

SERBIA

Access to Justice for Poor Women and Men (P150419)

Final Report

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This report is a companion piece presenting the findings of the Access to Justice research and analysis carried out to inform the Serbia Judicial Functional Review, which analyzes functioning of institutions of the Serbian justice system to provide an objective and data rich basis for Serbia's EU accession negotiations under the Chapter 23 of the *Aquis Communautaire*. The data collection and analysis was done throughout 2014. This report was funded by the World Bank and the Multi Donor Trust Fund for Justice Sector Support (MDTF-JSS), established with generous contributions from the EU Delegation in Serbia, the United Kingdom Department for International Development (DFID), the Swedish International Development Cooperation Agency (SIDA), Norway, Denmark, the Netherlands, Slovenia, Spain, and Switzerland. More information about the trust fund is available at www.mdtfjss.org.rs.

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Executive Summary

Lack of affordability is the most serious barrier to access to justice services in Serbia. Court and attorney costs represent a significant proportion of average income in Serbia. Pursuing even a simple case is unaffordable for many. Citizens do their best to avoid the courts: nearly 63% of the general public reported that, if they had a dispute which they thought should be settled in the court, they would decide against pursuing it; and fear of costs was the most common deterrent. Over half of recent court users surveyed considered the court-related costs in their particular case to have been excessive. The schedules for court and attorney fees are also quite complex, so court users struggle to estimate likely costs.¹

Lack of affordability of justice services also causes a drag on the business climate. Over one-third of businesses with recent experience in court cases reported that the court system is a great obstacle for their basic business operations, and an additional 30 percent reported that courts are a moderate obstacle. Businesses also report that the courts are becoming increasingly inaccessible to them due to high court and attorney fees. Small businesses face particularly challenges in navigating the court system, including high costs, cumbersome processes, lengthy delays, inadequate enforcement, and constantly changing legislation.

On further examination however, it is not absolute costs to users but perceived value for money which undermines access to justice. Although court users complain about costs (and non-users report that costs deter them), the Multi-Stakeholder Justice Survey found that recent court users who were satisfied with the quality of services delivered were far less likely to consider the costs to be excessive.² These data therefore suggest that improvements in quality and efficiency in service delivery could improve access to justice, by increasing the perceived value for money for potential court users, while also improving user satisfaction.

Attorneys play an important role in helping court users to navigate the system, but their fee structure is out of step with European practice and creates perverse incentives which undermine access to justice and efficiency and quality and service delivery.³ Self-represented litigants struggle to proceed alone without lay formats, checklists or practical guides, and unsurprisingly therefore, they are less likely to succeed. Attorneys are paid per hearing or motion, which encourages protracted litigation. Fees are awarded based on a prescribed Attorney Fee Schedule, which prohibits from charging less than 50 percent of the rates prescribed. This arrangement is out of step with European practice.⁴ Serbia's prescribed fees are also highly inflated and unrealistic, and in practice many attorneys charge less than the mandatory minimum because rates are beyond user willingness to pay. State-appointed attorneys (known as ex-

¹ There is also a cap on court fees, which distorts incentives by encouraging court users to pursue unmeritorious claims in high-value cases.

² 75 percent of court users who reported low quality of services also reported that the costs were excessive; while the 29 percent of court users who reported that quality was high did not consider the costs to be excessive.

³ 71 percent of citizens with court experience found attorney-related costs to be one of the most insurmountable barriers to access to the judicial system.

⁴ The European Court of Justice has held that mandatory minimum fees violate the EC Treaty. Further, 42 of the 47 countries monitored by the CEPEJ allow free negotiation between lawyers and clients.

officio attorneys) may be appointed for indigent clients but there are concerns regarding the mechanism for their selection and a lack of quality control.

A court fee waiver is available for indigent court users but its implementation is haphazard, resulting in inconsistent access to justice for the indigent. There is very limited understanding among the public of the court fee waiver program. There are no guidelines or standardized forms for judges who grant a waiver and their decisions go unmonitored. Stakeholders report that some Court Presidents informally discourage their judges from waiving fees, as fees are a source of revenue for courts. Waivers may improve access to justice in some areas but without data its impact cannot be monitored.

Legal aid programs are provided by an incomplete patchwork of services across the country. Municipal Legal Aid Centers cover around one-third of the country and around one-half of Serbia's total population. Yet, most citizens are unaware of any free legal services that might be provided in their municipality.

Reforms are currently underway to expand legal aid in line with EU practice by providing both 'primary legal aid' (legal information and preliminary advice) and 'secondary' (legal representation) to the poor and certain vulnerable groups. While the aims of the reform are admirable, there remains a high risk that these laws, like other reforms in recent years, will become 'stillborn' if fiscal and operational implications are not carefully planned or if implementation arrangements are weak. Despite several years of deliberation in working groups, there remain some concerns with the latest draft of the law. The current draft creates a bias in favor of secondary legal aid, to be provided predominantly by attorneys, while doing little to encourage primary legal aid, which would be provided by CSOs, municipal legal aid centers, and law faculties. Yet, the efficient delivery of primary legal services is likely to have the greatest benefit in terms of increasing access to justice for the largest numbers of Serbian citizens and could be delivered at much lower unit costs. It will be important to ensure that primary legal aid is adequately funded and delivered consistently throughout the country. Meanwhile, proposals for secondary legal aid could be considered more cautiously. A Fee Schedule will also need to be developed for the compensation of service providers for both primary and secondary aid. Based on previous analysis, the fees for these services should be far lower than the current Attorney Fee Schedule.⁵ Quality assurance mechanisms will also be required and this is another area of high implementation risk.

Recent legislative amendments seek to promote mediation but there are significant implementation challenges. Due in large part to previously failed reforms, there is limited awareness of mediation among judges, attorneys, court staff, and court users. Among those who are aware of mediation services, few report it to be a useful means of dispute resolution. A significant outreach initiative to potential court users will be required, along with intensive training for judges, prosecutors, lawyers, and court staff. Further incentives should be built in to the institutional framework to encourage the use of mediation and integrate it into the court system.

Awareness of law and practice is limited, even among professionals. Judges, prosecutors, and lawyers struggle to conduct research and keep abreast of new legislation, cases, procedures, and practices. Before

⁵ Further analysis will be required to ensure that service delivery arrangements provide sufficient incentive for high-quality service delivery without inflating costs or creating distortions in the market.

2014, the only legal databases with consolidated legislation were maintained by private companies on paid subscription basis. Few courts publish their court decisions, so access to these even among judges is very limited. On a positive note, the Official Gazette recently launched a free online database, and this should improve access to legislation. Efforts to raise awareness and build the capacity among professionals to conduct legal research could reap significant rewards in terms of consistency of practice across the jurisdiction.

Among the public, awareness of law and practice is even more limited. Continuous changes in legislation and scarce outreach of reforms combine to prevent the public from understanding their rights and obligations, or how to uphold them in court. Businesses report that access to laws – and frequent changes in legislation and regulations – causes uncertainty that affects their business operations. A significant injection of outreach and awareness-raising of legal reforms among the public, particularly among potential court users, is required. Existing court users also struggle to access information related to their own case. Examples exist in Croatia and elsewhere of court portals which could be applied in Serbia to enable court users to access information related to their case in a manner consistent with privacy laws.

Women experience the judicial system differently from men in a few ways. Women report more than men that justice services are inaccessible. More often than men, women find attorney fees to be cost-prohibitive. Women are also more likely to experience barriers to access to justice and inefficiencies in justice service delivery because they are more likely to be parties to certain types of cases, such as custody disputes and gender-based violence, which exhibit specific problems relating to procedural abuse and delay.

Equality of access for vulnerable groups poses specific challenges. The majority of citizens surveyed reported that the judiciary is equally accessible regardless of age, socio-economic status, nationality, disability, and language. However, those citizens who are over 60 years of age, live in rural areas or have the least amount of education find the judicial system particularly inaccessible, suggesting that targeted interventions are warranted. Individuals with intellectual and mental health disabilities experience serious disadvantage through the process by which they are deprived of their legal capacity. Members of the Roma community, refugees and internally displaced persons also report low awareness of their rights, as well as concerns regarding fair treatment before the courts. For these groups, there is a case for strengthening the dissemination of information to relevant CSOs and community leaders about the functioning of the judiciary and basic legal rights. The experience of the LGBT community is slightly different: though they appear more than the abovementioned groups to be aware of their legal rights, they remain deterred from filing cases due to fear of reprisal and perceived discrimination.

Introduction

This report aims at identifying the particular needs and constraints faced by the poorest women and men when accessing the judicial system. Similarly to the Judicial Functional Review,⁶ the scope of this report focuses primarily on the courts because they are the main vehicle for justice service delivery and the primary institutions of justice in Serbia. The scope includes all types of services and covers litigious and non-litigious aspects of civil, commercial, administrative, and criminal justice. The focus is on the actual implementation and day-to-day functioning of the sector institutions that deliver justice to people, rather than the ‘law on the books’. The scope includes other institutions in the sector to the extent that they enable or impede service delivery by the courts, including: the Ministry of Justice (MOJ), the High Judicial Council (HJC), the State Prosecutorial Council (SPC), the courts, the Public Prosecutor Offices (PPOs), the Judicial Academy, the Ombudsperson’s Office, the police, prisons, and justice sector professional organizations (such as the Bar, notaries, bailiffs, and mediators).

The focus of this report is on access to justice services, including relevant financial, informational, and geographic barriers to such access.⁷ In the EU accession process, the EC emphasizes the importance of enhanced access in justice system reform, and relevant European standards detail how effective access requires a fair and speedy trial, certain and swift enforcement procedures, access to legal representation, and the promotion of alternative dispute resolution mechanisms. This report views access via a series of dimensions, such as geographic, informational, and financial. Within that frame, this Report focuses on core needs that would address the most significant barriers to access for the poor and vulnerable groups while meeting minimum European requirements.

The available quantitative data presents challenges for any performance analysis, in particular in the area of access to justice. Within the broader context of the Functional Review, significant amounts of quantitative data from within the Serbian system were obtained and analyzed.⁸ They cover the period from 2010 to 2014. In Serbia, much of the relevant and available data originates in case management systems and in human resources and finance systems.⁹ The good news is that the data environment in

⁶ The Judicial Functional Review is published separately and available at www.mdtfjss.org.rs.

⁷ In lay terms, ‘justice’ is often perceived as a broader concept stretching beyond the determination of disputes settled through formal mechanisms to encompass concepts such as human rights protection and social justice. It may also refer to access to non-judicial bodies, such as ombudspersons, or to grievance and complaint mechanisms related to the delivery of government services. Those broader concepts, important as they are, fall outside the scope of this Report.

⁸ The quantitative data underlying the Functional Review was consolidated in a Mega Table. Existing qualitative data was gathered in a desk review report. Both are published and available at www.mdtfjss.org.rs.

⁹ The Functional Review relies on caseload, financial and human resources data from the SCC, including for the 2013 calendar year. The HJC has created a dashboard system, BPMIS, which collects some of the same data as well as some resource management information not collected in the reports submitted to the SCC. For example, BPMIS contains information the age and condition of ICT and other equipment and specific data about the use of contractual services, divided into a) experts, b) attorneys and c) professional services. These additional data fields allow for more rigorous analysis of resource needs. However, because BPMIS was only implemented in 2013, it does not allow for comparison with data from 2011-2012, also relied upon in the functional review. In addition, differences in caseload data between that submitted by the courts to the SCC and that submitted by them to the HJC suggest that there are data errors in BPMIS. In part, this is because data entry in BPMIS is manual and after statistical data is submitted to the SCC by the courts. Courts report that they made adjustments to some of their initially submitted data when providing it to the HJC for BPMIS.

the Serbian judiciary is richer than ever before. One of the challenges with data is that information is captured in a non-systematic and inconsistent manner, and is not conducive to analytical work. Also, much of the data gathering is made in an ad-hoc fashion with much duplication and occasional errors, requiring considerable data processing and triangulation.

Serbia's system for registering case data records a large amount of information but unfortunately does not work to its anticipated capacity. Databases are still localized at the court level and the exchange of information among them is not automatic, requiring manual inputting of data transferred from one court to another. This transfer duplicates work, is time-consuming, reduces efficiency, and introduces errors. There is a centralized database managed by the SCC and another, the Budget Planning and Management Information System (BPMIS), recently introduced by the HJC. Both consolidate statistical reports sent periodically by the individual court units.

This arrangement presents several challenges to any assessment of performance. First, any analysis in the context of the Functional Review depends on the pre-determined standard statistical reports submitted to the HJC and the SCC. Therefore, it is exceedingly difficult to run advanced reports for in-depth analysis without requesting all Courts to provide relevant data, suggesting that statistical reports are either not carried out or not effectively so. Also, the existing systems do not help checking for validity of submissions or entries at the court level. As a result, the data contain numerous yet minor errors, and only an audit of courthouses could help identify the correct data, a task well beyond the scope of this Report. Third, some Courts do not provide the required reports, submit them late, or send information that is visibly incomplete.

System data tend not capture unmet needs and things that do not come to the system. This presents particular challenges to a data-based analysis of obstacles to access to justice. Data from within the system was therefore supplemented by extensive survey data. Most European Courts commission user surveys to gauge user perspectives on performance aspects. In Serbia however, court user surveys are not conducted within the system. To fill this gap, the World Bank carried out a series of perception-based surveys.

The Multi-Stakeholder Justice Surveys 2009/2010 and 2013 measure perception on a range of issues, including perceptions of access, timeliness, costs, quality, and experiences of corruption. The original 2009/2010 survey was replicated and in 2013. The follow-up survey measured progress against the baseline and was also expanded to include new questions. Each survey has a representative sample of over 6,000 respondents. Respondents include general populations (divided into users and non-users), managers of private sector enterprises (divided into users and non-users), lawyers, judges, prosecutors, and administrative staff. From the two surveys, tens of thousands of data points now exist on a range of issues relevant to perceptions of justice in Serbia, and developments can be compared against the 2009 baseline.¹⁰

A two-part Access to Justice Survey carried out in 2013 was an effort to overcome the challenges commonly associated with collecting and analyzing data on access to justice. First, face-to-face

¹⁰ The survey report is published separately and available at www.mdtfjss.org.rs.

interviews were conducted with a representative sample of 1,003 respondents in their households across 67 municipalities and 127 local communities in both suburban and urban settings. Respondents discussed the kinds of disputes they and their households experienced, whether they considered taking them to court, and what deters them from using court services. Second, focus group discussions were conducted to gain a deeper understanding of behaviours, attitudes, and motives from specific target populations including economically active urbanites, rural farmers, owners of micro and small private enterprises, and members of LGBT populations. The focus groups consisted of 90-minute rounds with eight participants per session.

Since access to justice *de facto* tends to be more challenging for poor people than *de jure*, the World Bank also produced a series of Process Maps.¹¹ A Process Map measures the number and type of procedural steps that court users are required to take for a particular type of case to be decided from the beginning until a first-instance merits decision – both under the law (a *de jure* map) and in practice (a *de facto* map) – and then compares the two. Researchers mapped out *de jure* and *de facto* case processing for four particular procedures relevant to poor women and men in particular: a divorce proceeding, a domestic violence case, an eviction case, and the enforcement of a utility bill. Expert assessments were made based on the key informant interviews and with legal experts and practitioners specializing in the case type in question.

Access to Justice in Serbia Seen Through Cross-Country Data

In comparison with the rest of Europe, Serbia appears to have a problem with access to justice. According to the World Justice Project’s Rule of Law Index 2014, Serbia ranks the lowest among the EU and non-EU neighboring countries in terms of accessibility and affordability of the civil justice system (see graphs below).

