria: amount of income of a taxpayer, as well as the number of supported individuals; amount of the fee, data from tax administration, real estate cadaster and other data related to proprietary status of the party, data on employment and type of dispute:

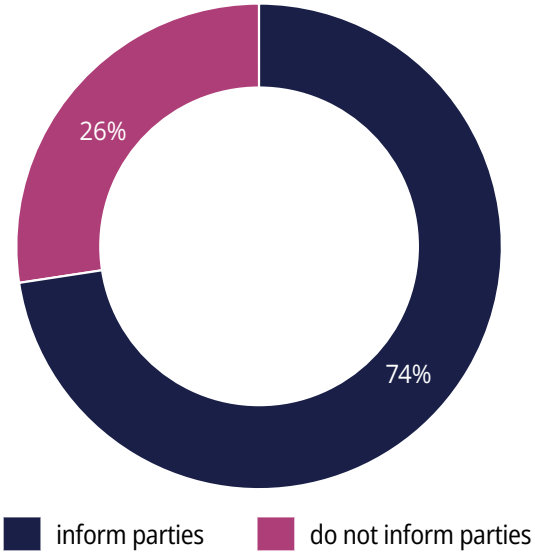
228 Civil Procedure Code, Articles 95 and 256
229 On the subject of the ratio of collected court fees to the amount of court funds spent on exemption from payment of costs of proceedings, there is this report done by the Council of Europe: "European judicial systems – Efficiency and quality of justice (2018)" available at https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c
230 Civil Procedure Code, Article 168

any evidence of poor financial status (evidence of income, obligation to provide support, etc.); evidence of unemployment, registration with the National Employment Service, number and age of the members of the household, that it is requested for the party to be unemployed, that he/she has not been registered with the BRA as the founder of representative of a company, that he/she is not liable to pay property tax, economic and medical status of the party, and his/her social status, the status of his/her family; significance of the dispute, evaluation of the necessity of the costs (in family disputes), amount of income, number of the members of the household supported by the party, whether he/she is liable to pay property tax.

Since the Civil Procedure Code does not prescribe the form for the court decision on exemption from the costs, the practice shows that decision on exemption from costs may be adopted as part of a judgement when the court decides about costs of proceeding, or as a separate decision. In this survey, 94.7% of the judges responded that they would make this decision as a separate one, while 5.3% of the judges stated that they would make this decision as part of the judgement. Compared to the previously observed period during 2020, there has been an increase in the number of decisions on exemption of costs as a separate decision for 12.9%. Decision on exemption from payment of costs of proceeding within the court decision may significantly affect the outcome of the proceeding 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, a decision on exemption from costs of proceeding may prevent the party from proposing and presenting evidence.

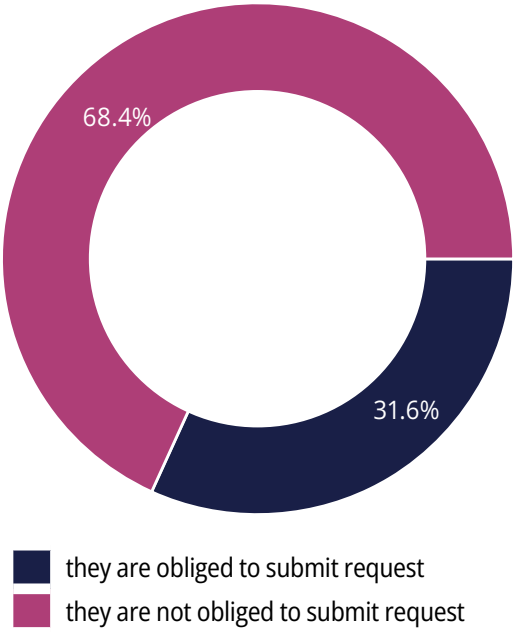


When we talk about the evidence a party should submit with their request for exemption, court practice is also inconsistent. The Civil Procedure Code stipulates that a party is obliged to state the facts and provide their proof in the request for exemption, but also, if needed, court may *ex officio* collect the necessary data and information about the financial situation of that party.[231] When asked about parties' requests that do not contain proof, 68.2% of the judges stated they would request from a 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 a request.



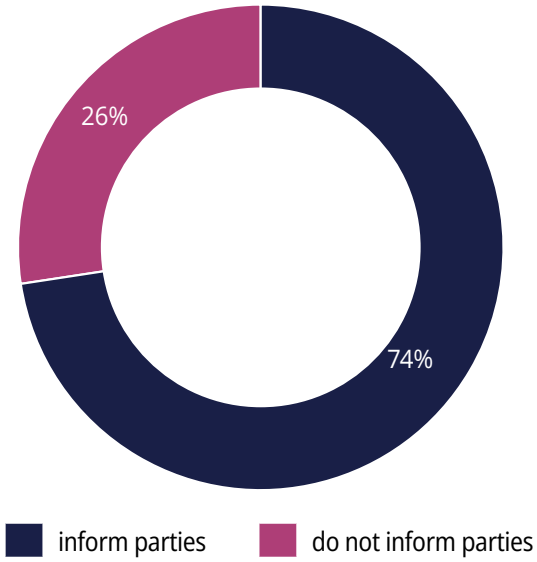
231 Civil Procedure Code, Article 169

Besides persons with sensitive social security, the Law on Court Fees also lists groups of persons such as dependent persons in the proceeding related to legal support and persons who require minimum wage payment, who are, by law, exempt from payment of court fees.[232] However, even though these persons are *ex lege* exempt from payment, and this provision is seemingly clear, court practice is not quite consistent. Thus, 31.6% of the judges state that it is the party's obligation to submit a request for exemption from payment of court fees, while up to 68.4% of the judges state that a party is not obliged to submit such a request. Therefore, it often happens in practice that the above-mentioned 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.



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 [233], they should have an equal obligation to also inform parties about a possibility of exemption from payment of costs of proceeding[234]. However, in most of the cases (even 74%), the judges inform the parties about the possibility of exemption from the costs of proceeding, while they do not inform in a smaller percentage of 26%. The situation is different compared to the previously observed period during 2020, when the judges informed the parties to a smaller extent and did not inform in a higher number of cases.

The law does not prescribe a deadline by which courts should decide upon a request for exemption



from costs of proceeding. Because of that, it may happen that a party submits the 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; timely is all before undertaking of the latest action in the proceeding, which includes the procedure of forced collection of the court fee; until the moment before forced collection for a lawsuit, and for the judgement until completion of litigation proceeding; until conclusion of the main hearing or 15 days as of the receipt of decision rendered in absence of the party; when the costs have already been collected; for the costs of the first-instance proceeding until completion with the final decision, while for the costs of legal remedy upon appeal or revision until completion of the proceedings upon legal remedies.

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 the right to exemption from payment of costs of proceeding, this standard may not be considered as fulfilled. [0/1 point]]

232 Law on Court Fees , Article 10.
233 Civil Procedure Code, Article 85.
234 A court shall recognize a party the right to free legal aid during the entire course of the proceeding when the party is completely exempt from payment of the costs of the proceeding; *see* Civil Procedure Code, Article 170.

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

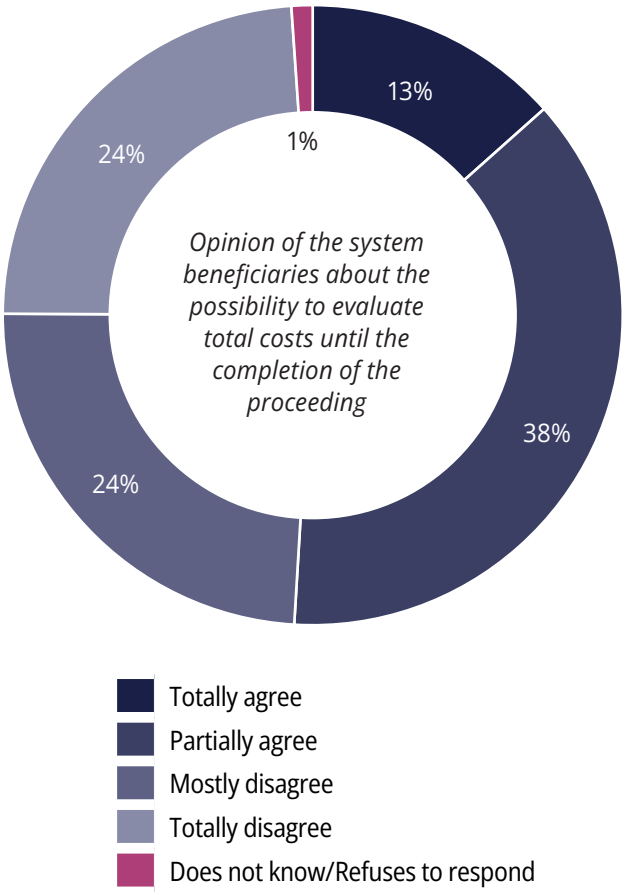
In 2020, the total proceeds from collection of court fees were 4,717,529,610.80 dinars, which is 888,466,678.57 dinars less than in 2019, primarily due to the pandemic caused by virus Covid-19. Compared to the previously observed periods (2019 and 2020), total proceeds collected from court fees has had continuous decrease, and the reasons are probably systemic or external, such as transfer of jurisdiction of the courts to public notaries and the epidemic of the virus, and not the inability of courts to collect court fees.[235] Out of the collected fees, 40% of the amount has been allocated for financing of the work of courts within program activities under the jurisdiction of the High Judicial Council.

However, besides generating income from 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 proceeding. The data obtained from the Ministry of Justice about the amount of 14,154,502 dinars refer only to basic courts, and do not constitute comparable data that could be used to make adequate conclusions.

Therefore, the same as in the previous reporting cycle, since the courts do not keep a separate record of total amounts exempt from payment of costs of proceeding, 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 POINTS]

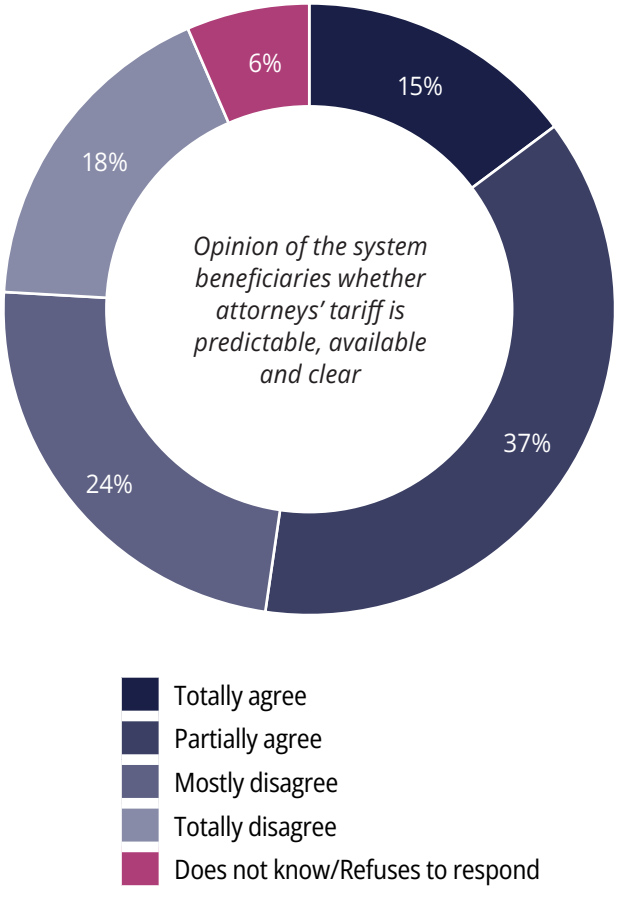
Based on a survey conducted among the citizens of the Republic of Serbia, the following results were noted. Namely, when given a statement "*At the beginning of proceeding, I was able to estimate total costs of the proceeding until its completion*", 47.9% of the citizens disagreed. On the other hand, 51% of the respondents agreed with this claim, and out of that 37.5% of the survey participants partially agreed. Thus, this standard cannot be considered as fulfilled, and the evaluation remains unchanged compared to the previous reporting cycle. [0/0.5 points]



235 Annual Work Report of the High Judicial Council, 2020, pg.12, downloaded from: https://vss.sud.rs/sites/default/files/attachments/IZVESTAJ%20o%20radu%202020.pdf

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

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 52.3% of the participants. Over half of the persons with such responses belong to the population that has degrees of high school, higher or higher education, mostly with average monthly income over 30,000 dinars per household member. On the other hand, 41.2% of the survey participants disagreed with this statement, and out of that number, 17.6% of the survey participants completely disagreed with the stated. 6.5% of the participants did not know how to respond or refused to respond to this question. Thus, based on all above stated, this standard may not be considered as fulfilled. The evaluation remains unchanged compared to the previous reporting cycle. [0/0.5 points]



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]

Strategic documents of the Republic of Serbia recognize the need for improvement in the field of increased transparency and availability of information, particularly having in mind the abilities of new communication technologies and development of e-justice.[236] The research showed that information about court fees is not represented on the websites of all the courts. About half of the courts have some kind of information about court fees. Most of this information refers to the display of the tax tariff, while a small number of courts have an electronic calculator for calculation of the court fees. This electronic tool is easily accessible via the Internet and is easy to use, so all court websites should use it in order to better inform the citizens about the costs of the proceedings. On a smaller number of the websites[237], there are the brochures (Guide for the Exemption of the Costs of Proceeding), which provide a simple overview of the basic costs of the proceedings in litigation, instructions how they are calculated, within which deadlines they are paid and which are the consequences of the failure to pay the costs. This information is an example of good practice that should be adopted by all the courts in the Republic of Serbia, for the purpose of better informing the citizens about the costs of the proceeding. Thus, this standard is considered partially fulfilled. [0.5/1 point]

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

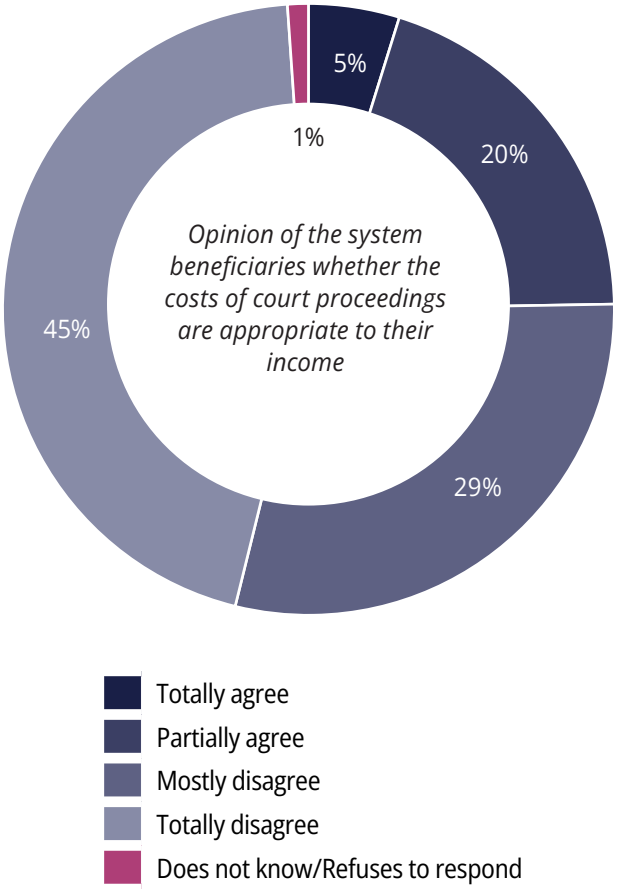
Based on a survey conducted among the judicial system beneficiaries, the following conclusions were made. Up to 74.1% of the survey participants disagreed with the statement that costs of court proceedings are appropriate considering their income. Out of that number, as many as 45% of the respondents stated that they completely disagreed

236 *See more at Strategy of Development of Judiciary* (Strategija razvoja pravosuđa) (draft) for the period 2019-2024, Ministry of Justice of the Republic of Serbia, 2019; The Strategy was not adopted in the National Assembly of the Republic of Serba. *See also Communication Strategy of the Public Prosecutor's Office* (Komunikaciona strategija tužilaštva), State Public Prosecutor's Office and State Council of Prosecutors, 2015-2020; Communication Strategy of the High Judicial Council and Courts (Komunikaciona strategija visokog saveta sudstva i sudova 2018-2022), USAID Project Rule of Law, 2018.

237 Such as, for example, Basic Court in Ivanjica and Basic Court in Zrenjanin

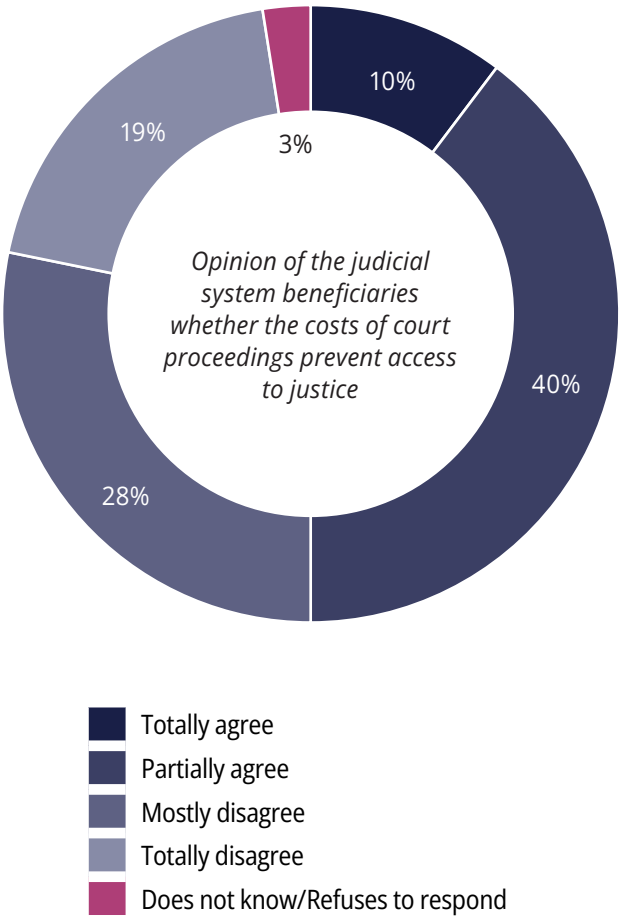
with the given statement. On the other hand, 24.7 of the respondents had positive feedback about the given statement. Even though it is a predominant opinion, it was mostly expressed by the participants older than 61, as well as with elementary or lower level of education coming from the territories of Sumadija and Western Serbia.

Since the percentage of the participants who agree with this statement is just 24.7%, this standard cannot be considered as fulfilled. The evaluation remains the same compared to the previous reporting period. [0/0.5 points]



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

Based on the survey among the judicial system beneficiaries, it was established that the percentage of the survey participants who believe that costs of court proceedings prevent access to justice is 47.5%. This opinion is the most prominent among the citizens with elementary and lower levels of education. Still, 50% of the surveyed citizens 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. The evaluation remains the same compared to the previous reporting cycle. [0/0.5 points]

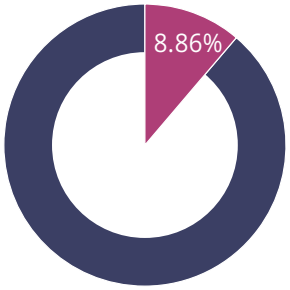


S8: HARMONISATION OF COURT FEES WITH AVERAGE INCOME IN SERBIA [0.5 POINTS]

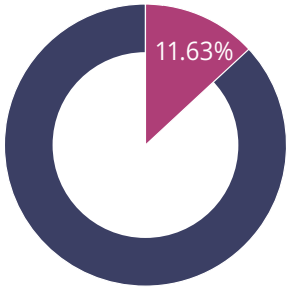
During 2020, there were 1,209,631 pending cases in Serbia, excluding enforcement cases. The increase of the number of unsolved cases was caused by the increased number of new cases in the last five years, which could not have been fully absorbed by the judicial system. There was a significant increase of unsolved cases during 2020 in the judicial matters due to extraordinary circumstances and undertaking of the measures for protection of the population against the pandemic, and due to which the courts in the Republic worked with significantly lower capacities.

Court fees depend on the value of the claim, and in some proceedings, 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 60,073 dinars in December 2020, or compared to the median salary of 45,721 dinars, the total costs of court fees in divorce proceeding

of 5,320[238] dinars make 8.86%, that is, 11.63% of that. This amount is not high compared to this type of proceedings 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.

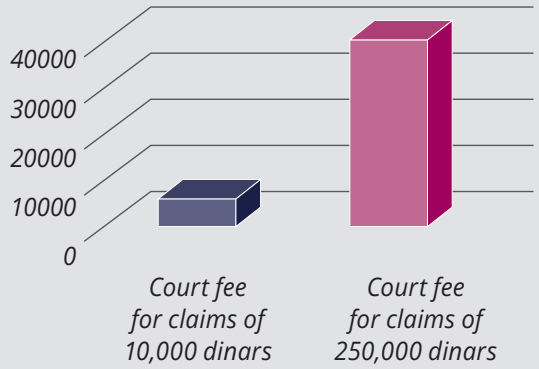


Share of court fee in divorce proceeding in the average net salary in Serbia for 2020



Share of court fee in divorce proceeding in the median net salary in Serbia for 2020

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

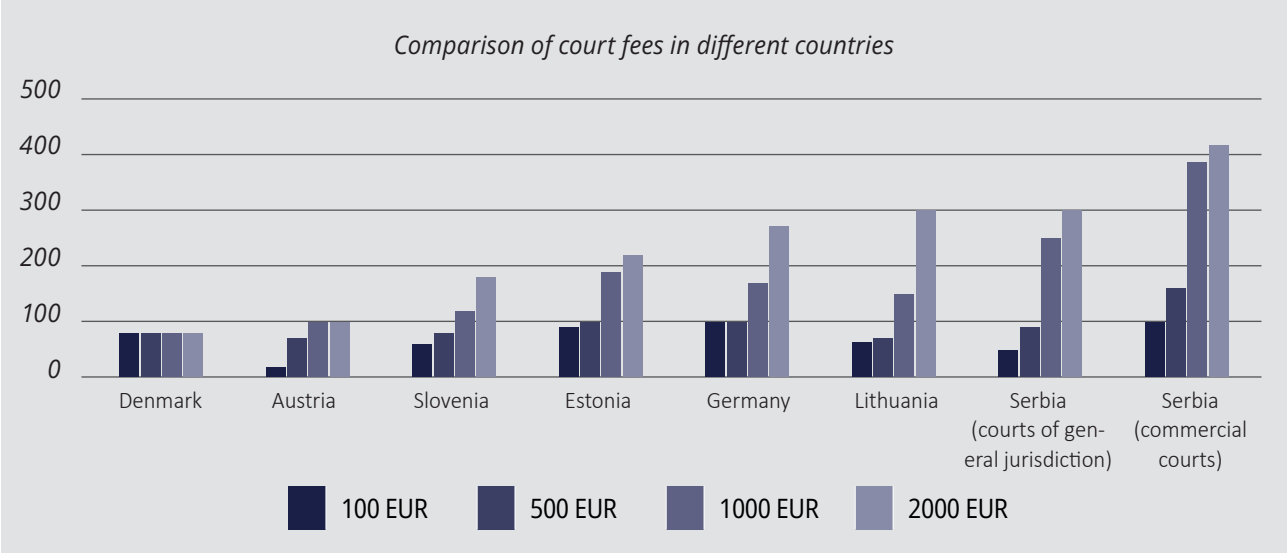


When we compare the court fees with those in other countries, they are much higher, especially in disputes with higher claims. On the other hand, for disputes with lower claims, fees are quite balanced. In the disputes where the value of the claim increases, court fees increase proportionally at the 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.[239] Thus, this standard is considered as fulfilled. [0.5/0.5 points]

S9: HARMONISATION OF ATTORNEYS' TARIFFS WITH AVERAGE INCOME IN SERBIA
[0.5 POINTS]

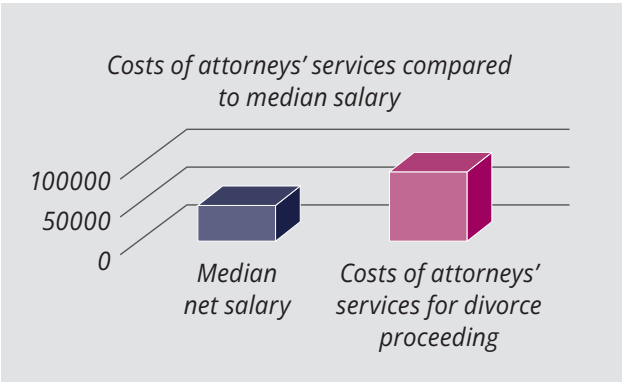
Attorneys' tariffs are prescribed by the Tariff for Reward and Compensation for Attorneys' Work.[240] The Tariff is attorneys' official price list and the attorneys in the Republic of Serbia are required to adhere to the attorneys' tariff. An attorney may agree with a party in written form on remuneration 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.[241] 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 4,000 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.[242] Such fixed amounts are not in line with European practice, since they prevent competition among the attorneys. The tariff envisions payment of the services to the attorney by submission or hearing. Such a system of pecuniary compensation may incite the attorneys to unnecessary procedural steps in order to pile the costs of legal services, which is contrary to the opinion of the Consultative Council of European Judges.[243] During 2021, the Bar Association of Serbia ren-

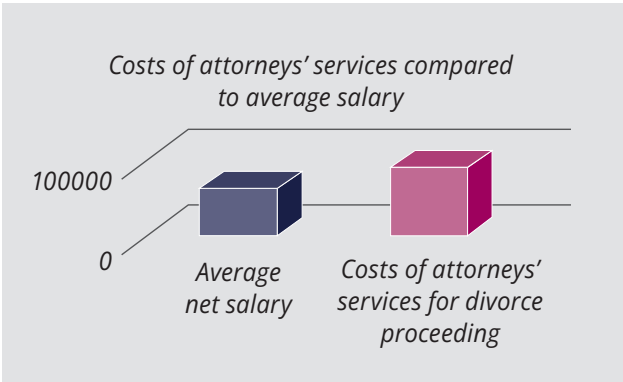
238 The amount of 5,320 RSD includes the court fee for the lawsuit and judgement.
239 Small Claims - Where Does Serbia Stand, Trust Fund for Justice Sector Support in Serbia (MDTF-JSS), Belgrade, 2019, pg. 17, available at: http://www.mdtfjss.org.rs/archive/file/Small_Claims-Where_Does_Serbia_Stand.pdf
240 "Official Gazette of the RS", no. 37/2021
241 Tariff for Reward and Compensation for Attorneys' Work ("Official Gazette of the RS", no.. 121/2012, 99/2020 and 37/2021), Article 4
242 Attorneys' Code of Ethics, item 18.2.2
243 Recommendation A.5, Opinion no. 6 (2004) of the Consultative Council of European Judges (CCJE), Strasbourg, 2001.



dered the Decision to amends the Tariff for Reward and Compensation for Attorneys' Work, having in mind that the Tariff for Reward and Compensation for Attorneys' Work had not been changed in the segment of the amount of reward for work in litigation proceedings since 2012, when it had been adopted. The Decision has been made for Tariff number 13 to be changed so that the current amount of the lowest rewards for work of the attorney is 9000 dinars compared to previous 6000 dinars.[244]

Average amount of attorneys' compensation in the divorce proceeding is 87,000 dinars as per the tariff[245]. When we take into account the average salary of 60,073 dinars or the median net salary of 45,721 dinars, costs of attorneys' services significantly exceed these monthly amounts. Thus, median net salary in the Republic of Serbia makes only 52% of the average compensation for attorneys' services in the divorce proceeding as per attorney's tariff. 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 points]



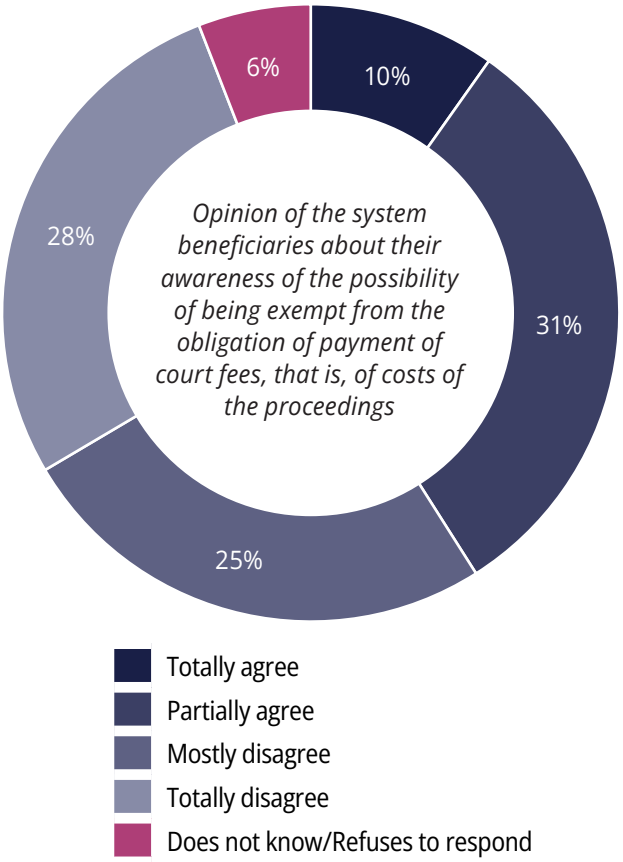


244 Decision to amends the Tariff for Reward and Compensation for Attorneys' Work, Bar association of Serbia, April 12, 2021, available at: https://aks.org.rs/aks/wp-content/uploads/2021/04/ODLUKA-o-izmeni-Tarife-o-nagradama-i-naknadama-tro%C5%A1kova-za-rad-advokata-1.pdf

245 The amount of 87,000 dinars includes compensation for the lawsuit, three hearings and one submission.

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

Based on the survey conducted among the judicial system beneficiaries, we learned that up to 53.1% of the participants were not informed about the possibility of exemption from payment of the fees, that is, costs of proceeding. Where 27.6% of the survey participants strongly disagreed. On the other hand, 41% of the citizens taking the survey consider themselves informed about this possibility. In addition, it is important to note that 5.9% of the survey participants did not know or refused to respond to this question. Since only 41% of the survey participants consider themselves informed about the possibility of exemption from payment of fees, that is, costs of proceeding, this standard cannot be considered as fulfilled. The evaluation remains unchanged compared to the previous reporting cycle. [0/0.5 points]



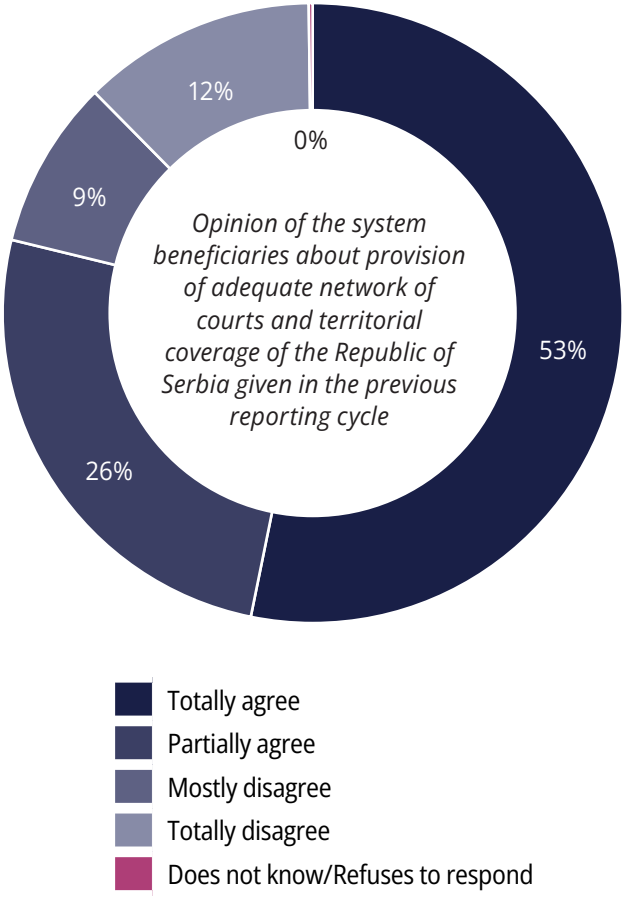
SUB-INDICATOR 1.5.
PHYSICAL ACCESS TO COURTS IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS	2020
1. System beneficiaries believe that the network of courts ensures adequate territorial coverage of the Republic of Serbia	1/1	1/1
2. System beneficiaries believe that courts are equally accessible to everyone, including persons with disabilities and movement difficulties	0.5/1	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	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	0.5/0.5
TOTAL NUMBER OF POINTS	**2/3.5**	**2/3.5**

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

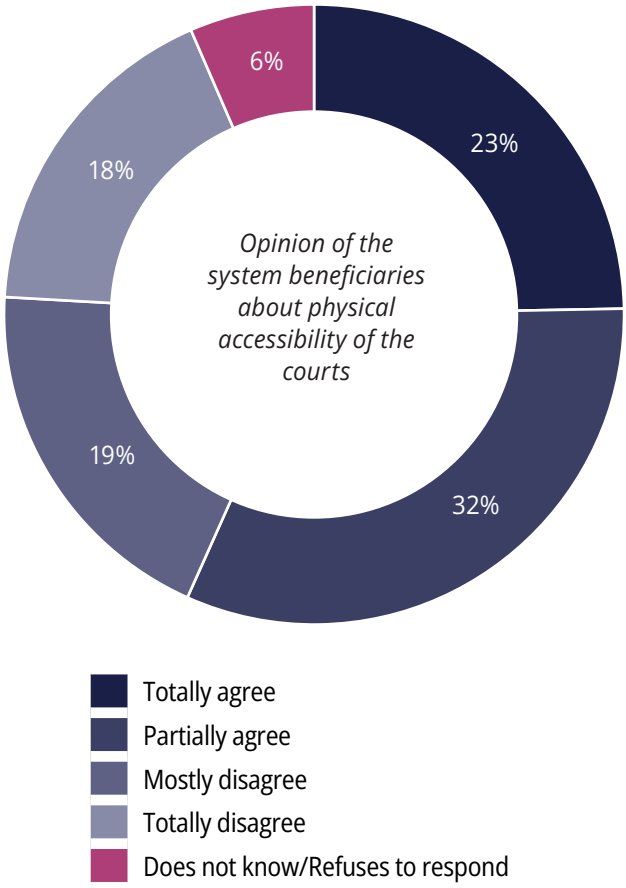
During collection and processing of data in this reporting cycle, it was not possible to obtain the data related with this specific standard. In the previous reporting cycle, the citizens were given a survey where they responded to the following statement: *"The closest first-instance court (basic or higher court) in my place of residence is at a distance that does not prevent my access to court"*, and the following results were compiled. Last year, it was established that 78.8% of those surveyed agreed with this statement. However, 21% of those surveyed disagreed with it. Most of those who disagreed came from the rural areas, from the territories of Sumadija and West Serbia, with average monthly income of 18,000 dinars per household member. Thus, in the last year's reporting cycle, as many as 78.8% of the

respondents provided positive responses about this topic, and at that time, this standard was considered fulfilled. [1/1 point]



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 by 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.), 56.7% 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. Out of that percentage, 24.7% fully agreed with this statement. Over half of those surveyed who responded this way come from the territory of Belgrade and have college or university education. However, up to 36.8 % of the citizens believe this is not the case and that these options do not exist. Besides that, 6.5% 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. The evaluation of the standard has stayed unchanged compared to the previous reporting cycle. [0.5/1 point]



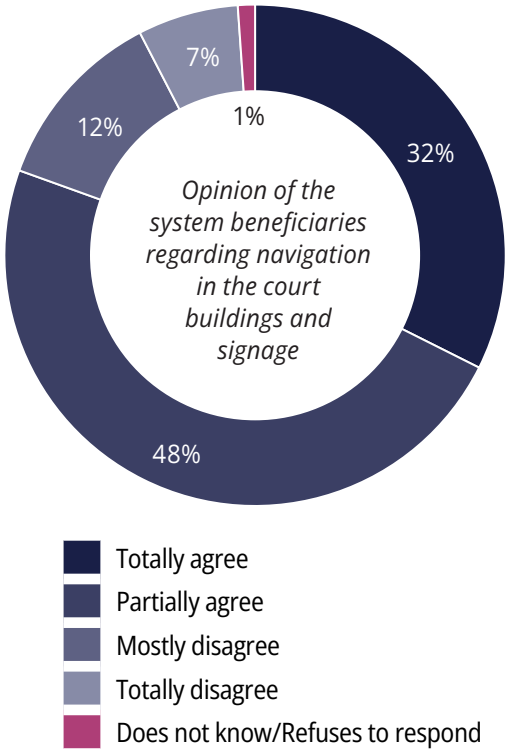
S3: COURTS HAVE AT LEAST 1 EMPLOYEE TRAINED TO COMMUNICATE WITH AND TO SUPPORT VARIOUS SOCIAL CATEGORIES, INCLUDING PERSONS WITH DISABILITIES AND MOVEMENT DIFFICULTIES [1 POINT]

The same as in the previous reporting cycle, this standard was supposed to be evaluated based on a quantitative analysis of the Judicial Academy's data on implemented training. However, the Judicial Academy's data on training, which include basic and ongoing training, special programs, and exams, as well as training 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.