Figure 1: Access and Affordability of Civil Justice, EU, EU11 and Serbia, WJP Rule of Law Index, 2014

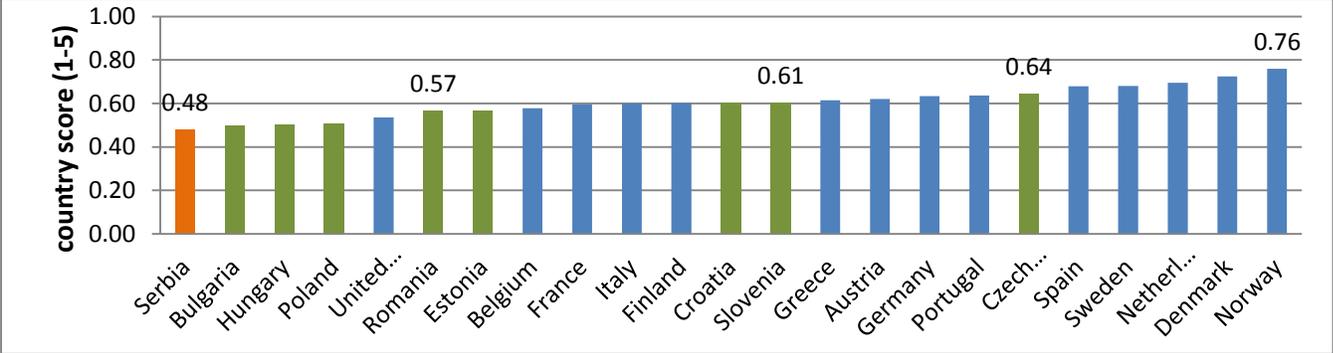
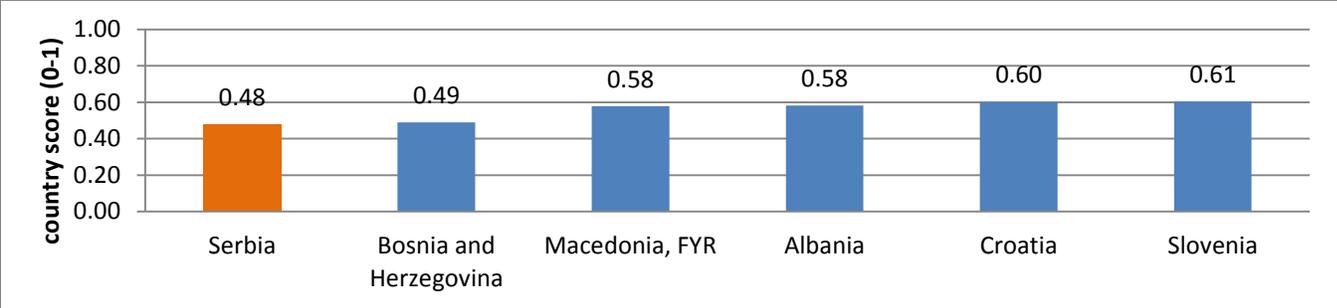


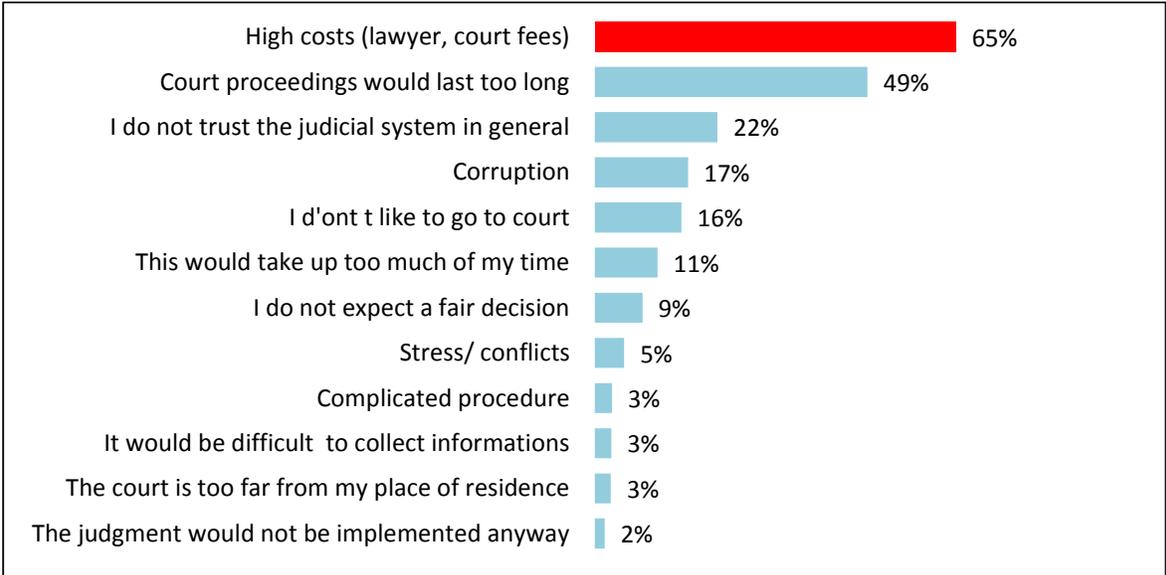
Figure 2: Access and Affordability of Civil Justice, Regional Countries and Serbia, WJP Rule of Law Index, 2014

¹¹ The process maps are published separately and are available at www.mdtfjss.org.rs.



According to a 2014 Access to Justice Survey, citizens do what they can to avoid the court system. Nearly 63 percent of respondents indicated that, had they had a dispute that they thought should be settled in court, they would nevertheless decide against pursuing it or would seriously consider not doing so. Court and lawyer costs, concerns about likely delay in court proceedings, and lack of trust in the judicial system are the primary reasons cited as deterring individuals from using court services. In the 2013 Multi-Stakeholder Justice Survey, members of the public with experience in the court system cited similar concerns with access to justice.

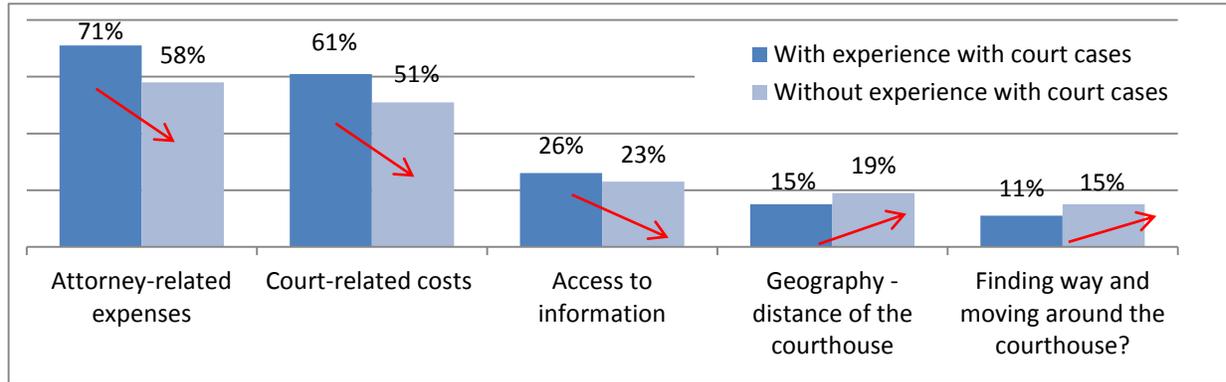
Figure 3: Reasons Why Citizens Would Not Take a Dispute to Court, 2013¹²



Notably, members of the public with court experience expressed greater concern with nearly every aspect of court accessibility than those without court experience. This suggests that improving access to justice requires going beyond merely demystifying courts or raising awareness about access to court services. Rather, it requires efforts that substantively address the barriers actually experienced by court users. Each of the reasons that citizens cite is addressed in this report.

¹² Access to Justice Survey, World Bank MDTF-JSS, 2014.

Figure 4: Reasons Cited by the Public for Why Courts are Inaccessible, 2013¹³



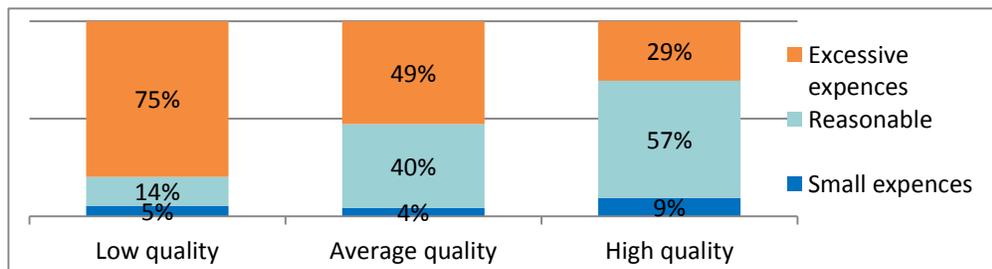
Affordability of Justice Services

Financial access to the court system is the largest barrier to access to justice for most Serbians. Data gathered in the 2013 Multi-Stakeholder Justice Survey provide an insight into the actual costs people face. The average total costs as reported by court users including all court fees, lawyer’s fees, and travel costs (but not including fines) are as follows:

Misdemeanor Cases	150EUR
Civil Cases	550EUR
Criminal Cases	550EUR
Cases involving business representatives	1,800EUR

On further examination, however, it is not absolute costs but perceived value-for-money which drives court users’ concerns. Findings of the 2013 Access to Justice Survey highlight the clear relationship between access to justice and quality of services delivered. Whilst court users complain about the costs of going to court, they are far more willing to pay if they are satisfied with the quality of justice services delivered. As shown in the figure below, 75 percent of court users who report that the quality of services they received was low also reported that the costs were excessive. By contrast, the 29 percent of court users who reported that quality was high considered the costs to be excessive.

Figure 5: Evaluation of overall expenses in relation to the quality of services, 2013



¹³ Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

The above results lead to the conclusion that improvements in quality would increase not only user satisfaction but also access to justice. These results highlight the interaction between efficiency, quality and access. Users who experience a lengthy time to resolution are likely to have paid more and be less satisfied with the service. By contrast, users who receive a prompt high-quality service are more likely to be satisfied and to perceive value in that service.

Justice services entail many individual costs to the user. The section below examines court-related costs, lawyer-related costs, and specific financial access issues facing lower-income Serbians, including court fee waivers, court-appointed attorneys, and legal aid.

Serbia does not have a system of private insurance for legal costs, so court users must pay fees out-of-pocket. Serbia is among only 13 countries monitored by the CEPEJ where such a system does not exist.¹⁴

Affordability of Court Fees

Court fees are set out in the Law on Court Fees.¹⁵ Fees are based on the stated value of the claim, up to a cap of 97,000 RSD.¹⁶ Fees are paid on every motion submitted,¹⁷ every decision rendered,¹⁸ and every court settlement reached in all litigious processes and commercial disputes. In uncontested proceedings, a nominal fee of 390RSD applies in some instances, though higher fees apply for uncontested processes involving property, such as inheritance procedures or division of property. Fees are also charged in criminal cases initiated by a private party, and Serbia is one of only eight countries monitored by the CEPEJ that charges such fees.¹⁹

Court users cite the court-related costs as a considerable obstacle to access to the judicial system in Serbia. In the 2014 Access to Justice Survey, focus groups stressed that court processes (particularly litigation) are considered very expensive even by educated citizens in Belgrade who are active in the economy. In the 2009 and 2013 Multi-Stakeholder Justice Surveys, the public with experience in court proceedings identified court costs as the most significant constraint as well. (See Table below.)

¹⁴ See *CEPEJ Evaluation Report, 2014* (based on 2012 data). Six EU Member States lack such a system, including Croatia, Ireland, Latvia, Malta and Romania. A further six countries that report data to CEPEJ lack a system, including Armenia, Macedonia, Moldova, Montenegro, Russia and Turkey.

¹⁵ Law on Court Fees (*Official Gazette of the Republic of Serbia No. 28/94*).

¹⁶ Fees range from 1,900 to 97,500 RSD in litigation and executive procedures, and 3,900 to 390,000 RSD in disputes before commercial courts. Fees are periodically amended for inflation or changes in currency exchange rates. In 2014, for instance, if the value of a claim is 10,000 RSD, a lawsuit fee will be 19 percent of that amount. If 100,000 RSD, the fee will be 5.9%, 3.93 percent for 1 million RSD, and 0.00975 percent for 10 million RSD. Regardless of the value of the claim, the fee cannot exceed 97,500 RSD before civil courts, and 390,000 RSD before commercial courts. Criminal proceedings not initiated by the Prosecutor also incur fees, though these are below 1,000 RSD.

¹⁷ E.g., initial claim, answer to the claim, counter-charges in litigious cases and in commercial disputes, motion for execution, securing of a debt, appeal, appeal for revision, and appeal for retrial.

¹⁸ E.g., first instance judgment, decision in trespass cases, decision on the dismissal of the claim or motion for execution, decision of the first instance court on the dismissal of the appeal.

¹⁹ See *CEPEJ Evaluation Report, 2014*. Court fees are charged to commence private prosecutions in Croatia, Cyprus, Greece, Monaco, Montenegro, Portugal and Switzerland.

Notably, businesses report that the courts are becoming increasingly inaccessible to them due to high costs.²⁰ In 2013, nearly 20 percent more businesses without court experience reported that court costs impact their access to courts compared with 2009. Approximately 7 percent more business entities with court experience reported in 2013 that court costs impeded accessibility than in 2009.

Half of the public and business representatives surveyed considered court-related costs in their particular case to have been excessive. These figures remain approximately the same as from 2009, except in misdemeanor cases. The Misdemeanor Court is increasingly unaffordable to users. In comparison with those who did not have experience with a court case, a considerably higher percentage of experienced citizens cite high costs, suggesting that perceptions of high fees are not a myth but based on the experience of users.

The majority of survey respondents state that costs of their own court case represented a burden on their personal budget. Compared to 2009, these figures remained constant with the exception of misdemeanor cases where, in 2013, a higher percentage of users stated that costs of their court case were a significant burden on their budget.

These perceptions are rooted in reality, particularly for those from less affluent parts of the country. As seen in Table 1 below, court fees for a divorce case, among the least costly in terms of court fees, would require the average person in Novi Pazar to pay 76 percent of their monthly net income in court fees alone. When attorney fees are included, even at the commonly discounted rate, the Novi Pazar resident would be required to pay nearly five times (523 percent) of their monthly net income to cover the total costs of the case. While a much wealthier Belgrade resident would pay only 20 percent of their average monthly net income in court fees for a divorce proceeding, once attorney fees are included, costs for a divorce would exceed the average Belgrade resident’s monthly net income.

Table 1: Divorce Costs as a Share of Average Income²¹

Region	Net Monthly Income per Capita	Court Fees ²²	Attorney Fees ²³	Total Fees	Court Fees as share of Income	Total Fees as share of Income	Total Fees (incl. only 50% Attorney Fees) as share of Income
Novi Pazar	6,970	5,320	62,250	67,570	76%	969%	523%
Belgrade First	27,110	5,320	62,250	67,570	20%	249%	134%

By contrast, court fees become relatively inexpensive in high-value civil cases.²⁴ There is a cap on court fees at 97,000 RSD (1,100 EUR), and stakeholders report that the cap distorts incentives when the cost of

²⁰ In the 2009 Multi-Stakeholder Justice Survey, business representatives found the judiciary to be more financially accessible than the public. However, there has since been a sharp increase in companies finding the Serbian judiciary inaccessible due to court-related costs.

²¹ Sources: Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>); Court Fee Schedule; Attorney Fee Schedule.

²² Fees assuming one filing fee and one first instance judgment fee.

²³ Attorney Fee assumes filing fee, two hearing fees, one postponed/adjourned hearing fee.

²⁴ 97,000 RSD is the maximum fee for cases involving claims 1 million RSD or more.

the claim is high by encouraging very wealthy individuals or large companies to pursue unmeritorious claims, exploit procedural inefficiencies or mount frivolous appeals. This anomaly could be rectified by removing the cap and simplifying the court fee structure based on the percentage of the claim.

Timing of Court Fees and Related Expenses

The Law on Civil Procedure envisages that each party pays court fees before they submit an initial claim or answer. The court will not suspend litigation for failure to pay fees; however, many potential or unseasoned court users may not be aware of the rule. In any event, the existence of significant upfront fees may deter access to the courts.

While court users report that the highest percentage of the overall costs of court proceedings relate to court fees, litigants may incur other significant costs. These include expert witness fees, witness expenses,²⁵ translation costs, and costs of placing ads on the court bulletin board. Users also incur personal costs, including their own travel and time off from work to visit lawyers and participate in proceedings. One participant in the focus groups noted that:

*'(...) I can't do my job and do this [pursue the case in court] at the same time, so I lose money. That's why it's very expensive, really time consuming and burdening.'*²⁶

Expenses such as those of expert witnesses must generally be paid in advance by the party who suggested their appearance before the court. In those instances, the court will proceed with the case without the report of the expert witness unless/until the expert fees are paid.²⁷ Some may be willing to produce an opinion before they are paid, however, given the growing problems with arrears, fewer and fewer experts are willing to do so (for further discussion on the impacts of arrears, see the Financial Management chapter of the Functional Review). Other expenses related to evidence, including those of other witnesses, shall be paid in advance or shortly after presentation of respective evidence.²⁸ These costs and their timing add further disincentives for parties to pursue cases.

Upfront costs further deter users because of the expected delay in recouping them. According to the Access to Justice Survey, when respondents who had not taken cases to court were asked why they would not do so, the most common reason cited was the expectation that proceedings would last too long (49 percent).²⁹ Serbia has also experienced periods of higher inflation in recent years, leaving court users out of pocket because of the delay. The expectation of a long delay in recouping costs if the party is successful may in itself deter access.

Constitutional Court cases pose slightly different access problems. Individuals who file an appeal to the Constitutional Court of Serbia (the last legal remedy that has to be used before a case can be brought before the ECHR) are not required to pay court fees but are generally required to cover their own attorney

²⁵ Transportation costs to court and lost income on the day of witnessing.

²⁶ *Access to Justice Survey, World Bank MDTF-JSS, 2014.*

²⁷ The only exception applies where certain facts need to be established by the court *ex-officio*. In these cases, the burden of presenting and covering the costs of the evidence shall be taken over by the court.

²⁸ For example, costs of a witness shall be paid in advance or within eight days after his or her testimony.

²⁹ *Access to Justice Survey, World Bank MDTF-JSS, 2014.*

costs. In addition, prescribed attorney fees for Constitutional Court proceedings are very high.³⁰ The inability to recoup these expenses would deter many potential court users from pursuing their claims.

Many courts maintain an online fee calculator that enables potential litigants to estimate their court fees before filing a case. This conforms to the CCJE standard³¹ that '(...) *technology should be developed whereby litigants may (...) obtain full information, even before proceedings are instituted, as to the nature and the amount of the costs they will have to bear*'. It is arguable whether these calculators alone can empower users to be informed about their costs up front, given that they don't provide all necessary information and explanations of the complexity of the fee schedule, including its dependence on the value of the claim and the type of case. As a result, parties seeking to understand the likely fees still need to visit the court to have court staff assist them. The online fee calculators would be more helpful if they contained explanations as to when a specific fee has to be paid and whether it should be paid by a plaintiff, a defendant, or both parties.

Accessibility of Court Fee Waivers

The Civil Procedure Code allows for court fee and cost waivers for parties who are financially unable to cover court-related costs.³² As demonstrated in Table 1 above and confirmed in surveys, lower income individuals are deterred from courts because of costs, and fee waivers may be critical to enable their access. Particularly in labor-related civil proceedings involving unpaid wages, a court fee waiver may determine whether the person can proceed with their claim or not. However, there is very limited

Inconsistent Application of Court Fee Waivers

In 2013, a lawyer assisted two indigent clients in Vojvodina in their claims for review of their legal capacity. The lawyer reported to the Review team that the two parties had identical circumstances – no income, no property and living in the same psychiatric hospital. Identical claims were submitted to two different judges of the same court requesting a waiver for the costs of medical examinations. One was accepted while the other was rejected. The second matter is currently awaiting appeal.

understanding of the court fee waiver option among the public, therefore many potential users would be deterred from the courts unaware they could access this benefit.

The court fee waiver program is largely undocumented. Official statistics and information on the number and amount of fee waivers granted by courts is lacking. Information about fee waivers is not recorded in AVP,³³ and manual registers of waivers are not kept. The only recording of fee waivers is by individual judges in their orders, therefore aggregation of data is not possible. It is possible that court fee waivers

³⁰ According to the Attorney Fee Schedule, a constitutional appeal costs 45,000RSD if it contains one claim, while every further claim costs 50 percent of this amount.

³¹ CCJE Opinion No. 6, 2004.

³² The court also has discretion to allow only a partial waiver under which only court fees are waived and the party pays other expenses.

³³ AVP can calculate court fees based on the case value and enter a comment about fees. However, there is no field or checkbox to indicate whether court fee waivers were requested or approved. In any event, many courts do not enter the court fee fields at all. They have little incentive to do so since there is no corresponding AVP report to make good use of the information by managerial staff. To improve the practice, a clerk could enter '\$0' as a court fee and make a reference to the judge's decision in the comment box. Alternatively, a waiver field could be introduced into AVP.

represent a ‘positive story’ where the court system is improving access to justice for poorer court users. However, it is difficult to measure any impact without better data.

The court fee waiver program is unstructured and largely goes unmonitored, resulting in divergent practices. There are no guidelines or standardized forms on granting a waiver. As a result, court practice varies according to information provided in interviews with attorneys and judges. Two different courts could rule on fee waiver requests entirely differently for persons in similar circumstances. Some courts report they apply a ‘rule of thumb’ that the higher the court fees, the more that should be provided in support of the claim; while other courts apply no such rule. In some locations, the judge or the presiding judge of a panel decides, in others the judge confers with the Court President. In some locations, two judges of the same court could rule differently, as shown in the box above. The lack of structure and guidance on fee waivers creates an inherent inconsistency in access to justice across the court system.

Though practice varies, stakeholders report that primary courts take into consideration the party’s property, income, and their family members. Courts may also consider the party’s financial dependents as well as the value of the claim.³⁴ In practice, interviewees indicated that judges would usually grant a waiver if the party submits an official statement to show they are unemployed and own no real estate. Recipients of social welfare may also be free from the duty of pay related costs of procedure, but again this is applied inconsistently.

Stakeholders reported that some Court Presidents informally discourage their judges from approving fee waivers as fees form a significant proportion of courts’ budgets (for further discussion of budgets, see Financial Management section). It is not possible to verify this claim, but if proven accurate, would suggest that extrinsic factors are influencing the access to justice of individual users and that practice is indeed inappropriately divergent.

Affordability of Attorneys

Parties in most cases choose to hire a private attorney for representation. The law requires only in some procedures that a party be represented by an attorney,³⁵ but in civil cases 65 percent of court users reported hiring an attorney, while 53 percent did so in criminal cases. There is also a high ratio of lawyers-to-population in Serbia.

Hiring an attorney is advisable if not necessary, due to the complexity and ambiguity of law and practice. Further, court users report they are strongly discouraged by peers to ‘go alone’ because the lawyer’s relationship with the judge may determine the outcome of a case. As stated by a participant in a focus group *‘the price of the lawyer also includes acquaintance with the judge.’*³⁶

³⁴ For example, if the value of the claim is very high, the fee would therefore be high. A waiver (a partial waiver) may be granted to a person who would not normally qualify, particularly if they are responding to a lawsuit.

³⁵ The *Civil Procedure Law* requires representation by an attorney in proceedings initiated by extraordinary remedial appeals. The *Criminal Procedure Code* also prescribes a number of specific circumstances (e.g., the defendant is tried in absentia, is hearing impaired) in which counsel is mandated. Finally, all minor defendants must have defense counsel. Applicants do not have to be represented by an attorney in proceedings before the Constitutional Court and the Administrative Court.

³⁶ *Access to Justice Survey, World Bank MDTF-JSS, 2014.*

Attorney fees and costs are highly regulated.³⁷ The Attorney Fee Schedule specifies fees for each type of proceeding and each legal action or motion.³⁸ Parties can negotiate, but fees must not be greater than 500 percent nor less than 50 percent of the tariff rate. In practice, assessments of payments reveal that the Attorney Fee Schedule is unrealistic.³⁹ Stakeholders reported it is common for parties to pay 50 percent of the tariff rate. In poorer areas outside of the cities, particularly in the South and East of Serbia, rates are likely to go below the 50 percent threshold.

The Attorney Fee Schedule is out of step with European practice and should be removed. In 42 of the 47 Member States of the Council of Europe, lawyers' remuneration is freely negotiated.⁴⁰ The European Court of Justice has found that the mandatory minimum fee violates Article 49 of the EC Treaty.⁴¹ To align national legislation with the Acquis, there is a strong trend among EU Member States and Candidate Countries to move away from fixed tariffs. During its accession process, Croatia amended the Law on Attorneys Service in 2008 to provide greater flexibility to attorneys in setting fees. Similarly in 2004, Romania eliminated minimum fees and strictly prohibited price fixing.⁴² Existing EU Member States have moved in the same direction.⁴³ Where fixed prices have been removed, several EU Member States have maintained recommended fee schedule for services, which may be set by either the professional body or the MOJ. These are justified on the basis of being a guide for consumers and judges in awarding costs, as well as a default scale in cases of where no agreement on fees is reached between the lawyer and the client. However, the EC advocates that both fixed and recommended fee scales are restrictive and anti-competitive forms of regulation and should be abolished at the earliest opportunity. The EC also argues that relevant information on the costs of legal services for consumers could be provided through alternative means far less restrictive of competition, such as the publication of historical and survey-based price information by independent parties, such as consumer organizations.⁴⁴

³⁷ *CEPEJ 2012, based on 2010 data*. In around 41 or EU Member States, remuneration between private parties is freely negotiated.

³⁸ Attorneys are entitled to all expenses as well as fees in case, such as transportation and accommodation costs, compensation for absence from office, per diem, and telephone bills.

³⁹ The Fiscal Impact Analysis of the draft Free Legal Aid Law drew on census data, case file reviews and interviews with attorneys to assess payment arrangements.

⁴⁰ See *CEPEJ Evaluation Report, 2014* (based on 2012 data). Only Cyprus, Germany, Slovenia and UK-Northern Ireland prevent free negotiation of rates.

⁴¹ In the *Cipolla Case* (C-94/04 - Cipolla and Others), the Court considered that the prohibition of derogation by agreement from the minimum fees set by the fee scale was a restriction within the meaning of Article 49 EC Treaty (free movement on persons and services), as the rules in question were liable to render access to the Italian legal services market more difficult for lawyers established in a Member State other than Italy. The Court held that the prohibition deprived those lawyers of the possibility, by requesting fees lower than those set by the scale, of competing more effectively with lawyers established in Italy on a stable basis, who therefore had greater opportunities for winning clients than lawyers established abroad.

⁴² Lawyers in Romania negotiate fees freely with clients, and these may be hourly fees, fixed fees or success fees.

⁴³ After prolonged debate, Italy moved away from its model in 2006, under which tariffs developed by the Lawyers' National Council and approved by their MOJ were binding. Italy eliminated minimum fees and allowed lawyers to decide their fees freely and link fees to the outcomes of their services. In 2003, Switzerland abolished its mandatory fee schedule under cartel laws.

⁴⁴ See *Competitive Restrictions in Legal Professions*, OECD, 2007, at p298.

Further, attorneys are paid per hearing or motion on the Fee Schedule, which is in conflict with CCJE opinion that ‘the remuneration of lawyers and court officers should be fixed in such a way as not to encourage needless procedural steps.’⁴⁵ Attorneys who accept payment by the case are rare.

Attorney fees are very high compared to the average per capita income in Serbia, particularly in criminal and civil cases.⁴⁶ The recent Fiscal Impact Analysis of Free Legal Aid Options conducted by the World Bank indicates that the average attorney’s fee in a criminal case is 118,000RSD, while that for a civil case is 75,000RSD.⁴⁷ The average criminal advocate fee is thus 17 times that of the average monthly net income of a resident of Novi Pazar, and more than four times that of the average monthly net income of a Belgrade resident.

According to the 2013 Multi-Stakeholder Justice Survey, 71 percent of the citizens with court experience found attorney-related costs to be one of the most insurmountable barriers to access to the judicial system.⁴⁸ Perceptions of affordability have deteriorated since 2009. 76 percent of respondents reported fear of inability to cover attorney-related costs strongly affects their decision on whether to bring a dispute to a court. Strikingly, the percentage of companies that find the judicial system inaccessible in terms of attorney-related costs rose by 18 percent from 30 percent to 48 percent in the period between 2009 and 2013.

Attorney fees create a barrier to access to justice for business, particularly small businesses. 52 percent of companies with 3 to 10 employees cite that attorney-related fees make the judicial system inaccessible, while 47 percent cite that court fees make the system inaccessible. Although these percentages decreased with size of the company, they remained obstacles even for larger companies (see

Figure 6).

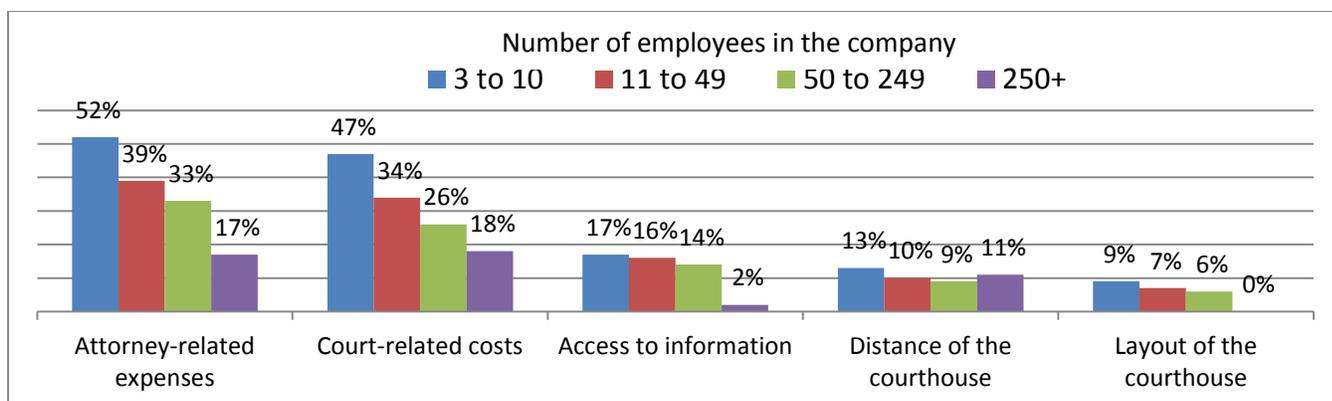
Figure 6: Reported Reasons why Judicial System is Inaccessible to Business by Size of Company, 2013

⁴⁵ CCJE Opinion No. 6 (2004) on *Fair Trial Within a Reasonable Time*.

⁴⁶ *Justice in Serbia: A Multi-Stakeholder Perspective*, World Bank MDTF-JSS, 2011. In misdemeanor and business sector cases, court costs were higher than attorney fees, while in criminal and civil cases attorneys’ fees far exceeded court costs.

⁴⁷ *Serbian Free Legal Aid Fiscal Impact Analysis*, World Bank MDTF-JSS, 2013. These data were collected through expert interviews and advocate fee sheets submitted as compensation claims collected at random from 27 Basic Courts and 22 Higher Courts Initial costs estimates were based on an identification of cost elements in these fee sheets.

⁴⁸ When asked to assess the accessibility of the judicial system in terms of attorney-related costs, only around 20 percent said that the system is accessible.



There are also concerns regarding the variable quality of attorneys. Several stakeholders report hearing large numbers of complaints regarding the quality of attorneys⁴⁹. Mechanisms for redress regarding the conduct of an attorney are opaque, and discipline of attorneys by any of the Bar Associations is rare.⁵⁰ Stakeholders were unable to point to any instance – of ex-officio attorneys or private attorneys – where an attorney has been sanctioned for malpractice. In a positive step however, attorneys are now required to hold professional liability insurance, and each Bar Association is able to pay for collective insurance for its members. So claims by former clients against negligent attorneys may be more likely in the future.⁵¹

Use of Ex-Officio Attorneys

Court users report that attorneys were appointed ex-officio in 17 percent of criminal cases and 2 percent of civil cases. Although the law requires ex-officio appointment in some cases,⁵² no official data are collected on the number of appointments or the types of cases where ex-officio appointment is most common.

Stakeholders expressed some concern regarding the integrity of the process for identifying ex-officio attorneys. The respective Bar Associations maintain lists of attorneys who specialize in criminal law and are available for work.⁵³ However, practice differs regarding the use of this list. In the past in Belgrade, the Bar Association had a telephone number that police, courts or prosecutors could call and be directed to an attorney. This practice was perceived well by stakeholders. Unfortunately, the practice ceased in 2013 amidst uncertainty regarding the leadership and management of the Bar. Outside of Belgrade, no such hotline has ever existed. Instead, the police make a series of phone calls looking for an attorney, relying either on the list (often an old copy) or their personal contacts. Since the introduction of the new

⁴⁹ See for example, the Annual Reports of the Ombudsman's Office for 2011, 2012 and 2013.

⁵⁰ Stakeholders were able to point to rare instances of civil claims made by former clients against attorneys for compensation or damage for losing a case when the attorney did not appear at the trial. In each case, stakeholders reported that the claimant was unsuccessful.

⁵¹ See amendments to the *Law on Attorneys*, 2011.

⁵² Criminal defense is mandatory in cases where the defendant is detained or where the offence is punishable by eight years imprisonment or more. Where the defendant is indigent, defense counsel may be appointed by the court in cases punishable by imprisonment of three years or more, or where reasons of fairness so require. In a very small range of instances, representation is required in civil cases.

⁵³ It is not clear, however, how often these lists are updated.

CPC, there has been some limited change in practice, but this has not addressed the problem. Prosecutors in Belgrade reported that they are required to make calls looking for an attorney.⁵⁴ They express discomfort with this process, given their high workloads and potential exposure to criticism and conflict of interest. Meanwhile in most if not all locations outside of Belgrade, police calls remain the standard practice.

Stakeholders expressed similar concern regarding undue influence in the appointment of attorneys. In some locations, the police, prosecutor, or the court reportedly narrow the list of attorneys and appoint only those who will encourage confession and lessen the workload of the case. It is not possible for this Report to substantiate these claims, but, if proven, such practices would deny defendants of the right to legal assistance of their own choosing under Article 6 (3) of the ECHR. The same concern has been expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on several occasions. In 2011, it reported that:

*'As had been the case during the 2007 visit, several detained persons who had benefited from the services of ex-officio lawyers complained about the quality of their work; in particular, the ex-officio lawyers apparently met their clients only once (in court), and often tried to convince them to confess to the offence for which they were being charged. Once again, the delegation heard allegations that the choice of a particular lawyer had been imposed on the persons concerned by the police.'*⁵⁵

The work of ex-officio attorneys is not monitored to ensure quality control. Information regarding appointments is not entered into AVP, or if entered, it is as a 'general remark' not suitable for running analytic reports. Some stakeholders report that the quality of work by ex-officio attorneys is lower than party-funded attorneys due to their limited accountability. Several stakeholders allege that ex-officio attorneys are more likely to pursue unmeritorious claims and appeals to increase their billings. In the absence of data or quality control mechanism, this Report is unable to substantiate these claims.