In addition, published data on the details on accessibility of courts was checked, and out of 17 analysed courts, 8 courts posted the data on the details on accessibility of courts (parking, entrance, elevator, possibility to access courtrooms). There is no systematically published data on the persons especially employed and trained to communicate and provide

support to the persons with disabilities and difficulties to move (there is information in individual cases whether the citizens can address for a service or assistance of the court security or some other organisational unit.

Thus, 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, nor have they been identified otherwise, this standard may not be considered as fulfilled. [0/1 point]



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 POINTS]

80.5 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. Also, there is an interesting data that 48.1% of the participants stated that they partially agreed with the same claim. However, 18.4% of the respondents disagreed with this claim, and out of that number, 6.5% respondents totally disagreed. Thus, this standard may be considered as fulfilled, and the evaluation stays the same compared to the previous reporting period. [0.5/0.5 points]

SUB-INDICATOR 1.6.
LANGUAGE ACCESSIBILITY OF COURTS IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS	2020
1. Information about the right to interpreter and translator is unified, public and easily accessible	0.5/1	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	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	0/1
4. Courts provide information about certified translators for foreign citizens in the course of procedure	0/0.5	0/0.5
TOTAL NUMBER OF POINTS	0.5/3.5	0.5/3.5

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

When it comes to linguistic accessibility of the courts in practice, the information about the right to interpreter and translator in the sample of courts vary. This information was published for 13 out of 17 observed courts, but even when they were published, they cannot be considered as complete based on the set criteria – unified, public and easily accessible. Each court has a different approach to the manner and place where this information will be published. Some courts do it in their annual progress report, others within a special notice or page, while some of them publish this information on the home page. It is positive that the Provincial Secretariat for Education, Regulations,

Administration and National Minorities – National Communities has made available its court translators database (it is possible to run searches per towns and languages).[246] According to the records of the Ministry of Justice on permanent court interpreters, there are 22 registered permanent interpreters for hearing-impaired persons[247], but these data are not easily accessible to possible users of court interpreting. Thus, having in mind all of the above, and considering 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 progress reports and websites of the 17 courts from the sample. Out of five courts covering the territories where national minority languages are in official use, two basic courts, in Subotica and Bujanovac, provide the information about free translators for the members of national minorities whose languages are officially used in the area where the court is located. Other courts do not publish such data, which, despite not showing that the rights of the parties are not infringed in practice, serves as evidence of the significance this has for the citizens whose language is officially used on the territory covered by a certain court. Thus, based on all above stated, this standard cannot be considered as fulfilled which was the case in the previous cycle. [0/1 point]

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]

In the observed sample, 10 out 17 courts publish information that they provide free translators for the members of the national minorities not present in the territory of the court, as well as that they provide certified translators for foreign citizens during the course of the proceedings. The same as in the previous measure, such an approach shows that linguistic accessibility of the courts is not high on the list of priorities of the courts. Thus, based on all above stated, the same as in the previous cycle, 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 POINTS]

Based on the existing results, it was established that 10 out of 17 courts published information about the fact that they provided certified translators for foreign citizens during the course of the proceedings. Also, it should be noted that none of the courts in the observed sample have published annual data on the use of language in the proceedings, and the reason for absence of such information is lack of suitable and unified court records. Thus, the same as in the previous reporting cycle, this standard is still not fulfilled. [0/0.5 points]]

EVALUATION OF THE INDICATORS:

Maximum sum of all Sub-indicators	**29** *(Sum of maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**14.5** ▲ *(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				

246 For more information see page http://www.puma.vojvodina.gov.rs/tumaci.php
247 Strategy for Improvement of the Position of Persons with Disabilities for the period from 2020 to 2024: 44/2020-176

As in the previous reporting period, 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. There have been no changes to the evaluation of the standards within different indicators, and the confirmed problems remain mostly the same. There are problems noted in application of rules for proving fulfilment of requirements for exemption from costs of procedure, prediction of possible cost of court proceeding until its completion, and attorneys' tariff. As in the previous period, the opinion of the citizens about the costs of court proceedings are not appropriate to their income and thus prevent access to justice. Also, they are not adequately informed about the possibility of getting exempt from these costs. In practice, physical accessibility of courts is satisfactory, but it is necessary to improve language accessibility.

RECOMMENDATIONS:

- As it was also recommended in the previous reporting cycle, 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, which are not in accordance with constitutionally guaranteed right to lead the proceedings fully in their language in the communities where they constitute significant portion of the population.
- It is necessary to establish the records (which do not exist at the moment) and publish the data on use of the languages of national minorities and other languages in court proceedings, for the purpose of regular monitoring of implementation of these obligations.
- In terms of physical access to courts, it is necessary to allocate more funds in the budget of the courts for adaptation of the facilities and communication systems to persons with disabilities and movement difficulties, as well as the specific spatial adaptations. In addition, once again there is a need to provide required support to vulnerable social groups, including persons with disabilities and movement difficulties, at the court facilities.
- Within adaptation of the physical accessibility of the courts, it is still necessary to amend the Court Rules of Procedure with the provisions that stipulate the obligation of securing technical conditions for undisturbed movement and access for the persons with disabilities and the elderly, in accordance with defined technical requirements.
- It is still necessary to work on better informing of the citizens about the possibility for exemption from the costs of proceeding, the process and conditions for exemption, and better harmonisation of these costs with the income of the citizens.

IV KEY AREA: JUDICIAL EFFICIENCY

INDICATOR 1: EFFICIENCY OF COURT PROCEEDINGS

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. The applicable laws regulate the right to a trial within a reasonable time	0.5/1	0.5/1
2. The procedural rights of parties and participants in court proceedings are regulated by law	0.5/1	0.5/1
3. The procedural rights of parties and participants in court proceedings are protected by law	0.5/1	0.5/1
4. There are provisions in place regulating procedural discipline for parties and participants in court proceedings	0.5/1	0.5/1
TOTAL NUMBER OF POINTS	2/4	2/4

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

In the period as of the previous report for 2020, there have been no changes to the legislative framework that regulates duration of the trial within a reasonable time during 2021. The right to a fair trial proclaimed by the European Convention for the Protection of Human Rights and Fundamental Freedoms[248] is guaranteed by the Constitution of the Republic of Serbia[249]. It is achieved by, among other things, a trial within a reasonable time[250]. This standard is prescribed by other legal instruments, such as the Civil Procedure Code[251] and Law on Protection of the Right to a Trial within a Reasonable Time [252].

As already mentioned in the previous report, the Law on Protection of the Right to a Trial within a Reasonable Time provides for several remedies for the protection of this right: complaint[253], appeal[254] and claim for just satisfaction[255]. 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

248 European Convention for Protection of Human Rights and Fundamental Freedoms ("Official Gazette of Serbia and Montenegro – International Treaties", no. 9/2003, 5/2005 i 7/2005 - corr. and "Official Gazette of the RS – International Treaties ", no. 12/2010 i 10/2015), Article 6 (1)
249 Constitution, Article 32
250 Constitution, Article 32 (1)
251 Civil Procedure Code, Article 10 (1)
252 Law on Protection of the Right to a Trial within a Reasonable Time ("Official Gazette of the RS", no. 40/2015), Article 1
253 Law on Protection of the Right to a Trial within a Reasonable Time, Articles 3 and 5-13
254 Law on Protection of the Right to a Trial within a Reasonable Time, Article 3, Articles 5-21
255 Law on Protection of the Right to a Trial within a Reasonable Time, Articles 3, 22 and 23

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.[256] The law provides for strict responsibility of the Republic of Serbia with regard to these rights.[257] This mechanism also envisions that when determining just satisfaction, the State Attorney's Office and the courts are bound by decisions of court presidents establishing that the party's right to a trial within a reasonable time has been violated.[258] The Law on Protection of the Right to a Trial within a Reasonable does not specify which actions judges must take in order to protect this right, and assumes that the rules and time limits stipulated in procedural laws apply. As regards the legal criteria for assessing whether or not a trial is conducted within reasonable time[259], they are defined very broadly. However, it is unclear 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 are often impossible to meet due to substantial differences in workloads among courts and judges.[260] The Civil Procedure Code does not provide guidelines or mechanisms for such situations. The mechanisms and proceeding upon complaint have already been described in the previous report and they have not been changed since. The same applies to the proceeding of submission of the proposal for settlement, and to the proceeding of just satisfaction and more serious violation of the right to trial within reasonable time, so this proceeding and legal solutions will not be elaborated at this occasion.

Thus, based on all above stated, it is obvious that the Law on Protection of the Right to a Trial within a Reasonable Time contains the provisions that significantly improve the control of the actions of the courts, but do not always provide clear instructions. Yet, the organisation 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, the same as in the previous year, 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 Civil Procedure Code is undergoing amendments that should have a significant impact on these rights of the parties and the participants in the proceedings. The procedural rights of parties and participants in the proceedings should 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 give 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.[261] 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 mea-

256 Law on Protection of the Right to a Trial within a Reasonable Time, Articles 3 and 23 (1)
257 Law on Protection of the Right to a Trial within a Reasonable Time, Articles 3 and 23 (2)
258 Law on Protection of the Right to a Trial within a Reasonable Time, Articles 3 and 23 (3)
259 As Law on Protection of the Right to a Trial within a Reasonable Time, Article 4 defines: *"...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."*
260 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.
261 Constitution, Article 32

sure, the right to the exclusion of the public from court.[262] 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.[263] Further, everyone has the right to an appeal or other remedy against any decision on their rights, obligations or lawful interests.[264] 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[265] and are free to dispose of their claims.[266] The rules are oral, direct and public proceedings.[267] The parties are required to submit all the facts on which they base their claims and propose evidence.[268]

Even though the Civil Procedure Code adequately provides for strict control of the time limits for adjournment of hearings[269], this control is not often performed in practice. Although efficiency and judicial economy are the principles inherent in the litigation process, the Civil Procedure Code often fails to regulate these matters more adequately. The same as in the previous reporting period, the attention directed at the provisions relating to the appointment of an attorney to receive documents are an example of a procedural rule which may delay the proceedings. 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.[270]

Based on the above considerations, the same as in the previous cycle, 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 legal framework has remained unchanged in this segment as of 2020, but there are ongoing amendments to the Civil Procedure Code. 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 catalogue of guarantees[271], which are further developed through relevant procedural laws.

The Civil Procedure Code and the Court Rules of Procedure prescribe procedural safeguards for the parties and participants in the proceedings through rules of court operation and conduct. Courts are obliged to act lawfully, equally, and fairly[272], to conscientiously and carefully assess the evidence[273], to conduct the proceedings without delay, to set a time frame and abide by the principle of judicial economy [274]. Courts have a duty to prevent and punish any abuse of the rights of the parties.[275] The Law on Judges provides for state responsibility for the damages caused by unlawful or improper work of a judge[276], and imposes an obligation on judges to compensate the damages if it is caused willfully.[277] Furthermore, the legal framework in regards to dis-

262 Constitution, Article 32
263 Constitution, Article 36
264 Constitution, Article 36
265 Civil Procedure Code, Article 2
266 Civil Procedure Code, Article 3 (2
267 Civil Procedure Code, Article 4 (1)
268 Civil Procedure Code, Article 7 (1)
269 Civil Procedure Code, Article 108
270 Civil Procedure Code, Article 149
271 Constitution, Article 27-37
272 Civil Procedure Code, Article 2
273 Civil Procedure Code, Article 8
274 Civil Procedure Code, Article 10 (2)
275 Civil Procedure Code, Article 9 (2)
276 Law on Judges ("Official Gazette of the RS", no.. 47/2017, 76/2021), Article 6 (1)
277 Law on Judges, Article 6 (2)

missal of the judges has remained unchanged, including the provisions regarding disciplinary responsibility of the judges. It should be noted that judicial efficiency in the proceedings is also secured by the Law on Protection of the Right to a Trial within a Reasonable Time[278]. Judicial administration, specifically the High Judicial Council and the Ministry of Justice, are responsible for overseeing the work of courts and protection of procedural rights of the parties and participants in court proceedings.[279] The complaint is a means for the participants in proceedings to assert their rights[280], 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, and undertake necessary measures.[281]

Procedural rights of the 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. The same as in the previous reporting period, it has been established that the procedural framework 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. The same as before, there are no rules in place to enable the development and improvement of the organisation 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, as it was last year. [0.5/1 point]

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

It has been established that during 2021, there were no changes to the legal framework, although they are expected soon. 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 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.[282] 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.[283] Judges are obliged to conduct the proceedings immediately, in accordance with pre-established timeframes for undertaking litigious actions, and at a lowest possible cost.[284] In accordance with the provisions of the Law on Judges, there is a disciplinary responsibility of the judges.[285] 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.[286] The other rules in this sphere remain in force as in the previous reporting period.[287]

Therefore, it can be concluded that the provisions regulating procedural discipline and the conduct of parties and participants in court proceedings are clear, but their application should be more efficient. That could be achieved 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]

278 Law on Protection of the Right to a Trial within a Reasonable Time
279 Law on organisation of Courts, Article 70
280 Court Rules of Procedure, ("Official Gazette of the RS", no.. 43/2019 i 93/2019), Articles 9, 9a, 9b, 9v and 10.
281 Court Rules of Procedure, Article 9
282 Civil Procedure Code, Article 9
283 Civil Procedure Code, Article 10
284 Civil Procedure Code, Article 10 (2)
285 Law on Judges, Article 25 (2)
286 Civil Procedure Code, Article 333
287 *See for example.* Civil Procedure Code, Articles 257 (4) and 267 (6)

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. The law prescribes that judgements must be drafted in such a way to comply with the reasoned judgement standard	1/1	1/1
2. The regulations provide for pre-service (initial) and in-service (continuous) multidisciplinary training of judges, judicial assistants and trainees	1/1	1/1
3. The regulations allow for appropriate allocation of human, financial and material resources	0/0.5	0/0.5
4. The law provides for dissenting opinions when making court decisions	0.5/0.5	0.5/0.5
5. The law provides for the evaluation of judges' performance	0.5/1	0.5/1
6. The regulations provide for consistent and predictable court decisions	1/1	1/1
TOTAL NUMBER OF POINTS	**4/5**	**4/5**

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

The legal framework in this area has not been changed since 2018, except for small changes in the rules of the Civil Procedure Code that envision the contents of the introduction to the judgement for the purpose of better identification of the parties in 2020[288]. The reasoned judgement 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[289]. 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 judgement 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 judgement[290], but does not prescribe the methodology of judgement 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:[291] 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. A guide 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."[292]

Having in mind the significance of the court practice 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 detailed legal regulation of this standard is not needed. Thus, 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]

288 Law on Amendments to the Civil Procedure Code ("Official Gazette of the RS", no. 18/2020) amending Article 355 of the Civil Procedure Code.
289 Constitution, Article 32; ECHR, Article 6
290 Civil Procedure Code, Article 355.
291 Decisions Už-4717/2013 of May 26, 2016 and Už-2048/2009 of February 22, 2012.
292 *Vodic 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.

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.[293] The rules have not changed in this segment compared to the previous year.[294] In addition to training of judges, the Law also envisions training of judicial assistants and trainees. Legislation of the Republic of Serbia provides for training of judges and other judicial staff. In practice, continuous training of judges after their election is not specifically regulated both in terms of time and topics. However, this standard is considered to be fulfilled, as was the case in the previous reporting period. [1/1 point]

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

The same as the previous year, 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. The Judicial Development Strategy also fails to address this thematic area.[295] 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. Having in mind all above stated, this standard is considered not to be fulfilled. The same evaluation has been made in the previously analysed period. [0/0.5 points]

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

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, the same as the previous year, this standard is considered fulfilled. [0.5/0.5 points]

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

There have been no changes in this area compared to the baseline analysis. 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.[296] 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 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 Judicial 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, as was the case in the previous period. [0.5/1 point]

293 Law on the Judicial Academy, („Official Gazette of the RS", no.. 106/2015)
294 Law on Judges, Article 45a
295 The 2020-2025 Judicial Development Strategy ("Official Gazette of the RS", no.. 101/2020)
296 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)

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 harmonisation of the national judicial practice, which as a result leads to enhanced public confidence in the judicial system. The Law on organisation of Courts entrusted this task to the highest courts in the country – the appellate courts and, of course, the Supreme Court of Cassation. Since the legislation of the Republic of Serbia provides an adequate legal framework for meeting this standard, and since the analysed legal framework has remained unchanged compared to the previous year, this standard is still considered to be fulfilled. [1/1 point]

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. The share of justified citizens' complaints regarding the work of courts in the total number of complaints	1/1	1/1
2. The share of justified citizens' complaints regarding the work of judges in the total number of complaints	1/1	1/1
3. The share of first-instance courts' judgements overturned on grounds of procedural violation in the total number of judgements delivered	0.5/1	0.5/1
4. The share of successful extraordinary remedial appeals for violations of procedural laws in the total number of appeals filed	1/1 ▲	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	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	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	0.5/1
TOTAL NUMBER OF POINTS	**4.5/7 ▲**	**4/7**

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

The analysis of the collected materials of the representative courts that were used as a sample, has provided the data based on the responses to the requests for access to information of public importance sent to the addresses of the courts. Since the sample of the analysed courts during the second circle of this research was bigger, the results were higher compared to the first processing. This time, the total of 420 complaints were filed against work of the courts, out of which 57 were found to be justified, which means that the percentage of justified complaints compared to the total number of submitted complaints is 13.5%. It should be noted that the Higher Court in Novi Sad and Basic Court in Vrbas did not submit the requested data, more precisely, the delivered general data for all the complaints submitted in 2020, without specifying which complaints referred to the work of the court specifically. Despite the fact that the number of the participants was double the number in the first round of the research, the results have not changed. As in the previous cycle, the standard is 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 analysis of the data received in this reporting period has brought a somewhat higher number compared to the previous analysis. However, despite having an increased number of representative courts in the sample, this time, the data were received from all the courts. Number of the complaints regarding the work of the judges in 2020 was 744, and out of that number 148.5 were found to be justified, which means that the percentage of the justified complaints compared to the total number is 19.95%. Thus, this standard is considered as fulfilled, as in the previous report. [1/1 point].

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

The analysis of the sample of the collected data from the expanded list of representative courts has brought the results that the total number of the submitted complaints regarding the judgements of the analysed 29 courts is 30.890, and the number of remanded decisions due to procedural rules of proceedings is 4221 , which means that the percentage of the remanded decisions solely due to the procedural reasons compared to the total number is 13.66%. It should be noted that the data was received from the Basic Court in Lebane about the number of appealed judgements, but that they were not able to provide the data on the number of remanded judgements, since there was not a separate record for the requested criteria due to a higher number of cases, and that even the search in AVP system could not provide requested information. Based on everything above stated, it can be concluded that this standard, same as in the previous period, is 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]

When taking over the results for this standard from the 29 examined courts, 15 courts responded that they did not have the data for the requested information. Thus, the following courts are included as representative when determining the results: Basic Court in Pirot, Basic Court in Kikinda, Basic Court in Sabac, Basic Court in Becej, Basic Court in Vrbas, Basic Court in Raska, Basic Court in Bujanovac, Higher Court in Nis, Higher Court in Negotin, Basic Court in Jagodina, Basic Court in Brus, Higher Court in Krusevac, Higher Court in Prokuplje and Higher Court in Kraljevo.

It is very interesting that among the courts that have reported that they do not keep those records are the courts that had given the requested results in the previous research. These courts are: First Basic Court in Belgrade and Higher Court in Novi Sad. The total number of extraordinary remedial appeals submitted against judgements of representative courts is 448, and the number of adopted extraordinary legal remedies due to procedural rules is 20, which means that the percentage of the adopted compared to the total number is 4.46%. Therefore, this standard is found to be fulfilled, unlike the previous analysis when it was partially fulfilled. [1/1 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]

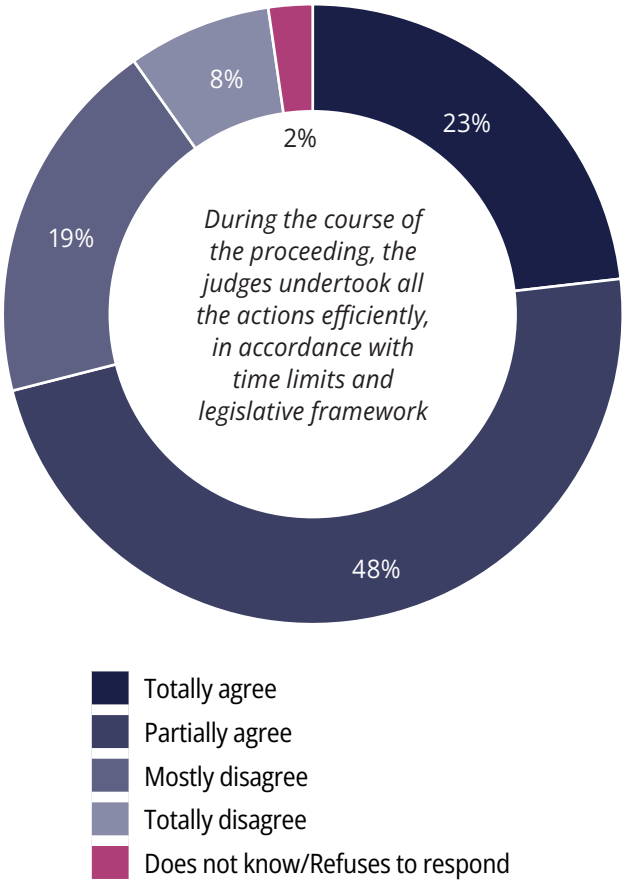
In reply to our request to access the information of public importance, the Constitutional Court clearly stated that, given the large numbers of constitutional appeals, filings and cases, this court kept the records of data pertaining to violations of constitutionally guaranteed rights only for the cases that had been adjudicated on the merits. That is why the Constitutional Court does not possess the 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 freedoms, not of violations of procedural rights of citizens. Since the received response is identical to the one received last year, this standard cannot be considered as fulfilled. [0/1 point]

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

In the response to the request for access to information of public importance about the number of applications that have been accepted before the European Courts for Human Rights due to violation of procedural laws that refer to the decisions against Serbia, the Constitutional Court stated that in 2020, the European Court for Human Rights had made 5 judgements based on eight applications submitted against Serbia. Infringements of the European Convention have been determined in four judgements (two infringements of Article 6 – access to court in enforcement proceedings, two infringements of Article 1, paragraph 1 of the Protocol 1 Environmental Protection, and two infringements of Article 8 – right to respect for private and family life). In the document Press Country Profile - Serbia[297], published on the website of the European Court for Human Rights, it is stated that this court processed 1421 applications regarding the Republic of Serbia, and that out of this number, 1413 were proclaimed impermissible. Since in 2020, eight applications before the European Court for Human Rights were proclaimed permissible, and since for the needs of this research, 2 infringements of Article 6 (access to court in enforcement proceeding) were treated as violations of the procedural rights of the parties, the percentage of the adopted applications is 25%. Therefore, same as in the previous report, this standard is considered as partially 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]

In the process of establishing whether this standard was fulfilled the judicial system beneficiaries responded to the following statement: "*During the course of the proceeding, the judges undertook all the actions efficiently, in accordance with time limits and legislative framework*". The following was determined based on the collected data: 71.1% of the citizens agreed with this statement – 23.2% of the citizens fully agreed, and 47.9% partially agreed. 26.6% of the citizens had a contrary standpoint. Out of this percentage, 7.5% of the citizens totally disagreed with this statement, while the remaining 19.2% mostly disagreed. Having in mind that 72.1% of the citizens had a positive opinion about this statement, this standard is considered as partially fulfilled. Compared to the results from the previous reporting cycle, the evaluation of this standard remains unchanged. [0.5/1 point]



297 Serbia – Press country profile, European Court of Human Rights, Jul 2021, available at https://www.echr.coe.int/Documents/CP_Serbia_ENG.pdf

SUB-INDICATOR 1.4.
THE LENGTH OF COURT PROCEEDINGS

SUB-INDICATOR STANDARDS	POINTS	2020
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	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	1/1 ▲	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	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	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	0/1
6. The share of ECHR judgements 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	1/1 ▲	0.5/1
7. System beneficiaries consider that the time frames and the length of proceedings standards were observed	0/0.5 ▼	0.5/0.5
TOTAL NUMBER OF POINTS	3.5/6.5 ▲	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 year 2020 was marked by the epidemic of virus COVID-19 and a state of emergency was proclaimed in the Republic of Serbia. Due to this fact, the courts did not work to their full capacity in the period from March 15, 2020, until May 6, 2020. In the civil matters, the hearings were not postponed in the following situations: deciding on injunctions, measures for protection against domestic violence, prohibition of dissemination of press and spreading of information by means of public information, retention in healthcare institutions in the field of psychiatry, and enforcement of executive decisions in family matters. However, subsequent state measures regarding limitation of the number of people in closed spaces (courtrooms), and numerous postponements of the hearings due to poor health conditions of court staff or participants in the proceedings, and/or mandatory self-isolation due to the fear of contamination (which is treated as justifiable omission) caused slowing down of the work in judiciary and numerous difficulties in terms of organisation and achieving basic working conditions. In addition, last year was particularly challenging for the courts in Belgrade and Novi Sad due to a high number of initiated court proceedings against the banks due to credit processing fees and insurance of housing loans. That was all reflected in the achievement of the results in terms of solving old cases, which have been a long-standing objection against the work of the Serbian judiciary. Thus, at the end of 2019, the Higher Court in Belgrade had 9680 pending old cases (cases established based on the appeals against the decisions of basic courts, specifically against the decisions and judgements in the small value disputes, where majority of the cases are exactly these litigations against the banks), while at the end of 2020, that number was 12458. On the other hand, there is a good example of the Higher Court in Novi Pazar, where the number of old cases decreased by 10.82%. This year, the analysis included 29 courts, specifically 10 higher courts and 19 basic courts. Only the Third Basic Court in Belgrade and High Court in Smederevo failed to respond to the request for information of public importance.

The value of this standard has been established through the analysis of the number of solved cases

in civil matters, which are considered old based on the criteria set out in the Backlog Clearance Program of the Supreme Court of Cassation (received by submission of the request for access to information of public importance) compared to the total number of pending cases (statistical data received by the access to so called Annual Report of the Supreme Court of Cassation for the period from January 1 to December 31, 2020). According to the collected data, the number of pending cases in the selected courts is 254619, and the number of old solved cases in the previous year was 16668, which makes 6.55%. For the purpose of precision of this analysis, it is important to note that it is impossible to obtain a reliable data on the number of old pending cases during a year from the courts using requests for information of public importance, since that number constantly changes from one day to another (some cases get the status of an old case during one year, but are solved in the same year, and that is probably why they are not a part of the internal statistics). Thus, based on all above stated, and having in mind that the calculated percentage is lower than 15%, this standard cannot be considered as fulfilled, and the result identical to the one of the last year. [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 data about the old enforcement cases solved in 2020 have been analysed. The data was obtained through requests for information of public importance sent to the addresses of 20 basic courts. Only the Third Basic Court in Belgrade failed to respond to the request. The analysis of the data was done compared to the total number of pending cases and based on the data arising from the Annual Report of the Supreme Court of Cassation for the period from January 1 to December 31, 2020. Thus, the number of old enforcement cases that were solved in the selected courts is 124894, and the total is 283801, which makes it 44.01%. It should also be noted that Basic Courts in Pozega, Subotica, Becej and Jagodina did not have any old pending enforcement cases at the end of 2020. The fact is that those cases are still active but are under jurisdiction of the holders of public authorizations, and from the position of the work of the courts, considering all the difficulties caused in the previous year by coronavirus, this was a successful year. Therefore, based on all above stated, this standard is considered as fulfilled, unlike the previous analysis when that was not the case. [1/1 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].

When establishing this standard, upon obtaining the data from the courts from the expanded sample of the representative courts through submitted requests for access to information of public importance, the data was better than in the first cycle. This time, only the Basic Court in Brus failed to provide the requested data, as stated, due to technical difficulties. Unlike the first cycle, when the analysis excluded the Higher Court in Belgrade since they had not been able to provide the requested data, stating that they did not keep the records on adopted but only solved requests, this time they delivered the requested data. Thus, out of a total of 29 contacted courts, the data was delivered by 28 courts, so that the number of submitted requests is 2817, and the number of adopted is 419.5, which makes 14.89%. Thus, this standard is considered as fulfilled, as was the case in the previous cycle. [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].

Since the basic courts have sole jurisdiction in enforcement cases, this analysis excluded higher courts. However, the analysis showed that certain higher courts kept the records regarding enforcement matters. However, for the purpose of preciseness of the analysis, it was decided to omit these data. Therefore, it was established that the number of submitted requests for protection of the right to a trial within a reasonable time in enforcement proceedings in 2020 was 1642, and that the number of adopted requests was 653, thus 39.77%. Therefore, this standard is considered partially fulfilled, as in the previous reporting cycle. [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, but only of cases adjudicated on the merits. In 2020, the Constitutional Court established a total of 1011 violations of the right, out of which, 250 decisions confirmed violation of the right to a trial within a reasonable time.