Accessibility for Unrepresented Litigants

Court users report that they represent themselves in around 30 percent of criminal cases and 30 percent of civil cases.⁵⁶ No official data are collected on the number of defendants who self-represent.⁵⁷

Self-representation would be very challenging in the Serbian context and place unrepresented court users at some disadvantage in terms of their access to justice. Judges usually guide or support self-represented

⁵⁴ However, it seems this practice, too, is inconsistent. In places under the jurisdiction of the First Basic Prosecutor's Office, the police are more likely to call attorneys, while in the Second Basic Prosecutor's Office, the prosecutors do it themselves. See *Report of the National Preventive Mechanism Team under the Optional Protocol to the Convention Against Torture*, 2014.

⁵⁵ See *Report to the Government of Serbia from the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT Report), 2011, at paragraph 22.

⁵⁶ This is a decrease from 32 percent in criminal cases, but an increase from 25 percent in civil cases in 2009.

⁵⁷ AVP was designed to record the identity of parties, their lawyers, and how much the lawyers are paid. However, courts do not systematically provide this information, and there is little incentive for them to do so as there is no standard report generated by AVP to aggregate and analyze the data.

litigants to ensure fairness. However, there is limited information or guidance for self-represented litigants, such as lay guides, checklists (see discussion of informational access below). The challenge is borne out in the results. In the 2013 Multi-Stakeholder Justice Survey, respondents who represented themselves had judgments go against them in a higher percentage of cases (60 percent) than people represented by a private lawyer (44 percent). The introduction of an adversarial system under the new CPC is likely to deepen the challenge in criminal proceedings. Initiatives to improve access to laws and court procedure (see below) would better enable users to navigate the court system. Initiatives to simplify case processing in the kinds of cases where users self-represent, such as in Misdemeanor Courts and in the pursuit of small claims in Basic Courts, could also improve access to justice for large numbers of people, while producing quality and efficient outcomes. For a further discussion on small claims, see the Efficiency chapter of the Judicial Functional Review.

Legal Aid Programs for the Indigent

The right to an attorney when fundamental rights are at stake is enshrined in international standards.

The further right to an attorney provided at state cost when a person cannot afford an attorney is outlined in the EU's Charter of Fundamental Rights,⁵⁸ the ECHR,⁵⁹ and the United Nations' Principles on Access to Legal Aid in Criminal Justice Systems. In Serbia, the Constitution guarantees the right to legal aid, but does not define 'legal aid' or who can provide it.

Current legal aid providers deliver an incomplete patchwork of services across Serbia. Around 46 municipalities have Municipal Legal Aid Centers (MLACs), and an additional 10 municipalities deliver legal aid without an MLAC. Together, these cover around one-third of the country and around one-half of Serbia's total population. However, the remaining municipalities do not provide the mandated services either because of funding or capacity constraints or because they do not prioritize the service. In Vojvodina, 28 of the 47 municipalities offer legal aid to the citizens.⁶⁰ Only six of these municipalities provide legal aid that includes representation before courts and administrative bodies, and the rest provide limited advice or information. Outside of Vojvodina, the situation is likely to be worse. Law Faculty Clinics and CSOs also provide some legal aid services in specific topics, such as refugee law and human rights protection.

National data is not collected on the number of instances of legal aid, nor on how much money is spent on legal aid service provision. Among the 47 countries monitored by the CEPEJ, Serbia is one of only four countries where it is impossible to identify the budget allocated for legal aid.⁶¹ Based on the municipal survey across Serbia in 2012, the 56 or so municipalities that provide legal aid of any form responded to 73,000 requests for assistance, offered advisory services 57,000 times, made 29,000 free submissions,

⁵⁸ Title VI Art. 47 paragraph 3 '*Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.*'

⁵⁹ ECHR Art. 6 paragraph 3 '*... to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.*'

⁶⁰ See *Pravna pomoć u jedinicama lokalne samouprave*, Provincial Ombudsman of the Autonomous Province of Vojvodina (Novi Sad, 2013), page 18.

⁶¹ See *CEPEJ Evaluation Report, 2014* (based on 2012 data). The other countries where legal aid expenditures are unknown are Armenia, Montenegro and Ukraine.

17,000 paid submissions, and 17,000 written submissions. Requests for assistance equaled slightly more than 2 percent of their collective populations. This was accomplished with a staff of around 80 legal advice providers and 20 support staff. In total, there were 911 requests per provider, 565 requests for submissions, and an estimated 379 actual court cases filings per provider.⁶²

Most citizens are unaware of any free legal services that might be provided in their city or municipality.⁶³ In the Access to Justice Survey, 58 percent of respondents across Serbia reported that they were not aware of any service that provided legal aid. An additional 25 percent indicated that no organization in their city or municipality provides free legal assistance to citizens. Namely, 82 percent of the respondents could not name a single organization or institution that provides legal aid free of charge, even when an MLAC is present in their municipality. Some of those who named an organization did so incorrectly – for example, 4 percent named the Ombudsman Office as an institution providing free legal aid, when it does not.

Where services are provided, they are perceived by clients to be of good quality. In the Access to Justice Survey, 93 percent of the respondents who used legal aid services were satisfied with those services, a resoundingly positive endorsement.⁶⁴

Rates of use of free legal aid, types of services provided, and satisfaction with services provided are not tracked or assessed at a central level. Data are fragmented and neither collected nor analyzed – some legal aid providers do not keep records at all.

Reform is underway to expand legal aid consistently with EU standards. A Working Group to draft a Free Legal Aid Law has been working on-and-off for several years.⁶⁵ A working group is aiming to finalize the draft, although that group met once in 2014. Key features of the draft law are outlined below, and some and remaining ‘sticking points’ and risks are highlighted.

- i. Primary legal aid (such as an initial consultation and the provision of general information and initial advice, as well as the drafting of documents) would be provided for all case types except commercial cases by a host of service providers, including MLACs, CSOs, trade unions and Law Faculties. All persons providing primary legal aid must be law graduates. However, no state funding is to be provided for this primary legal aid service, and there is no requirement for municipalities to establish MLACs. Delivery would presumably rely on international donor support or funding from individual municipalities. This is an area of high risk for implementation, because there is a high likelihood that primary legal aid would be underfunded. It is also likely that, without support, those municipalities that do not already have MLACs will not open them. Under the

⁶² This is based on the assumption that a portion of drafted submissions does not ultimately reach the court as an incoming case. Based on interview estimates conducted for the FLA Fiscal Impact Analysis, it was suggested that approximately two-thirds of submissions become incoming cases. *Serbian Free Legal Aid Fiscal Impact Analysis: Volume, Costs and Alternatives*, World Bank MDTF-JSS, 2013.

⁶³ *Access to Justice Survey*, World Bank MDTF-JSS, 2014.

⁶⁴ *Access to Justice Survey*, World Bank MDTF-JSS, 2014.

⁶⁵ A draft Legal Aid Bill was open for public debate in December 2013, and many comments were received, particularly from CSOs. However, the service delivery model, namely the use of one-stop-shops through the Ministry for Labor and Social Welfare, proved unfeasible so the draft required further reworking.

current scenario then, primary legal aid would continue to be provided inconsistently across the territory and underfunded compared with needs.

- ii. Secondary legal aid (such as representation in courts and mediation) would be provided for certain types of cases only, focusing predominantly on criminal defense. It would be delivered by those providers who are eligible to represent clients in court, as per the procedural rules that govern the time of case in question. In effect, this means that Bar Association attorneys will be the predominant providers of secondary legal aid. It is not clear whether trade unions or some other professional organizations may also be in a position to represent their members. It is also not clear how representatives would be chosen or allocated to cases. This aspect of the policy also poses high implementation risks. Relying on Bar Members for the bulk of service delivery would significantly increase program costs beyond what the justice system can likely afford in a challenging fiscal environment.⁶⁶ Further, Bar Members do not always have expertise in the types of cases where the poor need assistance, whereas associations and CSOs often have staff dedicated to specializing in this work, several of whom have law degrees and Bar exams, but are not members of a Bar Association. There is thus concern that Bar Members would deliver a lower-quality service for a higher-than-affordable price. Also, it is unclear how users would be aware of secondary legal aid services and referred to service providers in areas where primary legal aid does not exist.
- iii. Persons eligible to receive secondary legal aid would be individuals who already receive social benefits, as well as members of certain vulnerable groups (such as victims of domestic violence). Eligibility to receive social benefits would be determined through the database of the Ministry for Labor, Employment, Veteran and Social Policy (MLEVSP). However, it is not clear how any additional grounds of eligibility (for example based membership of a vulnerable group) would be determined.
- iv. The MOJ would develop a FLA Fee Schedule for the compensation of secondary legal aid providers. The Fiscal Impact Analysis of Free Legal Aid advises that this Fee Schedule should be significantly lower than the existing Attorney Fee Schedule, which has proven to be unrealistic.⁶⁷ There is some concern regarding the costing arrangements for all these service providers, and planning will be required to avoid the accumulation of arrears.⁶⁸

⁶⁶ Were the official tariff amount paid to attorneys in Basic Court cases expanded to all those eligible for legal aid, the cost is estimated at between 2.4 and 4.8 billion RSD per year. However, the cost of providing the same services through free legal aid (making a number of assumptions about eligible providers, the range of services provided, eligible recipients, and the administrative structure and the likely impact of quality controls) is estimated to be significantly less (estimated at approximately 600 m RSD per year).

⁶⁷ See *Serbian Free Legal Aid Fiscal Impact Analysis: Volume, Costs and Alternatives*, World Bank MDTF-JSS, 2013.

⁶⁸ Article 32, draft FLA Law suggests that only attorneys, notaries and mediators will be compensated by the state for the costs of secondary legal aid services and that the costs of all other services shall be borne by the providers. Such an arrangement may well undercut the purpose of the law and may result in primary legal aid services not being provided.

- v. Quality standards would be proposed and a quality control procedure would be established by a unit that would be created within the MOJ to perform oversight and assure efficacy of legal aid service delivery. Both primary and secondary legal aid providers would be required to be listed in a Registry of FLA Providers, to be managed by the MOJ. The providers will be required to keep records on their services and report annually to the MOJ on the scope and form of provided assistance. For primary legal aid providers, this would increase their bureaucratic overheads, even though they would receive no funding from the State.⁶⁹ It is unclear how the quality of legal aid service providers will be checked, and how data would be collected and monitored, particularly in secondary legal aid cases.

Of most concern, there appears to be an imbalance in the implementation and funding arrangements between primary and secondary legal aid under the current draft of the proposed law. Efficient delivery of primary legal aid is likely to have the greatest benefit in terms of increasing access to justice for the largest numbers of people. It will be important to ensure that this aspect of the reform is adequately funded (although costs need not be high) and delivered consistently throughout the country, including in municipalities that lack MLACs. Meanwhile, proposals for secondary legal aid are likely to impact fewer users and could be very costly. The proposal appears not to have applied lessons from the current arrangements for ex-officio attorneys,⁷⁰ so the quality of secondary legal aid services may be questionable. As a result, under the current arrangement both primary and secondary legal aid will face significant implementation challenges.

Refinement, finalization, and operationalization of the draft FLA Law should be a priority. After years of languishing in successive working groups, it will be important for a simple and effective law to be passed that is consistent with the minimum requirements of Article 6 ECHR and can be applied consistently throughout the country. The law will need to be costed and funds allocated to enable implementation of both primary and secondary legal aid. The oversight unit at the MOJ would also need to monitor implementation carefully, including by collecting and analyzing data on cases, beneficiaries, providers and service quality, and should be prepared to propose corrective measures for the continual improvement of the program. Without significant financial and operational planning and oversight, there is a risk that the reform may become ‘stillborn’ like others before it.

Lessons from legal aid systems in the region may be instructive in the final phase of refinement. A comparative analysis of legal aid systems was conducted by the MDTF-JSS in 2013, particularly highlighting Lithuania and Brcko, Bosnia, as two locations where legal aid has been implemented in a simple, effective, and fiscally responsible manner.⁷¹ It is increasingly common in advanced justice systems for legal aid to be provided on a user-provider payment system or voucher system, so that once a beneficiary is deemed eligible, the person can choose their own legal aid provider, rather than be allocated one. Such reforms have been known to improve both access and quality while enhancing user satisfaction and engagement in the process.

⁶⁹ See Article 10, draft Free Legal Aid Law.

⁷⁰ For discussion of ex-officio attorneys, see the Quality Chapter of the Judicial Functional Review.

⁷¹ See *Comparative Analysis of Free Legal Aid Options, World Bank MDTF-JSS, 2013*.

If implemented effectively, the FLA law has the potential to transform access to justice, comply with Chapter 23, and improve the perceptions of the judiciary in the public. It will not address the concern that courts are too expensive for average Serbians, but it would help to ensure that those most needy have improved access. Given the recent fall in incoming cases before all courts (particularly sizeable falls in Basic Courts), the court system has the capacity to absorb such an increase in demand that may arise. The effectiveness of legal aid delivery would also be greatly enhanced by the range of efficiency and quality initiatives discussed elsewhere in the Report. For example, establishing a simplified small claims procedure that encourages self-representation through a streamlined user-friendly process would significantly reduce the demand for free legal aid and enable scarce resources to be focused on meeting core needs to comply with Article 6 of the ECHR.

Access to information

Access to and Awareness of Laws

Access to and awareness of laws, a pre-requisite to access to justice, is limited in Serbia. Prior to 2014, the only legal databases where statutes in their complete form were available were those established and maintained by private companies. Private databases were available for an annual membership of approximately 400EUR.⁷² The National Assembly publishes legislation only as adopted without inserting changes in existing statutes. Ministries and other institutions that can adopt regulations do not always publish them.

The beginning of 2014 brought a significant change in availability of laws and other regulations. On January 1st, 2014, the Official Gazette (Službeni Glasnik) launched its online database where all legislation, including regulations adopted by bodies other than the National Assembly (e.g., ministries and courts), are available free of charge. The extent to which the new Official Gazette's legal database will increase effective availability of legislation remains unknown.

Nonetheless, court users struggle to find access information. In the 2013 ACA Court User Survey of court users, nearly half of all respondents reported that they had no information or were for the most part uninformed about the procedure that brought them to court.⁷³ The Survey also found that for those court users who were informed about the proceedings, over 40% reported that they got their information from direct contact with court staff, and 23% took information from other peoples' experiences. Focus groups suggested that people, regardless of their education, general awareness, or computer literacy often do not know where to find regulations and miss practical information concerning their rights or procedures for their protection. Those who have used the internet to obtain information on law and procedure say their search was time-consuming and frustrating because they had to visit a number of websites that sometimes offered unclear or different information from what is actually practiced.⁷⁴

⁷² For instance, the Paragraph Lex legal database, the most widely used, in 2014 charges new users RSD 44,990 (on April 2, 2014, approximately USD 537 or EUR 389) for its annual legislation package, while old users pay RSD 41,470 to renew their annual membership. See http://www.paragraf.rs/images/cenovnik_pravna_baza.pdf.

⁷³ See *ACA Court User Survey*, 2013.

⁷⁴ *Access to Justice Survey*, World Bank MDTF-JSS, 2014.

Frequent changes of legislation also undermine individuals' access to justice. Seasoned lawyers also find it difficult to know what the current law is, given the frequent changes. Judges acknowledged in interviews that they too struggle to be up to date with the constant amendments, especially when laws may be interpreted in more than one way and the interpretation of an official authority (such as a court or ministry) is lacking. For citizens, the challenge is compounded to the extreme.

Businesses report that frequent changes in laws and regulations create problems for their operations.⁷⁵ In focus group discussions, business representatives complain that laws are not accompanied by information that is easily available to companies, and high attorney fees deter them from seeking legal advice. As stated by the owner of an office supply company:

“The most severe problem in small companies is lack of information, since we are simply not able to deal with these things, with different new regulations popping out every day, we are simply stunned. We don't have legal departments, so that we can tell them – here are these invoices, do collect this money or sue them. We have to do it on our own, and I can't do my job and do this at the same time, so I lose money. That's why it's very expensive, really time consuming and burdening. And lawyers also charge a lot for it, with fees and everything”.

Farmers report similar problems, and complain that they find out about legislative changes too late. As one farmer in a focus group stated, ‘provisions should stay the same for a longer period of time, so that peasants get informed about them and know what to do if they have a problem, how to react’.⁷⁶

Individuals and companies would welcome free access to practical guidelines, authoritative interpretations, and commentaries following new legislation. Where they exist, useful commentaries on legislation by relevant experts are not available free of charge. Even the above mentioned Official Gazette's database, which now provides all laws and regulations free of charge, provides commentaries on legislation only to subscribed and paying users.