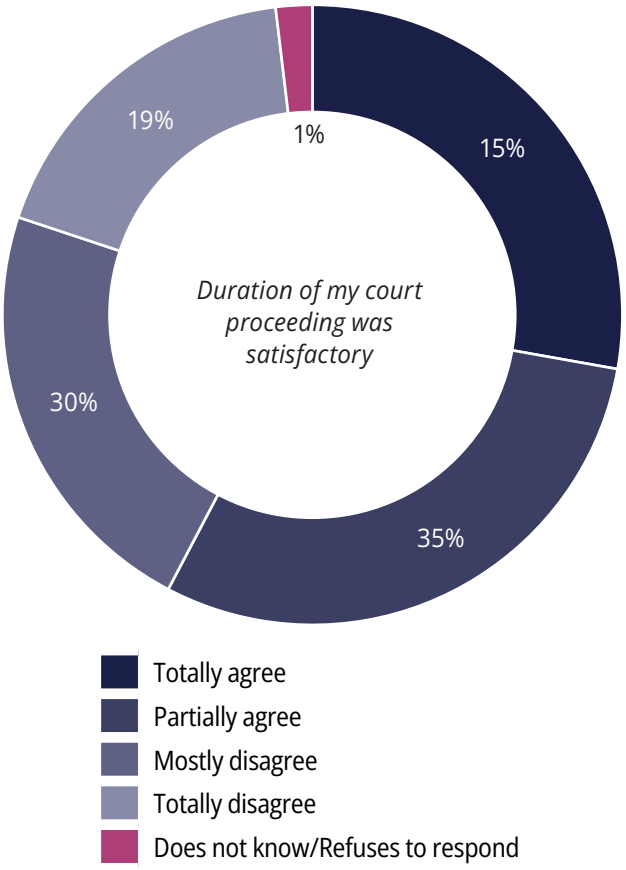
Given the importance of keeping statistics of this type of cases for the transparency of our country's judicial system, introducing records keeping of these cases in the future should be considered. As the data were not available, this standard cannot be considered as fulfilled, which was the case in the previous reporting cycle as well. [0/1 point]

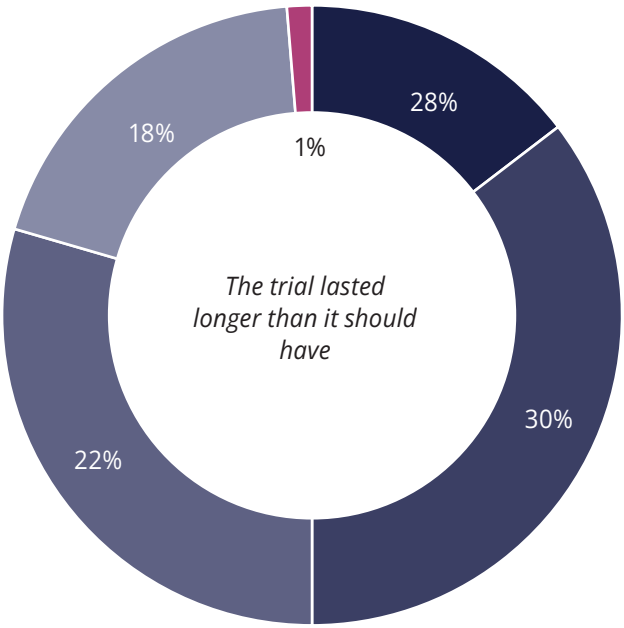
S6: THE SHARE OF ECHR JUDGEMENTS FINDING A VIOLATION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME IN THE TOTAL NUMBER OF APPLICATIONS FILED WITH THE ECHR AGAINST SERBIA [1 POINT]

The values for this standard have been obtained through the analysis of the Constitutional Court statistics, which are based on Analysis of statistics 2020[298] and Serbia – Press country profile[299], published in January 2021, on the website of the European Court of Human Rights, in connection with applications against the Republic of Serbia. Based on these data, the total number of adopted applications before the ECHR that concerned violation of the right to a trial within a reasonable time is 0. Thus, based on all above stated, this standard is considered as fulfilled, unlike the previous cycle when this standard was partially fulfilled. [1/1 point]

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

Based on a survey conducted with system beneficiaries, it was established that 50% of respondents answered that they were satisfied with the duration of





298 Analysis of statistics 2020, European Court of Human Rights, Serbia, pg. 53, January 2021, available at https://www.echr.coe.int/Documents/Stats_analysis_2020_ENG.pdf

299 Serbia – Press country profile, European Court of Human Rights, Jul 2021, available at https://www.echr.coe.int/Documents/CP_Serbia_ENG.pdf

court proceedings, while 48.7% said they were dissatisfied. Out of the percentage of positive responses, 14.6% respondents fully agreed with the claim. When asked to indicate whether they agree with the statement that the proceedings were unduly long, 57.7% of respondents agreed, and out of that 27.8% fully agreed. On the other hand, 40.4% believed that was not the case, and they disagreed. As in both cases the percentage of yes answers was below 60%, this standard is not fulfilled in both cases, and it is considered completely unfulfilled. This is a change compared to the previous reporting cycle, when this standard was considered to be fulfilled, which is not the case now. [0/0.5 points]

SUB-INDICATOR 1.5. QUALITY OF JUDICIAL DECISION-MAKING

SUB-INDICATOR STANDARDS	POINTS	2020
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	0/1
2. The share of upheld extraordinary remedial appeals for violations of substantive regulations in the total number of appeals	0/1	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	0.5/1 ▼	1/1
4. The share of ECHR judgements 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	1/1
5. Judicial system beneficiaries consider that a court/judge's decision is clear and intelligible.	0/0.5 ▼	0.5/0.5
TOTAL NUMBER OF POINTS	1.5/4.5 ▼	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. Namely, the only data available is that on the total number of overturned and modified decisions, but there is no specific data on the number of decisions overturned because of misapplication of the law. Therefore, as emphasised in the previous report, and having in mind the significance of introduction of such records in the future for the purpose of the transparency of the system, which does not exist at this point, 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 criterion. Yet, the same as in the previous cycle, interest has been expressed for keeping this type of statistics in the future in order to bring the judicial system closer to the 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]

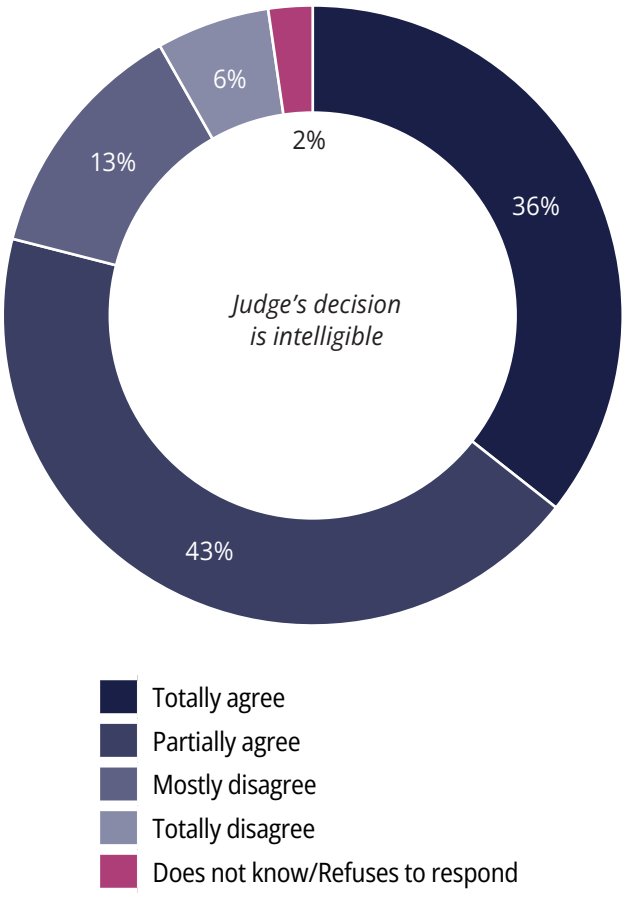
The value of this standard was assessed through the analysis of the statistical data obtained from the Constitutional Court. In 2020, there were 13,164 constitutional appeals against court decisions. It is important to point out that the number of individual constitutional appeals is much higher, but the Constitutional Court, in order to make their handling of so-called "typical cases" more efficient, merged 10 or more constitutional appeal cases into one single case. These cases include constitutional appeals of the different applicants specifying infringement of the same guaranteed right in the same proceeding or in respect of the same contested individual act. The total number of 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 761 (1101 total – 250 of which refer to a trial within a reasonable time), so, the percentage is 5.78%. Thus, based on all above stated, this standard is considered as partially fulfilled, unlike the last year analysis when the standard was fulfilled [0.5/1 point]

S4: THE SHARE OF ECHR JUDGEMENTS 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]

The evaluation of this standard was established through the analysis of the statistical data of the Constitutional Court, and as further explained in sub-indicator 1.4. standard 6, based on the available electronic documentation of the ECHR. Based on these data, during 2020, the ECHR considered 1421 applications against Serbia, and violation was established in 5 of them. There is no data on the total number of applications submitted before the ECHR in 2020 due to alleged infringement of the right to a trial within a reasonable time, and having in mind that the ECHR declared 1413 applications to be impermissible and deleted them from the list of cases, and in the remaining 8, it considered the other violations that did not refer to the trial within a reasonable time. Thus, there was no need to deduct a number of applications due to the violation of the right to a trial within a reasonable time from the total number of applications. Calculated percentage is 0.35%, so this standard is considered as fulfilled, as was the case in the previous cycle. [1/1 point]

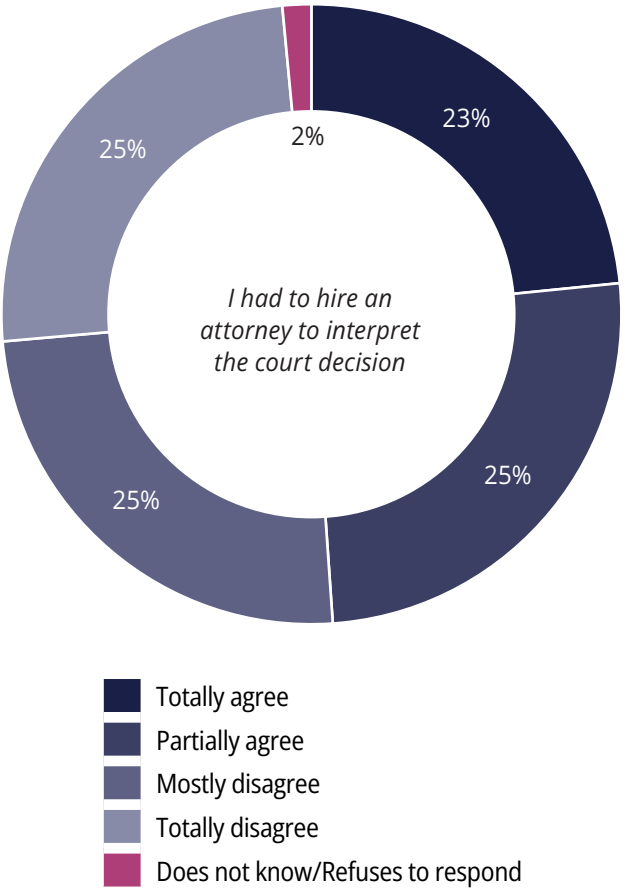
S5: JUDICIAL SYSTEM BENEFICIARIES CONSIDER THAT THE COURT DECISION IS CLEAR AND INTELLIGIBLE
[0.5 POINTS]

Compliance with this standard was assessed based on the results of the survey of the judicial system beneficiaries. The system beneficiaries 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?*



That the judgement was intelligible, agreed 78,9% of the respondents while 18.8% disagreed. Out of the percentage of those who agreed, 35.6% respondents stated that they fully agreed with the statement.

In respect of the necessity to hire an attorney for interpretation of the judgement, 48.9% of the citizens confirmed this statement. On the other hand, 49.6% of the respondents stated that it was not necessary to hire an attorney to interpret the judgement. Out of that percentage, 24.9% respondents completely disagreed with the statement. Therefore, this standard cannot be considered as fulfilled. Unlike the previous reporting period, when this standard was fulfilled, that is not the case this time. [0/0.5 points]



EVALUATION OF THE INDICATORS:

Maximum sum of all Sub-indicators	**27** *(Sum of maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**15.5** ▲ *(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	23-28
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**3**				

As in the previous reporting period, regulations relating to the quality of judicial decision-making are to a significant extent in line with the set standards. In addition, there have been no changes in respect of the evaluation of the procedural aspect, so it is still somewhat weaker. As regards to the procedural legislation, there is still a need for improvement, as has been previously identified, in order to fulfil all these standards, specifically with regard to prescribed mechanisms for ensuring trial within a reasonable time, which safeguard and guarantee the exercise of procedural rights of the parties and participants in the proceedings, and the regulations relating to procedural discipline of the parties in the proceedings. In terms of normative conditions for the quality of court decision-making, the same as in the previous reporting period, shortcomings were identified in the rules for the allocation of human and material resources in 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 Rights judgement s finding a violation of procedural rights. Moreover, in terms of the share of the adopted extraordinary legal remedies for the violation of procedural laws compared to the total number of filed legal remedies, there has been a mild improvement compared to the previous reporting cycle.

The manner of record keeping and systematising constitutional appeals still does not allow for an adequate assessment from the point of view of the practice of the Constitutional Court. This is due to the fact that compared to the previous reporting cycle, there have been no changes to the fact that the Constitutional Court does not keep this type of records. When we speak on the duration of the court proceeding, In terms of the duration of the court proceeding, there has been a certain improvement in terms of the standard regarding 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, as well as the share of the adopted applications before the ECHR due to the violation of the right to a trial within a reasonable time, compared to the total number of appeals before the ECHR. However, the result has been somewhat weaker in regards to the opinions of the system beneficiaries on compliance with the deadline and duration of the court proceedings, and the clarity and intelligibility of the court decisions, that is of the judges' decisions. Furthermore, a weaker result was recorded in regards to the previous reporting period in terms of the share of adopted constitutional appeals due to the violation of constitutionally guaranteed rights and freedoms, except for those that refer to duration of the trial within a reasonable time, compared to the total number of these constitutional appeals.

RECOMMENDATIONS:

- At the normative level, further harmonisation of the Law on Protection of the Right to a Trial within a Reasonable Time with the procedural legislation is needed. Legislative framework should be amended by more comprehensive and precise instructions for judges' actions, specify the manner of urgency gradation, as well as harmonise the instructional deadlines of procedural legislation with the obligations concerning efficient court proceedings.
- It is necessary to identify opportunities for organisational and technical improvements, through amendments to the regulations, 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 buildup of large backlogs.
- It is necessary to introduce the obligation to keep the records on the number of upheld constitutional appeals for violation of procedural rights of the parties.
- It is necessary to introduce the obligation to keep the 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 the first instance courts on grounds of misapplication of law by the competent judicial authorities.
- 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 HARMONISATION OF JUDICIAL PRACTICE

SUB-INDICATOR STANDARDS	POINTS	2020
1. The legal framework envisions mandatory monitoring of implementation of court action plans relating to harmonisation of judicial practice	0.5/1	0.5/1
2. The law prescribes the obligation to maintain and publish case-law databases	1/1	1/1
3. The law specifies the competences and procedure for harmonisation of judicial practice	0.5/1	0.5/1
4. The law allows for first-instance courts to initiate requests for resolving controversial legal issues	0.5/1	0.5/1
TOTAL NUMBER OF POINTS	2.5/4	2.5/4

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

In accordance with the Law on organisation of Courts, the Supreme Court of Cassation provides for a uniform judicial application of the rights and equality of parties in court proceedings.[300] Pursuant to its jurisdiction, and for the purpose of harmonisation of the application of the law, the Supreme Court of Cassation has adopted the plan of activities for harmonisation of the court practice.[301] In this document, the Supreme Court of Cassation provides a detailed list of all the activities to be implemented in order to harmonise court practice, of both the Supreme Court of Cassation, and all other courts. In the case of the Supreme Court of Cassation, the document provides for harmonisation of the court practice through deciding on extraordinary legal remedies in individual cases, making legal standpoints, publishing of decisions made in repetitive cases and publishing of established operative parts of decisions.[302] Depending on the type and instance of a court, the Action Plan further established the series of measures in the direction of horizontal and vertical harmonisation of court practice. The provisions of this document, as well as of this law, do not stipulate declarative obligation to monitor application of the action plans of the courts that refer to harmonisation of court practice. However, since the law stipulates the obligation of the Supreme Court of Cassation to provide uniform judicial application of the rights, it is considered that this obligation is within the scope of work of the Supreme Court of Cassation. Pursuant to the provisions of the Law on organisation of Courts and Action Plan of the Supreme Court of Cassation, the presidents of the appellate courts concluded a new Agreement on organisation, place and time for joint sessions of the appellate courts in the period 2021-2025, for the purpose of harmonisation of court practice of the courts in the Republic of Serbia and improvement of the quality of court decisions through uniform interpretation of the law.[303] Since there were no amendments to the analysed law in the reporting period, the valuation of this standard remains identical as the previous one, and this standard is found to be fulfilled. [1/1 point]

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

The obligation of courts to maintain and publish court practice databases is laid down in laws and by-laws. Legal regulations are general and are limited to, on one side, publishing of the decisions of the

300 Law on organisation of Courts, Article 31
301 Supreme Court of Cassation Action Plan for Judicial Practice Harmonization (I CY-724/2014 of April 1, 2014).
302 *Ibid*, pg. 1-2
303 Agreement on organisation , place and time for joint sessions of the appellate courts in the period 2021-2025, 2021, available at https://www.vk.sud.rs/sites/default/files/attachments/Sporazum.pdf

Supreme Court of Cassation, including: decisions important for the practice of the courts, which are published in special collections, and all the decisions made by the Supreme Court of Cassation deciding on the extraordinary legal remedies filed against the decisions of the courts in Republic of Serbia and other matters stipulated by the law. On the other hand, it is defined that courts with a higher number of judges shall have the department of court practice, but the law does not provide for more details in this respect, but it is stated that these matters would be closely defined by the court rules of procedure, thus exhausting the legal regulations of this issue.

Along with legal regulations, there are several bylaws that define this field more closely. The Court Rules of Procedure, referred to in the Law on organisation of Courts, contain the norms that define the matters that are not included in the law, and the Rulebook on organisation and Operation of the Supreme Court of Cassation specifies the manner of operation and the composition of the court practice department at this court, as well as other important matters such as the title of its court practice publication (Bulletin of Court Practice). Court practice databases cannot be accessed via the website of the Supreme Court of Cassation.

The Judicial Development Strategy for the period 2020-2025 stipulates regulation of the framework, as well as improvement in terms of better accessibility of court practice of the European Court for Human Rights and the Court of Justice of the European Union.[304] The Judicial Development Strategy for the period 2020-2025, recognized establishing of the mechanism for harmonisation and publishing of court practice for the purpose of further improvement of efficiency of the judicial system as one of the strategic priorities[305]. Another reform measure recognized by the Judicial Development Strategy for the period 2020-2025 is continuous updating and improvement of the database of regulations of the Legal Information System of the Republic of Serbia and the court practice database in terms of number and representativeness of the decisions, and improvement of availability and visibility of these bases to the professional, scientific and general public.[306] As the applicable regulations prescribe the obligation to maintain and publish a database of court practice, the standard is considered as fulfilled. [1/1 point]

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

As established in the previous reporting cycle, the Supreme Court of Cassation adopted the action plan for the harmonisation of court practice in April 2014. 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.[307] Depending on the court type and instance, the action plan envisions a number of measures aimed at horizontal and vertical harmonisation of court practice.[308] Neither the Law on organisation of Courts nor the action plan enunciate the obligation to monitor the implementation of the courts' action plans for the harmonisation of the 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]

The Civil Procedure Code introduces the possibility in a situation where in a large number of cases heard by courts of the first instance a need arises to adopt a stance on a legal matter of relevance for decision making, the court of first instance, either *ex officio* or

304 Judicial Development Strategy for the period 2020-2025, point 4
305 *Ibid.*
306 Judicial Development Strategy for the period 2020-2025, point 6
307 Supreme Court of Cassation Action Plan for Judicial Practice Harmonization (I CY-724/2014 of April 1, 2014).
308 *Ibid,* chapter IV

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.[309] According to its Action Plan of the Supreme Court of Cassation for the purpose of harmonisation of the court practice, this court is obliged to dedicate two conferences a year to controversial legal issues.[310] The Action Plan of the Supreme Court of Cassation for the purpose of harmonisation of the court practice designates the appellate courts to serve as mediators in the process of harmonisation of the practices of basic, higher and commercial courts, as follows: 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.[311] It is important to note that the Law on organisation 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 jeopardise 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. Since there were no relevant changes to the Law in the reporting period, this standard is still partially fulfilled. [0.5/1 point]

SUB-INDICATOR 2.2. ACCESSIBILITY OF COURT PRACTICE

SUB-INDICATOR STANDARDS	POINTS	2020
1. The court practice database is publicly accessible	1/1	1/1
2. Access to the court practice database is free of charge	1/1	1/1
3. The court practice database is regularly updated and expanded which is a prerequisite for predictable and uniform application of the law	0.5/1	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 court practice via an intranet.	0.5/0.5	0.5/0.5
5. Court practice exchange is made possible via intranet	0/0.5	0/0.5
TOTAL NUMBER OF POINTS	**3/4**	**3/4**

S1: THE COURT PRACTICE DATABASE IS PUBLICLY ACCESSIBLE
[1 POINT]

Based on the completed check of the availability of the databases, the following results have been established. The Supreme Court of Cassation and all four appellate courts in the Republic of Serbia have publicly accessible databases. Compared to the situation in 2020, the appellate courts have fully or partially transferred the court decisions to the site https://www.sudskapraksa.sud.rs/sudska-praksa, which could be accessed without limitations and reimbursement, and where the court decisions could be searched based on the several criteria. Thus, there can be a conversation on "centralization" of the database of the court practice on the level of appellate courts and their storage in one location. In regards to the availability of the database of the court practice, the results are similar to those from the previous reporting period. Only seven of the total of 25 higher courts [312] and six out of 66 basic courts [313] in the Republic of Serbia have publicly accessible da-

309 Civil Procedure Code, Article 180
310 Supreme Court of Cassation Action Plan for Judicial Practice Harmonization (I CY-724/2014 of April 1, 2014). pg. 2
311 *Ibid.*
312 These are the following courts: 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
313 Basic Court in Uzice, Basic Court in Sombor, Basic Court in Pozega, Basic Court in Novi Sad, Basic Court in Nis and Basic Court in Zajecar

tabases. It is noticed that one more basic court provided access to the operative parts of decisions. This is the Basic Court in Zajecar. It is important to note that availability of the decisions of higher instance courts is more significant for harmonisation of the court practice. Therefore, since the courts' databases are publicly accessible, this standard is found to be fulfilled, the same as in the previous cycle. [1/1 point]

S2: ACCESS TO COURT PRACTICE DATABASES IS FREE OF CHARGE
[1 POINT]

As in the case of evaluation of the previous standard, 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[314] and six basic courts[315] have publicly accessible databases. All the databases can be accessed free of charge. In addition to publicly accessible court practice databases on the courts' websites, there are specialised 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 court practice bulletins of several Serbian courts for download. None of the databases contain all the decisions of the courts, but only the selected ones. Given the above data, this standard is considered as fulfilled, the same as in the previous reporting cycle. [1/1 point]

S3: COURT PRACTICE 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 the appellate courts on the territory of the Republic of Serbia, as well as the Supreme Court of Cassation, had databases of the court practice which were regularly updated and expanded. However, only three higher courts[316] (out of 25 analysed) 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, court practice databases of some courts contain merely a few operative parts of judgements. It is therefore recommended that this standard should be improved in the future by making a larger amount of court practice accessible, in a consistent manner, and regularly updating court practice databases in order to provide a better insight into the court practice development in our country. Considering all stated data, and the existence of data, this standard is considered as partially fulfilled, the same as in the previous analysis. [0.5/1 point]

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

The analysis of publicly accessible court practice databases of courts of all three instances showed that all court cases were managed by automated systems through the existing interfaces. Since it was established that automatic case management through interfaces applied to all the court cases, this standard is considered fully fulfilled, the same as in the previous reporting cycle. [0.5/0.5 points]

S5: EXCHANGE OF COURT PRACTICE IS FACILITATED VIA INTRANET
[0.5 POINTS]

The analysis of publicly accessible court practice databases of courts showed that exchange of court practice via intranet was 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 pro-

314 These are the following courts: 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
315 Basic Court in Uzice, Basic Court in Sombor, Basic Court in Pozega, Basic Court in Novi Sad, Basic Court in Nis and Basic Court in Zajecar.
316 These are Higher Court in Sabac, Higher Court in Novi Sad and Higher Court in Valjevo

visions of the Law on Personal Data Protection.[317] Therefore, since this possibility still does not exist in the court databases, this standard cannot be considered as fulfilled. Evaluation of this standard compared to the previous reporting cycle has remained unchanged. [0/0.5 points]

SUB-INDICATOR 2.3. UNIFORM APPLICATION OF THE LAW

SUB-INDICATOR STANDARDS	POINTS	2020
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	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	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	0.5/1
4. Constitutional Court's decisions have an impact on uniformity of courts practice	1/1	1/1
5. Prosecutors apply the law uniformly to all persons in similar situations	0/1	0/1
TOTAL NUMBER OF POINTS	2/5	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 2020, the Supreme Court of Cassation received 19 cases relating to requests for resolution of a controversial legal issue and adopted two legal opinions. As the proportion of adopted legal opinions is still below 30%, this standard cannot be considered as fulfilled in this reporting cycle either. [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 harmonisation over the past two to three years were used to determine the value of this standard.

The total of 10 judges were interviewed, out of which 6 judges that handle civil cases during 2020, and 4 judges that handle criminal cases. Interviewed judges on average adjudicate 260 cases a year. In the previous period, 90% of interviewed judges rendered a decision on the matter that the Supreme Court of Cassation had already adopted a legal opinion on. In addition, it was established that in 88.9% of the cases, such legal opinion had partial impact on the decision made by the interviewed judges. In respect of information on legal opinions of the Supreme Court of Cassation, a half of the interviewed judges were informed of them via bulletins of the Supreme Court of Cassation, while the remaining half of the interviewees stated sessions of the department, court administration, Internet page of the Supreme Court of Cassation, and court practice department as their sources.

The decisions of the Constitutional Court are available via the Internet page of the Constitutional Court. The judges are informed in different ways – via the Internet page of the Constitutional Court, at the sessions of their departments, via court administration or in other ways. 90% of the interviewed judges stated that they acted on the matters the Constitutional Court had made a decision on. The same percentage of judges responded regarding joint legal opinions of the appellate courts in respect of the impact on

317 Law on Personal Data Protection ("Official Gazette of the RS", no. 87/2018)

decision making. The judges responded in high percentage that both types of decisions impacted their decision making in the proceedings. 70% of the judges are verbally informed of the joint opinions of the appellate courts at the sessions of the departments.

There are issues in implementation of joint legal opinions of the appellate courts, adopted legal opinions of the Supreme Court of Cassation and the decisions of the Constitutional Court in practice. As many as 70% of the judges confirmed that these issues existed. For example, based on the words of the interviewed judges, those problems consisted of the differences in the opinions of the Constitutional Court and Supreme Court of Cassation on the same legal matters, the fact that a big part of lower instance courts are not aware of the decisions of the highest instance courts, or weak argumentations in the decisions of the stated courts. Almost all the judges believe that it is possible to deviate from the adopted legal opinion of the Supreme Court of Cassation if such deviation is correctly elaborated. The reasons for deviation were mostly lack of consent with argumentation of the adopted legal opinion of the Supreme Court of Cassation, different opinions of several panels of the Supreme Court of Cassation and differences in legal or factual situations.

Having in mind all above stated, and since a great percentage of the interviewed judges gave completely positive evaluations of the impact of the decisions of the Supreme Court of Cassation and joint legal opinions of the appellate courts on the 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]

Compared to the previous reporting cycle, there have been no changes observed in terms of the status of this standard. 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[318] 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.[319] Compliance with one such instruction (Instruction O. No. 2/19 of July 22, 2019) was taken as a test. This instruction refers to the obligation of public prosecutors, when applying the mechanism of deferred prosecution[320] 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.) require so, and having in mind the State Public Prosecutor's 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 offence 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 offences 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

318 Law on Public Prosecutor's Office, ("Official Gazette of the RS", no. 63/2016 - Decision of CC), Article 25(1)
319 Law on Public Prosecutor's Office, Article 25 (1)
320 Criminal Procedure Code, Article 283 (1) (5)

stated that he sometimes applied this mechanism to criminal offences 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.

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 Rulebook on application of the principle of opportunity in criminal prosecution, rather than provisions of the law or the general instruction. Thus, this standard is partially fulfilled. This way, the evaluation established in the previous cycle has been confirmed in this reporting period as well. [0.5/1 point]

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

Work of the Constitutional Court is very significant for harmonisation of the court practice. For this reason, based on the interviews undertaken with the judges when the judges responded to the question on the existence of the decisions of the Constitutional Court that impacted the decisions of the interviewed judges and their impact, the following was established. 90% of the interviewed judges stated that there were the decisions of the Constitutional Court that impacted their actions. Also, 55.6% of the interviewed judges stated that the decisions of the Constitutional Court fully impacted the decisions they made, while 44.4% of the respondents stated that these decisions partially impacted their decision making. For this reason, this standard is considered as 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. As in the previous reporting cycle, 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 offence, proposed criminal sanction, especially detention, and entering into a plea agreement with a defendant under the conditions prescribed by law. The responses received are somewhat different compared to those in the previous reporting cycle.

In respect of the legal qualification of the criminal offence, which is the reason for prosecution, unlike in the previous cycle, 88.89% of the interviewed attorneys had a negative response, and disagreed that the public prosecutors uniformly applied the law on this matter. In respect to the other matters, the situation is similar. Thus, for example, 77.78% 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[321]. Still, none of the respondents had a clear positive response to the matter of uniform application of the law with all the individuals in respect of the rules on deferred criminal prosecutions, but 44.44% of the respondents disagreed, while 55.56% stated that this was the situation in most cases. When it comes to criminal complaint dismissal, 77.78% of the respondents expressed the opinion that rules were not applied uniformly. As regards uniform application of the law in situations where detention is proposed, 88.89% of the attorneys answered in the negative. In respect of the uniform application of the rules in terms of the possibility of the plea agreement with the defendant, 55.6% of the attorneys had a negative opinion. Lastly, 77.78% of the attorneys believe that public prosecutors do not apply the law uniformly when proposing a criminal sanction for an offence that is the subject of prosecution. This standard cannot be considered as fulfilled, as in the previous reporting cycle. [0/1 point]

321 Criminal Procedure Code, Article 6

EVALUATION OF THE INDICATORS:

Maximum sum of all Sub-indicators	**13** *(Sum of maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**7.5** *(Sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-2.5	3-5.5	6-8.5	9-11.5	12-14
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	3				

Compared to the previous reporting cycle, there have been no major changes in respect of the legal predictability in the work and decision making of judicial bodies, primarily in terms of the rules on harmonisation of court practice, and it is confirmed that there is a high level of harmonisation with the set standards. The same as in the previous cycle, there is a need for certain normative improvements, primarily in regards to implementation and monitoring of the action plans of the courts for the purpose of harmonisation of the court practice. In addition, general evaluation of the availability of the data on court practice is positive to the significant extent. The same as in the previous reporting period, 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:

- It is necessary to improve the programs of continuous training of the judges at the Judicial Academy and enable judges to attend certain training at their request, and especially in case there is a change of the matter they work in.
- It is necessary to improve the work of the highest instance court of the Republic of Serbia, which is in charge of harmonisation of the court practice. This court should, to that effect, print and publish the Bulletin with the crucial parts of the decisions and professional papers of the judges on the disputable legal issues on its web pages, and publish its own decisions, as well as the decisions of the Constitutional Court and the ECHR, legal reasonings, opinions and conclusions on the web page. Also, it is necessary to improve the access to court decisions through their additional systematisation using keywords.
- Once again, the emphasis is placed on the need for the statistical parameters to be changed and improved so that the grounds for overturning or modifying decisions of the 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.
- It is necessary to improve the mechanisms for the harmonisation 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 expressed 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	2020
1. The Constitution and the law determine the independence of judges in their proceedings and decision-making processes	1/1	1/1
2. There is an adequate mechanism which guarantees the right to an impartial judge	1/1	1/1
3. The law and the Court Rules of Procedure regulate the principle for random assignment of cases	0.5/1 ▼	1/1
4. The Law on Judges and the Rulebook on Disciplinary Procedures regulate the system of disciplinary responsibility for violating the code of conduct by a judge	0.5/1	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	0.5/1
6. The law regulates the manner of prosecuting a judge in a criminal procedure for a criminal offence committed by a judge	0.5/1	0.5/1
TOTAL NUMBER OF POINTS	4/6 ▼	4.5/6

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

[1 POINT]

Compared to the findings presented in the previous reporting cycle, formally legally, some of the essential amendments have been prepared and some changes to the legal framework have been made.