Access to Court and Case Information

Access to court information is a necessary pre-requisite to enable a court user to engage with the logistical and procedural aspects of their case. Ensuring that users are better informed can reap significant benefits in terms of efficiency. As outlined in the Efficiency chapter of the Judicial Functional Review, the Vrsac Basic Court prepared checklists of information for users, which has smoothed and improved efficiency in case processing.

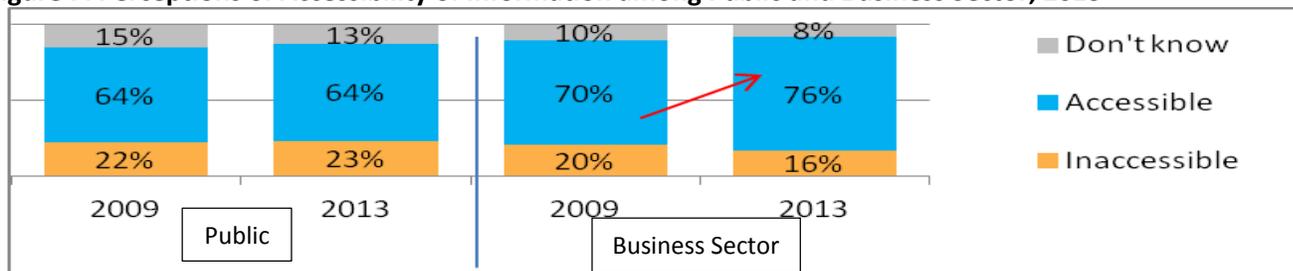
In the Multi-Stakeholder Justice Survey, 64 percent of the public and 76 percent of business sector respondents reported that the judicial system is accessible in terms of general access to information. Respondents agree that access to information on how to initiate judicial proceedings is not a significant

⁷⁵ See also the section on quality of law making in the Quality Chapter. NALED tracks 30 laws important for businesses and reports that over the last five years, these laws have been amended or overhauled 98 times in total.

⁷⁶ *Access to Justice Survey, World Bank MDTF-JSS, 2014.*

barrier in efforts to file a case in court. On a further positive note, and in contrast with 2009, a higher percentage of business representatives report that information is accessible (see Figure 7 below).

Figure 7: Perceptions of Accessibility of Information among Public and Business Sector, 2013⁷⁷



However, the availability of information on misdemeanor proceedings is worsening. In 2013, 24 percent of respondents complained it is hard to collect information about misdemeanor cases, compared with only 6 percent of respondents in 2009.⁷⁸ Access to information in misdemeanor cases is particularly important because the users in these cases usually research and represent themselves. Easily accessible information in lay formats could thus also improve the efficiency and quality of proceedings in Misdemeanor Courts.

Access to information is a particular challenge for seniors and the least educated citizens.⁷⁹ In the Multi-Stakeholder Justice Survey, 58 percent of the elderly and 63 percent of the least educated expressed that difficulties in finding the necessary information influences their decision to initiate a judicial procedure or not.⁸⁰ This information should be borne in mind when planning how to make information on procedures more accessible.

Information on how to enter complaints against the courts is also not easily accessible. For further discussion about complaints mechanisms, see the Quality chapter of the Judicial Functional Review.

Respondents use several sources of information when looking for information about their case. This varies in frequency depending on the type of case. In criminal cases, lawyers are the most common source of information at 44 percent, followed by unofficial sources such as friends and media, and then official court sources of information. Unofficial sources of information prevail in misdemeanor cases (50 percent), followed by official court sources (39 percent). In civil cases, lawyers and official court sources of information are used most frequently (34 percent). As for the business sector, lawyers are the prevailing source of information (63 percent), and somewhat less than half of companies (47 percent) use official court sources.

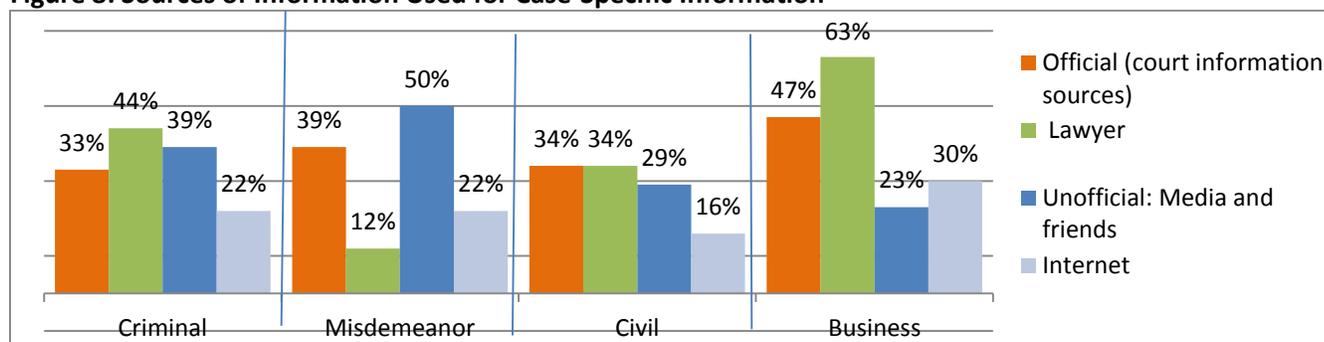
⁷⁷ *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

⁷⁸ The proportion of those saying it was easy to obtain information declined in civil cases as well (from 61 to 48 percent), but this was accompanied by an increased proportion of those who let their lawyer collect information (from 25 to 33 percent).

⁷⁹ In the 2011 Census, 'elderly people' refers to those over 60 years of age, composing around 24.7 percent of the population. 'Uneducated people' refers to those with nil or incomplete primary education, composing around 13.7 percent of the population.

⁸⁰ *Access to Justice Survey, World Bank MDTF-JSS, 2014.*

Figure 8: Sources of Information Used for Case-Specific Information⁸¹



Respondents to both Multi-Stakeholder Justice Surveys indicated that among official sources of information, court staff and the registry desk were used most often. Over 70 percent of respondents in the public and business sector that used official information sources were satisfied.⁸² Little mention was made of using printed materials from the court (e.g., informational brochures or leaflets), with only 3 percent of respondents relying on these sources of information. It may be that such information is not readily available at courts. During field visits, such brochures and leaflets on basic procedures were sought to be obtained without success.

Victims of crime are at a particular disadvantage when accessing information and navigating the court system. All EU Member States (except Latvia) offer a free-of-charge service to inform and help victims of crime, in recognition of their vulnerability and specific justice needs. Among those countries monitored by the CEPEJ, Serbia is also one of only five states that lacks such a service.⁸³ In Serbia, such services are provided on a voluntary basis by a patchwork of local CSOs.

There is considerable room for improvement in making information available online. Some courts have rich websites (for instance the Leskovac Basic Court), while others do not have a website at all. Some CSOs also offer useful practical information. Providing online information enables potential users to conduct research without assistance, prevents unnecessary travel to the courthouse, and can improve the efficiency of court processes. In 2013, only 24 percent of survey respondents⁸⁴ indicated using the internet for information since websites do not contain useful information and litigants do not know how to access these websites. In 2012, internet penetration in Serbia was approximately 60 percent,⁸⁵ but this will invariably rise in the medium term and the Serbian judiciary should be prepared for when it occurs. In the meantime, offline versions should also be readily available, particularly for rural, elderly, and the least educated groups. For discussion of online resources, see the ICT Management section of the Judicial Functional Review.

Availability of court information saw significant progress with the introduction of a web portal, the Sudova Srbije. The portal provides information on the status of ongoing procedures in first instance

⁸¹ *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

⁸² *Justice in Serbia: A Multi-Stakeholder Perspective*, for the World Bank, September 14, 2011, pg. 41.

⁸³ See *CEPEJ Evaluation Report, 2014*. The four other jurisdictions that lack a system to inform and help victims of crime include Andorra, Armenia, Latvia and Montenegro.

⁸⁴ *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014*. This is an increase from 16 percent in 2009.

⁸⁵ *IPSOS Media, 2012.*

courts, including hearing dates. Due to privacy constraints, the portal can only be accessed by those who know the case number, which causes some confusion for parties and lawyers alike.⁸⁶ Further, the portal does not currently provide information about matters before appellate courts and the SCC. None of the four appellate courts or the SCC post daily schedules online. Hence, parties to proceedings are not in a position to know when an appellate court or the SCC will hold deliberations in their case. The Constitutional Court, which used to announce its daily schedule, have since abandoned this practice. Croatia's 'e-case' portal provides greater coverage as well as more detailed information. It has better managed the privacy constraints by providing the initials of the parties and their case file numbers to enable easy identification. Reforms similar to 'e-case' would be readily implementable and would improve access to court information in Serbia.

Court notice boards could also provide better information to court users. As court users often are required to wait in public areas for hearings or services, this provides a low-cost and easy-access option for raising awareness to anything from changes in procedure, lay guides, checklists, lay formats of annual reports etc. Court staff, under the direction of the Court President, could be more proactive in enhancing the visibility of notice boards and ensuring that they provide accurate and relevant information for court users.

Access to Court Decisions

The SCC is the only court with regular publication of all its decisions. The Constitutional Court has made many of its decisions available online for the public. Other courts do not regularly publish their judgments, although some, in particular appellate courts, make some particularly important decisions or excerpts from decisions available on their websites. Selected decisions are also periodically published in the Official Gazette. However, the number of decisions available online remains limited. Only the Constitutional Court's website has a search engine that allows keyword searching. A search engine for the SCC's website is currently under construction.

The Act on Free Access to Public Information allows all individuals can request a court to provide them with its decisions.⁸⁷ In general, courts fulfill this duty though in some cases, delays occur especially if a request involves a large number of decisions. Parties to court proceedings can always ask courts for decisions made in their case and also have access to their case files.

Access to Alternative Dispute Resolution

Evidence from numerous countries shows that the effective use of mediation can enhance the efficiency of dispute resolution, reduce the number of pending cases, and help keep cases from returning to the judicial system. Estimates from Serbia's Free Legal Aid Working Group members indicate that the cost of a case concluded through mediation will be approximately 25 percent of that of a case completed through

⁸⁶ In December 2013 the Commissioner for the Protection of Personal Data ordered the MOJ remove all names and addresses from the portal.

⁸⁷ The War Crimes Chamber of the Belgrade High Court does not make its judgments available to the public, notwithstanding orders to do so by the Commissioner for Free Access to Public Information.

litigation, with significant savings to the courts and to parties.⁸⁸ Such a reduction in costs indicates that mediation may directly enhance access to justice by allowing more affordable dispute resolution.

The EU actively promotes methods of alternative dispute resolution, including mediation. Standards require member states to encourage training of mediators and to urge judges to invite parties to try mediation first. The EU also highlights certain safeguards, such that mediation must take place in an atmosphere of confidentiality, and that mediators cannot be obliged to give evidence in court about mediations.⁸⁹

In 2005 a legal and institutional framework for mediation was established in Serbia,⁹⁰ but mediation was never fully embraced. Despite the judiciary's poor reputation, backlogs, and efficiency challenges, the alternative course was not perceived to be more attractive. Over time, the number of mediation cases in Serbia has reportedly decreased.⁹¹

Mediation has not been effectively incorporated into the regular proceedings of all courts. Instead, the system sits astride the regular system and depends on individual judges, attorneys, or parties to propose its use of their own initiative. To be effective, a court-annexed mediation system should be integrated into the case flow, and a system developed to divert cases to mediation at the appropriate time. Further, there is an absence of public awareness and understanding of the concept of mediation and its potential benefits, so court-annexed mediation programs experience difficulties in finding citizens interested in using mediation services. Lastly, there has been an absence of cooperation between stakeholders in the field of mediation.⁹²

Awareness of mediation is somewhat limited, although it is more commonly known in business circles. According to the 2013 Multi-Stakeholder Justice Survey, only 17 percent of general court users and around 53 percent of business users know what mediation is, and these levels of awareness have been constant since 2009.

Some limited mediation does occur outside of the court system. The National Bank of Serbia, the Commissioner for the Protection of Equality, the Association of Mediators, and the Chamber of Commerce

⁸⁸ *Serbian Free Legal Aid Fiscal Impact Analysis*, World Bank MDTF-JSS, 2013.

⁸⁹ See for example, https://e-justice.europa.eu/content_eu_overview_on_mediation-63-en.do

⁹⁰ The 2005 Law on Mediation enabled mediation in all disputes unless a law stipulated the exclusive authority of a court or other relevant body. Mediation could be initiated either before or after the initiation of court proceedings, or independent of any formal proceedings. Court-annexed mediation services in the Basic Courts and certain courts of special jurisdiction could be used in civil matters, such as property, family, commercial and employment disputes. In criminal matters, court-annexed mediation could be used to facilitate an agreement between the victim and a juvenile offender (victim-offender mediation). Civil and criminal mediators were mostly sitting judges, but occasionally included trained professionals. In family disputes, particularly in cases involving parental rights, mediation was generally carried out in collaboration with social welfare centers. In 2006, the 'Republic Mediation Centre' was established to organize mediation services, organize training and expert conferences, and publish relevant materials.

⁹¹ *Recommendations for Development and Implementation of Mediation in Serbia*, Blažo Nedić, Jelena Arsić, 2011.

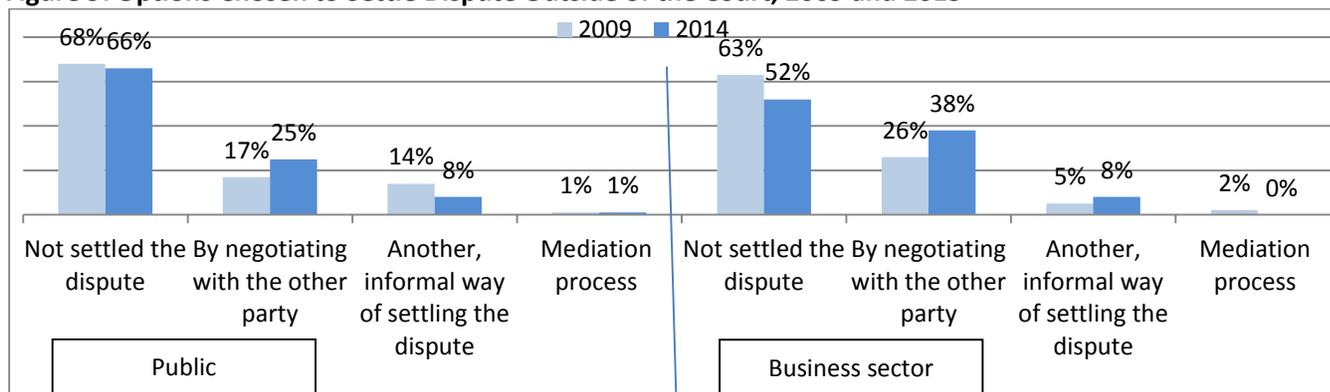
⁹² *Mediation in Serbia, Achievements and Challenges, Partners for Democratic Change*, Serbia, 2012.

and Industry all offer mediation for some types of disputes. However, a recent evaluation of the use of mediation in Serbia indicated that these efforts are ad-hoc and used only sporadically.

Mediation also suffers from a perception problem, largely because previous reforms offered promise but were ‘stillborn’. Among the general and business court users who heard about mediation, the majority considers it useful, but they are more likely to think that it is just partly useful rather than very useful. Furthermore, there has been a decrease in its perceived effectiveness. Among those who are aware of mediation in the 2013 Multi-Stakeholder Justice Survey, 36 percent of the general court users considered mediation very useful, a decrease of 15 percent from 51 percent in 2009. Conversely, 7 percent more people in 2013 consider it to be not useful at all. People who claimed to have had a dispute they thought should be settled in the court but decided against such action rarely choose to settle the dispute by mediation procedure. Only 1 percent of general population (out of those who had a dispute but decide not to settle it in the court for any reason) opted to settle the dispute by mediation process, while in business sector mediation was chosen by only 2 percent in 2009, and 0 in 2013.

Nonetheless, court users – and potential users – appear to want alternatives outside of the court system, indicating that a well-designed mediation system would attract demand from potential court users. In the Multi-Stakeholder Justice Survey, 33 percent of the public and 46 percent of business representatives who had a dispute prefer to negotiate with the other side or resolve it informally somehow (see Figure 9 below). Similarly, in the 2014 Access to Justice Survey, the majority of people reported having a dispute but opting not to take a suit to court. Of them, 23 percent said they negotiated their dispute on their own with the other party, and a further 5 percent found an informal way to settle the dispute. The remaining 72 percent said the dispute was still outstanding.⁹³

Figure 9: Options Chosen to Settle Dispute Outside of the Court, 2009 and 2013⁹⁴



Recognizing the problems of the previous ‘stillborn’ reforms, the MOJ formed a number of working groups between 2010 and 2014 to consider amendments, and in May 2014, a new law on mediation was adopted by the Serbian Parliament. Under the new law, the Republic Mediation Center has been disbanded and mediation is expected to be brought under the umbrella of the courts. Judges are now

⁹³ *Access to Justice Report, World Bank MDTF-JSS, 2014.*

⁹⁴ Survey Question: *How did you settle the dispute?* Population base: members of public and business sector who reported to had a dispute they thought should be settled in the court but decided against such action. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

expected to act as mediators outside of their working hours and using court facilities. The 2014 Mediation Law allows for parties to be relieved from paying court fees if mediation is successful before the end of first hearing. As with the first law, mediation may be used under the new law in any dispute unless a law stipulates the exclusive authority of a court or other relevant body. In particular, mediation is seen as suitable for property, family, commercial, administrative, environment, consumer, and labor cases. In relation to criminal and misdemeanor cases, mediation may be used for damage and compensation requests.