Out of twelve planned steps for implementation of the procedure to change the Constitution in the segment that refers to judiciary until the end of 2021, a big number of those have been implemented, including some that had not been planned, but have improved the process. Elaborated Draft for change of the Constitution, submitted by the Government to the National Assembly on December 3, 2020, was examined by the Department for Constitutional Matters and Judiciary on April 16, 2021, and made the decision on that occasion to initiate the activities in the process of change of the Constitution, which are within the scope of work of the Department for Constitutional Matters and Judiciary. This Draft was also adopted by the National Assembly at the Fourth Special Session of the Twelfth Convocation, held on June 7, 2021, by two-thirds majority. Along with the planned, the Department also undertook some unplanned activities by establishing a Working Group on June 23 to prepare the act on change of the Constitution, which was entrusted with the preparation of the Draft change of the Constitution on July 6.

Proposed solutions lead to strengthening of independence and improvement of the position of judiciary through several specific proposals. Primarily, it is planned to cancel the existing mechanism

of "three-year probation mandate of the judges". Certainly, even more significant change is the final "transfer" of competence for election of all judges and court presidents. In accordance with long term critiques, suggestions and proposals, the existing mechanism is changed so that the competence for the election of all the judges and court presidents is taken from the National Assembly and assigned to the High Judicial Council. Independence of the judiciary is also strengthened by more precise definition of by more precisely prescribing the guarantee of immovability. More precisely, the possibility for a judge, with his/her consent, to be directed to another court is cancelled (the possibility of transfer is kept), and there is also a right to an appeal before the Supreme Court of Cassation against the decision on transfer of judges. In addition, it is envisioned to extend the immunity of judges for the opinion given regarding performance of the judicial function – primarily, by explicit stipulation that the provision also refers to the lay judges, with explicit statement that a judge or a lay judges may not be held responsible for an opinion given in a court proceeding and for voting during rendering of a court decision, except unless they commit a criminal offence of violation of the law by a judge, public prosecutor or his/her deputy.

When it comes to the permanence of judicial office, that is, dismissal, it is foreseen that the provision of the Constitution contains explicitly prescribed cases when a judge is dismissed from the office, which is now a legal matter. The High Judicial Council still has an odd number of members (11), in which the majority are judges (six elected by their colleagues and the seventh, the president of the Supreme Court of Cassation), with the fact that there will be no representatives of the executive and legislative power in its composition, nor will four prominent lawyers elected by the National Assembly be members of the political parties. Therefore, it can be concluded that the planned solutions, compared to the solutions from the current Constitution, still improve the position of the judiciary and largely fulfil the obligations assumed by the Action Plan (AP) for Chapter 23.

In addition to the above, the National Assembly adopted, at the Ninth Extraordinary Session of the Twelfth Convocation, on July 21, 2021, amendments to the Law on Judges[322] and the Law on High Judicial Council[323]. Adoption of these laws is envisioned as the obligation the Republic of Serbia must fulfil pursuant to the recommendations of the Group of States against Corruption (GRECO) in the Council of Europe, that is, as an activity defined by the Revised Action Plan for Chapter 23 – Judiciary and Fundamental Rights. Namely, Recommendation VI, defines for the system for evaluation of the work of judges to be revised, that is, to include qualitative criteria and abolishing the rules that unsatisfactory results of evaluation systematically lead to the dismissal of the judges. Among other things, GRECO used it the Recommendation VII to state "(i) *Judges' Code of Ethic should efficiently be communicated to all the judges and amended by additional written guidelines on the ethical matters – including explanations, guidelines with interpretation and practical examples – and should be regularly updated*". Furthermore, pursuant to the Revised Action Plan for Chapter 23 – Judiciary and Fundamental Rights, it is planned to amend the Law on Judges and Law on High Judicial Council for the purpose of defining the Ethical Board as the permanent working body of the High Judicial Council, and prescribing the competence of the High Judicial Council for adoption of the Rules of Procedure for the work of the Ethical Board and imposing the obligations to prepare the report on the work of the Ethical Board of the High Judicial Council on compliance with the provisions of the Code of Ethics.

The Law on Amendments to the Law on Judges has cancelled the rule that unsatisfactory results of the evaluation systemically lead to dismissal of those judges. More precisely, the amendments are only the first necessary step that cancel previously applicable provision of Article 63, based on which a judge was dismissed from the function in case of unprofessional execution – if a judge received the grade "does not satisfy", pursuant to the criteria and measures for evaluation of the work of the judges. The Ethical Board has been introduced in the Law, as the permanent body of the High Judicial Council and its duty is defined to deliver the report of its work and the application of the Code of Ethics[324] to the High Judicial Council at least once a year. The identical change was also made in the Law on High

322 Law on Judges ("Official Gazette of the RS", no.. 76/2021)
323 Law on High Judicial Council ("Official Gazette of the RS", no.. 76/2021)
324 Law on Judges, Article 30

Judicial Council.[325] The difference is only that its Article 15, which defines permanent working bodies of the High Judicial Council, explicitly mentions the Ethical Board as the permanent working body.

Finally, acting in accordance with Recommendation VII GRECO, at the session held in September of this year, the High Judicial Council adopted the amendments to the Judges' Code of Ethics. The amendments refer to Chapter 7 called "Loyalty to the principles of the Code of Ethics". With their adoption, it is explicitly stipulated that a judge is under obligation to comply with the Judges' Code of Ethics at all times, and that violation of the provisions of the Judges' Code of Ethics to a greater extent constitutes a disciplinary offence.[326] According to the explanation of the specific amendment, the Ethical Board shall decide which actions are contrary to the dignity and independence of the judges and detrimental for the image of the court based on the Code of Ethics.[327] In the above described way, the obligation envisioned by the Revised Action Plan for Chapter 23 – Judiciary and Fundamental Rights has been fulfilled. Thus, all the above shows that the constitutional and legal guarantees could be evaluated as adequate, so this standard is considered to be fulfilled. [1/1 point]

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

Although some of the laws that constitute the legal framework for exercising and protection of the above specified right were changed during 2021 (Criminal Procedure Code[328]), the amendments were not made in respect of the right to an impartial judge, so the findings specified in the previous reporting cycle remain in force.

The Law provides adequate mechanisms that guarantee 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, and for that reason, it keeps previously given maximum evaluation of standard fulfilment. [1/1 point]

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

Similar to the previous standard, some of the regulations (Law on Judges)[329] that constitute legal framework were changed during 2021. With adoption of the amendments to the Law on Judges, it is stipulated that the cases are entrusted to a judge, based on the division of work in courts (which is the criterion that had existed even before its adoption), but also considering the complexity of the case.[330] Since this law does not provide, not even generally, a definition of this term, it is obvious that the mentioned Article has been amended by the provision that can be differently interpreted, depending on the persons who are to apply and interpret it, and their interests. At the same time, there is still an ambiguity why the provision of the Law does not contain what was stated in the Explanation of the relevant amendment. Based on the explanation of the specific amendment, cases are assigned to the judges based on the complexity of the case, which includes objective criteria: number of parties and other participants in the proceeding (interfering party, witnesses, expert witnesses), compliance with the deadlines for court activities, etc.[331] Amendments done in a described way question to the great extent the findings presented in the previ-

325 Law on High Judicial Council, Article 15
326 Judges' Code of Ethics ("Official Gazette of the RS", no.. 96/2010 and 90/2021), Article 7, 7.3.
327 Draft Law on Amendments to the Law on Judges, Chapter III
328 Criminal Procedure Code
329 Law on Judges
330 Law on Judges, Article 24 (2)
331 Draft Law on Amendments to the Law on Judges, chapter III

ous reporting cycle, that is, whether the principle of random assignment of the cases is done correctly or is it threatened by their adoption. In accordance with this, this standard is considered partially fulfilled, unlike in the previous reporting cycle. [0.5/1 point]

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

Compared to the findings and evaluations made in the previous reporting cycle, there have been some small, but non-essential improvements. As it can be noticed in the part of considering the fulfilment of Standard 1, is reflected in the amendments to the Judges' Code of Ethics, which explicitly stipulate that the violation of the provisions of the Judges' Code of Ethics to a great extent, as disciplinary offence.[332]

The Law on Judges stipulates types and forms of disciplinary responsibility, which the conditions and procedure for establishing are explained in more details by a bylaw.[333] The lack is the fact that the disciplinary proceedings are, 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 standardisation 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]

Considering above-described findings regarding the amendments to the Law on Judges[334], it can be confirmed that there have been no changes to this standard either in the findings and evaluations given in the previous reporting cycle.

Namely, the standard of legal guarantee of incompatibility of the duty of judges with other activities 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 for the reputation of the court.[335] The law foresees disciplinary responsibility in the event that the High Judicial Council determines the existence of incompatibility of the duty of judges with another activity or service.[336] 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.[337] However, the prescribed incompatibility criteria are not clear and precise enough, and the procedure of testing incompatibilities before the High Judicial 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 OFFENCE COMMITTED BY A JUDGE
[1 POINT]

Similar as in case of the previous standard, currently, there are no changes in the findings and the evaluations given in the previous reporting cycle.

Regarding the legal regulation of the manner of prosecuting judges in criminal proceedings, it should be kept in mind that there are two basic types of criminal responsibility of judges: for criminal offences outside the judicial duty, general rules of criminal procedure and criminal responsibility are applied to the judges. On the other hand, if the criminal offence is related to the judicial duty, the procedural immunity of the judge takes place. The

332 Judges' Code of Ethics ("Official Gazette of the RS", no.. 96/2010 and 90/2021), item 7.3
333 Rulebook on the Procedure for Establishing Disciplinary Responsibility of the Judges and Court Presidents ("Official Gazette of the RS", no.. 41/2015)
334 Law on Judges
335 Law on Judges, Article 30
336 Law on Judges, Chapter VII
337 Law on Prevention of Corruption ("Official Gazette of the RS", no.. 35/2019, 88/2019, *11/2021* - authentic interpretation and 94/2021)

High Judicial 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 proceedings 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 a decision needs to be made or to the entire court proceeding when that decision is made. Therefore, the standard is considered as partially fulfilled. However, once the amendments to the Constitution are adopted, that is, if the amendments shown during examination of the fulfilments of Standard 1 are adopted, it will be necessary, as a consequence, to make the amendments to the Law on Judges. After that, it is expected that it will be required to correct the findings and evaluations given during the First cycle of reporting in terms of their increase to the maximum value. [0.5/1 point]

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. Representation of reactions of professional associations that indicate impermissible influences on the work of a judge	0.5/1	0.5/1
2. Proportion of reactions of the High Judicial 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	0/0.5
3. Number of complaints submitted by judges to the High Judicial Council due to impermissible influence on the work of judges	0/0.5	0/0.5
4. System beneficiaries think that there is not any impermissible influence on the judiciary	0/0.5	0/0.5
5. System beneficiaries think that the integrity of judges is at the suitable level	0/0.5	0/0.5
TOTAL NUMBER OF POINTS	**0.5/3**	**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 public reactions of independent professional associations that indicate impermissible influences on the work of judges, certain changes could be observed. During 2021, the Judges' Association of Serbia made a total of 8 press statements. Out of that number, 5 referred to impermissible influence on the work of a judge, which constitutes more than a half or more than 50% of those statements. At the same time, this is a percentage increase compared to the percentages given in the First cycle of reporting. Some of these statements have "greater substance" than the other, since they refer to the statements of the President of the Republic of Serbia, verbal attacks of the members of the Parliament, and/or media reporting. On the other hand, despite having an active web page of the Forum of Judges of Serbia, the segment "Announcements" does not have any changes compared to the previous reporting cycle. More precisely, the last statement was published in October 2019.

Despite this, just like in the previous reporting cycle, it can be confirmed that the public statements were mostly related to different types of impermissible influence on the work of judiciary, while the next topic was a critique of the changes to the legal framework, more precise, to the Civil Procedure Code and the set of laws included in the proposals for providing authentic interpretations. Thus, the evaluation given in the previous cycle is still relevant, so this standard is partially fulfilled. [0.5/1 point]

S2: PROPORTION OF REACTIONS OF THE HIGH JUDICIAL 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 POINTS]

This time also, the analysis was focused on the ratio of the number of reactions of the High Judicial Council and the number of public reactions of professional associations regarding the media writings and politicians' statements, which were assessed as pressure on independence.

Of the total number of announcements by the High Judicial Council (135 as of the beginning of 2021 until November 2021), none of them referred, that is 0% referred, to the statements of certain state or party officials about the work of the judges, which constitute impermissible pressure. Thus, none of the specified public statements of the High Judicial Council correspond to the reactions of independent judicial associations regarding impermissible impact on the work of the judges. Thus, it could be concluded that the specific cases regarding which the High Judicial Council makes public reactions, on one hand, and professional associations of judges, on the other, constitute two completely separate, parallel worlds. Due to everything stated, it is obvious that a step back was made compared to the previous reporting cycle, and for this reason, previously given evaluation that this standard was not fulfilled, is now additionally confirmed. [0/0.5 points]

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

Based on the data from the Work Report of the High Judicial Council for 2020, during that reporting year, 7 judges sent a complaint to the High Judicial Council, which is an identical number to a number of judges that did the same thing during 2019. Out of this number, four judges sent the complaint pursuant to Article 29 of the Law on Judges[338], which is a decrease compared to the previous period.[339] This time again, 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 Judicial Council, but it can be stated that impermissible influence is by far the most common reason why the judges have addressed the High Judicial Council. However, the outcome of the actions of the High Judicial Council based on these complaints does not give reasons for optimism. Namely, based on the data from the Report, at the time it was written, there were 2 pending complaints, while other 2 were decided by the High Judicial Council by adopting the decision rejecting one, and dismissing the other one as unfounded.[340] Therefore, due to the fact that the High Judicial Council did not find that there was a founded complaint, the evaluation that this standard is not fulfilled is still valid. [0/0.5 points]

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

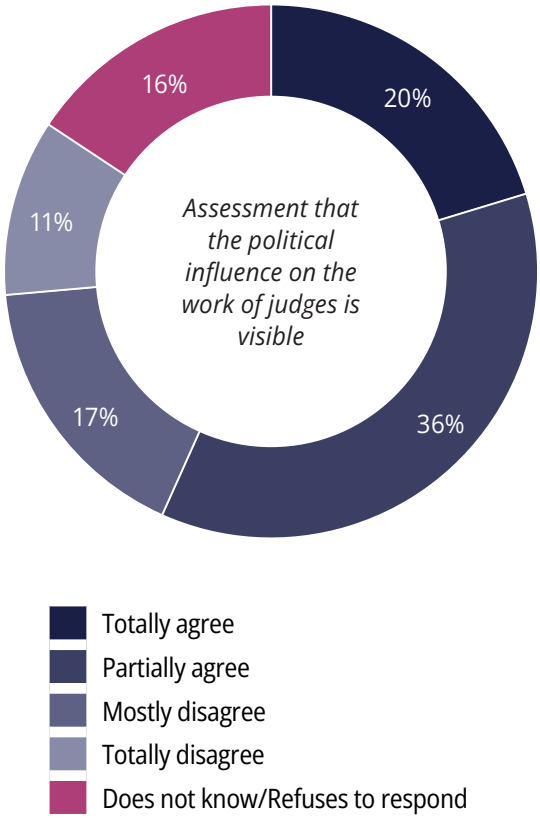
Perception of the system beneficiaries of the existence of impermissible influence on the judiciary, based on the survey conducted among the citizens as judicial system beneficiaries, was established as follows. Majority of the citizens think that political impact on the proceedings and deciding on the work of the judges in Serbia is visible (56.7%), while a smaller percentage of the interviewees (27.6%) believe this is not the case. In addition, it is important to note that out of this percentage of the surveyed citizens that responded affirmatively, 20.3% of them completely agreed with this statement. Other than that, 15.7% of the respondents did not know, or refused to respond to this statement. Thus, this standard is not fulfilled, and compared to the previous reporting period, this evaluation has remained unchanged. [0/0.5 points]

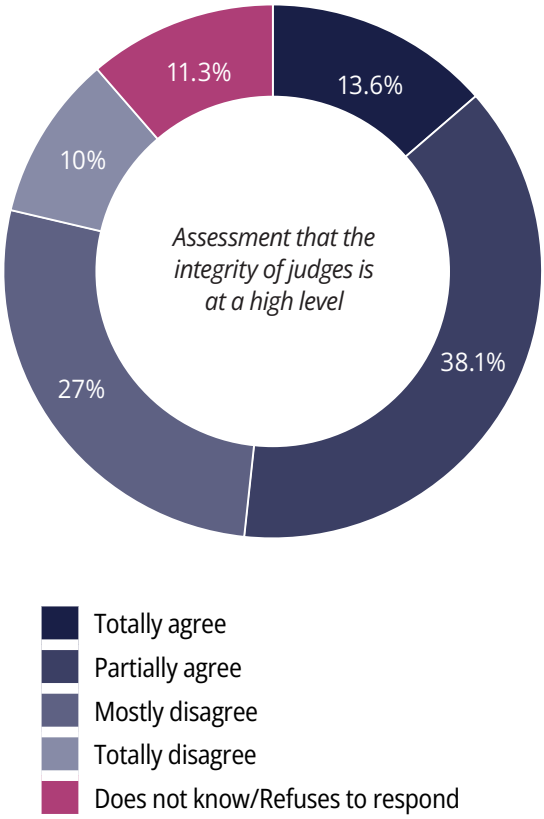
S5: SYSTEM BENEFICIARIES THINK THAT THE INTEGRITY OF JUDGES IS AT THE SUITABLE LEVEL [0.5 POINTS]

The perception of system beneficiaries about the integrity of judges is somewhat more favourable. A bit more than half of the respondents believe that the integrity of the judges is at a high level (51.7%). Still, as many as 37% of the respondents do not agree with this claim, and out of that number 27% are those that mostly disagree with the statement. Fur-

338 Law on Judges, Article 29
339 Annual Work Report 2020, High Judicial Council, pg. 41; *See also the* Report on monitoring of the situation in judiciary for 2020, European Policy Centre – CEP, Belgrade, 2020, pg. 112.
340 Annual Work Report 2020, High Judicial Council, pg. 41

thermore, 11.3% of the respondents did not know, that is, refused to respond to this statement. As the target value for meeting this standard is, by the research methodology, set at 70%, it is concluded that this standard has not been fulfilled, the same as in the previous reporting period. [0/0.5 points]





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

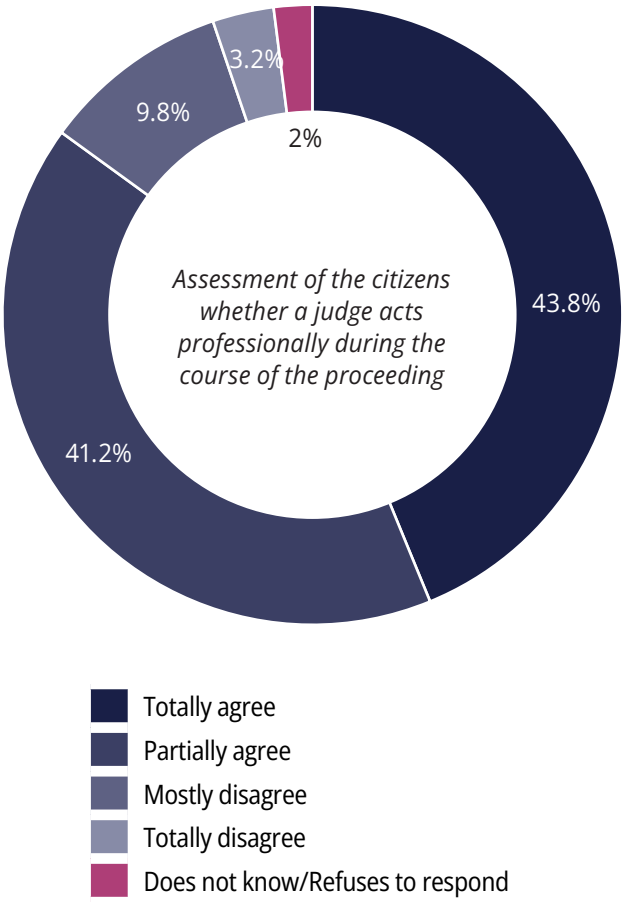
SUB-INDICATOR STANDARDS	POINTS	2020
1. Proportion of well-founded complaints about the work of a judge submitted to the president of the court	0.5/1	0.5/1
2. System beneficiaries think that the judge acts professionally during the proceedings	0/0.5	0/0.5
3. Proportion of the adopted general opinions of the Ethics Committee of the High Judicial Council in the number of submitted initiatives for giving opinions	0/0.5	0/0.5
4. System beneficiaries think that the judge acts politely during the proceedings	0/0.5	0/0.5
5. System beneficiaries think that the judge acts with dignity during the proceedings	0/0.5	0/0.5
TOTAL NUMBER OF POINTS	**0.5/3**	**0.5/3**

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 Judicial Council, which, among other things, contains the data on the complaints about the work of a judge submitted to the president of the court. As stated in the Report of the High Judicial Council for 2020[341], out of 810 newly formed cases, 577 represent cases based on submitted complaints of the parties or other participants in the proceedings[342], 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 as of the day of receiving the complaint.[343] The president of the court assessed that the complaint was found in 55 of those cases.[344] Also, in 287 cases, it was assessed that the complaints were not founded.[345] In 21 cases, the complaints were rejected, while for 62 complaints, the president of the court did not evaluate the submission.[346] In addition, it is important to note that in 28 cases involving disciplinary offences 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.[347], submission forwarded to the Disciplinary Prosecutor of the High Court Council under its jurisdiction.[348] Therefore, as the percentage of well-founded complaints about the work of judges in regard to the number of complaints received is 6.79%, this standard is considered as fulfilled. Although it was observed that the number of complaints was lower, and as a consequence, the other numbers are also smaller than in the previous reporting cycle, that did not have an impact on the given evaluation. [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 legal system beneficiaries, the vast majority assess that a judge acted professionally during the proceedings, 88,3% respondents (out of that, 43.3% "fully agree" and 45% "partially agree"). On the other hand, only 10.9% of the respondents disagreed with this statement. Also, only 0.8% did not know, that is, refused to respond to this statement. Thus, this standard is considered as fulfilled, which was the case in the previous reporting period. [1/1 point]



341 Annual Work Report 2020, High Judicial Council, pg. 41
342 Law on organisation of Courts, Article 55 (1)
343 Annual Work Report 2020, High Judicial Council, pg. 41, 42
344 *Ibid.*
345 Annual Work Report 2020, High Judicial Council, pg. 41, 42
346 *Ibid.*
347 *See* Law on Judges, Article 90
348 Annual Work Report 2020, High Judicial Council, pg. 41, 42

S3: PROPORTION OF THE ADOPTED GENERAL OPINIONS OF THE ETHICS COMMITTEE OF THE HIGH JUDICIAL 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 Ethical Board of the High Judicial Council, which will determine the exact number of decisions of the Ethical Board of the High Judicial Council in relation to the total number of requests, it was not possible to determine this data.

Compared to the previous reporting cycle, there have been some improvements in the work of the Ethical Board of the High Judicial Council since at its session on September 15, 2021, the High Judicial Council adopted the amendments to Rules of Procedure of the High Judicial Council, but also adopted the new Regulations of Procedure of the High Judicial Council, by which the previous Rules of Procedure of the Ethical Board ceased to be valid. Pursuant to adopted amendments, instead of an occasional working body that consisted of the members of the High Judicial Council, as stipulated by the previous Rules of Procedure, the Ethical Board became the permanent body of the High Judicial Council, consisting of 7 appointed members from among the judges and retired judges. After these changes, the announcement was published for election of the members of the Ethical Board and seven judges (active and retired) were elected upon completed procedure and this body was established. The first, constitutive session was held on October 15, 2021. At that occasion, the Ethical Board elected the president of this body, as well as vice president and confidential advisor. These are the judges of higher instances from the Republic of Serbia who are retired.[349] In addition, contact data was also published for the purpose of confidential advisory.[350] Also, as stated in the Annual Report of the High Judicial Council for 2020, the comprehensive analysis of the legal framework for the judicial ethics, relevant comparative legal standards, as well as the existing Judges' Code of Ethics and Code of Ethics for the members of the High Judicial Council[351] were prepared and published.

In regards to the opinions, there were no requests (that is, the initiative for establishing violation of the Judges' Code of Ethics, that is, Code of Ethics of the members of the High Judicial Council) received from an authorised applicant. On the other hand, two requests were submitted by unauthorised applicants and were dismissed by the Ethical Board. Several letters were received as well, but they cannot be considered as relevant. Along with the mentioned Constitutive Session on October 15, the Ethical Board held another session on December 3, 2021, but there is no data on it on the web site of the High Judicial Council. Precisely at that second session, two requests submitted by unauthorised applicants were dismissed. In addition, at the same session, the Ethical Board adopted the decision for the High Judicial Council to send the proposal for amendments to the Rulebook on the work of the Ethical Board of the High Judicial Council, envisioning for the Ethical Board to adopt its Rules of Procedure, due to lack of it in the Rulebook. Thus, there were improvements in the organisation and work of the Ethical Board of the High Judicial Council compared to the previous reporting cycle. Therefore, this standard can now be considered as partially fulfilled. [0.5/1 point]

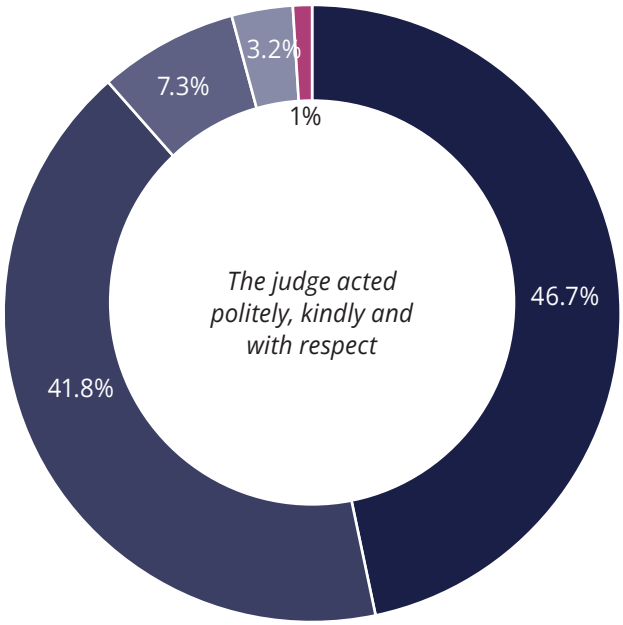
S4: SYSTEM BENEFICIARIES THINK THAT THE JUDGE ACTS POLITELY DURING THE PROCEEDINGS
[0.5 POINTS]

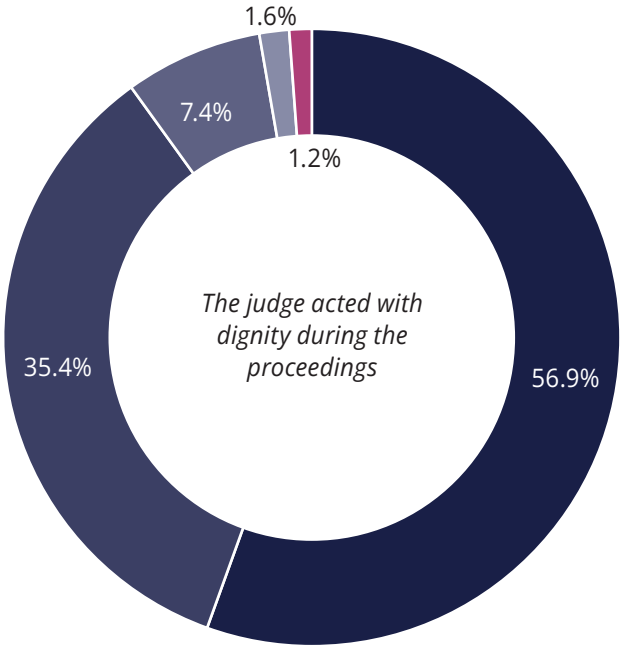
Regarding the manner of verbal communication of a judge with the party in the proceedings, decency, kindness and respect, the results of the conducted public opinion survey show that citizens with personal experience assess it positively. As many as 88.5% of the respondents had a positive response to this statement. Out of that percentage, as many as 46.7% of the respondents fully agreed with this statement. On the other hand, only 10.3% of respondents had a negative response. Thus, this standard is considered as fulfilled, which was the case in the previous reporting period as well. [0.5/0.5 points]

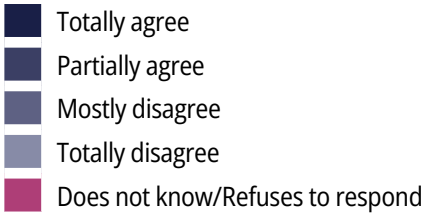
349 The first constitutive session of the Ethical Board of the High Judicial Council, October 15, 2021, available at https://bit.ly/3rD3qwl
350 Notice on the contact data of the confidential advisor to the Ethical Borad of the High Judicial Council, available at https://bit.ly/3HG9VV4
351 Annual Work Report 2020, High Judicial Council, pg. 37

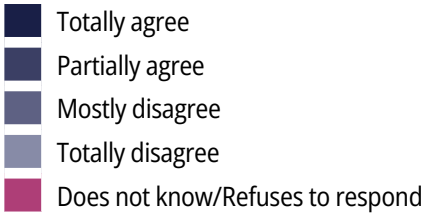
S5: SYSTEM BENEFICIARIES THINK THAT THE JUDGE ACTS WITH DIGNITY DURING THE PROCEEDINGS
[0.5 POINTS]

Perception of the system beneficiaries in regards to dignity of actions and attitude of the judges in the courtrooms as follows. 92.3% of the respondents agreed with this statement, and out of that percentage, as many as 56.9% of the respondents fully agreed with this statement. A very small number of citizens gave a negative mark, as low as 7.1%. Based on the regional criterion, the largest number of the respondents that disagreed is from the territory of Belgrade. Based on all above stated, this standard can be considered as fulfilled, as was the case in the previously analysed period. [0.5/0.5 points]









EVALUATION OF THE INDICATORS:

Maximum sum of all Sub-indicators	**13** *(Sum of maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**8** *(Sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-2.5	3-5.5	6-8.5	9-11.5	12-13.5
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	**3**				

Compared to the previous reporting period, formally legally, some of the essential changes were prepared for adoption and certain changes to the legal framework were made. Depending on their adoption, it will be necessary, as a consequence, to amend other relevant regulations. For now, the existing normative framework and guarantees were evaluated as adequate and whole. The segment that was deemed as inadequate, and also experiencing deterioration of results compared to the previous period, is access

to random assignment of cases in the Law on Judges and the Court Rules of Procedure. The amendments to the mentioned Law question the adequacy of the application of the principle of random assignment of cases. In addition, insufficiencies observed in the previous reporting cycle are persistent, such as for example negative perception of the public on impermissible impact on the judiciary, from the point of view of the citizens with the experience in the capacity of juridical system beneficiaries. Also, the omissions in the work of disciplinary bodies and the issue of incompatibility of functions with the legal profession, which was noted in the previous reporting cycle as well.

On the other hand, based on the received opinion of the system beneficiaries, and the data on the share of founded complaints regarding work of the judges in the total number submitted to the court president, the positive impression remains of professional conduct of judges, their actions during the processing and demeanour towards the parties. There is an improvement in regards to the work of the Ethical Board of the High Judicial Council compared to the previous reporting cycle, since there were certain steps in organisation and actions of this body.

RECOMMENDATIONS:

- It is necessary to undertake all necessary measures during following steps after adoption of the constitutional amendments, and consequently changes to the laws in order to justify their adoption. Amendments to the laws regarding judiciary should, in the spirit of the law and based on the constitutional amendments, provide additional strengthening of judicial independence. This primarily refers to the method of work and deciding of the High Judicial Council, which should be the proof that the independence of judiciary is really wanted.
- It is necessary to make precise or at least general definition of the new criteria for assignment of cases, in order to limit the corruptive potential and decrease the space for discretionary deciding and abuses.
- It is necessary for independent professional associations to continue and intensify the practice of monitoring and public emphasis on the cases of impermissible influence on the work of the judges.
- It is necessary for the High Judicial Council to start monitoring and make public emphasis on the cases of impermissible influence on the work of the judges, if possible, in a way and in the numbers done by the independent professional associations of judges.
- It is recommended for the High Judicial Council to dedicate a major part of its annual report to the cases of impermissible impact on the work of the judges, as well as to make relevant data on them publicly available

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	2020
1. The law guarantees access to an attorney to any detained and accused person	0.5/1	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	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	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	0.5/1
5. The regulations guarantee an adequate manner of assigning an attorney *ex officio*	0.5/0.5	0.5/0.5
TOTAL NUMBER OF POINTS	2.5/4	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 defence 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 defence are available.[352] 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.[353] A person deprived of freedom without a court decision, shall be immediately informed not to say anything, and not to be interrogated without the presence of an attorney whom he/she personally selected, or an attorney who will provide free legal assistance in case the defendant is not able to afford it.[354]

The Criminal Procedure Code stipulates that the defendant shall be informed before the first hearing, thoroughly and in the language he/she understands, of the charges 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 in-

352 Constitution, Article 33
353 *Ibid.*
354 Constitution, Article 29

terrogation.[355] 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 defence, as observed in the practice of the European Court of Human Rights.[356] 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[357], and raises the question of how the defendant will become familiar with these rules at the initial stages of the proceedings if he/she does not have any knowledge of the law. The Criminal Procedure Code always gives priority to the personal selection of the defendant in respect of the attorney he/she is under obligation to have pursuant to the provisions of Article 74 of Criminal Procedure Code.

Court decision cannot be based on the defendant's statement if he/she has not been properly instructed or provided with the right to a legal assistance[358]. It is confirmed that the standard has been partially fulfilled There have been no changes to this standard compared to the previous reporting period. [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 POINTS]

The Constitution of the Republic of Serbia guarantees to any detained person the right to be immediately informed of reasons for detention, in a language which he/she understands, as well as the offence with which he/she is being charged with, and the right to immediately inform a person of their own choice of the detention.[359] In accordance with Article 69 of the Criminal Procedure Code, every detained person has the right to be immediately informed of reasons for detention, in a language which he/she understands. In case the defendant does not understand the language of the proceeding, he/she is guaranteed the right to be interrogated using the services of a translator.[360] If the defendant suffers from a hearing loss, questions shall be asked in a written form, if the defendant lacks the ability to speak, he/she shall reply to the questions in a %written form, and if he/she suffers from blindness, the content of written evidence material shall be presented verbally during interrogation.[361] In case the interrogation cannot be done this way, in accordance with Article 87, paragraph 1 of the Criminal Procedure Code, a person with whom the defendant can communicate could be called to serve as an interpreter.

Therefore, the regulations contain adequate provisions that guarantee to any detained person the right to be informed of the reasons for detention in a language, which he/she understands. This standard is considered as fully fulfilled. [0.5/0.5 points]

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.[362] 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 offence with which he/she is being charged and the nature and cause of the accusation,[363] 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 familiarising himself/herself with the evidence collected against him/her in the early stages of the proceedings[364], which impedes the possibility of preparing defence, contrary to the relevant standard of the European Hu-

355 Criminal Procedure Code, Article 68 (2)
356 Öcalan v. Turkey (GC), 46221/99 of May 12, 2005, in regards to the application of Article 6 of the European Convention on Human Rights and Fundamental Freedoms.
357 Criminal Procedure Code, Article 69 (1) (2)
358 Criminal Procedure Code, Article 85 (5)
359 Constitution, Article 33
360 Criminal Procedure Code, Article 87
361 *Ibid.*
362 Constitution, Article 33
363 Criminal Procedure Code, Article 68
364 Criminal Procedure Code, Article 499 (4)

man Rights Law.[365] Thus, unlike the Constitution of the Republic of Serbia which is harmonised with Article 6, paragraph 2 item b) of the European Convention on Human Rights, based on which the defendant must have sufficient possibilities and time to prepare the defence, the Criminal Procedure Code requires additional harmonisation. Thus, it is confirmed that this standard had been 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]

According to Article 33, paragraph 5 of the Constitution of the Republic of Serbia, any person prosecuted for a criminal offence shall have the right to present evidence in his/her favour by himself/herself or through the legal counsel, to examine witnesses against him/her and demand that witnesses on his/her behalf be examined under the same conditions as the witnesses against him/her and in his/her presence. That is in compliance with Article 6, paragraph 3 of the European Convention of Human Rights and Fundamental Freedoms, and based on which, the defendant has the right to examine or have examined witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her. The principle of "equality of arms" primarily means that each party has a possibility to present their evidence and is not placed in a less favourable position compared to the other party. According to Article 6 of the European Convention on Human Rights, the goal of this is to ensure a fair trial, and not only in the phase of the main hearing, but in the earlier phases as well (preliminary criminal proceeding).

However, the Criminal Procedure Code does not guarantee mandatory defence for each accused person. For this reason, in situations where mandatory defence is not prescribed, but it depends on the defendant's choice, and which often depends on his/her property status (and does not meet the conditions for the recognition of the so-called poor law), the defendant is in a less favourable position compared to the plaintiff who has special knowledge. However, the establishment of mandatory defence in all situations would require the engagement of special budget funds, which is not an easy task at all. The inequality of the parties in terms of the possibility of presenting evidence is particularly a problem if one takes into account Article 349 of the Criminal Procedure Code, which stipulates that the accused person must testify about the allegations in the indictment. In addition, the accused may present evidence on that occasion. Later in the proceeding, problems may arise because only the evidence related to the contested part of the accusation, as well as the evidence presented on that occasion, is presented. A defendant who does not know the law, but in some cases even a person who has a legal education, without a defence attorney is not able to present all the evidence that would be in his/her favour at a later stage of the proceedings. Therefore, it cannot be said that the provisions of the Criminal Procedure Code guarantee the defendant the opportunity to collect and present evidence in the same way as the prosecutor. According to the provisions of the Criminal Procedure Code, the defendant has the right to review the files and look at the evidence and items that serve as evidence, collect evidence for his defence, present evidence in his/her favour and request that the defence witnesses be examined under the same conditions as the prosecution witnesses. However, the defendant and his/her defence counsel do not have a guaranteed right to copy certain files and documentation that would be important for the preparation of the defence.

Based on Article 125 of the Criminal Procedure Code, the defendant has the right to submit a request to the competent authority for the appointment of an expert advisor. In the event that the expert witness' report is unclear, incomplete, wrong and in contradiction with itself or the circumstances on which the expert witness' report was made, or doubts arise as to its veracity. However, this is the exclusive privilege of the defendants who are in a better financial situation. With the aforementioned provision, only certain defendants are placed in a more favourable position, i.e. they are given a greater opportunity to dispute the findings and opinions of experts of a certain profession. In accordance with the provisions of the Criminal Procedure Code, the defendant has the right to suggest that the expert witness opinion be repeated if it is unclear or contradictory. However, it can be concluded that the chances of this being highlighted are greater if the defendant has a defence attorney or if he/she has hired an expert advisor. According to the provisions of Article 301 of the Criminal

365 Contrary to Article 6, paragraph 2. Item b) of the European Convention on Human Rights and Fundamental Freedoms

Procedure Code, the suspect and his defence counsel can independently collect evidence and material for the defence. If the suspect and his/her defence counsel believe that it is necessary to undertake a certain evidentiary action, they will propose to the public prosecutor to undertake it. If a preliminary hearing has not been held, the parties, the defence attorney and the injured party have the right to propose, under the same conditions if the hearing was not held, that new witnesses or experts be called to the main trial or some other evidence be presented, where they must indicate which facts should be proven and which of the proposed evidence. The Criminal Procedure Code entitles the parties, the defence counsel, and the injured party, to propose that new evidence be presented before the end of the main hearing, and they can also repeat proposals that were previously rejected. After the presentation of the last piece of evidence, the president of the panel asks the parties, the defence counsel, and the injured party if they have any suggestions for supplementing the evidentiary proceedings. And in those situations, the accused person who has a defence attorney is in a better position than the person who only presents their own defence. Therefore, even in those situations, the procedural inequality of the parties in criminal proceedings is visible.

Due to all of the above, it can be said that the principle of equality of weapons in the criminal proceedings of the Republic of Serbia is unattainable. It is possible only in the case of the introduction of mandatory defence. However, even then, some defendants are placed in a more favourable position when it comes to the possibility of hiring an expert advisor, who represents a kind of a private expert of the defendant. It is concluded that the standard is partially fulfilled. [0.5/1 point]

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

The Criminal Procedure Code allows for the possibility for a defendant to opt for an attorney of his/her own choosing. Nonetheless, if a defendant does not select an attorney or loses one in the course of the criminal proceeding (according to the Criminal Procedure Code, defence is mandatory) 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.[366] The Criminal Procedure Code always gives the advantage to personal selection of the accused when it comes to selection of the defence attorney he/she is under obligation to have pursuant to the provisions of Article 74 of the Criminal Procedure Code.

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.[367] Upon signing this Protocol, a call centre 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 a court, public prosecutor's office or a competent body of internal affairs. According to the Protocol, if a court wishes to hire an attorney *ex officio*, the president of the court contacts the Bar Association's call centre, 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 Internal Affairs. 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 the information and statistical reports on each individual attorney, each body which appointed an attorney *ex officio*, as well as to obtain information on all the attorneys appointed and assigned *ex officio* on a daily, monthly or annual level. This way, favouring 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.

National regulations guarantee an adequate way for appointment of the defence attorney *ex officio*. Even though the Criminal Procedure Code earlier

366 Criminal Procedure Code, Article 76

367 *See more on this topic* https://www.drzavnauprava.gov.rs/vest/21370/potpisan-protokol-o-razmeni-podataka-u-postupkupostavljanja-no.anioca-po-sluzbenoj-duznosti.php

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 of the 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. Compared to the previous reporting cycle, there have been no changes to the value of the standard. [0.5/0.5 points]

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. The law provides legal instruments for protection of rights and interests of an injured party during preliminary criminal investigation	0.5/1	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	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	0/0.5
4. The law prescribes the right of an injured party to assume criminal prosecution	0.5/1	0.5/1
TOTAL NUMBER OF POINTS	1.5/3.5	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]

Basic legal instruments for protection of rights and interests of an injured party in preliminary criminal investigation are a 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 offence prosecuted *ex officio*.[368] 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 offence, at any given moment during the proceedings, but no later than by the completion of the main hearing before the first instance court.[369] Moreover, an injured party has the right to submit evidence, examine case files and evidence, and to be notified of a public prosecutor's decision to dismiss charges or to abandon criminal prosecution.[370] On the other hand, unlike defence, an injured party is not entitled to submit a complaint to any irregularities during the investigation. Furthermore, the law prescribes the obligation for the injured party to be notified of the 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]

According to the Constitution of the Republic of Serbia, the injured party has the right to decide on his/her rights and interests at a public hearing, fairly and in reasonable time.[371] With regard to legal instruments for protection of rights and interests of an injured party in a criminal proceeding, 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 realis-

368 Criminal Procedure Code, Articles 50 and 51
369 Criminal Procedure Code, Article 254
370 Criminal Procedure Code, Article 50
371 Constitution of the Republic of Serbia, Article 32

ing property claim, and to propose temporary measures for its protection.[372] Furthermore, the injured party is entitled to grant power of attorney to a proxy and request 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 as a government body.[373] The insufficiencies of the process and legal framework refer to the 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, and other measures of protecting personal integrity of the injured party and preventing exposure to additional mental and moral pressure, particularly during the hearings. Additionally, the manner of submitting relevant information to the injured party during proceedings lacks clarity. The possibility of exercising rights and interests of the injured parties would be more efficient if the possibility of the legal remedy was introduced against the decision preventing the possibility of translation or interpretation in the language understood by an injured party.

The provisions of Article 11 of the Criminal Procedure Code should be amended by defining a competent authority for rendering the decisions on approval of translation and interpretation, and the method for evaluation of the needs and the criteria based on which such a decision is rendered.

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 POINTS]

With regard to the matter of an injured party being guaranteed participation in the decision-making process on 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 hearing during which the agreement is reviewed. Even if the injured party got to know of the time when hearing is taking place, he/she would not be able to attend, as it is prescribed that 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 defence attorney, but not to the injured party.[374]

In case of a dismissal of the criminal charges due to the defendant fulfilling his/her responsibility on the basis of conditional opportunity (postponement of criminal prosecution), the injured party also does not have the right to a complaint, the same as in case of dismissal of the criminal complaint for the reasons of efficiency.[375] The only possibility is provided to an injured party in regards to the submission of proprietary legal requests. In such a situation, the public prosecutor will invite the injured party to submit proprietary legal request[376] before the conclusion of the agreement. It is confirmed that this standard has not been fulfilled. [0/0.5 points]

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 the charges, or within eight days as of the date of being notified of the option to assume criminal prosecution and represent defence, or within three months as of the date of dismissal, if the injured party was not notified of it.[377] 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.

If an injured party is a minor or a person declared legally incompetent, criminal prosecution may be taken over by his/her legal representative, and who may execute his/her rights through an attorney.[378] In accordance with Article 57 of the Criminal Proce-

372 Criminal Procedure Code, Articles 50-57
373 Criminal Procedure Code, Article 52
374 Criminal Procedure Code, Article 315
375 Criminal Procedure Code, Article 283, Article 50
376 Criminal Procedure Code, Article 50
377 Criminal Procedure Code, Article 52
378 Criminal Procedure Code, Article 56

dure Code, if an injured party dies during the prescribed time limit for making a declaration on assuming criminal prosecution, or submitting a motion for criminal prosecution, or during the proceedings, his/her spouse, common-law spouse or other persons with whom he/she had lived in a common law marriage or other permanent personal association, children, parents, adopter, adoptee and siblings and legal representative may, within three months of his/her death declare that they are assuming prosecution or submit a motion that they continue the proceedings.[379] The same applies to a legal successor of the legal entity that ceased to exist.[380]It is confirmed that the standard is partially fulfilled. [0.5/1 point]

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

SUB-INDICATOR STANDARDS	POINTS	2020
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	1/1▲	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 defence and admit or not admit guilt	1/1	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	1/1
4. Defendant is taken before a court in the shortest possible time	1/1	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	0.5/1▲	0/1
6. Defendant is provided with sufficient time and facilities to prepare defence	1/1▲	0.5/1
7. Defendant's defence team is provided access to files and evidence	1/1▲	0.5/1
8. Defendant is enabled to collect and present evidence for his/her own defence without obstructions	0.5/1	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 favour without obstructions	0.5/0.5	0.5/0.5
10. Defendant is enabled to utilise all legal instruments and legal remedies available at that moment	1/1	1/1
TOTAL NUMBER OF POINTS	8.5/9.5▲	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]

Compared to the previous reporting period, the survey was this time done among the attorneys, but also among the public prosecutors. The findings were as follows.

75% of the attorneys agree with this statement. More precisely, 12.5% of the surveyed attorneys fully agree with this statement, while 62.5% attorneys partially agree with this statement. On the other hand, 25% of the attorneys stated that they disagreed.

In regards to the public prosecutors, the situation is even clearer. Namely, 89.5% of the surveyed public prosecutors fully agreed with the statement made about this standard, while 10.53% of the prosecutors stated that they partially agreed with the statement. None of the surveyed participants disagreed with the statement.

Based on the data received though the survey, this standard can be considered as fulfilled. Compared to the previous reporting period, there has been an improvement in the evaluation of this standard. [1/1 point]

379 Criminal Procedure Code, Article 57
380 *Ibid.*

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

While determining standards, a survey was conducted among attorneys and public prosecutors. When responding, the respondents separately replied regarding each of the elements of the above stated standard. In the case of the public prosecutors, all of them, meaning 100% agreed with the statement that the defendant was informed that he/she may choose to refuse to respond to certain questions, freely present his/her defence or admit or not admit guilt. The situation with the attorneys is somewhat more complicated. So, for example, in respect of the statement that the defendant is informed that he/she may choose to refuse to respond to certain questions, 46.7% of the surveyed attorneys did not agree, while 53.3% of the respondents disagreed. In respect of the statement that the defendant is informed that he/she may freely present his/her defence, 81.2% of the respondents agreed. In the end, in respect of the claim that the defendant is informed that he/she may admit or not admit the guilt, 66.7% of the attorneys agreed.

Thus, based on all above stated, the same as in the previous cycle, this standard can be considered as 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. Out of all the attorneys that participated in the survey, precisely one half (50%) responded positively regarding this standard. On the other hand, 31.25% of the surveyed attorneys did not agree with the stated standard. It is important to note that as many as 18.75% stated that they did not have a response regarding this statement. In the case of the public prosecutors, 94.74% of the respondents agreed that they had the possibility to inform and call the defence attorney of their choosing to attend certain activity. However, 5.26% of the surveyed public prosecutors fully disagreed with the stated standard. Based on all above stated, this standard could be considered as fulfilled, the same as in the previous reporting cycle. [1/1 point]

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

The opinions of the attorneys regarding this issue were established based on the anonymous survey. 62.5% of the attorneys believe that the defendants are brought before a judge in a preliminary proceeding within the shortest possible period. However, a significant percentage of them, 37.5% of the surveyed attorneys do not think this is the case. And in regards to the opinion of the public prosecutors, 96.49% of them believe that the defendants are brought before a judge in a preliminary proceeding within the shortest possible period. Still, 3.51% of the public prosecutors mostly disagree with the above stated. Thus, in this case, the maximum evaluation is given, and the standard is fulfilled the same as in the previous cycle. [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 OPINION
[1 POINT]

While determining compliance with this standard, attorneys' perception of adherence to this principle was established. As in case of other standards which include several elements, the respondents provided their response for each individual item. Thus, 6.25% of the attorneys do not know to respond whether a defendant is provided with a possibility to read the criminal charges just before the first hearing. However, as many as 62.5% of the attorneys disagreed with this standard, while only 31.25% of the attorneys believe that the defendant is provided with a possibility to read the criminal charges before the first hearing.

In regards to access to the minutes on the scene investigation, 18.75% of the surveyed attorneys partially agree, while 75% of the attorneys think this is not the case. Additionally, 6.25% of the questioned attorneys do not know how to respond to the question.

Finally, 25% of the respondents think that a defendant is enabled to read the findings and opinion of the expert witness immediately before the first hearing, while the remaining 75% disagree.

In regards to the surveyed public prosecutors, 96.5% of them believe that a defendant is enabled

to read the criminal charges just before the first hearing, while 3.5% do not agree with this statement. In regards to the possibility of a defendant to have access to the minutes on the scene investigation immediately before the first hearing, 92.59% of the public prosecutors believe this to be the case. 5.55% of them disagreed, while only 1.85% did not know how to respond. Finally, 91.07% of the public prosecutors believe that a defendant is enabled to read the findings and opinions of the expert witness immediately before the first hearing, while 8.93% of the surveyed public prosecutors disagreed.

Having in mind the opinions expressed by the attorneys regarding this matter, this standard can be considered as partially fulfilled. [0.5/1 point]

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

While determining compliance with this standard, it was established that one half of the surveyed attorneys found this standard to be adhered to. The remaining ones, i.e. the other half, disagreed and found that the defendant was not provided with sufficient time and facilities to prepare the defence. In respect of the public prosecutors, all the respondents think that a defendant is provided with sufficient time and facilities to prepare defence. Thus, based on the opinions of the participants in the survey, this standard can be considered as fulfilled, which is an improvement compared to the previous reporting cycle. [1/1 point]

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

The results based on the conducted survey are as follows. 62.5% of the surveyed attorneys had positive feedback regarding adherence to this standard. Still, 37.5% do not agree that the defence team of the defendant was provided access to files and evidence. In regards to the opinion of the public prosecutors on this matter, absolutely all the respondents agree that the defence teams of the defendants are enabling all this. Thus, this standard is considered to be fulfilled, unlike in the previous reporting cycle when it was only partially fulfilled. [1/1 point]

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

37.5% of the surveyed attorneys were of the opinion that the defendant was enabled to collect and present evidence for his/her defence without obstructions. On the other hand, as many as 56.25% of the attorneys do not think this is the case, while 6.25% do not know how to respond. In respect of the public prosecutors, only 1.75% of the surveyed disagreed. Significantly higher percentage of 98.24% of the public prosecutors think that a defendant is enabled to collect and present evidence for his/her defence without obstructions. Thus, this standard could be considered as 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 FAVOUR WITHOUT OBSTRUCTIONS
[0.5 POINTS]

Out of the total number of surveyed attorneys, 68.75% of them think that a defendant can make statements on all the facts and evidence presented against him/her and present facts and evidence in his/her favour without obstructions, while 31.25% do not agree with this statement. The situation is more polarised in regards to the right of the defendant to present the facts and evidence in his/her favour without obstructions. In this case, 56.25% of the attorneys agree, while 43.75% of them think that this is not the case in practice.

In case of the public prosecutors, a very high percentage thinks that a defendant can make statements on all the facts and evidence presented against him/her and present facts and evidence in his/her favour without obstructions, as many as 98.24%. On the other hand, only 1.75% of the public prosecutors have a different point of view. All the public prosecutors had a positive response regarding the right of the defendant to present the facts and evidence in his/her favour without obstructions. Thus, based on all above stated, this standard is considered as fulfilled. [0.5/0.5 points]

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

87.5% of the surveyed attorneys had a positive response regarding the standard that a defendant is enabled to utilise all legal instruments and legal remedies available at that moment. Unlike their opinion, 12.5% of the attorneys think that this is not the case in practice. Public prosecutors have all agreed on this position. Moreover, 94.74% of the public prosecutors stated that they fully agreed that a defendant was enabled to utilise all legal instruments and legal remedies available at that moment. Having in mind that a majority of the surveyed attorneys had a positive opinion, it is considered that the defendant was enabled to use all legal instruments and legal remedies available at any moment, this standard is considered as fulfilled. [1/1 point]

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

SUB-INDICATOR STANDARDS	POINTS	2020
1. Injured party has received written confirmation of the filed criminal charges	0.5/1 ▲	0/1
2. Injured party is informed of actions taken by the prosecutor's office in line with the law	0.5/1 ▲	0/1
3. Injured party is informed of the time and place of witnesses and expert witnesses' examination	0.5/1 ▲	0/1
4. Injured party is granted access to files and enabled to present evidence in line with the Criminal Procedure Code	1/1	1/1
5. Judgement was submitted to injured party	1/1	1/1
6. Injured party is familiar with the right to submit a property claim	0.5/0.5	0.5/0.5
7. Injured party is informed of the defendant's release	0/1	0/1
8. Injured party is provided with the right of translation and interpretation	0.5/1	0.5/1
TOTAL NUMBER OF POINTS	4.5/7.5 ▲	3/7.5

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

In this reporting cycle, along with the attorneys, the public prosecutors were also surveyed.

Based on the survey conducted among the attorneys, the following results were obtained. Namely, since this is considered to be a very sensitive topic, and very often inconsistently applied in practice, hence the results are very diverse.

Primarily, 6.67% of the attorneys could not respond regarding this standard. On the other hand, 40% of the surveyed attorneys thought that an injured party regularly received written confirmation of the filed criminal charges, while 53.34% responded negatively about this claim.

In respect of the public prosecutors, 62.97% of them thought that an injured party regularly received written confirmation of the filed criminal charges, while 25.92% of the respondents thought this was not the case. It is interesting to note that as many as 11.11% of the public prosecutors could not respond regarding this standard.

Thus, having in mind the entire comprehensive opinion expressed by the respondents, this standard could be considered partially fulfilled, unlike the previous cycle when it was completely unfulfilled. [0.5/1 point]

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

When evaluating the level of fulfilment of this standard, 26.67% of the attorneys partially agreed with the statement that the injured party was informed of actions taken by the prosecutor's office in line with the law. It is important to note that none of the attorneys fully agreed with this statement. On the other side, 73.33% of the attorneys disagreed.

14.81% of public prosecutors disagreed, while 85.18% of the public prosecutors thought that the Injured party was informed of actions taken by the prosecutor's office in line with the law.

Thus, based on all above stated, this standard can be considered as partially fulfilled. [0.5/1 point]

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

53.33% of the surveyed attorneys stated that this standard was not fulfilled. In regards to the public prosecutors, 9.26% of them disagreed with this standard. Still, the remaining 88.89% of the public prosecutors thought that the injured party was informed of the time and place of witnesses and expert witnesses' examination.

Thus, due to the polarised responses given by two surveyed groups, this standard is considered as partially fulfilled. [0.5/1 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 undertaken among the attorneys, it was established that as many as 86.67% attorneys thought that the injured party was granted access to files and enabled to present evidence in line with the Criminal Procedure Code. On the other hand, 13.33% of the attorneys thought that this standard was not implemented in practice. In regards to the opinion of the public prosecutors, 98.15% of them thought that this standard was fulfilled in practice.

Thus, considering the general opinion on this issue, this standard can be considered as fulfilled. [1/1 point]

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

When establishing fulfilment of this standard, the data were received that as many as 93.33% of the surveyed attorneys thought that this principle was complied with, and that the judgement was submitted to the injured party as a rule. In respect of the public prosecutors, 79.63% of the surveyed also agreed with this standard. However, it is important to note that as many as 16.67% of the public prosecutors stated that they did not know whether this standard was implemented in practice. Therefore, based on all above stated, this standard is fulfilled. [1/1 point]

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

60% of the attorneys expressed the opinion that the injured party was familiar with the right to submit a property claim. In addition, 92.6% of the public prosecutors are of the same opinion. Unlike them, 33.33% of the attorneys and 3.7% of the public prosecutors think differently. It is interesting that 6.67% of the surveyed attorneys could not respond regarding fulfilment of this standard in practice.

Therefore, based on the given opinions and experience from practice of the attorneys and public prosecutors, this standard is fulfilled. [0.5/0.5 points]

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

According to data obtained from the conducted survey, all surveyed attorneys are of the opinion that injured parties are not informed of the defendant's release, even though they should be. Moreover, as many as 80% of them fully disagreed with the application of this standard in practice. The responses of the public prosecutors were much more diverse. Thus, 25.92% of them thought that this standard was not complied with in practice. 62.96% of the public prosecutors opposed this standpoint. It is interesting to note that 11.11% of the public prosecutors could not respond regarding this standard. Thus, this standard is not fulfilled. [0/1 point]

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

46.66% of the surveyed attorneys agree with the standpoint that the injured party is provided with the right of translation and interpretation. 20% of the attorneys think that this standard is not applied in practice. It is significant to note that 33.33% of the attorneys could not respond regarding this standard.

In regards to the public prosecutors, 92.6% of them confirmed that this standard was respected in practice. Therefore, this standard is partially fulfilled. [0.5/1 point]

EVALUATION OF THE INDICATORS:

Maximum sum of all Sub-indicators	**24.5** *(Sum of maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**17▲** *(Sum of allocated values of all individual Sub-indicators in this indicator)*				
Conversion table	0-4.5	5-9.5	10-13.5	14-17.5	18-21
	1	**2**	**3**	**4**	**5**
FINAL EVALUATION OF INDICATORS	4▲				

Compared to the previous reporting cycle, there has been no changes in the overall evaluation of the adequacy of the legal framework that regulates the protection of the rights of the accused and the rights of the injured in the criminal proceedings, and it is still partial. Important standards, such as the legal guarantee of access to the defence counsel of the person deprived of liberty and the defendant, the right of the defendant to be informed about the offence charged against him and the nature and reasons of the accusation, as well as the possibility of collecting and presenting evidence in the same way as the prosecutor, on one hand, and guarantees of a legal remedy for the protection of the rights and interests of the injured party in preliminary criminal and criminal proceedings, and the right of the injured party to undertake criminal prosecution, are still present in the legislation, but are still considered partially fulfilled, due to the lack of complete adequacy. The provisions on the method of assigning an *ex officio defence* attorney were positively evaluated, while the guarantee of the participation of the injured party in deciding on the opportunity and the agreement on the recognition of the criminal offence is completely lacking.

In relation to the previous reporting cycle, the analysis of the protection of the accused and the injured in practice was carried out on the basis of a survey of the attorneys, but also of the public prosecutors, so, the values of the standards obtained are different compared to the previous year. Progress has been observed in terms of the protection of the accused in practice with the standards related to clearly notifying the accused of the offence he/she is accused of, nature and reasons of the accusation, and that everything he/she declares may be used as evidence in the proceedings, and the opportunities given to the accused immediately before the first hearing, read the criminal report, the report on the investigation, and the findings and opinion of the expert witness. Also, progress can be seen in relation to the previous reporting cycle in terms of the standards that treat the provision of sufficient time and opportunities for defence preparation and the fact that the defendant's defence was enabled to view files and evidence. In terms of the protection of the injured party in practice, progress was also observed in the standards that deal with notifying the injured party of the actions of the prosecution in accordance with the Law, obtaining a written confirmation of the submitted criminal complaint, and informing the defendant of the time and place of the examination of witnesses or experts.

RECOMMENDATIONS:

- It is necessary for the courts to have measures that enable avoidance of visual contact between the injured (victims) and perpetrators of criminal offences during presentation of evidence. This would prevent unnecessary questions about the private life of a victim, which are not related to the criminal offence and without the presence of the public. That is why it is necessary to secure a special type of listening for the injured individual who are not witnesses in the criminal proceedings. The protective measures in terms of the Criminal Procedure Code are established only in respect to the witnesses, but not the victims of the criminal offences (injured parties).
- The Criminal Procedure Code should stipulate the method for delivery of information to the injured parties in the criminal offences, and which refers to the case.
- The law should prescribe an explicit obligation for the injured person to comply with the proposed measures, when the prosecutor's decision orders the defendant to fulfil the obligation to pay a certain amount of money in favour of a humanitarian organisation, fund or public institution, and to perform community service. It should be borne in mind that the injured party can be a legal entity, and even the state, for example. in terms of public funds, so in such situations it would be necessary to consult the competent public attorney's office before ordering a certain amount of money to be paid for humanitarian purposes or ordering a person to perform community service. In any case, priority must be given to the satisfaction of the rights and interests of the injured party.

INDICATOR 2:
INTEGRITY AND QUALITY OF THE WORK OF PUBLIC PROSECUTORS

SUB-INDICATOR 2.1:
ADEQUACY OF LEGAL NORMS ON THE INTEGRITY OF THE WORK OF PUBLIC PROSECUTORS

SUB-INDICATOR STANDARDS	POINTS	2020
1. The law determines independence of public prosecutors/deputies in their proceeding and decision-making process	0.5/1	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	0.5/1
3. There is an adequate mechanism which guarantees impartiality and governs recusal of prosecutors	1/1 ▲	0.5/1
4. The Law on Public Prosecutor's Offices and the Rulebook on Disciplinary procedures regulate the system of disciplinary responsibility for violation of code of conduct	0.5/1	0.5/1
5. The law prescribes an obligation of public prosecutor's office to take action with regard to criminal offences prosecuted ex officio	0.5/1	0.5/1
6. The law prescribes a control and sanction mechanism in case the public prosecutor's office violates the obligation stipulated under the standard no. 5	0.5/0.5 ▲	0/0.5
7. The law contains mechanisms which prevent political or any other impermissible influence on prosecutor's office	0.5/1	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	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	0.5/1
TOTAL NUMBER OF POINTS	5/8.5 ▲	4/8.5

S1: THE LAW DETERMINES INDEPENDENCE OF PUBLIC PROSECUTORS/DEPUTIES IN THEIR PROCEEDING AND DECISION-MAKING PROCESS
[1 POINT]

Independence of the actions of public prosecutors/deputies 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.[381] The Government nominates public prosecutors from the list of proposals submitted by the State Prosecutorial Council, while the deputies are appointed at the proposal of the State Prosecutorial Council. The State Prosecutorial Council elects the deputies of public prosecutors, who are appointed to a position permanently. Public prosecutors account to the State Public Prosecutor and the National Assembly for the work of the public prosecutor's office, which they are in charge of, as well as for their own work.[382] Basic public prosecutors account for their work to their immediately superior higher public prosecutor, while deputy public prosecutors account to public prosecutors.[383] The said provisions of the Law on Public Prosecutor's Office[384] 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 State Prosecutorial Council, which includes the

381 Constitution, Articles 160 and 164
382 Law on Public Prosecutor's Office, Articles 74 and 75
383 Law on Public Prosecutor's Office, Article 16
384 Law on Public Prosecutor's Office

minister competent for judiciary 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 organised, along with the solutions in the proposed amendments to the Constitution in the segment that refers to organisation of public prosecutor's office, are shown in the opinions of the Consultative Council of European Prosecutors and the Venice Commission.[385]

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.[386] The Law allows devolution, i.e. for all the 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.[387]

At the session held on September 21, the Department for Constitutional Matters and Judiciary adopted the text of the act on the amendments to the Constitution, which was sent for the opinion of the Venice Commission. The text of the act was prepared by the working group consisting of the representatives of the professional associations, professors of constitutional law and representatives of the National Assembly. The transparency of the work of the working group is a positive step in the work on the amendments to the Constitution of the Republic of Serbia. At the 128th plenary session, held on October 15-16, 2021, the Venice Commission adopted the Opinion on the Draft Constitution of the Republic of Serbia.