However, the new law on mediation has not addressed the institutional shortcomings that were present under the first law. Other than providing for some fee relief and expanding the scope of cases for which mediation is seen as suitable, the new law does not address the problems identified above. The role to be played by attorneys and parties is not clear, though practice around the world suggests that lawyers need not always be involved. If lawyers do participate, consideration will need to be given to the extent to which it may charge for mediation or whether legal aid would be.⁹⁵ It will be necessary to monitor the potential misuse and failure of parties to comply with mediated available agreements.⁹⁶ By-laws, to be developed within the next six months, may assist but the challenges of implementation are likely to be significant with this model and should be carefully managed in the rollout. Legal changes need to be supported by extensive outreach, regulatory considerations, and incentives to encourage the use of mediation.

The judiciary can expect some challenges in implementing a system where judges become mediators. The Multi-Stakeholder Justice Survey found that Serbian judges are not very supportive of mediation (see Box below). A significant behavioral change and training would thus be required for them to become champions of the process. The extent to which judges were consulted through this process is also unclear, and no additional incentives were provided for judges to perform this further work outside of normal hours, potentially creating a systemic vulnerability towards gift giving or malfeasance by parties. Although mediation requires a very different skill set from judging, there remains no special training for judges who mediate disputes. Further, as European standards require that judges should not hear a dispute on which they have previously mediated,⁹⁷ careful confidentiality and conflict of interest rules will need to be managed.

⁹⁵ CCJE also calls for legal aid to be available for mediation (and other ADR) phases of a case, not just when cases enter the trial phase.

⁹⁶ Under the new law, settlements at mediation are as enforceable as court decisions. Enforceability of non-utility bill enforcement has been improving but issues remain. Deeper analysis is necessary to help improve performance in this important area. See Efficiency Chapter.

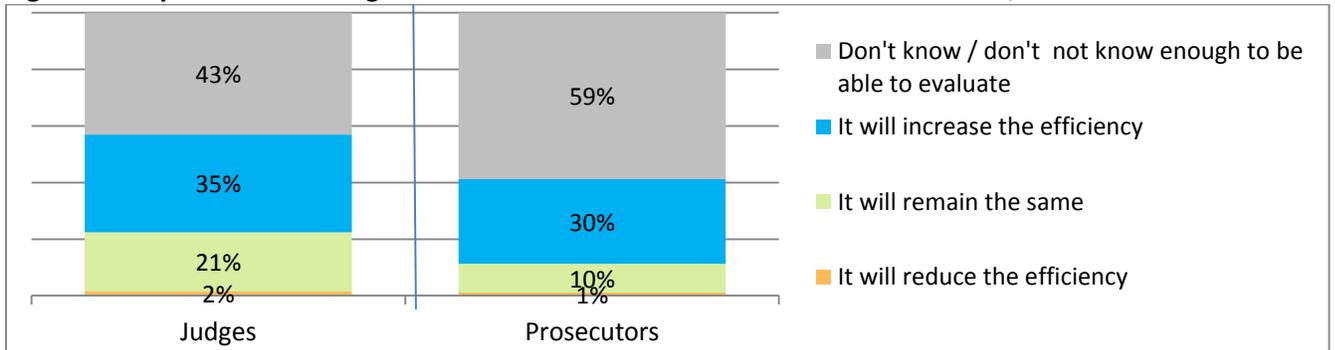
⁹⁷ See for example Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on *Certain Aspects of Mediation in Civil and Commercial Matters*.

Box: Attitudes of Judges and Prosecutors to Mediation

- About half of judges and prosecutors consider mediation partly useful, and only about one-third consider it very useful.
- 53 percent of judges report to be informed about mediation. A substantial number of judges claimed that they are not well-informed about the mediation process.
- Only around 20 percent of judges and 8 percent of prosecutors have undergone mediation training.

Currently, judges and prosecutors report ambivalence about the proposed law. It is therefore timely for a significant investment in outreach, awareness raising, and training of judges and court staff. The proper functioning of the system presumes that all the actors in the system have basic knowledge of mediation. Although some courts employ mediation coordinators, they are often individuals who perform judicial functions and therefore cannot be expected to oversee effectively the administration and management of cases referred to mediation in addition to their regular judicial duties. Partners in Serbia suggest a tiered approach to training for mediators, attorneys, prosecutors, judges, and non-judiciary people who will have some participation in mediation (e.g., business leaders, media, CSOs, and other stakeholders).⁹⁸

Figure 10: Expectations of Judges and Prosecutors towards the new Mediation Law, 2014⁹⁹



Support for mediation by the Court Presidents and other managers, and understanding of their role in the mediation process, will be vital for the successful use of court mediation. The CCJE calls for judges to encourage consensual settlement,¹⁰⁰ and elaborates that ‘understanding the respective roles of judges and lawyers in the framework of friendly settlements by conciliation or mediation is a vital factor for developing this approach.’ These factors are not yet present in Serbia.

⁹⁸ *Mediation in Serbia, Achievements and Challenges*, Partners for Democratic Change, Serbia, 2012, pg. 63.

⁹⁹ Survey Question: *Prepared is a draft of the new law that stipulates establishing of a completely new mediation system, which includes license for mediators, founding of a chamber, and standardization and accreditation of mediator training programs. In your opinion, how will enactment of the new Law on Mediation affect the efficiency of the judicial system? Scale: .1 It will reduce the efficiency, 2. It will remain the same, 3. It will increase the efficiency, 3. I do not know enough to be able to evaluate.* Population base: total target population. It should be noted that some amendments were made to the draft law between late 2013 when this question was posed and May 2014 when the law was enacted. These changes may thus influence current perceptions. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

¹⁰⁰ CCJE Opinions No. 6 (2004) and 16 (2013).

Familiarity among the judges, court staff and the public is an issue, but it may not be the primary barrier.

In a recent crowd-sourcing survey,¹⁰¹ of those who answered the question about mediation, a minority of respondents indicated they were prepared to use mediation, with some doubting its efficiency. Impediments to use of mediation cited by participants included:

- a. insufficient incentives to use mediation, since some parties could simply afford to wait while the civil litigation drags for years on end;
- b. insufficient incentives for lawyers to recommend mediation because of its likely impact on their litigation fees;
- c. lack of trust by parties in the impartiality and fairness of the mediator; and
- d. unwillingness of the judiciary to direct parties to mediation, mainly due to inertia and resistance to change.

A case referral and management system for mediation is a critical step to optimize the benefits of mediation and improve both quality and efficiency in the courts' performance. Implementation of mediation in courts will require clear criteria, such as the criteria for selection of cases suitable for mediation, administrative procedures,¹⁰² and statistical monitoring and reporting. It may be worth considering how best to incentivize judges to refer certain types of cases to mediation, perhaps via a 'reward' or 'bonus' earned via productivity norms. Mediation could for instance be counted as part of the individual judges' workload, and incentivized in evaluations and promotions for judges and Court Presidents.

Access to Allied Professional Services

A vast array of professionals other than attorneys – including bailiffs, interpreters, expert witnesses, and mediators – support the delivery of justice. Access to information on these providers and the ability to retain them at a reasonable cost is needed to access the courts effectively. To ensure access to these professionals, litigants need to be able to identify them easily by geographic area and needed topic area (e.g., a Romanian speaker in a certain vicinity), understand likely fees, and) know if there are pending complaints against them.

Information available on registries varies in quality and scope. The MOJ has created registries for most enforcement agents and expert witnesses¹⁰³ and a registry of interpreters is included on the Association of Interpreter website as well as elsewhere. Interpreter and expert witness registries appear to be adequate to make a selection by specialty or language. However, it can be difficult to access fee

¹⁰¹ Impressum, *Judicial Reform through the interaction of Citizens and States (Judicial Studies Series Volume II)*, UNDP Survey, December 2013. A crowd-sourcing survey notifies people that a survey is available to be completed on-line. Respondents are self-selecting and they may choose which questions to which they will respond. This crowd-sourcing survey was hosted for one month on the website of the B92 news agency. Most respondents did not respond to the full list of questions. Of the 1,656 responses received, 173 answered the question about mediation.

¹⁰² Such as timing of the mediation referral, the content of the case file which is referred to mediation and management of cases where an agreement is reached through mediation as well as those where no agreement was reached.

¹⁰³ Registries will be available for private notaries and mediators once notarial registration and mediation are implemented. Individual courts also maintain registries of expert witnesses.

information,¹⁰⁴ and the process for registering a complaint against one of these professionals with an individual judge is not described online. The only mechanism to complain would be to approach the individual judge in the case.

Geographic and Physical Access to Justice Service

Geographic Access to Court Locations

Geographic barriers to access to justice are not a significant concern in Serbia, particularly in light of its manageable size and population. Around 73 percent of citizens and 85 percent of business representatives do not consider distance to the courthouse to be a problem. The elderly and the least educated are the only cohorts to indicate in a sizeable minority that the distance to the courthouse makes the judiciary less accessible.

Average distance to a courthouse has reduced even further due to changes to the court network, effective 1 January 2014. An earlier UNDP survey found that the 2010 re-networking had somewhat hindered access to courts for some parts of the population, increased costs for the parties and their lawyers, and adversely affected lawyers working in smaller communities.¹⁰⁵ However, the recent expansion increased the number of Basic Courts to 66 from 34. The expansion of courts was largely achieved by converting 'Court Units' to 'Basic Courts', thus almost doubling the number of Basic Court locations that hear criminal proceedings and hold hearings on a daily basis.

Further expansion of the court network would be unnecessary. Future efforts to improve physical access to justice services would be best addressed using online strategies, such as e-filing. As internet penetration improves, geographic distance will become less relevant than before. The development of streamlined online processes can bring a range of court services directly to the user.

Physical Layout of Court Locations

The layout of courts is generally accessible for court users. Notwithstanding suboptimal physical conditions, in both the 2009 and 2013 Multi-Stakeholder Justice Surveys, respondents mentioned they did not generally cite physical access as a barrier to the delivery of court services. This suggests that access to justice efforts should focus on substantive access to services. Nonetheless, infrastructure upgrades have the potential to improve public perceptions of access to justice by signaling a modernization in justice service delivery and easing constraints for those who work within courts.¹⁰⁶

Persons with disabilities experience particular challenges in accessing courthouses. Respondents to the UNDP survey¹⁰⁷ indicated that physical inaccessibility of judicial facilities is a primary barrier to access to

¹⁰⁴ This is referenced in the rulebook on remuneration of expenses in court proceedings, but is not available on the MOJ website.

¹⁰⁵ Impressum, *Judicial Reform through the Interaction of Citizens and States, Judicial Studies Series Volume II*, 2013.

¹⁰⁶ For further discussion, see the Infrastructure Chapter of the Judicial Functional Review.

¹⁰⁷ Impressum, *Judicial Reform through the Interaction of Citizens and States*, for UNDP, December 2013, pg. 39.

justice for this group. Their concerns relate to the primary entrance to buildings, movement throughout facilities, and adaptability of information for those with visual, audio or learning disabilities.

Further, in a few locations, navigation within courthouses can be challenging as signage is limited and the layout is not intuitive. In these locations, it is common for court users to roam the halls looking for courtrooms or counters. This puts disabled court users at a particular disadvantage, but also affects general court users. Increased use of clear navigation signs would be a low-cost initiative for these locations that would also save the time of court staff and likely increase user satisfaction. In areas where languages other than Serbian are common among court users, multi-lingual signs should be used.¹⁰⁸

Equality of Access for Vulnerable Groups

56 percent of the citizens surveyed consider the judiciary equally accessible to all citizens, regardless of their age, socio-economic status, nationality, disability, and language. However, 38 percent of reported that it is not equally accessible to all. Similarly, 59 percent of business sector representatives consider the judicial system equally accessible to all companies, while 35 percent of the latter do not share this opinion.

Compared with population average, citizens with less education (elementary school and lower) and citizens over 60 years of age perceive the judicial system as less accessible to them in all aspects, including costs. Citizens who live outside urban areas experience more difficulties in obtaining necessary information, finding their way in the courthouse, and distance of the courthouse. These responses point to the need for providing specific assistance to targeted populations.

Individuals with intellectual and mental health disabilities experience significant disadvantage in their access to justice services. The process by which individuals can be deprived of their legal capacity is not as stringent as European and international standards require.¹⁰⁹ Research conducted in 2011 indicates that a hearing by a judge is conducted in only around 12 percent of all cases.¹¹⁰ This appears to contradict the requirement that such hearings may be dispensed for exceptional cases only.¹¹¹ In 94 percent of deprivation of capacity cases, individuals are deprived of all their legal capacities. This contradicts the CoE Principles Concerning the Legal Protection of Incapable Adults, which states that different degrees of incapacity should be recognized, and that measures of protection should not automatically result in a complete removal of legal capacity.¹¹² Recent amendments in May 2014 to the Act on Non-Contentious Proceedings introduced periodic re-assessments of capacity at least once every three years, a move towards compliance. Stakeholders expressed concern that social welfare centers, which act as legal guardians in many cases, are under-resourced and may visit their wards less than once per year. The

¹⁰⁸ See also the Infrastructure Chapter of the Judicial Functional Review.

¹⁰⁹ See 'Principles Concerning the Legal Protection of Incapable Adults', adopted by the Committee of Ministers of the Council of Europe in 1999, Recommendation No. R (99) 4, adopted by the Committee of Ministers of the Council of Europe on 23 February 1999. See also the *Convention on the Rights of Persons with Disabilities*, 2006.

¹¹⁰ Research conducted by the Mental Disability Rights Initiative of Serbia and the Belgrade Centre for Human Rights, 2011.

¹¹¹ See, for example, ECtHR judgment in *Shtukaturv v. Russia* (Application No. 44009/05), para 73. See also written comments submitted to the ECtHR by the European Group of National Human Rights Institutions in *D.D. v. Lithuania* (Application No. 13469/06).

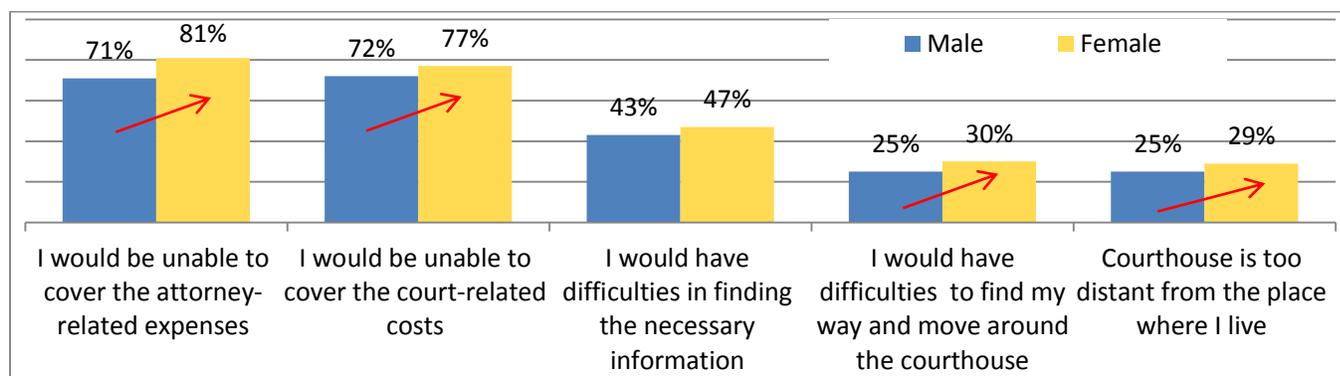
¹¹² See CoE Principle 3 and ECtHR judgment in *Shtukaturv v. Russia*.

procedure for wards to challenge their deprivation of liberty and re-assess their capacity is also opaque, and it is not clear whether individuals can apply on their own behalf. Some CSOs are supporting applicants to do, so citing ECHR jurisprudence, though those without CSO support would likely be unable to contest their status.

Gender disparities are minimal: there is no significant difference between the proportion of men and women who would decide to bring a case to court when they think that court was the proper forum for resolution. Approximately 8 percent of men and 2 percent of women decided not to bring a case to court even though they believed court was the proper forum.¹¹³

The only significant difference between women and men respondents in perceived barriers to access was found in lawyer-related costs. Considerably, more women (81 percent) than men (71 percent) stated that lawyer-related costs would be relevant to their decision to take a dispute to court. This is also the only problem women mentioned more than the population as a whole.