The amendment XVIII proposed the change to Article 156, which stipulates the position and competence of the public prosecutor's office, so that Article 156 now regulates the responsibility of the public prosecutor's office. Unlike the existing solution, according to which the public prosecutor is responsible for the work of the public prosecutor's office he/she manages, to the State Public Prosecutor and the National Assembly, and which, as stated in the previous part of the text, is a very questionable solution from the aspect of the independence of the public prosecutor's office, it was proposed that only the Supreme Public Prosecutor should be responsible for the work of the public prosecutor's office and for his/her work to the National Assembly. However, in order to eliminate the possibility of influence on his/her professional integrity, it was proposed that the provision of the Constitution should explicitly stipulate that he/she is not responsible to the National Assembly for the action in a particular case. According to the draft text of the act amending the Constitution of the Republic of Serbia, a new title was proposed for public prosecutors who lead public prosecutor's offices - chief public prosecutors, and instead of the title deputy public prosecutors, the title public prosecutors was proposed. According to the new proposal, the chief public prosecutors (public prosecutors) are still responsible for their work to the Supreme Public Prosecutor, and to immediately senior public prosecutor in accordance with the law. According to the text of the draft, public prosecutors should be responsible for their work exclusively to the chief public prosecutor, in accordance with the law.

Draft amendment XVII proposes that the public prosecutor's office should be a single and independent state body that prosecutes the perpetrators of criminal offences and other punishable acts and performs other responsibilities that protect the public interest determined by law. According to the same amendment, no one outside the public prosecutor's office may influence the public prosecutor's office and the holders of the public prosecutor's office in handling and deciding on a particular case.

The amendment XXIV proposes for the State Prosecutorial Council to be called the High Council of Prosecutors. The reason why the word "prosecutors" is used instead of "prosecutorial" is that the public prosecutor's offices do not constitute the third power of government such as judiciary, and that is why such a name better corresponds to their position and function. Such a linguistic solution reflects the intention of the legislator preparing the Constitution.

385 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.

386 Report from the 68th plenary meeting of GRECO held in Strasbourg (June 15-19, 2015)

387 Law on Public Prosecutor's Office, Article 13

The current solution regarding the composition of the State Council of Prosecutors (High Council of prosecutor) is a problem. According to the amendment XXV, the High Council of Prosecutors should consist of eleven members, out of which none is a representative of legislative, but one is a representative of the executive power. According to the draft, the High Council of Prosecutors should consist of 11 members: five public prosecutors elected by chief public prosecutors and public prosecutors, four renown lawyers elected by the National Assembly, Supreme Public Prosecutor and minister competent for judiciary. Such a solution may cause problems, having in mind that the stated body is authorised to perform election, promotion and dismissal of public prosecutors, as well as for deciding on disciplinary responsibility of public prosecutors and deputy public prosecutors, because there would be a possibility of political influence on the functioning of the public prosecutor's office. However, according to amendment XIII, such a possibility is not foreseen when it comes to the composition of the High Judicial Council. According to the draft, it should consist of eleven members, six judges elected by the judges and five prominent lawyers elected by the National Assembly. In addition, an alternative solution was proposed, according to which the High Judicial Council should consist of 11 members: five judges elected by the judges, the president of the Supreme Court and five prominent lawyers elected by the National Assembly.

As it could be concluded, no representative of the executive power was proposed for the composition of the relevant judicial council. Regardless of the position that the public prosecutor's office should have a different quality of independence compared to the courts, it is still necessary to eliminate the possibility of political influence on its independence. Therefore, the representative of the executive power should not be a part of the High Council of Prosecutors. According to the opinion of the Venice Commission of October 18, 2021, which is expressed in item 87, the participation of the Minister of Justice in the High Council of Prosecutors may call into question the independence of that body, and in item 88, the opinion is expressed that it is unclear why such a composition of the High Judicial Council was not proposed. In the same opinion, the Commission refers to the recommendation of GRECO, which had recommended a change to the composition of the State Council of Prosecutors (High Council of Prosecutors). Its composition should not include any of the representatives of either the legislative or the executive power. Within item 90, the position was expressed that if the Supreme Public Prosecutor were part of the High Council of Prosecutors, it could contribute to other members who are hierarchically subordinate to him formally or informally following his/her instructions.

One of the proposals of the Venice Commission expressed in item 91 is that the members of the High Council of Prosecutors should not be *ex officio* members (High Public Prosecutor and Minister responsible for judiciary). The Supreme Public Prosecutor should not be a member of such a body for the previously mentioned reasons and the reason that even in that case a political element would be present, bearing in mind that he/she is elected for membership in that body by the National Assembly. The reason why the Minister should not be a member is that this way a representative of the executive power would be represented in the said body, which would also leave the possibility of political influence on the work and decision-making of an independent institution such as the High Council of Prosecutors. The proposal is to exclude *ex officio* representatives from the membership in the relevant body, and to have only public prosecutors elected by their colleagues and five renown lawyers elected by the National Assembly, who should not have any current or future hierarchical or *de facto* relationship of subordination with the Supreme Public Prosecutor, and that they be exclusively representatives of other legal professions (item 92 of the opinion of the Venice Commission).

The proposed amendment to the Constitution of the Republic of Serbia does not prescribe the method of selection of public prosecutors who are elected to office for the first time, but it is a matter that will be prescribed after the amendment of the Constitution of the Republic of Serbia.

Thus, the existing constitutional and legal solution enables political influence on the work of the public prosecutor's office. Also, due to hierarchical authorization of the public prosecutor regarding work of the deputy public prosecutors, it is possible to impact their independence in work with specific cases. Planned amendments to legislative and constitutional framework should allegedly correct this situation in the future, and this will be the subject to further discussion in the upcoming reporting cycle. For now, it is confirmed that this standard is 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]

In accordance with Article 47 of the Law on Public Prosecutor's Office, the public prosecutor and deputy public prosecutor should, in their activities, adhere to the Code of Ethics rendered by the State Council of Prosecutors. However, the Law does not refer to the obligation to proceed in accordance with it. Only Article 104 of the same Law stipulates that the public prosecutor, and/or deputy public prosecutor shall commit a disciplinary offence if he/she significantly infringes the provisions of the Code of Ethics. That means that not all the cases will have the basis for disciplinary responsibility due ego failure to complain with the Code, but only in case of major infringements.

During, 2021, new Code of Ethics of Public Prosecutors and Deputy Public Prosecutors[388] was adopted. It prescribes the obligation of public prosecutors and deputy public prosecutors to act in accordance with the Constitution, law and regulations rendered in accordance with the law, ratified international treaty, generally accepted rules of international law and the practice of the European Court for Human Rights. Compared to the previous Code of Ethics, for the purpose of harmonisation of the practice of public prosecutors, greater importance was given to the practice of the European Court for Human Rights, and which reflects on the practice of national judicial bodies as well. Positive solution are also the Guidelines for Application of the Ethical Principles[389], which provide additional elaboration, and which should positively improve the responsibility of the public prosecutors.

Through amendments to the Rules of Procedure of the Ethical Board of the State Council of Prosecutors of 2021, the institute of a Confidential advisor[390] was introduced for the first time in Article 3a*. In accordance with that provision, before addressing the Ethical Board, the public prosecutor or deputy public prosecutor may address the Confidential advisor for previous advice or clarification regarding application of the provisions of the Code of Ethics and implementation of the competences of the Ethical Board. This could be exclusively a person that has knowledge in the field of ethics. They are elected for the period of three years and cannot be re-elected. A member of the State Council cannot be a confidential advisor. However, having in mind the specificities of the public prosecutorial function, it should be still made more precise, so that this individual is not only someone with the knowledge in the field of ethics, but also must understand the way public prosecutor's offices work. Considering his/her role, the decision that a member of the State Council of Prosecutors cannot be a confidential advisor is justified. His/her work is closely regulated by the Guidelines adopted by the Ethical Board. Thus, the recommendation from item 48 of GRECO's Fourth cycle of evaluation was fulfilled, recommending confidential advising for the public prosecutors and deputy public prosecutors within public prosecutor's offices.[391] Items 77 and 79 confirm that there is no adequate mechanism for confidential advisory before disciplinary proceeding and it is advised that confidential advisory should not be done by the Ethical Board within the State Council of Prosecutors, but by an experienced public prosecutor outside of that body. The latest amendments to the Rules of Procedure of the Ethical Board envision a possibility of confidential advisory outside the State Council of Prosecutors. However, it should be noted that this function may be performed only by an experienced public prosecutor. According to a new solution, stipulated by Article 4 of the Rules of Procedure of the Ethical Board of the State Council of Prosecutors, this board may act also on the initiative of the confidential advisor.

The Code of Ethics stipulates the obligation to respect the principles of independence, impartiality, respect for human rights and freedoms, respect for the right to a fair trial, respect for the personal integrity of participants in the proceedings, respect for the presumption of innocence, as well as the obligation of public prosecutors and deputy public prosecutors to act responsibly and professionally in

388 Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the Republic of Serbia ("Official Gazette of the RS", no. 42/2021)
389 Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the Republic of Serbia ("Official Gazette of the RS", no. 42/2021), Attachment 1
390 Rules of Procedure of the Ethical Boards of the State Prosecutorial Council ("Official Gazette of the RS", no. 69/2021), Article 3a*
391 Second report on harmonization of the Republic of Serbia, Fourt cycle of evaluation – Prevention of corruption in respect of parliament members, judges and prosecutors, GRECO, Council of Europe, GrecoRC4(2020)12, adopted on October 29, 2020, published on November 26, 2020, item 62

the proceedings and protect both professional and personal integrity.[392] The contents of those principles are additionally explained in the Guidelines for application of the ethical principles, and which constitute an integral part of the Code of Ethics of the Public Prosecutors and Deputy Public Prosecutors.

In case of a suspicion that there has been or could be a violation of the Code of Ethics, the public prosecutor and deputy public prosecutor may turn to the Ethical Board of the State Council of Prosecutors for interpretation of the provision, advice, or clarification of the factual situation. It is prescribed that only significant violations of the Code of Ethics could constitute a basis for disciplinary responsibility, while grossly inappropriate behaviour of the public prosecutor and deputy public prosecutor, which violates ethical principles, constitutes a significant infringement of the Code of Ethics.[393] According to the previous decision, it was prescribed that a significant infringement was defined as a wilful, severe or frequent violation of independence, impartiality, respect for rights, responsibility and concern for professional duties, professionalism and dignity in accordance with the provisions of the Code. Such a solution left the possibility for arbitrary interpretation and uneven assessment, because there were no guidelines on the basis of which it would be possible to determine what is meant by severe and frequent violation of independence. For this reason, it was necessary to further specify those terms. Now, it is additionally defined by the Guidelines for the application of ethical principles, which constitute an integral part of the Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the Republic of Serbia. The aforementioned guidelines have additionally clarified what, for example, means respecting the integrity of the participants in the proceeding, professional and personal integrity. However, this does not mean that the guidelines and the code should not be updated according to the needs of the practice.

The Law on Public Prosecutor's Offices does not explicitly stipulate the obligation of the public prosecutors and deputy public prosecutors to act in accordance with Code of Ethics but contains declarative provision envisioning that they comply with the Code of Ethics[394] in their work. The same Law stipulates that only a more significant violation of the Code of Ethics presents the basis for the disciplinary responsibility.[395] That is why this obligation should be explicitly stipulated by the Law on Public Prosecutors, while the principles contained in the Code of Ethics are additionally explained with adoption of the Guidelines for application of the ethical principles, and which constitute an integral part of the Code of 2021. Thus, this standard is still considered as partially fulfilled. [0.5/1 point]

S3: THERE IS AN ADEQUATE MECHANISM THAT GUARANTEES IMPARTIALITY AND GOVERNS RECUSAL OF PROSECUTORS
[1 POINT]

According to the provisions of the Criminal Procedure Code, a prosecutor or deputy public prosecutors are recused if there are circumstances due to which a judge or lay judge would be recused from the duties in a certain case.[396] According to Article 37 of the said regulation, these are the following cases: if the prosecutor is injured by a criminal offence, if a defendant, defence counsel, prosecutor, injured parties, their legal representatives or proxies is his/her spouse or person with whom he/she lives in a common law marriage or other permanent personal association or is a relative by blood to any degree, or collaterally to the fourth degree, and by marriage to the second degree. The same also applies if the prosecutor is a foster-parent or foster child, adopter or adopter, guardian or ward of the defendant, his/her defence counsel, prosecutor or injured party, as well as where in the same criminal proceedings he/she had acted as a judge for the preliminary proceedings, or had decided on confirming the indictment, or had participated in rendering a decision on the merits of the charges which is being challenged through an appeal or extraordinary legal remedy, or had taken part in proceedings as a prosecutor, defence counsel, legal representative or proxy of an injured party or of the prosecutor, or was heard as a witness or an expert witness, unless specified otherwise by this Code. A prosecutor or a deputy public prosecutor may be exempt from prosecutorial duty in a specific case, if there are circumstances that raise doubts about his/her impartiality.

392 Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the Republic of Serbia ("Official Gazette of the RS", no.. 42/2021), Chapter II Ethical principles
393 *Ibid*, Chapter III Responsibility for infringements of the Code of Ethics
394 Law on Public Prosecutor's Office, Article 47
395 Law on Public Prosecutor's Office, Article 104
396 Criminal Procedure Code, Article 42

In accordance with Article 42 of the Criminal Procedure Code, the public prosecutor shall decide on recusal of the persons appointed to substitute for him/her in accordance with legal authorization. The State Council of Prosecutors shall decide on the recusal of the State Public Prosecutor based on the obtained Opinion of the State Public Prosecutor's Office.[397] The Law on Public Prosecutor's Office defines the appropriate reactions in the situations of conflict of interest, and which is in accordance with the European Guidelines on Ethics and Conduct for Public Prosecutors.[398] Article 65 of the said law stipulates which functions cannot be associated with the function of a public prosecutor.[399]

The jurisdiction for deciding on the existence of a conflict of interest of the public prosecutor and the deputy public prosecutor, and the manner of initiating the proceeding, are prescribed.[400] Violation of the provisions on the existence of a conflict of interest by the prosecutor or deputy public prosecutor is grounds for dismissal or disciplinary responsibility.[401] Having in mind that both public prosecutors and deputy public prosecutors are public officials, the provisions of the Law on Prevention of Corruption apply to them.[402] They are under obligation not to prioritise their personal interest over public interest, to comply with the regulations that regulate their rights and obligations and to create and maintain trust of the citizens in conscientious and responsible performance of the public function.[403] They must not be dependent on the persons that could influence their impartiality, nor use the public function to obtain any public benefit or advance for themselves or their associate persons.[404] In addition, they are prohibited from using information obtained in a public function, if it is not available to the public, for the purpose of obtaining benefit or convenience for themselves or others, or causing harm to others.[405] Also, the method of initiating the proceeding for deciding on the existence of a conflict of interest and the method of notifying the Agency by a public official about an existing or possible conflict of interest are prescribed.[406]

National regulations establish the adequate mechanism that enables impartiality and recusal of a public prosecutor in case of conflict of interests. However, having in mind that the public prosecutors and their deputies are holders of a public function, the execution of this function is regulated by the Law on Public Prosecutor's Office and the Law on Prevention of Corruption. Thus, this standard is considered as fulfilled. [1/1 point]

S4: THE LAW ON PUBLIC PROSECUTOR'S OFFICES AND THE RULEBOOK ON DISCIPLINARY PROCEDURES REGULATE THE SYSTEM OF DISCIPLINARY RESPONSIBILITY FOR VIOLATING CODE OF CONDUCT [1 POINT]

The Law on Public Prosecutor's Office defines the term disciplinary offence, prescribes disciplinary offences, disciplinary sanctions, disciplinary bodies, proceeding, decisions of the disciplinary prosecutor, regulates the position of the public prosecutor, i.e. deputy public prosecutor in disciplinary proceedings, decisions of the disciplinary commission and decisions of the State Council of Prosecutors.[407] The Rulebook on Disciplinary Proceeding and Disciplinary Responsibility provides additional regulation of the system of disciplinary responsibility for breaches of the rules of behaviour[408]. However, the provisions regulating the system of disciplinary responsibility also contain certain shortcomings: the procedure for dismissal due to established disci-

397 Law on Public Prosecutor's Office, Article 33
398 European Guidelines on Ethics and Conduct for Public Prosecutors ("The Budapest Guidelines"), adopted by the Conference of Prosecutors General in May 2005, available at https://rm.coe.int/conference-of-prosecutors-general-of-europe-6th-session-organised-by-t/16807204b5
399 These functions are in the bodies that make regulations and executive bodies, public services and bodies of provincial autonomy and local units of self-government, membership in political parties, engaging in public or private paid work, providing legal services and giving legal advice for a fee. The same Article also prescribes the exceptions.
400 Law on Public Prosecutor's Office, Articles 66 and 67
401 Law on Public Prosecutor's Office, Chapter Eight
402 Law on Prevention of Corruption
403 Law on Prevention of Corruption, Article 40
404 *Ibid.*
405 Law on Prevention of Corruption, Article 40 (3)
406 Law on Prevention of Corruption, Articles 43 and 44
407 Law on Public Prosecutor's Office, Chapter Eight
408 Rulebook on Disciplinary Proceeding and Disciplinary Responsibility of Public Prosecutors and Deputy Public Prosecutors ("Official Gazette of the RS", no. 64/2012, 109/2013 and 58/2014)

plinary responsibility in relation to the disciplinary procedure is unjustified as a separate procedure. In addition, the problem is also the way of defining a disciplinary offence, and offences contain linguistic inaccuracies. The State Council of Prosecutors is competent both for the first instance and the second instance proceedings. The provisions of the Law require additional harmonisation. This primarily refers to the definition of disciplinary offences, which should not stipulate unconscientious actions as the basis for disciplinary responsibility of public prosecutors and deputy public prosecutors, since that is not a prerequisite that makes them suitable for performance of that function. In addition, everything should be consequently defined, and not only more severe disciplinary offences. Deciding on dismissal due to violation of disciplinary provisions should not be separated from the disciplinary proceeding but should represent a kind of sanction in case of violation of the provisions of the Law and the Code of Ethics, which are the grounds for disciplinary responsibility. In addition, the provisions of the Law on Public Prosecutor's Office that prescribe disciplinary offences should be specified linguistically, as well as exceptions should be prescribed when it is not possible to act in accordance with certain provisions, which should not be grounds for disciplinary responsibility. For example, this is the situation when a public prosecutor or a deputy public prosecutor refuses to act in accordance with unlawful tasks and actions entrusted to him/her.

The Law contains certain inaccuracies and inconsistencies with regard to the disciplinary responsibility of prosecutors. On the other hand, the Rulebook, which prescribes the system of disciplinary responsibility in more details, requires changes in order to improve the efficiency and fairness of the proceeding, as well as to prevent political influence on the decision-making process on the existence of responsibility, because in the second instance procedure, as members of the State Council of Prosecutors, the representatives of the executive and legislative power decide as its members. Based on the above, it is concluded that the standard is partially fulfilled. [0.5/1 point]

S5: THE LAW PRESCRIBES AN OBLIGATION OF PUBLIC PROSECUTOR'S OFFICE TO TAKE ACTION WITH REGARD TO CRIMINAL OFFENCES PROSECUTED *EX OFFICIO* [1 POINT]

The law prescribes an obligation of the public prosecutor's office to take action with regard to criminal offences 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 offences prosecuted *ex officio*. Public prosecutors can postpone criminal prosecution of criminal offences punishable with fines or imprisonment of up to five years if the suspect agrees to fulfil some of the prescribed obligations.[409] The main issue is the inability of an injured party to participate[410] as his/her consent is not required in the public prosecutor's decision-making process regarding postponement of criminal prosecution. Furthermore, a public prosecutor is entitled to dismiss criminal charges if it is related to an act of little importance, when the 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.[411] These provisions can solely be applied to criminal offences punishable with imprisonment of up to three years or with fines.[412] Moreover, taking into account different interpretations of postponement of criminal prosecution (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 THE PUBLIC PROSECUTOR'S OFFICE VIOLATES THE OBLIGATION STIPULATED UNDER THE STANDARD NO. 5 [0.5 POINTS]

In accordance with Article 104 of the Law on Public Prosecutor's Office, a public prosecutor, i.e. a deputy public prosecutor commits a disciplinary offence if he/she significantly violates the provisions of the Code of Ethics. This means that not all the cases will

409 Criminal Procedure Code, Article 283
410 The problem may be absence of the consent of the injured party in case of imposing enforcement of other measures, such as for example undertaking of psychosocial treatment for the purpose of removing the causes of violent behaviour, and which should be a legal obligation, particularly if the individual is injured due to preparation of the criminal offence which involves violent behaviour (e.g. domestic violence).
411 Criminal Code, Article 18
412 Criminal Code, Article 18 (3)

have basis for disciplinary responsibility due to failure to comply with the Code, but only in cases of more significant violations. The same is stipulated by the Code of Ethics.[413] Significant violations of its provisions include grossly inappropriate behaviour of the public prosecutor and deputy public prosecutor, which violates ethical principles.[414] Along with the new Code of Ethics, the Guidelines for Application of the Ethical Principles constitute its integral part.

The Law on Public Prosecutor's Office does not explicitly define who controls compliance with the Code of Ethics by public prosecutors and deputy public prosecutors. However, the Code of Ethics for public prosecutors and deputy public prosecutors stipulates that public prosecutors or deputy public prosecutors, if there has been or could be a violation of the Code of Ethics, can turn to the Ethical Board of the State Council of Prosecutors for advice, interpretation or clarification.[415] Article 3 of the Rules of Procedure of the Ethical Board of the State Council of Prosecutors[416] prescribes that the said board takes care of the implementation of the Code of Ethics and promotes professional ethics. Therefore, it can be interpreted that the control of compliance with the provisions of the Code of Ethics by public prosecutors and deputy public prosecutors is carried out by the said board. The selection procedure and the authorizations of the Ethical Board are prescribed in more detail in Article 19 of the Rules of Procedure of the State Council of Prosecutors. In accordance with that provision, it has the obligation to undertake preventive measures in order to strengthen professional ethics, but also to prepare a report on the conduct. However, despite the fact that the Ethical Board was constituted on May 7, 2018, at the session of this Council, there has been no report on conduct published on the website of the Council, nor the annual work report. The Work Report of the State Council of Prosecutors for 2019 contains the data that the Ethical Board issued an Announcement A number 678/19 of September 9, 2019, due to conduct of the holders of public prosecutorial function that could question public trust in the work of the public prosecutor's office.

In the report for the year 2020, it is stated that the EO register of the State Council of Prosecutors, used to record submissions sent to the Ethical Board of the State Council of Prosecutors, was formed during 2020, and 3 cases were registered, and in the previous year and in 2018 no separate records had been kept for such cases.[417] As for the submitted reports, according to the Work Report, the parties submitting disciplinary reports are primarily citizens, although in the previous year, unlike the previous period, there was also one report submitted by the Ethical Board of the State Council of Prosecutors.[418]

Thus, based on all above states, this standard could be considered completely fulfilled in this reporting period. [0.5/0.5 points]

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 the prosecutor's office, we should primarily focus on the constitutional provisions referring to the independence of the prosecutor's office which prosecutes perpetrators of criminal and other punishable offences and protects constitutionality and legality. Political activism of public prosecutors and deputy public prosecutors is impermissible for the reason of preventing political influence.[419] 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 the 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 jeopardise the independence of the public prosecutor's office.[420] Therefore, the public prosecutor and deputy public prosecutor must refuse any action, which would have influence

413 Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the Republic of Serbia ("Official Gazette of the RS", no.. 42/2021), Chapter III Responsibility for violation of the Code of Ethics
414 *Ibid.*
415 Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the Republic of Serbia ("Official Gazette of the RS", no.. 42/2021), Chapter III Responsibility for violation of the Code of Ethics
416 ("Official Gazette of the RS", number 59/2018 and 69/2021)
417 Work Report of the State Council of Prosecutors for 2020, February 2021, pg. 6
418 *Ibid*, pg. 12
419 Constitution, Article 163
420 Law on Public Prosecutor's Office, Article 5

on the independence of the public prosecutor's office. As per law, the deputy president of the State Council of Prosecutors notifies the State Council of Prosecutors of any political or other impermissible influence on the public prosecutor's office, and acts in the capacity of the Commissioner for Autonomy.[421] In accordance with Article 164 of the Constitution, the State Council of the State Council of Prosecutors is an independent body that provides and guarantees independence of public prosecutors. Their position, competence, method of work, conditions and procedure for election of the elective members of the State Council of Prosecutors, duration of the mandates and cessation of their function and provision of the conditions and means for work are stipulated by the Law on State Council of Prosecutors.[422] However, despite this being the body that guarantees independence of the public prosecutors pursuant to the Constitution and the Law, the mechanism that prevents political and other impermissible influence on the public prosecutor's office is not envisioned by the Law, but by a bylaw that regulates its work.

It seems that the rules of procedure of the prosecutors are insufficiently regulated and that there is enough room for normative improvement. There is a lack of instruments that secure full independence and autonomy of the work of the Commissioner, as well as of those that regulate its relation with the State Council of Prosecutors. This can be rectified by adopting special Rules of Procedure of the Commissioner for Autonomy, which would define his/her rapport with the State Council of Prosecutors. It is confirmed that this standard is partially fulfilled. [0.5/1 point]

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]

According to the draft Constitutional Amendment No. XIX, the lower chief public prosecutor or a public prosecutor who thinks that the mandatory instruction is unlawful or unfounded has the right to object in accordance with the law. The positive side of such a solution is the possibility to file a complaint both in the case when he/she considers the instruction to be unlawful, and when he/she considers it to be unfounded. Therefore, the cumulation of both conditions is not necessary. The Venice Commission spoke positively of such a proposal. However, according to the Opinion of the Venice Commission dated October 18, 2021, expressed in item 81, every instruction should be in writing, and if it changes the opinion of the subordinate prosecutor, it should be explained. The complaint should be submitted to an independent body, such as the State Council of Prosecutors (High Council of Prosecutors), which should decide on its lawfulness. Provisions on unlawful and unfounded instructions also exist in the provisions of the Law on Public Prosecutor's Office. If the junior public prosecutor considers that the mandatory instruction of the senior public prosecutor is unlawful and unfounded based on Article 18, paragraph 3 of the Law the Public Prosecutor's Office has the right to file a complaint with an explanation to the State Public Prosecutor within eight days as of the day of receiving the instruction.

The complaint is submitted through the public prosecutor who issued the mandatory instruction and who is obliged to review the mandatory instruction he/she issued within 3 days as of the day of receipt of the complaint. That provision provides the opportunity for the public prosecutor to correct an unlawful decision before submitting the complaint to the State Public Prosecutor. A complaint is not permitted only against the mandatory instruction of the State Public Prosecutor. However, imposing mandatory actions of the public prosecutor is disputable, even though the instruction of the immediately superior public prosecutor is unlawful and unfounded. The problem is also the fact that the condition for filing a complaint by a lower public prosecutor is cumulative. It is necessary for the instruction to be both unlawful and unfounded. Therefore, a complaint cannot be made if the instruction is only unlawful. The existing solution is contrary to paragraph 10 of the Recommendations of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System Rec (2000)19, according to which the prosecutor should be exempt from further proceedings in a situation where he/she considers that an instruction is contrary to the law or his/her conscience in the relevant case. Based

421 Rules of Procedure of the State Council of prosecutors ("Official Gazette of the RS", no. 29/2017 i 46/2017 i 39/2021), Article 9

422 ("Official Gazette of the RS", no.. 116/2008, 101/2010, 88/2011 and 106/2015)

on this, it could be concluded that it is sufficient for the instruction to be unlawful or contrary to the prosecutor's professional conscience, and not that it is necessary that, in addition to the unlawfulness, there is an additional condition in order to be able to file a complaint with the State Public Prosecutor. In addition, the decision according to which such a complaint is addressed to the highest prosecutorial instance, and not to the public prosecutor who is directly superior (e.g., the appellate public prosecutor should decide on the complaints filed against the unlawful instructions of the senior public prosecutor), is also disputable. Bearing in mind the short deadlines for deciding on the complaints against the instructions of the immediately superior public prosecutor, the obligation should be prescribed for the public prosecutor to refrain from acting in the case until the decision on the complaint is made. An obligation to undertake actions that cannot be delayed could maybe be possible.

If the solution contained in the draft amendment XIX to the Constitution of the Republic of Serbia is accepted, as well as the Opinion of the Venice Commission of October 2021 expressed in item 81, this should have a positive effect on the provisions of the Law on Public Prosecutor's Office, which should prescribe that the complaint against the decision is submitted to the State Council of Prosecutors (High Council of Prosecutors).

According to the provisions of the Law on Public Prosecutor's Office, a deputy public prosecutor who believes that a mandatory instruction is unlawful and unfounded can file a complaint with an explanation to the immediately senior public prosecutor within eight days of receiving the instruction. According to Article 24, paragraph 5 of the mentioned Law, the complaint is submitted through the public prosecutor who issued the mandatory instruction and who is obliged to review the mandatory instruction issued by him/her within 3 days as of the day of receipt of the complaint. This way, he/she is provided with the chance to reconsider his/her decision and to place mandatory instruction out of force, because in that case the complaint is not submitted directly to the senior public prosecutor. However, in those cases, the question can be raised as to what will happen if the complaint is not submitted directly to the senior public prosecutor, and the public prosecutor does not place mandatory instruction out of force. In addition, according to the law, the deputy public prosecutor who filed the complaints is obliged to act according to the instructions of the immediately higher public prosecutor, which he/she considers to be unlawful and unfounded. However, if it turns out that such an instruction is really unlawful and unfounded, there could be damage to a person, which would be caused by the action of the public prosecutor or deputy public prosecutor acting according to the instructions of the immediately superior public prosecutor or public prosecutor. In order to protect prosecutors and deputy public prosecutors from responsibility in case of failure to act in accordance with the Rulebook on Administration in Public Prosecutor's Offices, the method of recording complaints expressed by public prosecutors and deputy public prosecutors should be prescribed. Although according to the provisions of the Law on Public Prosecutor's Offices, the State Council of Prosecutors does not decide on the complaints, the obligation should be imposed to submit the complaint to the said council. An unfounded and unlawful instruction can represent a form of influence that threatens the independence of the public prosecutors. The same applies in regard to international standards and the need to change the law in connection with the mentioned issue, and what was stated in the previous paragraph.

Bearing in mind that issuing of individual instructions represents an impact on independence in the proceedings, it is necessary to stipulate special conditions by law, under which individual instructions can be issued. In the IV round of the evaluation, GRECO even expressed a negative opinion about individual instructions, precisely because they can be used for the purpose of political influence in sensitive cases. Considering the draft amendment to the Constitution of the Republic of Serbia, it seems that it will still be allowed in the Republic of Serbia if their text is adopted. Considering that there is an upcoming referendum on changes to the Constitution in the part related to the judiciary, it is possible that the consequential change of other relevant regulations will follow.

The Law on Public Prosecutor's Office prescribes the manner of action of the public prosecutor and deputy public prosecutor in case of suspicion that the instructions of the immediately superior public prosecutor or public prosecutor are unlawful and unfounded. However, it is necessary to further strengthen the mechanism for protection of the public prosecutor or deputy public prosecutor in order to further protect the independence in perform-

ing the function. Therefore, this standard is 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 POINTS]

In regard to the matter of whether the law prescribes an obligation for instructions of the State Public Prosecutor to be in a 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.[423] According to the said provision, mandatory instruction is issued in a written form and must contain the reason and explanation for its issuance.[424] It is also prescribed that the State Public Prosecutor issues general mandatory instructions for proceeding, in writing, to all public prosecutors in order to achieve legality, efficiency and uniformity in the proceeding.[425] 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 by the 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]

SUB-INDICATOR 2.2: PREVENTION OF IMPERMISSIBLE INFLUENCE ON THE WORK OF PUBLIC PROSECUTORS

SUB-INDICATOR STANDARDS	POINTS	2020
1. There are functional mechanisms in place which protect public prosecutors from impermissible political and other influences	0.5/1	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	0/0.5 ▼	0.5/0.5
TOTAL NUMBER OF POINTS	0.5/1.5 ▼	1/1.5

S1: THERE ARE FUNCTIONAL MECHANISMS IN PLACE WHICH PROTECT PUBLIC PROSECUTORS FROM IMPERMISSIBLE POLITICAL AND OTHER INFLUENCES [1 POINT]

The analysis of the work report of the State Council of Prosecutors was done for the purpose of analysing whether this standard has been fulfilled in the segment that refers to the Commissioner for Autonomy.[426] In the Work Report of the State Council of Prosecutors for 2020, it was stated that the Commissioner for Autonomy had a total of 6 cases in the relevant year. Out of that number, the Commissioner submitted one report to the State Council of Prosecutors considering that the State Council of Prosecutors should examine the report.[427]

However, it is particularly important to note that the mandate of the Commissioner for Autonomy expired in March 2020, in accordance with the then valid Rules of Procedure of the State Council of Prosecutors.[428] Due to the problems caused by the pandemic of the contagious disease Covid-19 and the fact that during 2020, new members of the State Council of Prosecutors were elected, until February 2021, when the Work Report of the State Council of

423 Law on Public Prosecutor's Office, Article 18
424 *Ibid.*
425 Law on Public Prosecutor's Office, Article 25
426 Work Report of the State Council of Prosecutors for 2020, February 2021, Republic of Serbia, State Council of Prosecutors, available at http://www.dvt.jt.rs/izvestaji/, pg. 32
427 *Ibid.*
428 ("Official Gazette of the RS" no. 55/2009, 43/2015, 4/2016)

Prosecutors was published, the Commissioner for Autonomy had not been elected. Appointment of the Commissioner for Autonomy followed on April 23, 2021[429]. In addition, the Commissioner issued an announcement on September 13, 2021[430] and the opinion on September 14, 2021[431], which could be accessed on the Internet presentation of the State Council of Prosecutors, in the chapter regarding the Commissioner for Autonomy. In the Opinion of September 14, 2021, in one of the cases covered by the media, the Commissioner determined the existence of an impermissible influence on the work of the public prosecutor, due to the sensationalist reporting of the media. The Commissioner found that the Higher Public Prosecutor's Office had reacted correctly in the given case but called for more proactive communication with the public.[432] Based on all above stated, this standard could be 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 POINTS]

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 proceedings, as well as with his work and public reactions. The attorneys, as part of the professional public responded mostly negatively to this question. 20% of the respondents did not know how to respond, while the remaining percentage of the attorneys responded that they were not familiar with the work of the Commissioner for Autonomy of the Prosecutors in the cases of public commenting. In respect of the public prosecutors, 7.84% of the surveyed public prosecutors could not respond to the asked questions. Out of the remaining number of the surveyed public prosecutors, 49.02% responded affirmatively, while 43.14% responded negatively.