Figure 11: Male and Female Perceptions of What Deters Potential Court Users¹¹⁴



Members of focus groups from the Lesbian, Gay, Bisexual, and Transgender population (LGBT) are less likely than others to file cases to protect themselves or punish those who have harmed them. Most cases related to violation of LGBT rights have been started with active participation of an NGO. Anonymity in court cases is a common reason, and many LGBT citizens, especially those in small communities, are reluctant to ‘come out’ in a public forum. Others are afraid of retaliation from their alleged harassers, and experienced activists who follow court proceedings are deeply pessimistic.¹¹⁵

Members of the Roma community, refugees, and internally displaced persons (IDPs) share the opinion that courts do not treat all members of the public equally.¹¹⁶ As courts do not collect data on users’ personal characteristics, the Review is unable to substantiate whether this perception is rooted in reality or due to an outdated perception retained from the past. There may be a case for strengthening the

¹¹³ *Access to Justice Survey, World Bank MDTF-JSS, 2014.*

¹¹⁴ *Access to Justice Survey, World Bank MDTF-JSS, 2014.*

¹¹⁵ *Access to Justice: Survey, World Bank MDTF-JSS, 2014.*

¹¹⁶ *Justice in Serbia: A Multi-Stakeholder Perspective, September 14, 2011, pg. ix, 81.*

dissemination of information to relevant CSOs and community leaders about the functioning of the judiciary and basic legal rights directed to these groups to break down perceived barriers.¹¹⁷

Recommendations and Next Steps

Simplify the court fee structure to enable users to estimate likely costs. Remove the cap on court fees. Standardize the court fee waiver process, and collect and analyze data on court fee waivers.¹¹⁸ Implementation of this recommendation will align with EU standards and good international practice.¹¹⁹ The initial steps can be made in the short term for little to moderate costs.

- ✓ Simplify the court fee structure to enhance understanding of likely court costs. Remove the cap of 80,000 RSD on court fees and remove court fees for criminal cases initiated by a private party. (MOJ – medium term)
- ✓ Provide lay formats of information online and in paper brochures about the foreseeable costs and duration of proceedings to enable potential court users to better estimate the costs of their case. (MOJ – medium term)
- ✓ Adopt and disseminate standards for granting fee waivers, and create a standardized fee waiver application form and decision form for use by all courts. (MOJ, SCC – short term)
- ✓ Require staff to enter data on fee waiver requests and decisions in existing fields in AVP. Over time, monitor data fee waivers to encourage compliance with standards. (MOJ, courts – short term)

Remove the Attorney Fee Schedule to enable competition in the market for legal services. Develop a more cost-effective Attorney Fee Schedule to apply only for legal services to the state (e.g., legal aid services and ex-officio attorney appointments). Consider moving away from a pay-per-hearing model.¹²⁰ The CCJE advises that remuneration of attorneys should not be fixed in a way that encourages needless procedural steps.¹²¹ The European Court of Justice has held that mandatory minimum fees violate the EC Treaty. In 42 countries monitored by the CEPEJ, lawyers' remuneration is freely negotiated.¹²² Some steps will entail low to moderate costs but they would likely be more than offset by savings in moving from per-hearing payment to per-case payment for court-appointed attorney.

¹¹⁷ UNDP Survey (2013) *Impressum, Judicial Reform through the interaction of Citizens and States (Judicial Studies Series Volume II)*, pg 54.

¹¹⁸ This recommendation aligns with NJRS Strategic Guideline: 2.5.2 Defining the criteria for determining the poverty threshold (in order to abolish or reduce court fees and reduce pecuniary fines in criminal and misdemeanor cases).

¹¹⁹ See *Measures for the Effective Implementation of The Bangalore Principles of Judicial Conduct*, adopted by the Judicial Integrity Group, undated.

¹²⁰ This recommendation aligns with NJRS Strategic Guideline 2.5.1; Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

¹²¹ This aligns with CCJE Opinion No. 6 (2004) on fair trial within a reasonable time.

¹²² See *CEPEJ Evaluation Report, 2014* (based on 2012 data). Only Cyprus, Germany, Slovenia and UK-Northern Ireland prevent free negotiation of rates.

- ✓ Remove the Attorney Fee Schedule and allow attorneys to negotiate their fees freely with clients. Develop a lower Attorney Fee Schedule for legal services provided to the state (see below), which could also act as a default schedule for the awarding of costs. (MOJ – medium term)
- ✓ Periodically update Bar Association lists to inform the process of selecting ex-officio attorneys, and provide lists to all relevant stakeholders. Clarify the appointment process and re-instate/establish Bar Association hotlines for attorney referrals. Provide parties with information on how to make a complaint about an ex-officio attorney. (MOJ, Bar Associations – short term)
- ✓ Require court staff to enter data on ex-officio attorney appointments into existing AVP fields. Monitor the use of ex-officio attorney appointments by case type, outcome, appeal rate and time to disposition. Compare with data where attorneys were not appointed ex-officio. Over time, use data to inform future reforms of ex-officio appointments. (MOJ, Bar Association – short to medium term)
- ✓ Provide parties with information on how to make a complaint about an ex-officio attorney. Strengthen quality control mechanisms for ex-officio attorneys. (Courts, Bar Associations – long term)
- ✓ Consider whether the mandatory appointment of ex-officio attorneys in certain cases (known as mandatory defense) should be broadened. (MOJ – long term)

Prioritize the passage of an adequately funded, cost-effective Free Legal Aid law that expands the pool of service providers and limits State costs.¹²³ International standards establish the right to counsel to protect fundamental rights, and the ECHR calls for state-supported defense for indigent parties when the interest of justice demands it. The law should be passed as a priority, and rollout can occur in the medium term. Potential significant costs can be contained by following these recommendations:

- ✓ Prioritize passage of the draft Free Legal Aid Law. Ensure that the operational and fiscal implications of the draft law are adequately addressed. Cost and provide funding for primary legal aid services and ensure its coverage across the territory. Secure funding to implement any expanded mandates provided in the law. (MOJ, MOF – short term)
- ✓ Develop an Attorney Fee Schedule for the reimbursement of providers of primary and secondary legal aid. Consider a payment mechanism whereby clients receive vouchers for legal aid services and can choose their own provider. (MOJ – short term)
- ✓ Task a Working Group within the MOJ to plan and oversee the rollout of the new law. Draft regulations. Provide training to service providers. Establish the proposed quality control mechanism and relevant protocols. (MOJ – medium term)
- ✓ Provide easy-to-read information about court processes in pamphlets and on the web, including guidance on assessing court and attorney fees, and how to make a complaint against attorneys. (MOJ – medium term)
- ✓ Disseminate information to the public about the availability of legal aid services. (MOJ – medium term)
- ✓ Collect and analyze data on the use of legal aid by the public, including the most common case types, the workloads of service providers and the levels of satisfaction of users. (MOJ – medium term)

¹²³ This recommendation aligns with NJRS Strategic Guideline 2.5.1: Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

Improve services for self-represented litigants, including simple forms and checklists for court users, and lay brochures and guides of basic laws and procedures.¹²⁴ Improved information can enable litigants to proceed smoothly through the system without an attorney, thus improving access to justice, as well as efficiency in the delivery of services.

- ✓ Create fields in AVP to collect data the number of self-represented litigants, their case types, outcomes and times to disposition. Require that staff enter data. Over time, use the data to design more targeted interventions to support self-represented litigants. (MOJ – short term)
- ✓ Building on lessons from Vrsac Basic Court, develop checklists of routine processes for court users and disseminate widely. (Courts – short term)
- ✓ Develop lay information packs for case types that are (or could be) most commonly pursued without an attorney, including guides, flow charts and infographics (MOJ – medium term)
- ✓ Develop/improve registries of allied professionals, such as enforcement agents, mediators and private notaries, to include expertise, geographic area, clear fee descriptions, complaint procedures, and disciplinary actions initiated or fines levied against an individual. Include in the bailiff registry a calculator for assessing likely bailiff fees (similar to the court fee calculator). (MOJ, Chamber of Bailiffs – short term)

Operationalize the new Mediation Law, create incentives for court users and practitioners to opt for mediation, and monitor the results. Conduct intensive training among professionals on mediation and disseminate information to potential court users.¹²⁵ The CCJE recognizes the critical role of judges and lawyers for consensual settlements.¹²⁶ EU Member States are required to ensure training and quality of mediators and mediation confidentiality. While some steps can be taken soon, this is a large undertaking requiring considerable time, money, and political will to accomplish. In order to encourage mediation, the remuneration structure for attorneys will need to be changed from one based on fees paid for hearings to one based on legal services and case resolution.

- ✓ Develop quality standards for mediators and a certified mediator registry. (MOJ – short term)
- ✓ Raise public awareness of mediation through websites, brochures, and public service announcements. Introduce a Mediation Self-Help Test, applying lessons from the Netherlands, so that parties can determine whether mediation would benefit them. (MOJ – short term)

¹²⁴ This recommendation aligns with NJRS Strategic Guideline 2.5.1: Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

¹²⁵ This recommendation aligns with NJRS Strategic Guideline 2.5.3: establishment of an efficient and sustainable system of dispute resolution through mediation, by improving the normative framework and conducting the procedure of standardization and accreditation of initial and specialized training program for mediators, as well as by promoting the alternative methods of dispute resolution. Establishment of the register of licensed mediators in accordance with predefined criteria.

¹²⁶ CCJE Opinions No. 6 (2004) and 16 (2013). See also, De Pala, Giuseppe and Mary B. Trevor, eds., *EU Mediation Law and Practice*, Oxford University Press, 2012.

- ✓ Establish a formal Court-annexed mediation program in all Basic and Higher Courts and standards for determining which cases are appropriate for mediation.¹²⁷ Strengthen mediation confidentiality requirements, requiring that judges serving as mediators cannot serve as trial judge in the same case and providing trial judges only with confirmation that mediation was unsuccessful rather than the reasons no settlement was reached. (MOJ, HJC – medium term)
- ✓ Provide incentives to potential users of mediation, including:
 - Lawyers: provide subsidized, tiered training to familiarize attorneys with mediation and those lawyers who decide to become mediators. Require mediators who received subsidized training to provide a specified number of free mediations. Introduce a system of co-mediation and mentoring to enhance mediator skills. (MOJ, Bar Associations – medium term)
 - Judges: develop training and printed materials for Court Presidents and judges about the advantages and mechanics of mediation. Count dispositions achieved through mediation as part of the individual judges' workload. (HJC, JA – medium term)
 - Public: introduce legal aid for mediation¹²⁸ and provide a temporary financial stimulus via free mediation hours. Set fees for mediation at less than court litigation fees, reflecting likely lower court costs than through standard litigation. Reduce the mediation fee in small claims cases to bring it more in line with court fees for these cases. (MOJ – medium term)
- ✓ Create an effective mediation case referral and management system, including: a) criteria for selecting cases; b) procedures for selecting a mediator; c) statistical monitoring and reporting; and d) coordinating activities between the court, litigants and mediators. (HJC – medium term)

Make important cases, consolidated legislation, and information about open and disposed cases freely accessible online.¹²⁹ Implementing this recommendation will advance several CCJE goals.¹³⁰ Most of these efforts can be accomplished in the medium term for low to moderate costs.

- ✓ Provide public information about court processes via court websites and brochures and using radio and television public access channels. Start with information about misdemeanor case process for which citizens indicate that the least information is available and the highest demand for information exists. (MOJ, HJC – short term)
- ✓ Publish consolidated legislation online free of charge. For the most commonly-used legislation, provide annotated commentaries. (National Assembly, Official Gazette – medium term)
- ✓ Ensure that parties in pending cases can access the basic registry and scheduling information about their case on the web portal, applying lessons learned from Croatia. (HJC, MOJ – medium term)
- ✓ As discussed further in the ICT resource section, develop common standards on which appellate decisions should be uploaded to searchable public websites. (MOJ, SCC – medium term)

¹²⁷ For example, civil matters, divorce and/or custody cases, and victim-offender mediation in juvenile cases.

¹²⁸ Fourteen EU Member States offer legal aid for cases in mediation. See *CEPEJ Final Evaluation Report 2014* (based on 2012 data), Table 8.2.

¹²⁹ This recommendation aligns with NJRS Strategic Guideline 2.9.2: improving the transparency of work of the judiciary by establishing public relations offices, info-desks and comprehensive websites.

¹³⁰ CCJE, Opinion 14 (2011), 'Justice and Information Technologies (ICT)'; Opinion 6 (2004) on *Fair Trial Within a Reasonable Time*. See also the Magna Carta of Judges (Fundamental Principles) on Access to Justice.

Develop lay formats of legal information specifically aimed at reaching vulnerable groups.¹³¹ CEPEJ reports 17 EU Member States provide special information to ethnic minorities in line with CCJE recommendations¹³² supporting steps to strengthen the public perception of impartiality of judges¹³³ Further, providing information to designated groups can be made in the short to medium term for low cost.

- ✓ Develop lay formats of legal information specifically tailored for vulnerable groups, including less educated court users, Roma and internally displaced persons. (HJC – short term)
- ✓ Develop court materials including websites in languages other than Serbian consistent with European standards for providing information in other languages. (MOJ – medium term)
- ✓ Organize training programs in non-discrimination and equal treatment for judges and court staff. (HJC, JA – medium term)
- ✓ Consider the feasibility of establishing a victim of crime service, applying lessons from EU Member States. (MOJ – medium term)
- ✓ Conduct a public campaign to raise awareness on the role of, and right to, a court appointed interpreter. (MOJ – long term)

¹³¹ This recommendation aligns with NJRS Strategic Guideline 2.5.6: Improvement of the normative framework on the basis of results of assessment related to the access to justice of vulnerable and marginalized groups.

¹³² Opinion 7 (2005) on Justice and Society.

¹³³ CEPEJ *Final Evaluation Report*, 2014 (based on 2012 data), page 86.

Annex 1 - Access to the Judiciary (Survey Analytical Report)

BACKGROUND AND PROJECT OBJECTIVE

One of the issues surveyed in the Multi-stakeholder survey on perception of judiciary performance in Serbia, conducted in November 2013, was readiness of the general public to settle the disputes in the court and main reasons to decide against such action. The findings showed that citizens who stated to have had a dispute they thought should be settled in the court but decided against such action most frequently named the financial inaccessibility of the court proceedings as the main reason for this decision. However, surveying the issue was limited to the subsample of the citizens who stated to have had a dispute they felt should be settled in the court but decided against this action (9% of the total population).

In order to get a wider picture of the citizens' perception of the accessibility of judiciary as the barrier to citizen's usage of the court services when they feel in need for the service, the World Bank conducted an additional quantitative survey and qualitative survey through focus group discussions.

The survey was focused on two issues: the citizens' mood towards settling their disputes in the court when they feel that it should be done, and perceptions of the main reasons against this action. For that reason participants in the focus groups were either those with experience with court case in previous three years or with some dispute which had a good ground for being brought to court, but they gave up the court process.

Quantitative survey was realized on national representative sample of 1000 citizens 18+ years old. Focus groups were conducted with general public, farmers, owners of small enterprises, and members of LGBT population.

SUMMARY OF THE KEY FINDINGS

The top findings of the survey could be summarized as follows:

- Majority of the citizens, if they had a dispute which they think should be settled in the court, would decide against such action, or would have at least a great dilemma
- The main reasons against settling the dispute in the court are predominantly related to basic access to judiciary - primarily the cost of proceedings, and access to solution - primarily duration of the proceedings
- Reasons related to access to justice were less spontaneously accentuated as the reasons against settling the dispute in the court, but when prompted, somewhat more than half of the citizens stated that the enforcement of the decision, as well as the fairness of the judgment would be for them the issues to consider
- Compared with population average citizens with low education, older citizens, and citizens who live out of urban areas feel the judicial system as less accessible to them in all aspects of basic accessibility (in terms of costs, availability of information, distance of court building and finding one's way in the courthouse)
- All participants in focus groups agreed that processes in Serbia lasted too long and that costs were too high. For members of general population participating in focus groups these two reasons were the main obstacles to starting a court process.