Therefore, based on the results of the survey, it can be concluded that the professional public is basically not familiar with the existence, work, and appearances of the Commissioner for Autonomy of Prosecutors in cases of public commenting on criminal proceedings by public officials, so this standard is not considered fulfilled. [0/0.5 points]

EVALUATION OF THE INDICATORS:

Maximum sum of all Sub-indicators	**10** *(Sum of maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**5.5** *(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				

Compared to the previous reporting cycle, there are still certain deficiencies in terms of the legal framework that governs the integrity of the work of public prosecutors. Namely, it still cannot be fully assessed as an adequate legal framework, e.g. in relation to the independence in the actions of public prosecu-

429 Decision on appointment of the Commissioner for Autonomy, April 23, 2021, A no. 95/21, available at http://www.dvt.jt.rs/wp-content/uploads/2021/04/Odluka-o-imenovanju-Poverenika-za-samostalnost.pdf
430 Announcement of the Commissioner for Autonomy, State Council of Prosecutors PS 3/21 of September 13, 2021, available at http://www.dvt.jt.rs/wp-content/uploads/2021/10/Mi-ljenje-Poverenika-za-samostalnost-DVT-PS-3-21.pdf
431 Opinion of the Commissioner for Autonomy, State Council of Prosecutors PS 2/21 of September 14, 2021, available at http://www.dvt.jt.rs/wp-content/uploads/2021/10/Mi-ljenje-Poverenika-za-samostalnost-DVT-PS-3-21.pdf
432 *Ibid*, pg. 4

tors, and/or deputies and the decision-making of the public prosecutor's office, the obligation of the prosecutor to comply with the Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the State Council of Prosecutors in their work, or in respect of the legally prescribed obligation of the public prosecutor's actions regarding criminal offences which are prosecuted *ex officio.* Also, the same as in the previous cycle, no changes have been observed regarding the mechanisms for the protection of public prosecutors from impermissible political and other influences.

In comparison with the last year report, there has been an improvement, and thus the increase of the values of the standards that refer to adequateness of the mechanism that guarantees impartiality and regulates recusal of the prosecutor, as well as in the case of legal stipulation of the mechanism of control and sanctioning of the violation of the obligation of the public prosecutor's office to act on the criminal offences prosecuted *ex officio*. On the other hand, there has been a worse result in respect of the public awareness of the work and reactions of the Commissioner for Autonomy of the Prosecutors in the cases of public commenting of criminal processing by the holders of public functions.

RECOMMENDATIONS:

- Having in mind the specificity of the public prosecutor's function, it is necessary to additionally require that this person should be a person not only with special knowledge in the field of ethics, but also a person who understands how the public prosecutor's office functions.
- The Rulebook on Disciplinary Proceedings and Disciplinary Responsibility of Public Prosecutors and Deputy Public Prosecutors should prescribe a shorter deadline for submission of a legal remedy. However, regardless of the urgency of the proceeding, in accordance with Article 32(3), the public prosecutor or the deputy public prosecutor whose disciplinary responsibility is determined should be able to have a hearing before the second instance authority, i.e. State Council of Prosecutors.
- It is necessary to additionally improve the legal definition of the disciplinary offence, which should not stipulate unconscientious actions as the basis for disciplinary responsibility of public prosecutors and deputy public prosecutors, since that does not constitute the requirement which makes them suitable for performance of that function.
- In addition, it is necessary to determine consequently all, and not only more serious disciplinary offences. Also, the provisions of the Law on Public Prosecutor's Office that prescribe disciplinary offences should be specified linguistically, and the exceptions should be prescribed when it is not possible to act in accordance with certain provisions, which should not be grounds for disciplinary responsibility. It is, for example, a situation when a public prosecutor or a deputy public prosecutor refuses to act in accordance with unlawful tasks and assignments entrusted to him/her.
- It is necessary to specify the manner of work of the Commissioner by law, which could be regulated in more detail by the Rules of Procedure. Criteria should also be established on the basis of which it can be clearly determined whether it is a question of political or some other type of influence on the actions of public prosecutors and deputy public prosecutors. In addition, records of unlawful influences should be introduced in order to be able to gain insight into the frequency and manner of impacts in order to prevent them.
- Having in mind that unlawful and unfounded instructions may be related to political or other unlawful influence on his/her work, it is necessary to supplement the provisions of the Rulebook on Administration in Public Prosecutor's Offices in order to prescribe the mandatory records of submitted complaints in case of possible failure to submit the same to a higher instance, given that it is delivered through the public prosecutor who issued such an instruction.

INDICATOR 3:
QUALITY OF PENAL POLICY

SUB-INDICATOR 3.1:
ADEQUACY OF LEGAL NORMS ON SANCTIONS

SUB-INDICATOR STANDARDS	POINTS	2020
1. Normative conditions for imposing criminal sanctions for five most common criminal offences are in accordance with the practice of the EU member states	0.5/1	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	0.5/1
3. Normative conditions for imposing alternative sanctions for five most common criminal offences are in accordance with the practice of the EU member states	0.5/1	0.5/1
TOTAL NUMBER OF POINTS	1.5/3	1.5/3

S1: NORMATIVE CONDITIONS FOR IMPOSING CRIMINAL SANCTIONS FOR FIVE MOST COMMON CRIMINAL OFFENCES ARE IN ACCORDANCE WITH THE PRACTICE OF THE EU MEMBER STATES
[1 POINT]

According to the reports of the Statistical Office of the Republic of Serbia on adult perpetrators of criminal offences in the last five years, five crimes that are most common in the practice of the courts of the Republic of Serbia are: domestic violence, failure to provide financial support, endangering public transport, unauthorised possession of narcotics and theft.[433] Normative conditions for the imposition of criminal sanctions for the mentioned criminal acts are analysed in relation to the legislation of the following European Union member states: Croatia, Slovenia and Germany. Croatia and Slovenia were chosen for the reason that they, like the Republic of Serbia, were members of the SFRY and had a similar legal tradition. In addition, the Republic of Slovenia was the first of the former members of the SFRY to join the EU in 2004, and Croatia in 2013. The provisions of the German legislation are the subject of a comparative analysis because, since it is the country of the European continental legal system, which also applies in the Republic of Serbia also belongs, and Germany is also a member state of the European Union. The subject of the research was a comparative legal analysis of the description of the elements of the mentioned criminal offences, i.e. the qualifications that cover the existence of those criminal offences, if an individual national legislation does not contain the same criminal offence. The research also included the matters of precision and clarity of the qualifications, and the adequacy of the prescribed sanction in relation to the gravity of the crime, social threat and purpose of penalty. Below are the key findings of the conducted comparative legal analysis.

The provisions that stipulate the criminal offences for the five most common criminal offences in the practice of the courts of the Republic of Serbia are largely harmonised with the provisions of the member states of the European Union, which prescribe the same or similar criminal offences. However, in order to provide more effective protection, some provisions require additional harmonisation in order to more adequately determine the elements of a criminal offence and more effectively protect the victims of a criminal offence. Changes are necessary in connection with the provision of Article 195 of the Criminal Code of the Republic of Serbia [434] , which prescribes the criminal offence of failure to provide financial support. Bearing in mind that obligations related to the provision of financial support can only be ordered by a court decision and established by a court settlement, it is necessary to delete the part of the provision that refers to the settlement concluded before another authority. In addition, it is necessary to define more serious consequences

433 *See* Statistical Office of the Republic of Serbia, Publications, available at https://www.stat.gov.rs/sr-cyrl/publikacije/?d=5&r=
434 Criminal Code, Article 195

of the criminal offence of failure to provide financial support. In connection with the mentioned criminal offence, the criminal legislation of the Republic of Serbia, as well as the Croatian legislation, gives priority to the settlement of the obligation to provide financial support, rather than the imposition of a criminal sanction. Article 283 of the Criminal Procedure Code of the Republic of Serbia prescribes the possibility of postponement of criminal prosecution, and the waiver of criminal prosecution if the provider of financial support settles the unpaid obligation of financial support and continues to settle due obligations on that basis. However, the mentioned provision of the Criminal Procedure Code should be amended according to the model of Article 206 D, paragraph 1, item 3) of the Croatian Criminal Code, which prescribes mandatory consent of the victim or injured person before the public prosecutor's decision on the application of postponement of criminal prosecution, i.e. waiver of criminal prosecution. Such a provision would enable more effective protection of the rights of the injured persons in the criminal proceedings of the Republic of Serbia.

In addition, the criminal offence of unauthorised possession of narcotics in part where they are kept for personal use should be decriminalised, following the example of Croatian and Slovenian legislation. Possession of the narcotics for personal use could be sanctioned through the provisions of misdemeanour law, and the application of other non-criminal measures would provide more effective protection and enable the treatment of persons addicted to the use of drugs and other illegal substances. Possession of the narcotics intended for sale or enabling consumption by another person should still be the basis for criminal sanctions, but within the criminal offences referred to in Article 246 of the Criminal Code, unauthorised production and placing of the narcotics on the market, and Article 247, enabling consumption of the narcotics. Since the description of the elements of the criminal offence must be clear, and the sanctions must be adequate to the severity of the committed criminal offence, the social threat and the purpose for which they are imposed, this standard is considered 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]

During examination and evaluation of the standards related to the type and duration of sanctions prescribed by the laws regulating the field of criminal law, which are in accordance with European standards and international conventions, a large number of relevant international documents from this field have been taken into account. National legislation of the Republic of Serbia requires additional harmonisation with European standards regarding the prescription and imposition of criminal sanctions. For a large number of criminal offences, when it comes to the basic forms of criminal offences, fines and prison sentences are alternatively prescribed. It is necessary to reconsider the necessity of the existence of criminal offences stipulated by a large number of non-criminal laws. These could be prescribed as misdemeanours by the same laws or could be included under legal descriptions of some other criminal offences stipulated by the basic criminal legislation.

The provision on the life sentence in prison should be amended in line with European standards[435], so a parole could be granted not after the expiration of twenty-seven years, but twenty-five years as of the beginning of serving the life sentence. It is also necessary to amend the provisions that prescribe alternative sanctions, more precisely, they should foresee, in accordance with European standards, mandatory consent of the perpetrator of a criminal offence to fulfil the obligations imposed on him/her, with a suspended sentence and a conditional sentence with protective supervision. At the same time, this should be an additional guarantee of his/her readiness to fulfil those obligations.

435 *See* Recommendation of the Committee of Ministers of the Council of Europe on parole of 2003 R(2003)22; Statute of the International Criminal Court, UN General Assembly, Rome Statute of the International Criminal Court, ISBN No. 92-9227-227-6, Article 110 (3) and (5); See also Recommendation R(92)17 of the Committee of Ministers to Member States Concerning Consistency in Sentencing, Recommendation 26; Recommendation R(86)12 of the Committee of Ministers to Member States Concerning Measures to Prevent and Reduce Workload in the Courts; Recommendations R(87)18 of the Committee of Ministers to Member States Concerning the Simplification of Criminal Justice; Memorandum with Recommendation R(92)16; Recommendation of the Council of Europe No R (99)22 on prison overcrowding and prison population inflation; United Nations Tokyo Rules, UN General Assembly, United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) : resolution / adopted by the General Assembly, A/RES/45/110

With regard to other penalties that imply imprisonment according to Article 46 of the Criminal Code, the national legislation is harmonised with the aforementioned standards, because it stipulates that a convicted person who has served two-thirds of the prison sentence can be conditionally released from serving of the sentence, if he/she has improved during the course of the sentence, so good behaviour can be expected if released, and particularly if until the completion of the imposed sanction, he/she does not commit a new criminal offence. Imprisonment should, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners of 1955 (Rule no. 58) and the Nelson Mandela Rules of 2015 (Rule no. 41), be applied only when justified by the protection of society from criminality and reduction of recidivism, and that the time of deprivation of liberty be used for the purpose of reintegrating convicts into society after release, so that they are trained to respect the law and take care of their own needs in accordance with it.

Based on the standards cited below, it can be concluded that imprisonment should be the last resort, and criminal sanctions should have as little retributive character as possible. The goal of their pronouncement is reintegration of the perpetrator, while taking into account the interests of both the perpetrator, the injured party and the wider social community. Having in mind all the above stated, it can be said that the harmonisation of the national standards with the European standards in this area has not been fully implemented. Based on the above, it is determined that this standard is partially fulfilled. [0.5/1 point]

It is also necessary to define the way to reconcile the victim and the perpetrator of the criminal offence, because after the compensation of the damage, this is also one of the measures prescribed in connection with the application of the alternative sanction of conditional sentence with protective supervision. That is why there is a need for additional definition of that procedure, and in accordance with European standards, which recommend a more detailed regulation of the mediation in criminal law matters. When it comes to the position of the injured person, it is necessary to prescribe mandatory consent of that person when imposing certain measures in addition to the plea agreement, and before concluding the aforementioned agreement, and before making a decision on postponing criminal prosecution by the public prosecutor (application of the principle of the opportunity of criminal prosecution), as stipulated by Article 206 (d) of the Criminal Code of Croatia. Based on all of the above stated, it can be said that it is necessary to carry out additional harmonisation of national standards with the European standards in the mentioned area. Therefore, this standard is partially fulfilled. [0.5/1 point]

S3: NORMATIVE CONDITIONS FOR IMPOSING ALTERNATIVE SANCTIONS FOR FIVE MOST COMMON CRIMINAL OFFENCES ARE IN ACCORDANCE WITH THE PRACTICE OF THE EU MEMBER STATES [1 POINT]

In the Republic of Serbia, the following alternative criminal sanctions are prescribed: conditional sentence with protective supervision, house arrest, work in the public interest and revocation of a driver's licence. Alternative sanctions are not directly related to individual criminal offences but are related to the amount of the threatened sentence, while their application is excluded for some acts. Among the European standards in this in this regard, the Recommendations of the Council of Europe R (92)16 are of particular importance, i.e. European rules, as well as their supplement R (2000)22. According to them, none of the alternative sanctions or measures could be of unlimited duration. In order to implement alternative criminal sanctions, cooperation is needed, as well as the consent of the perpetrator for their imposing. This strengthens a sense of responsibility towards the community, and the victim of the crime. The recommendations of the Council of Europe emphasise the need to integrate convicts into the community. The same recommendations are contained in Recommendation of the Council of Europe No R (99)22 on prison overcrowding and prison population inflation. In addition, Recommendation No. R (2010)1 on the Council of Europe Probation Rules, and Recommendation R (2014)4 on Electronic Monitoring, recommend that member states establish probation services through their national legislation, i.e. electronic monitoring in accordance with the guidelines. Furthermore, the legal analysis covers the legislation of Croatia, Slovenia, and Germany, in terms of prescribing and implementing alternative criminal sanctions.

On the basis of the conducted legal analysis, it was determined that there is a need to provide a special explanation for the court's decision to impose a prison sentence, if there is a possibility of an alternative sanction (as is the case in Croatia and Germany). The general conclusion is that the criminal legislation of the Republic of Serbia contains an adequate legal

framework for imposing alternative criminal sanctions, instead of short-term imprisonment. Alternative sanctions can be applied to the basic forms of the above-mentioned five most common criminal offences in the practice of the national courts of the Republic of Serbia. However, the national legal framework for the application of alternative sanctions is not fully and adequately rounded. According to the Council of Europe Annual Penal Statistics SPACE II for 2019, alternative sanctions are very rarely imposed in practice by the courts of the Republic of Serbia. The reason for such actions of the courts is probably the fear of condemnation from the public and the media. However, it seems that the existence of a provision in the Criminal Code which stipulates that the court is obliged to explain why it decides to impose a short-term prison sentence instead of an alternative sanction and whether the purpose of the penalty can only be achieved by imposing the prison sentence, would have a stimulating effect on the practice of national courts regarding imposing of alternative sanctions.

Based on all above stated, it can be concluded that this standard is partially fulfilled. Compared to the previous reporting period, there have been no changes in terms of the value and fulfilment of this standard. [0.5/1 point]

SUB-INDICATOR 3.2: PERCEPTION OF JUSTNESS OF THE IMPOSED CRIMINAL SANCTIONS

SUB-INDICATOR STANDARDS	POINTS	2020
1. Participants in criminal procedure are of the opinion that there is a consistency in imposing criminal sanctions for individual criminal offences	0/1	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	0.5/1 ▲	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	0/0.5
TOTAL NUMBER OF POINTS	0.5/2.5 ▲	0/2.5

S1: PARTICIPANTS IN CRIMINAL PROCEDURE ARE OF THE OPINION THAT THERE IS A CONSISTENCY IN IMPOSING CRIMINAL SANCTIONS FOR INDIVIDUAL CRIMINAL OFFENCES

[1 POINT]

The same as in the previous research cycle, a survey was conducted among the attorneys who specialise as defence attorneys or whose practice is predominantly in criminal matters and with public prosecutors, in order to obtain an assessment of the fulfilment of standards related to the criminal policy of the courts in practice. The findings indicate that as many as 86.6% of the interviewed attorneys assessed that there was no uniform practice in the application of criminal sanctions for individual criminal offences. Also, 6.67% of them could not answer this question.

Interviewed public prosecutors have a somewhat different view, since 53.85% of them are of the opinion that there is no uniform practice on the application of criminal sanctions for individual criminal offences. 46.16% of public prosecutors have a positive response about this claim. Therefore, according to all above stated, it cannot be confirmed that this standard has been 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]

As with the previous standard, when asked about the uniformity of the penal policy with regard to the personal and social status of the defendants, the uniform response of the attorneys was that it was not the case in practice. 86.66% of the attorneys responded negatively about this statement, while an additional 6.67% of them did not know how to answer this question. It is interesting to point out that none of the interviewed attorneys completely agreed, while only 6.67% of them partially agreed.

Again, the evaluation of the public prosecutors is somewhat different, but they also agree that discrim-

ination against defendants based on their personal and social status cannot be completely eliminated. 49.02% of the public prosecutors disagreed, while 50.98% of the public prosecutors think that penal policy is truly equal for all defendants regardless of their personal and social status. Bearing in mind all of the above, it can be concluded that this standard has not been partially fulfilled in this reporting cycle. [0.5/1 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 POINTS]

Regarding the issue of the impact of collisions that occur between the relevant laws in criminal matters on the uniform application of criminal sanctions, the evaluation of attorneys is somewhat milder than with the previous standards, but still the majority of them respond that normative collisions have an impact on the application of sanctions in judicial practice.

53.34% of the attorneys had a negative response regarding this topic, and even 20% of respondents of this group did not know how to answer. This assessment is largely shared by the interviewed prosecutors. 58.82% of the surveyed prosecutors expressed an opinion similar to that expressed by the attorneys, expressing negative opinion regarding the question that conflicts of laws do not affect the equality of application of criminal sanctions. Public prosecutors who confirmed this question are a minority, only 35.29% of them. Based on the above, it is concluded that this standard has not been fulfilled. [0/0.5 points]

EVALUATION OF THE INDICATORS:

Maximum sum of all Sub-indicators	**5.5** *(Sum of maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**2▲** *(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	**3▲**				

Compared to the previous reporting cycle, there have been no changes in terms of evaluation of the standards that follow the legal framework and the quality of penal policy. Namely, as in the previous report, partial adequacy of the relevant legal framework in this area is still confirmed. It has already been stated that the criminal legislation in the segment of criminal sanctions is largely harmonised with the defined comparative and international standards. Certain insufficiencies have been observed regarding the prescribed rules on the type and duration of sanctions. However, the penal policy of the courts is extremely poorly rated. Compared to the previous reporting cycle, there has been a shift in terms of the attitude of the participants in the procedure regarding the equality of the policy for all the defendants, regardless of their personal and social status, and a slightly better result compared to the previous cycle was recorded in respect of this particular standard. In terms of other standards related to the perception of penal policy, there was no change in the given evaluations. The improvement at the level of one of the elements of the perception of the participants in the procedure has led to an increase in the overall rating of the sub-indicator, and instead of the previous rating of 2, is now rated 3.

RECOMMENDATIONS:

- It is necessary to reconsider the necessity of the existence of criminal offences prescribed by a large number of non-criminal laws, which could be prescribed by the same laws as misdemeanours or placed under the legal description of some other criminal offences prescribed by the basic criminal legislation.
- When it comes to the sentence of life in prison, it should be changed in accordance with European standards, so that a parole may be imposed not after the end of twenty-seven years, but twenty-five years as of the commencement of the life sentence.
- It is necessary to further improve the national legal framework in order to apply alternative sanctions more effectively. One of the recommendations is the possibility of combining alternative sanctions so that, for example, the penalty of community service or revocation of a driver's licence can be applied as additional obligations in addition to a conditional sentence with protective supervision.
- Mandatory explanations should be prescribed in court judgements imposing short-term prison sentences instead of some of the alternative sanctions, as prescribed in some European countries. Another option is to introduce mandatory replacement of prison sentences of up to one year with non-institutional sanctions, unless this is contrary to the purpose of punishment for which they are pronounced, taking into account the nature and type of the criminal offence, the circumstances under which it was committed and the personality of the perpetrator.

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	2020
1. An effective legal instrument which provides legal protection of debtors is prescribed	1/1	1/1
2. An effective legal instrument which provides legal protection of third parties is prescribed	0.5/1	0.5/1
3. The law enables debtors and third parties to present evidence	0.5/0.5	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	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	0.5/0.5
6. Requirements for an equal distribution of cases among public enforcement officers are prescribed	0/0.5	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	0.5/0.5
8. Legal guarantees against misuse in the receivables collection process are in place	0.5/0.5	0.5/0.5
9. An effective supervision of the work of public enforcement officers is prescribed	0.5/0.5	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	0/0.5
TOTAL NUMBER OF POINTS	4/6.5	4/6.5

S1: AN EFFECTIVE LEGAL INSTRUMENT THAT PROVIDES LEGAL PROTECTION OF DEBTORS IS PRESCRIBED
[1 POINT]

In accordance with the Law on Enforcement and Security, an appeal is envisioned as the basic legal remedy against a decision on enforcement. The appeal can be used to challenge the decision if the enforcement document has ceased to be valid, if the deadline for fulfilment of the obligation of the enforcement debtor has not passed, if the claim from the enforcement document has ceased on another basis, if the subject to enforcement is inadmissible or it is impossible to enforce the case, and for other legal reasons.[436] Complaint is the basic legal remedy against the decision on enforcement based on an authentic conclusive document, including utility services related cases. It may be filed if the claim from the authentic conclusive document has not occurred, if untrue content was entered in the authentic conclusive document, if the claim was not due, if the obligation was fulfilled or otherwise terminated, if the claim has expired, and for other reasons prescribed by this or a special law. Complaint postpones enforcement, unlike the appeal. Thus, if the complaint is accepted, the case is referred to litigation before the competent basic court. In the period as of the previous report, the Law on Enforcement and Security has not been changed, so the same provisions on legal remedies are still in force. Since the enforcement debtor has available effective legal means, namely the appeal, as the basic legal remedy, which has a devolution effect and the possibility of examining the legality of the acts adopted in the procedure, and the complaint, which refers to litigation in which the content and grounds of the claim can be examined, this standard is considered as fulfilled. [1/1 point]

S2: AN EFFECTIVE LEGAL INSTRUMENT THAT PROVIDES LEGAL PROTECTION OF THIRD PARTIES IS PRESCRIBED
[1 POINT]

A person who believes that he/she has a right that prevents enforcement, primarily the right of ownership or other right regarding enforcement, can submit a complaint to the public enforcement officer requesting that the enforcement be determined illegal in that case.[437] Complaint by a third party, unlike an appeal, does not have a devolution effect. In this regard, there are no changes in relation to the previous report, so the noted shortcomings of the current legal solution are still present: although in the event of dismissal or rejection of a complaint, a third party can initiate civil proceedings against the enforcement creditor in order to establish that the enforcement is impermissible in that case, and that litigation does not delay enforcement. In addition, the complaint of the third party must contain the reasons for it, and the documents proving the existence of the right need to be attached, otherwise the complaint shall be rejected. On the other hand, in case of the inventory and sale of the debtor's belongings, there is a *legal presumption* that all things held by the debtor are owned by him and can be subject to enforcement, with prescribed exceptions according to the type and purpose of the thing.[438] This way, the legislator gives priority to the protection of the interests of the creditor for effective implementation of the enforcement, in relation to the protection of the interests of the third party. Namely, the third party must prove that the things are owed by him/her, and not the debtor, and not make such a circumstance probable. In addition, a strict written form of evidence (*forma ad probationem*) is required as early as at the time of submission of the complaint, that is, before the civil proceedings in which these pieces of evidence would be examined. Therefore, legal means to protect the interests of third parties exist, they are prescribed, but the realisation of such protection is combined with the difficulty of proving and conducting litigation proceedings of uncertain length and outcome, especially bearing in mind the issue of disposal and preservation of evidence on the ownership of movable property. Given that the same objections from the previous report still exist, it is concluded that the standard is partially fulfilled. [0.5/1 point]

S3: THE LAW ENABLES DEBTORS AND THIRD PARTIES TO PRESENT EVIDENCE
[0.5 POINTS]

The law foresees the possibility of submitting evidentiary proposals of the enforcement debtor, in connection with the allegations from the filed legal remedies, appeal and/or complaint, where proving the circumstances related to the claim itself is not permitted, considering the basic legal principle of

436 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
437 Law on Enforcement and Security, Article 108
438 Law on Enforcement and Security, Article 221 and 218

formal legality. Also, there have been no changes in this standard compared to the previous period, and the standard is considered fulfilled. [0.5/0.5 points]

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]

Impartial and equal treatment of public enforcement officers towards parties in the proceedings and third parties is prescribed as one of the principles of the Code of Ethics of Public Enforcement Officers.[439] The content of this principle is the requirement to prevent discrimination of the parties, considering the personal characteristics of the person in the proceeding, racial, national, religious affiliation, gender, sexual orientation, and social or financial status. However, there is no requirement for objective and equal legal treatment of the parties in the proceedings, i.e. prevention of discrimination with regard to the procedural status of the person. The law does not contain special provisions or principles that guarantee equality of all enforcement creditors and enforcement debtors, that is, guarantees of prevention of discrimination. As the cited guarantees are not of legal rank, and do not directly relate to the prevention of discrimination in enforcement proceedings with regard to the capacity of an enforceable debtor, an enforceable creditor or a third party, the 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 POINTS]

The law stipulates that the court is competent to decide on the proposal for enforcement, based on the enforcement document and on the basis of the authentic conclusive document, while the public enforcement officers are competent to carry out the enforcement. The court is also competent to decide on legal remedies. Exceptions are public enforcement officers deciding on proposals for enforcement on the basis of an authentic conclusive document in utility matters and on the complaint of a third party, instead of the court, and enforcement by the court in prescribed cases. In this reporting period, there were no changes to the relevant provisions, which can be evaluated as consistent within the systemic solution where the court decides and the public enforcer implements, while the exceptions are generally adequate (except for deciding upon the complaint of a third party, which was discussed above). Therefore, the standard is considered to have been fulfilled. [0.5/0.5 points]

S6: REQUIREMENTS FOR AN EQUAL DISTRIBUTION OF CASES AMONG PUBLIC ENFORCEMENT OFFICERS ARE PRESCRIBED
[0.5 POINTS]

The law has accepted the principle of "random" public enforcement officers only in the field of utility cases. In other situations, the principle is that public enforcement officers are on the specific market of judicial services for the enforcement of court decisions, where the choice is left to the creditor to determine to whom they will submit a proposal for enforcement among locally competent enforcement officers. As stated in the previous report, the principle of "random" enforcement officers is, in this way, opposed to the principle of mutual competition that occurs in the market of enforcement services. The legislator has not changed the position to give preference to the "market" principle, in addition to the argument that it is often heard in the public that it is a matter of exercising public powers, that the execution is carried out according to a predetermined cost list, where the final costs are borne by the enforcement debtor, so the criteria for the establishing of the "supply and demand" do not have its appropriate theoretical foundation, nor any practical reasons other than the fact of selection with regard to non-economic criteria (e.g. achieved results in previous enforcements, speed and extent of successful debt collection, etc.), in which case, the thesis of the market of the services of enforcement is problematic. As in the previous report, the standard is not considered to have been fulfilled. [0/0.5 points]

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 POINTS]

The Law on Enforcement and Security stipulates that acts of the court and the public enforcement officer, as well as other written documents, are delivered by the public enforcement officer, if the court is not

439 Code of Ethics of Public Enforcement Officers ("Official Gazette of the RS", no. 105/2016), Article 6

exclusively competent for enforcement.[440] If delivery fails, within three days, the letter is published on the electronic notice board of the court that issued the decision on enforcement based on an enforceable or authentic conclusive document, and when it comes to a decision on enforcement based on an authentic conclusive document, delivery is repeated once more after the expiry of the period of eight days as of the previous delivery, and if the repeated delivery fails, the decision will be published within three days on the electronic notice board of the competent court. In addition, the rulebook adopted during the reporting period specifically regulates delivery by electronic means between public enforcement officers and state authorities, including the court, which is carried out through the appropriate application of the Ministry of Justice, which further improves the efficiency and responsibility of the system of delivery of letters in enforcement matters.[441] Thus, this standard is considered to be fulfilled. [0.5/0.5 points]

S8: LEGAL GUARANTEES AGAINST MISUSE IN THE RECEIVABLES COLLECTION PROCESS ARE IN PLACE [0.5 POINTS]

The principle of proportionality should prevent abuses that occur in cases of inventory and sale of things, when the claim is significantly lower than the real value of things, especially when it comes to real estate. Detailed rules in the debt collection procedure govern the actions undertaken in the debt collection and settlement process, thus preventing abuse by public enforcement officers. Previously adopted special provisions on restrictions in the forced sale of real estate, and the application of the so-called electronic auctions, have had the effect of significantly reducing the risk of abuse in this particularly delicate matter. Therefore, it is assessed that this standard is fulfilled. [0.5/0.5 points]

S9: AN EFFECTIVE SUPERVISION OF THE WORK OF PUBLIC ENFORCEMENT OFFICERS IS PRESCRIBED [0.5 POINTS]

The supervision of the work of public enforcement officers is carried out by the Ministry of Justice and the Chamber of Public Enforcement Officers.[442] The supervision carried out by the Chamber can be planned (regular supervision) or based on a complaint from a party or a participant in the proceeding, in which case extraordinary supervision is carried out. The Ministry carries out supervision on its own initiative, on the proposal of the president of the court in whose territory the public enforcement officer is appointed, or upon a complaint by another public enforcement officer, party or participant in the proceedings. In addition to the prescribed rules of work organisation and compliance with the provisions of the procedure, the application of the Standard of Professional Conduct of Public Enforcement Officers is examined during supervision.[443] As all the necessary conditions for the implementation of effective supervision are prescribed, this standard is fulfilled in its entirety. [0.5/0.5 points]

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 POINTS]

A complaint against a public enforcement officer can be filed by a party or another participant in the proceeding. However, the complainant does not have any rights in the complaint procedure, does not have the status of a participant in that procedure, does not have the right to inspect the files, does not have the right to submit evidentiary proposals outside of the complaint itself, and there is no prescribed obligation to be inform about the outcome of the procedure initiated by the complaint. Regarding this standard, there are no news in the reporting period. Therefore, the standard cannot be considered fulfilled. [0/0.5 points]

440 Law on Enforcement and Security, Articles 36 and 37
441 Rulebook on Electronic Delivery though Public Enforcement Officers and Other Bodies ("Official Gazette of the RS", no.. 30/2021)
442 Law on Enforcement and Security, Articles 523 and 524
443 Rulebook on the Standards of Professional Conduct of the Public Enforcement Officers ("Official Gazette of the RS", no.. 90/2019)

SUB-INDICATOR 1.2:
THE WORK OF PUBLIC ENFORCEMENT OFFICERS IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS	2020
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	0.5/1
2. Public enforcement officers play an active role as mediators between parties for the purpose of settling claims by agreement	0.5/1 ▲	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	1/1
4. Parties in the enforcement proceedings are of the opinion that the costs of the public enforcement are predictable	0/0.5	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	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	0/0.5
TOTAL NUMBER OF POINTS	2/4.5 ▲	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]

In the period after the previous report, no noticeable progress has been recorded in raising confidence in the non-discriminatory behaviour of public enforcement officers. Based on the experience of citizens who have had experience with the procedure of forced debt collection, it can be seen that the appropriate level of trust in the work of public enforcement officers has not been achieved.[444] The nature of the enforcement procedure is such that it is carried out in order to realise the legal interest of one party, which is determined by a legally binding court decision or other executive act, and against the interest of the other party, which is obliged to fulfil a certain claim of the creditor. It is logical that in the discussions participated by persons with experience in enforcement debtors, as a rule, they will express criticism and dissatisfaction with the work of public enforcement officers. Objections that can be heard are that in certain situations, not everyone who has the status of debtor is treated the same, i.e. that enforcement is not carried out equally rigorously. However, these comments are largely anecdotal, given that there is no reliable evidence that discriminatory behaviour is a systemic problem. The same remarks were recorded in the previous report, and since no progress has been observed in the meantime, it can be concluded that the standard is partially met. [0.5/1 point]

S2: PUBLIC ENFORCEMENT OFFICERS PLAY AN ACTIVE ROLE AS MEDIATORS BETWEEN PARTIES FOR THE PURPOSE OF SETTLING CLAIMS BY AGREEMENT

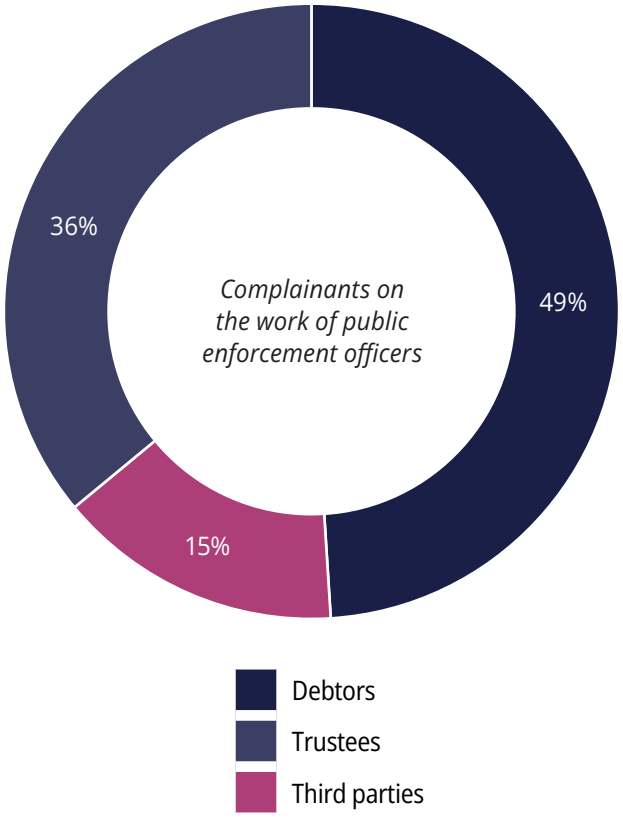
[1 POINT]

In the previous report, it was stated that in addition to the request of the legislator to establish the practice of mediation for the purpose of amicable settlement, such cases were extremely rare. On the other hand, the conditions for the implementation of the mechanism of voluntary settlement of monetary claims arising from utility services and related activities (so-called *soft collection*) have been improved, by adopting amendments to the bylaw that closely regulates the way this mechanism is implemented in practice. It can be stated that this is how certain progress has been made towards the development of the mediation of public enforcement officers, in the previous procedure (voluntary settlement), and that it is necessary to achieve the same in the enforcement procedure itself. Therefore, it is concluded that the standard is partially fulfilled. [0.5/1 point]

444 Survey undertaken through focus groups in the period X-XI 2021

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 the data obtained from the Chamber of Public Enforcement Officers, based on inquiries about the number and structure of complaints, a total of 949 complaints about the work of public enforcement officers were submitted to the Chamber annually, where 49% were submitted by enforcement debtors, and in 15% of cases the applicants were enforcement creditors. The remaining complaints were submitted by other participants in the proceeding.[445] In the same period, 587,381 new enforcement cases were received, and there were a total of 1,968,438 pending cases that calendar year. Although there is no data available that links complaints to individual cases, it can be seen that the relative share of complaints in relation to the total number of active cases on an annual level is 0.0482% (less than 1 complaint per 5,000 active cases). The stated values coincide to a significant extent with the data from the previous report, with a certain increase in the number of complaints from enforcement creditors. Considering the share of complaints in the total number of pending cases in a year, it is concluded that the standard has been fulfilled. [1/1 point]



S4: PARTIES IN THE ENFORCEMENT PROCEEDINGS ARE OF THE OPINION THAT THE COSTS OF THE PUBLIC ENFORCEMENT ARE PREDICTABLE [0.5 POINTS]

Based on the discussion with citizens who have had experience with enforcement, it can be observed that there is a problem of ambiguity regarding the costs of the proceedings. The questions that arise in connection with this are most often the method of calculating the amount of the advance and the uncertainty of how much the costs will be until the end of the proceeding, given that the enforcement decision contains only the advanced costs, and that the amount of compensation for a successfully implemented procedure, which is calculated at the end of the procedure, is uncertain.[446] At the same time, it is necessary to keep in mind that public enforcement officers act and calculate the costs of the proceeding on the basis of the Tariff of Public Enforcement Officers, which is a bylaw, publicly available and unique for all public enforcement officers[447]. It can be concluded that the complexity of the method of calculation and collection of costs is a bigger problem than the tariff itself, and that this issue is closely related to citizens' awareness of the tariff and its application. Therefore, the problem of unpredictability of costs is present, primarily as a result of the "hermetic" tariff from the point of view of citizens, so the standard cannot be considered as fulfilled. [0/0.5 points]

S5: PARTIES IN THE ENFORCEMENT PROCEEDINGS ARE OF THE OPINION THAT THE PUBLIC ENFORCEMENT OFFICERS' FEES TARIFF IS CLEAR AND UNAMBIGUOUS [0.5 POINTS]

As stated above, the tariff is publicly available, and the citizens can access it any time. As a regulation, the tariff is clear and unambiguous, but the problem arises with the aforementioned impossibility for citizens to independently assess possible costs based on the tariff itself, neither as creditors nor as debtors. The tariff is, therefore, available, and it has the effect of regulations applied by public enforcement officers, but this mechanism is not sufficiently clear from the point of view of citizens, so this standard is considered unfulfilled. [0/0.5 points]

445 The data for 2019 have been received based on the letters submitted by the Chamber of Public Enforcement Officers
446 Focus groups
447 Tariff of Public Enforcement Officers ("Official Gazette of the RS", no. 93/2019)

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 POINTS]

In the reporting period, no progress has been recorded in terms of bringing the methods of calculation and collection of advance payments closer to the citizens. Previously established assessments remain that it is difficult for the parties to see the amount and structure of the costs that are taken into account and charged through advance payments. In this regard, a special problem is the collection of advance payments in utility cases, which are extremely massive in terms of their scope in the total number of enforcement cases (utility cases make up 41.4% of all pending cases received on annually)[448]. There is a practice of including the costs for drafting a proposal for enforcement as an advance and in a situation where the submission is independently prepared by the service of the utility company that appears as the submitter of the proposal for enforcement based on an authentic conclusive document. The creditor pays this advance, but it is immediately transferred to the debtor by the decision on enforcement, who has no insight into the structure of costs determined by the decision, nor in the conclusion on the amount of the advance payment referred to in Art. 4, paragraph 2 of the Law on Enforcement and Security. Therefore, the problem of transparency and validity of the method of calculating the advance is present, so the standard cannot be considered fulfilled. [0/0.5 points]

EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**11** *(Sum of maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**6** ▲ *(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 rules of enforcement and procedure of the public enforcement officers are regulated precisely and in detail by the Law on Execution and Security. After several iterations of legal amendments, but also after several years of practice, a significant part of the shortcomings and ambiguities regarding the legal rules have been removed. In addition, there remains a need to improve certain legal solutions, primarily with regard to the realisation and protection of the rights of third parties and complainants regarding the work of the public enforcement officers. At the same time, the enforcement cases usually draw the attention of the public incidentally, which creates a distorted image regarding the legality and work of public enforcement officers. Such a phenomenon, and the insufficient level of information among citizens about the rules of enforcement and the way public enforcement officers work, cause misunderstanding or mistrust. The costs of the proceedings are, in practice, still unknown to the parties.

448 Data from the annual work reports of public enforcement officers for 2020

RECOMMENDATIONS

- Certain legal improvements are needed, especially with regard to the effectiveness of the legal means that ensure legal protection of third parties in the proceedings, possibility of proving the allegations of the debtor and third parties, guarantee of objective and equal legal treatment of the parties by the public enforcement officers, and possibility of the applicant submitting the complaint regarding the work of the public enforcement officers to access the data from the supervision and to be aware of its outcome;
- It is necessary to work further on raising of public awareness of the rules of enforcement and the way public enforcement officers work, in order to reduce mistrust of the citizens, which frequently occurs as a result of a lack of reliable information;
- It is necessary to consider a model for calculating the costs of the proceedings that would be clearer and more transparent for the parties to the proceedings. This would ensure greater degree of predictability of the costs of the proceeding - consider the possibility of creating a "cost calculator" or a similar tool that would be available to citizens, so that they could calculate potential approximate costs according to the parameters of the specific case.

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	2020
1. Legal framework for the work of notaries provides adequate conditions for notarization of documents	0.5/1	0.5/1
2. The law prescribes a unified notaries' fees tariff	1/1	1/1
3. The law prescribes for the notaries' fees tariff to correspond to the provided service	0.5/1	0.5/1
4. The law prescribes the working hours of notaries to be organised in such manner which enables customers to access services even outside the regular working hours	0.5/1	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	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	1/1
TOTAL NUMBER OF POINTS	4.5/6	4.5/6

S1: LEGAL FRAMEWORK FOR THE WORK OF NOTARIES PROVIDES ADEQUATE CONDITIONS FOR NOTARIZATION OF DOCUMENTS
[1 POINT]

Solemnization is the act of confirming a non-public document by a public notary, which gives it the status of a notarized (solemnised) document. The Law on Public Notaries prescribes that solemnization is carried out when it is determined by law, and in particular it is carried out when concluding a contract on the transfer of real estate, a contract on a mortgage and giving pledge statements, and in case of the contracts based on real and personal easement[449]. The wording of the cited provision that confirmation is performed "when it is determined by law" has influenced establishing of the restrictive practice of public notaries, which does not allow the solemnization of private documents for which such a form is not expressly prescribed by law, which excludes the disposition of the party. Since there have been no changes to the legislative framework compared to the previous report, it is estimated that the standard is partially fulfilled, given the stated reservation. [0.5/1 point]

S2: THE LAW PRESCRIBES A UNIFIED NOTARIES' FEES TARIFF
[1 POINT]

The Public Notaries' Tariff is unique and applies equally to all the notaries, and to all of their actions. The act determining the tariff of public notaries, as well as its amendment, is issued by the Minister of Justice, based on the opinion of the Chamber of Public Notaries. The Public Notaries' Tariff determines the reward for the work of a public notary and reimbursement of expenses incurred in connection with the work performed by a public notary, the method of determining the value of the work performed, and the method of calculating the amount of the reward and reimbursement of expenses. Considering the uniqueness and equal effect of the tariff on all public notaries, the standard is fulfilled. [1/1 point]

449 Law on Public 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), Article 93

S3: THE LAW PRESCRIBES FOR THE NOTARIES' FEES TARIFF TO CORRESPOND TO THE PROVIDED SERVICE [1 POINT]

The Law on Public Notaries does not contain a provision or foresee the principle that the public notaries' tariff must be adequate in relation to the service provided. The remuneration for the work of a public notary, and the reimbursement of costs incurred in connection with the work performed, are determined in the manner determined by the tariff prescribed by the minister.[450] The amount of the reward is calculated according to the criteria of the value of the object of the legal work or action, in a fixed amount and according to the time spent for the preparation and performance of a certain action, and when calculating the reward for the performed legal work, all actions related to the specific legal work are taken into account, including preparatory work[451]. In the period as of the previous report, certain changes have been made to the Public Notaries' Tariff, thus fixing the fee (in the amount of 20 points, i.e. RSD 3,000) for drawing up a notary record of a gift contract in the first line of succession, between a parent as the gift provider and the child as the recipient, for drawing up a notarial record on the establishment of easement rights, and for drawing up a unilateral declaration of will regarding real rights to immovable property, regardless of the value of the immovable property. In addition, the same fixed amount of compensation is prescribed for drawing up a declaration of recognition of paternity, declaration of agreement with recognized paternity, and other declarations related to personal statuses and probate proceedings.[452] The aforementioned changes effectively reduced the compensation, but according to the type of acts and categories of persons and their statuses to which those acts refer, and not in terms of adjusting the compensation to the content and complexity of the work performed. Therefore, the standard is still not regulated by law, nor is such a criterion foreseen by the amendments to the bylaw that were adopted in the reporting period, so the evaluation of partial fulfilment of the standard is given. [0.5/1 point]

S4: THE LAW PRESCRIBES THE WORKING HOURS OF NOTARIES TO BE ORGANISED IN SUCH MANNER THAT ENABLES CUSTOMERS TO ACCESS SERVICES EVEN OUTSIDE THE REGULAR WORKING HOURS [1 POINT]

The law stipulates that the relevant minister regulates the working hours of the offices of public notaries by his/her act.[453] The Rulebook on the Office of Public Notary and Working Hours of Public Notaries stipulates that notaries' offices work from 9 a.m. to 5 p.m. on weekdays. The working hours are imperatively prescribed by this act, and the possibility for public notaries to have longer working hours or a different schedule is not foreseen. In addition, it is possible to conduct an official action outside working hours, and on non-working days, based on a specially explained request of the party. Therefore, it can be seen that the working hours of the office overlap with the usual working hours of the majority of employed citizens, so their performance of the necessary tasks at the offices of public notaries usually requires absence from the workplace during working hours and makes access to these judicial services difficult. In the reporting period, no changes were made to the relevant rulebook, so taking into account that there are no legal guarantees of compliance with the working hours with the needs of the parties, as in the previous report, the standard is considered 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 assessed in the previous report, the Law allows the members of national minorities the right to have a public notary document written in a language they understand in places where the language of the national minority is in official use, the obligation for public notaries in areas of units of local self-government where the language and script of the national minority are officially used, to draw up notarial documents in the Serbian language in the Cyrillic script or in the language and script of the national minority

450 Law on Public Notaries, Art. 134
451 Public Notaries' 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, 91/2020 and 36/2021)
452 Amendments to the Public Notaries' Tariff ("Official Gazette of the RS", no. 36/2021)
453 Rulebook on the Office of Public Notary and Working Hours of Public Notaries ("Official Gazette of the RS " no.. 31/2012, 87/2014 and 15/2017)

or in both languages and scripts, in accordance with the request of the party, so the standard is considered fulfilled in its entirety.[454] [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 obligation of reimbursement of losses due to the omission of a public notary is expressly prescribed by law, and it is extended to include damages caused by notary trainees, associates and assistants, and the administrative staff working in the notary's office, regardless whether they are responsible independently and according to the general rules of the Law on Contracts and Torts.[455] Before commencing work, the notary is obliged to insure himself/herself against responsibility for damages for a minimum of 80,000 euros, and is responsible for all actions of all employees in his/her office. In the event that this sum is not sufficient for compensation, the public notary public is also liable with personal property. Taking into account all the above, the standard is considered fulfilled. [1/1 point]

SUB-INDICATOR 2.2: THE WORK OF NOTARIES IN PRACTICE

SUB-INDICATOR STANDARDS	POINTS	2020
1. Guidance provided to clients by notaries is impartial	1/1 ▲	0.5/1
2. Notaries act conscientiously when providing services	1/1	1/1
3. Notary's associates and assistants received proper training for providing services	1/1	1/1
4. The price of the service is adequate	0/0.5 ▼	0.5/0.5
5. Notaries' offices are equally distributed throughout the country and all citizens have equal access to them	0.5/1	0.5/1
6. Physical accessibility of notary's service is unobstructed	0.5/0.5	0.5/0.5
TOTAL NUMBER OF POINTS	**4/5**	**4/5**

S1: GUIDANCE PROVIDED TO CLIENTS BY NOTARIES IS IMPARTIAL

[1 POINT]

Based on the conducted field research of user experience[456], service beneficiaries confirmed in 82% of the cases that they were adequately informed by the public notary or his/her assistant about the rights and obligations that arise when performing the act of notarization. 84% of users agreed with the assessment that the public notary or his/her assistant clearly and precisely answered every question asked and resolved every doubt regarding the service in question (a significant shift compared to the results of the previous report, according to which 46% respondents had been adequately informed in advance, and 69% favourably evaluated received answers to the questions). Based on all of the above stated, it can be determined that the average value of achieving this standard is 83%, so it can be concluded that the standard as a whole is fulfilled. [1/1 point]

S2: NOTARIES ACT CONSCIENTIOUSLY WHEN PROVIDING SERVICES

[1 POINT]

Based on the results of the conducted survey, 89% of the beneficiaries assessed that the request to implement the action at the public notary was submitted without difficulty, while 84% of respondents were satisfied with the deadline for the requested action. 89% of surveyed beneficiaries agreed with the assessment that during the reception at the no-

454 Law on Notaries, Article 18
455 Law on Notaries, Article 58
456 Field research through survey of the service beneficiaries in 13 towns, done in the period IX-X 2021

tary's office, the notary's associates were friendly and accommodating. The evaluation of the adequacy of the waiting area, in terms of seating and transparency of the party calling system, is somewhat weaker compared to the previous criteria, but it amounts to a satisfactory 67%. Overall, 84% of the beneficiaries were satisfied with the service provided by a public notary (35% were completely satisfied, and 49% were partially satisfied). Based on the median value of the expressed values of the positive evaluation of the mentioned individual segments that evaluate conscientiousness in the actions of public notaries, a median positive evaluation is obtained in 82.6% of cases (the overall median evaluation of conscientiousness according to last year's report was 90.4%). In any case, the standard is considered to have been fulfilled. [1/1 point]

S3: NOTARY'S ASSOCIATES AND ASSISTANTS RECEIVED PROPER TRAINING FOR PROVIDING SERVICES
[1 POINT]

When asked whether they believe that the associates and assistants of the public executioner are fully professionally trained to perform the service, 46% of the beneficiaries fully agree, and 44% partially agree. Since the positive evaluation makes up a total of 90%, it can be concluded that this standard has been fulfilled. [1/1 point]

S4: THE PRICE OF THE SERVICE IS ADEQUATE
[0.5 POINTS]

Regarding the issue of notary public work costs, during the survey, only 42% of the beneficiaries responded positively to the assessment that the amount of reward paid for the notary work performed corresponded to the service provided, considering the complexity of the work, the time and effort required to complete the work. The evaluation of the beneficiaries was the same when asked whether the amount of the reward paid for the performed notary work did not represent an excessive financial burden for the household, considering the type of certification. Therefore, the standard cannot be considered fulfilled. [0/0.5 points]

S5: NOTARIES' OFFICES ARE EQUALLY DISTRIBUTED THROUGHOUT THE COUNTRY AND ALL CITIZENS HAVE EQUAL ACCESS TO THEM
[1 POINT]

The Law on Public Notaries prescribes the rules on the territorial distribution of the offices of public notaries, according to which the number of notaries' offices is determined by the minister, based on the opinion obtained by the Chamber, so that for the area of one local government, as a rule, at least one notary public office is designated, and in areas with a greater concentration of population and more intensive economic operations, the number of notary posts is determined so that one notary post is determined for every 25,000 inhabitants.[457]

The analysis of the data on the number and seat of public notaries, who have been appointed and work at the time this report is prepared[458], starting from the aforementioned legal criteria of territorial distribution, has shown that notaries' offices are present in 98 out of 145 cities and municipalities, that is, 68% of all units of local self-government are covered. Out of the stated number of units of local self-government with notaries' offices, and where, according to the stated criteria, it is necessary to appoint more public notaries, the criterion of the number of public notaries in relation to the number of inhabitants was not met in 20 cases. In the reporting period, notary public offices were established in 11 new units of local self-government, and the only existing one was closed in one, while additional public notaries were appointed in six cities and municipalities, in addition to the existing ones, of which the legal maximum was met in three cases. Therefore, the criterion of presence in all units of local self-government has been fulfilled with 68%, and the criterion of an adequate number of public notaries, where it is necessary according to the number of inhabitants, has been fulfilled with 76%, and therefore it is stated that the standard is partially fulfilled. [0.5/1 point]

457 Law on Notaries, Article 15

458 List of offices of public notaries on the Internet page of the Chamber of Public Notaries of the Republic of Serbia, 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 POINTS]

Based on the data from the survey, 95% of the beneficiaries said that the public notary's office was located in an easily accessible location in the town. 91% of the beneficiaries stated that the public notary's office was clearly and precisely marked in the public space (there are easily visible and understandable directions to the office premises). The average value of the mentioned positive evaluations is 93%, which leads to the conclusion that the standard of easy physical accessibility of the public notary to system beneficiaries has been fulfilled. [0.5/0.5 points]

EVALUATION OF THE INDICATORS

Maximum sum of all Sub-indicators	**11** *(Sum of maximum values of all individual Sub-indicators in this indicator)*				
Sum of all allocated values of Sub-indicators	**8.5** *(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	3				

The system of public notaries, after the first decade since its introduction into the legal order of Serbia, has fully come to life in the context of judicial services related to the certification of documents, solemnization and performance of other notarial actions, the goal of which is to improve legal security in legal transactions. In recent times, public notaries have also taken over certain typical judicial tasks, such as the discussion of inheritance. The legislation governing the work of public notaries is assessed as adequate. In practice, certain shortcomings can be observed regarding the evaluation of the proportionality of the price of this judicial service in relation to the complexity of the work and the time invested, and the network of offices that still does not fully and adequately cover the entire territory of the country.

RECOMMENDATIONS

- It is necessary to improve the legal framework in the part regarding guarantee of implementation of the principle of proportionality of the reward in relation to the service provided, and in terms of working hours that would be better adapted to the needs of the citizens.
- It is necessary to improve the territorial distribution of notaries' offices, in order to provide citizens with equal access to notarization services throughout the country.

CONCLUSION

Report on monitoring of the situation in Judiciary for 2021 contains the findings and evaluations, which are the result of the second cycle of the mechanism for monitoring of improvement in judicial reforms in Serbia, observed and analysed from the angle of independent non-governmental organisations. Reporting methodology provides reliability and comparativeness of data, findings and evaluations with the previous report, which was the baseline report in the current cycle, and this offers an objective overview of the situation and observed changes, based on facts and independent professional evaluations. The same as in the previous one, the systematics of report include presentation of the findings and recommendations based on 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.

In the area of legal aid, general evaluation of the level of the indicators is identical as in the previous report, with minor changes in certain standards. General evaluation is still relatively unsatisfactory, and particularly problematic are the issues of the quality of the regulation of the conditions for exercising the right to free legal aid, criteria for determining categories of beneficiaries and procedures for exercising of this right. There have been no relevant normative changes in this reporting period, but there is an improvement in terms of legal possibility for the appointment of free attorney and evaluation of fairness of the procedure for deciding on his/her appointment in practice. The observation is that there has been an improvement in the way beneficiaries perceive the quality of the provision of legal aid. Recommendations are primarily directed at improvement of the legal framework and connecting these rules with the rules of civil procedure, regulations on legal profession and legal protection of minors in criminal matters.

The legal framework for access to data and transparency of the work of the courts and public prosecutor's offices has been evaluated as complied with the envisioned standards to the significant extent. There are still problems regarding definition of the term of an official document, and the omission to publish short overviews of the judgements. There has been a deterioration of the value of the standards compared to the previous report, in respect of proactive and reactive transparency in certain segments of the practice of the courts and public prosecutor's offices. This also includes the practice of appointing persons in charge of responding to the requests to information of public importance, by relevant internal acts. There has been an improvement in respect of the standards that refer to availability of key information and regular publishing of annual progress reports and work reports on the court websites, timely responses to the requests for information of public importance, and evaluation of accuracy and preciseness of the delivered information. The same as in the previous report, the recommendations refer to the need to improve both proactive and reactive transparency, availability of data on the websites of the courts and public prosecutor's offices, particularly in the languages of the national minorities, where that is stipulated, but also provision of data on professional biographies of judges and public prosecutors.

The same as in the previous year, in respect of the access to court, the legal framework of physical and linguistic access has been evaluated as satisfactory, and the evaluation is somewhat worse regarding organisation of financial access. In addition, the same as in the previous cycle, the opinions of the citizens on the costs of court proceedings and their (in)appropriateness due to their income remains unchanged. The same applies to their standpoint that this prevents access to justice. Also, the citizens are not adequately informed of the possibility to be exempt from these costs. Physical accessibility of the

courts in practice is at a satisfactory level, but it is necessary to improve linguistic accessibility. Among other things, the recommendations include the need to solve the issues of physical access to the courts for the persons with disabilities and the elderly, both in legal sense, but also in respect of the accessibility of the court facilities. In regards to the financial access, it is required to improve the level of information the citizens receive about the possibility of exemption from the costs of the proceedings, the proceeding and conditions for exemption, and better harmonisation of the costs with the income of the citizens.

The same as in the previous report, in the area of judicial efficiency, in the segment that refers to efficiency of court proceedings, there is a need to improve the mechanisms that secure trial within a reasonable time and guarantee exercising of procedural rights of the parties. The practice of the courts and judges has been relatively positively evaluated. There is also a slight improvement of the share of adopted extraordinary legal remedies due to violation of procedural laws in the total number of filed legal remedies. The recommendations regarding this indicator refer to the need to improve the method and structure of the records, both on adopted constitutional appeals due to violation of procedural rights of the parties, and the number of founded complaints of the parties in the proceedings, and the need to raise the level of awareness among the citizens on the mechanisms for protection of the right to a trial within a reasonable time.

The second indicator in this area refers to legal predictability and has not experienced significant changes. As in the previous cycle, there is a need for certain normative improvement, primarily regarding implementation and monitoring of the actions plans of the courts in the segment of harmonisation of the court practice. In addition, general evaluation of accessibility of the data on court practice is positive to a significant extent. The same as in the previous reporting period, there are certain insufficiencies in the practice of the courts and public prosecutor's offices in regards to establishing and application of legal opinions and understanding of competent courts, as well as the issue of uniform actions of the public prosecutor's offices in similar situations. A set of recommendations has been provided for improvement and harmonisation of court practice and practice of the public prosecutor's offices, and the development of court statistics.

There have been no significant improvements in the field of ethics in judiciary in this reporting period. The existing normative framework and guarantees have been evaluated as adequate and comprehensive, while there has been a certain deterioration of the results compared to the previous period in respect of random assignment of cases. There is still a negative perception of the public about impermissible influence on judiciary, and there are also insufficiencies in organisation of the work of disciplinary bodies and the issues of incompatibility of the judicial function. On the other hand, based on the surveys of the system beneficiaries, and the data on the share of founded complaints regarding the work of the judges in the total number submitted to the court presidents, there is a still positive impression about professionalism of the judges, their conduct during the proceedings and behaviour towards the parties. There has been a certain improvement in regards to the work of the Ethical Board of the High Judicial Council compared to the previous reporting cycle, since certain steps have been made in organisation and activities of this body. The recommendations refer to the need for further strengthening of the mechanism for protection of the integrity of judges and public prosecutors, particularly in the context of these constitutional changes. Furthermore, it is recommended for the High Judicial Council to monitor and publicly disclose cases of impermissible influence on the work of the judges, and to make relevant data about them publicly available.

Complex field of access to justice in criminal matters contains the indicators of protection of the rights of the parties in the proceedings, integrity, and quality of the work of public prosecutors and quality of penal policies. There have been no changes compared to the previous reporting cycle in respect of the general evaluation of the adequacy of the legal framework that regulates protection of the rights of the defendants and the rights of the injured parties in the criminal proceedings, and it is still evaluated as partially adequate. There has been an improvement in respect of the evaluation of the protection of a defendant in practice, and the standards that deal with provision of sufficient time and means for the preparation, including possibility to review case file and evidence. In respect of the protection of an injured party in practice, there has also been an improvement in the standards that deal with notifying of the injured party on the actions of the public prosecutor's office in accordance with the Law, receipt of

the written confirmation on filed criminal complaint, and notifying the defendant of the time and place of questioning of the witnesses or experts. It has been recommended to improve the method for interrogation of the participants in the proceedings, as well as informing of the injured parties on the course of the proceedings, and higher authorizations of the injured party in application of the principle of opportunity. It is important to note that in this reporting period, the survey has had a wider coverage since it included public prosecutors and attorneys, who provided their opinion on compliance with the certain principles in practice. This indicator has been evaluated by a higher mark than in the previous cycle, and now has a mark 4, compared to 3 in the previous year.

In respect of the integrity and quality of work of the public prosecutors, there are still certain insufficiencies in respect of the legal framework that regulates integrity of work of public prosecutors. This particularly refers to independence in work of the public prosecutors, and/or deputy public prosecutors and rendering of the decisions of the public prosecutor's offices, obligation of the public prosecutors to comply with the Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the State Council of Prosecutors in their work, and in respect of legally defined obligation to act on the criminal offences *ex officio*. Furthermore, in the previous period, there have been no changes in regards to the mechanism for protection of public prosecutors against impermissible political and other impacts. Also, there has been a positive improvement in the standards that deal with adequacy of the mechanism that guarantees impartiality and recusal of the prosecutors, and in case of legal imposing of the mechanism of control and sanctioning of the breaches of the obligation to act by the public prosecutor's office on the criminal offences initiated *ex officio*. Still, the result regarding transparency of the work and reaction of the Commissioner for Autonomy of the Prosecutors in cases of public discussion of the criminal proceedings by holders of public offices is worse than last year. The recommendations particularly focus on introduction of the legal framework and implementation of disciplinary proceedings.

Compared to the previous reporting period, there have been no changes in respect of the evaluation of the standards that deal with the legal framework and quality of penal policy. It is confirmed that criminal legislation, in the segment of organisation of criminal sanctions, is complied with defined comparative and international standards to a great extent. There are certain insufficiencies observed in respect of stipulated rules on the type and duration of the sanctions. However, the penal policy of the courts has been evaluated very poorly. Still, compared to the previous reporting cycle, there have been some improvements in respect of the opinions of the participants in the proceedings about equal policy for all the defendants, regardless of their personal and social status, and there have been better results in comparison to the previous cycle. There have been no changes to the evolution of other standards regarding perception of the penal policy. Improvement on the level of one of the elements of perception of the participants in the proceeding has led to the increase of the overall evaluation on the level of the indicator, so this indicator has received mark 3 unlike in the previous period. The recommendations refer to the need for further harmonisation of the legal framework of general and special legislation, harmonisation of life sentence in prison with international standards, and affirmation of the system of alternative sanctions.

The area of access to judicial services includes evaluation of the work of public enforcement officers and public notaries. The legal framework that regulates work of public enforcement officers is evaluated as adequate. There is still a lack of information in public about the rules of enforcement and method of work, while the parties are still not aware of the costs of the proceedings in practice. The recommendations are directed at the need for further improvement of the legislation, particularly in respect of exercising and protection of rights of third parties and parties submitting complaints about the work of public enforcement officers. In addition, it is needed to further work on raising the awareness of the public on the rules of enforcement and method of work of the public enforcement officers and reevaluating the existing model for calculation of the costs of the proceedings.

The system of public notaries is evaluated as adequately legally organised. In practice, certain insufficiencies could be observed in respect of the evaluation of the proportionality of the price of the judicial services compared to the complexity of the work and invested time, from the perspective of the beneficiaries of these services, and the need for further development of the network of offices of public notaries for the purpose of the citizens' access to

these services. There is a particular recommendation regarding the need for improvement of the legal framework in respect of the guarantee for implementation of the principle of proportionality of the award compared to the provided services, as well as in respect of the working hours that would be better suited for the needs of the citizens.

Along with the findings provided in this report, it is also necessary to note a higher level of involvement of the judicial bodies in provision of required data in the reporting period and observed higher levels of participation of certain categories of subjects in implementation of certain research activities, particularly among public prosecutors. It is equally important that the research cycle was fully completed using the same methodology, which secures sustainability of this mechanism for monitoring the situation in judiciary. Finally, along with other current reports that are prepared and published by state bodies, this report is not a competitive, but a complementary analytical instrument, which should provide additional information for adequacy and responsibility of the valuation of the situation in judiciary, and broader, securing the rule of law in the existing institutional environment. This is achieved by providing the review from the point of view of the citizens, individuals, articulated through the findings and evaluations of the experts from the sector of civil organisations.

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