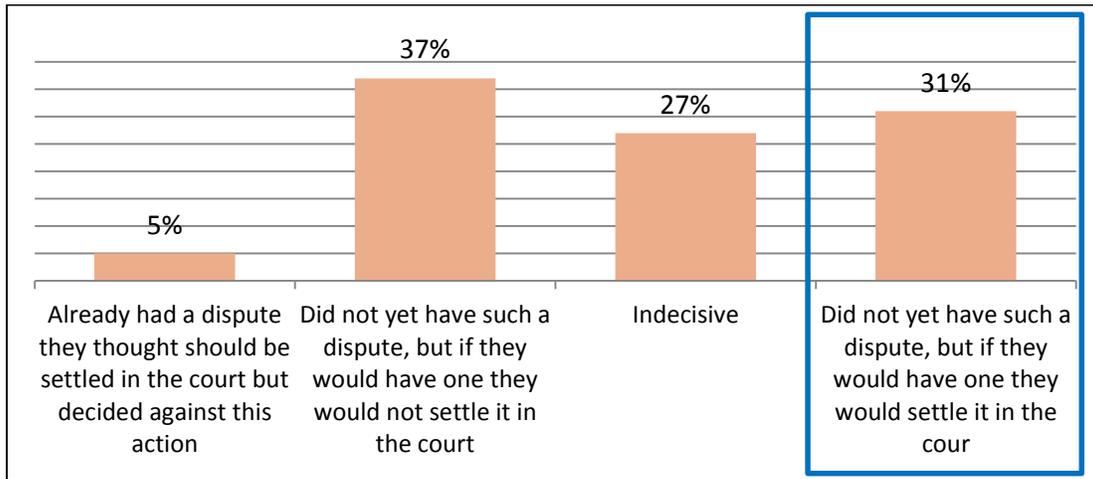
- For farmers and owners of small business court cases are usually connected with debts and damages they have not been able to collect from other business entity or state. However, they often give up on starting a process due to the fact that enforcement of court decision is not satisfactory and that even after winning the case they are not able to collect the money.
- Members of LGBT population are mainly concerned about inadequate penal policy since they are often faced with situations when the judicial system does not adequately prosecute perpetrators of crimes against LGBT persons and thus does not contribute to reducing discrimination which is their main expectation from court cases (“to send message that discrimination is against the law”).

SURVEY RESULTS

1. Readiness of general public to settle a dispute in a court

Survey findings show that majority of the citizens are not really eager to settle their disputes in the court. As much as 69% of the citizens stated that, if they had a dispute which they think should be settled in the court, they would decide against such action, or would have at least a great dilemma. More precisely: 5% stated that they had already had a dispute they thought should be settled in the court but decided against this action, 37% stated that they did not yet have such a dispute, but if they had one they would not settle it in the court, 27% were indecisive, and only 31% stated that if they had a dispute they feel should be settled in the court, they would do it. (Figure 1.1)

Figure 1.1: Readiness to settle dispute in the court (*Did you have a dispute in the last three years which you thought should be settled in court but you decided against such action for some reason? / Suppose now that you have a dispute which you think could be settled in court. What do you think, would you take it in the court (i.e. initiate the proceedings as a plaintiff), or try to find some other way to resolve it?*) Base: Total target population

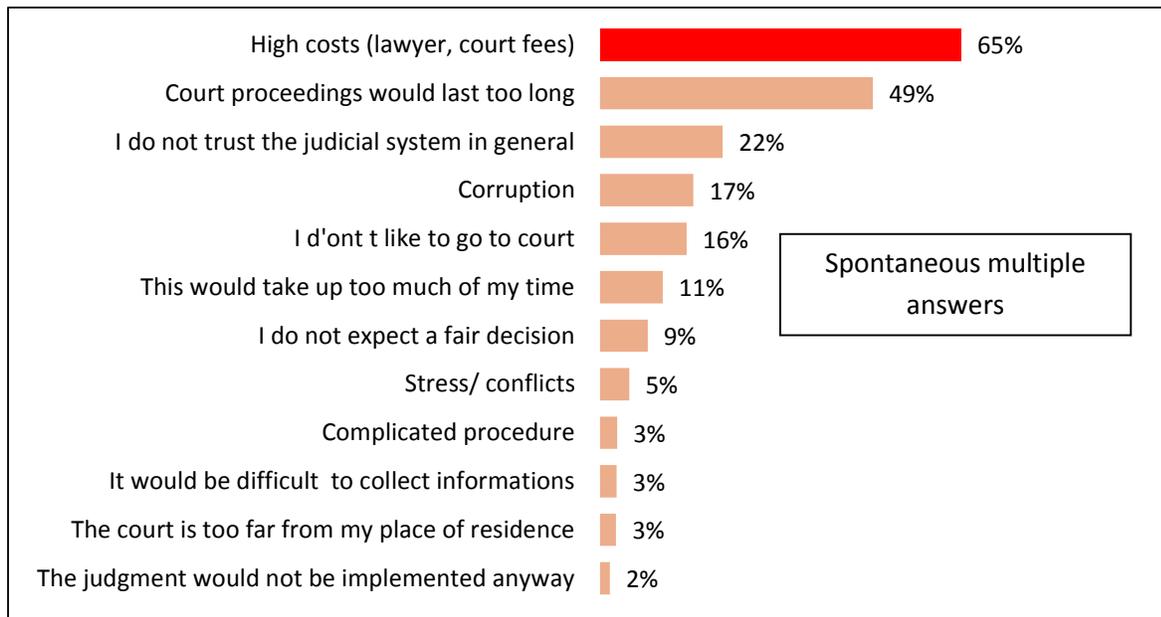


2. Reasons why people decide not to settle their disputes in the court

Spontaneously mentioned reasons against settling disputes in the court

The financial accessibility was found to be the top of mind reason why citizens would not take the dispute to the court even if they thought that it should be settled in the court. High costs were spontaneously mentioned by 65% of the citizens as one of the top three reasons for not taking the dispute to the court. The second most frequently mentioned reason was excessive duration of court proceedings, but which was spontaneously mentioned by considerably smaller percentage of the citizens, 49%. (Figure 2.1)

Figure 2.1 SPONTANEOUSLY NAMED REASONS WHY CITIZENS WOULD NOT TAKE THE DISPUTE TO THE COURT IF THEY HAD ONE (Why would you not take the dispute to the courts if you had one, what are the key reasons? Multiple Spontaneous answers, up to 3 answers) Base: 64% of general public who stated that if they had a dispute which they think could be settled in court, they would decide against this action or are indecisive



Every other citizen (50%) who stated to have had a dispute they thought should be settled in the court but decided not to do it, named also high costs of proceedings as the main reason for their decision.

In total, reasons related to basic access to judiciary were predominant, followed by reasons related to access to solution of the dispute, while substantially less people named reasons related to access to justice. If spontaneously named reasons against taking disputes to the court were classified in three groups, basic access to judiciary¹³⁴, access to solution of the dispute¹³⁵ and access to justice¹³⁶, the

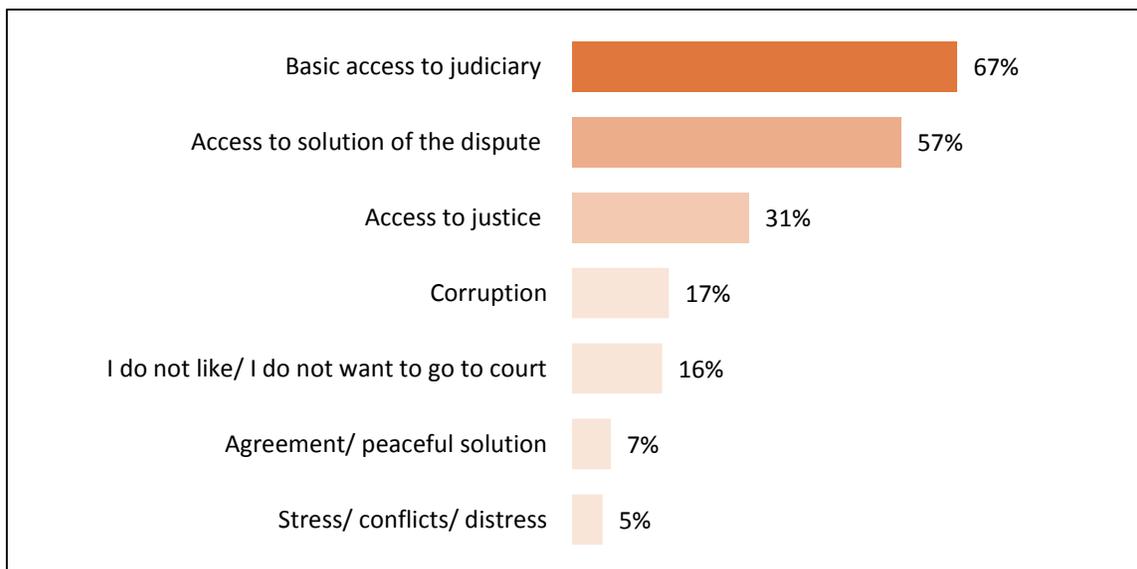
¹³⁴ Affordability of court costs, access to necessary information, geographical distance of the court, and finding way and moving around the courthouse

¹³⁵ Duration of the proceeding, personal time spent

¹³⁶ Fair judgment, trust in judiciary, enforcement of court decision

findings indicate that basic access to judiciary is predominant (67% of the citizens named one or more reasons in this category); access to solution of the dispute was the second most important reason mentioned by majority of the citizens (57% named one or more reasons in this category), while access to justice was named by less than one third of the citizens (31% named one or more reasons in this category). (Figure 2.2)

Figure 2.2 THREE CATEGORIES OF SPONTANEOUSLY NAMED REASONS WHY CITIZENS WOULD NOT TAKE THE DISPUTE TO THE COURT IF THEY HAD ONE (*Why would you not take the dispute to the courts if you had one, what are the key reasons?* Multiple Spontaneous answers, up to 3 answers) Base: 64% of general public who stated that if they had a dispute which they think could be settled in court, they would decide against this action or are indecisive



Basic access to judiciary

All groups participating in the focus groups (general population, owners of small businesses, farmers and LGBT population) also referred to basic access to judiciary as the main obstacle to participate in court proceedings. However, although they also find high costs of proceeding as the most important reason (the same as general population participating in quantitative study), they differ from general population by emphasizing the importance of inaccessibility of information as important issue.

Costs of court proceedings, particularly for litigations, are considered too expensive due to high lawyer's fee and in some cases fees for expert's opinion and travel expenses. The opinion is that the largest share of costs goes on the lawyer's fee, because this fee is considered as too high (every appearance in front of the court is charged from 50 Euros on) and at the same time majority of the lawyers prolong the already sluggish court process in order to earn more (the bigger number of hearings, the more money for the lawyers). Other fees, such as fee for expert opinion (for example, surveying the land, etc.) and traveling to court located in some other town are not present in every court case, but they are typical for cases farmers are facing.

„The problem here is money, and the fact that the whole process would unnecessarily be stretched to a very long period of time. The hearing is postponed because one of the parties doesn't appear, and I have to pay the lawyer for every appearance in court, and so it goes on for years. Plus I have to have money to go there. I cannot instigate the proceedings here, because the wood is not here. I have neither money nor time for that, because the courts function the way they function, and I would have to take days off work to finish it, and I would have to pay for all that. It isn't worth the money.“ Litigation about ungrounded use of inherited woods which was not instigated

In case that potential court users decide to reduce the costs through own engagement in court process, they run into next big obstacle that is **inaccessibility of information**. Participants in focus groups stated that they were limited to the data available on the Internet, since other sources of information were not accessible for them (for example some citizens didn't get free legal assistance in municipality when they applied). On the other hand, online information about laws and procedures are very complicated and time consuming for amateurs. Farm and business owners, due to lack of legal department and high costs of lawyers, are forced to keep continuously informed about regulations in their area of business, but they are facing the problem of frequent changes of regulations (especially in agriculture), which are also believed to be complicated and to have "loopholes". Farmers are especially sensitive about this topic, since they are often faced with disputes with the state and they give up on court proceeding fearing that they will run into one of these "loopholes in regulations" (for example, procedure for starting a case for damage inflicted on property is complicated and not clear enough and farmers often fear they will lack some procedure or document due to lack of information).

„You read that such case can be concluded in particular period of time, you read about your rights, the duration of particular processes, but when you get involved in this story it's something utterly different, it is much longer and more complicated.“ Focus group with general population

Members of LGBT population, as compared with other groups participating in focus group discussions, pointed to different weaknesses of judiciary as very important. Thus, lack of information refers to lack of information about antidiscrimination which is the reason why cases of discrimination acts against LGBT are not even recognized. However, sometimes even when victims recognize discrimination, they do not start a proceeding due to insufficient availability of information on starting a court procedure (often in small communities where there are no NGOs that would provide free legal help). Another basic inaccessibility of judiciary specific for LGBT population is **inaccessibility in terms of protection of anonymity of LGBT persons seeking justice**. Namely, insufficiently developed mechanism for protection of anonymity of LGBT persons in court cases is one of the most common reasons why even cases of severe physical attacks are not reported to the Police and the judiciary. Many LGBT persons, especially residents of small places, decide not to report their case because it would mean exposing their sexual orientation to the public, which they are not prepared to do.

Access to solution of the dispute

Access to solution of the dispute that was named as second most important category of reasons in quantitative study was also mentioned in focus group discussions, but the importance of specific reasons within that category was somewhat different. Similar to general population participating in quantitative study, focus group participants named length of proceeding as very important obstacle,

but unlike them they were more focused on subjective involvement, such as personal time spent and stressfulness of that personal involvement.

Excessive duration of proceedings is often the reason for giving up potential dispute solution in court. Experiences of focus groups participants who had some court case coincide with expectations of participants who gave up looking for solution in court: processes last for years, there are too many hearings, and time intervals between two hearings are too long (if there are 3 hearings a year, this means that the litigation would last for 5-10 years). Long intervals between hearings are considered a result of inefficient judiciary, overburdened judges, and frequent change of judges during the process. On the other hand, it is believed that excessive number of hearings is often the result of deliberate obstruction of the proceedings by one party on lawyer's advice (failing to come to the hearing, request for postponement, etc.).

Long processes with large number of hearings require significant personal involvement of parties in the process and are **extremely time consuming**. Citizens who work in private companies are faced with serious problem of absence from work. Namely, the courts work only on weekdays, so although they have the right to be absent from work if they have a court hearing, the employed citizens are forced to ask for a day off (from annual holiday). Farmers also emphasized personal time spent as a big obstacle for them given that agriculture requires daily and all-day engagement.

In addition to financial costs and time, citizens are even more concerned about **the stress** that they are exposed to due to long and inefficient processes which they expect. Each new hearing, particularly those where other party is absent, represents an extraordinary irritation. Stress was particularly accentuated by female participants who had long litigations over custody, whose children were exposed to repeated psychological testing due to repeated hearings.

„I can only say that no one would be able to compensate me for my nerves..“ Focus group with general population

Access to justice

Reasons against taking disputes to court that can be classified as obstacles to access to justice were given greater importance by focus groups participants as compared with general population from the quantitative study. These reasons were spontaneously mentioned and discussed in detail, and they refer to fair judgment, inadequate penal policy and enforcement of court decision, which all together reduces trust in judiciary.

Main obstacle to fair judgment is inability to prove the case to court and, in some cases, judge's performance. Fear that case will not be proven in court is closely related to the fact that witnesses are often not willing to testify in favor of plaintiff or that perpetrator of the offence was not found. Lack of witnesses is particularly frequent in cases of violation of labor rights (illegal work and unpaid salaries), when testimony of other employees is one of the few ways to prove the case, but likelihood of witness's testimony is very small because of fear from losing their job. Cases when perpetrators are not found are

usually cases of theft from small businesses or farms. Companies and farmers do not file a private lawsuit in that case because they believe they won't be able to compensate the damage in court and they all agree that the state and the judicial system are not protecting them enough in cases of damage inflicted by theft (for example farmers do not have the possibility to institute court proceedings for minor damages or thefts on their fields, of value lower than 15 000 RSD, which are very frequent, and they lose 500 EUR on annual basis approximately).

Other important factor that sometimes stands in the way of fair judgment is unsatisfactory judges' performance. Inadequate work of judges is considered more a consequence of indifference and insufficient knowledge about the subject, than of work overload. According to focus groups participants, judges' lack of expertise in some field is particularly visible in cases regarding agriculture and rights of LGBT population. Activists who attended hearings in court proceedings of LGBT persons state that judges are neither familiar enough with problems of LGBT population, nor sufficiently conscious and without prejudice. According to them, judges tend to interpret discriminating statements of the accused in such a way as to soothe them, so court records and statements may be interpreted as a sign of penitence of the perpetrator for the offense committed.

"Hearings are not taped, and court records are interpreted by judges, which is usually absolutely different from what was really said in the courtroom. For example, the accused for threatening the organisers of Pride said that if people like them ruled, thinking of LGBT population, it would be tantamount to an atomic bomb, and that he didn't want his daughter to grow in such an environment. This was not part of the court records and he got just 2 month probation because he repented sincerely." Focus group with LGBT activists

Inadequate penal policy and inadequate interpretation of laws appeared to be very important issue for LGBT population, since their general perception of justice and importance of fair judgments is somewhat different compared to other target groups participating in focus group discussions. Namely, they do not perceive court cases merely as a mechanism for protecting their personal rights, but primarily as a form of struggle for the rights of the entire LGBT community. They expect the judicial system and the state to send the message and educate broader public (message to LGBT population to actively protect their rights and to perpetrators that discrimination is punishable) with adequate penal policy and adequate judgments in cases of discrimination, but so far it was not the case. According to focus groups participants, the legal frame provides good foundation, but implementation and interpretation of laws and penal policy are inadequate, so the message actually sent is likely to be just the opposite (the perpetrators get minimum punishment, if any).

"On one hand, I feel this inner anger, because we have laws and the laws have their say, and we can see that it is not observed at all. The state and the judiciary have to take a clear stand and send the message that violence and discrimination are not allowed. You must not harm a gay or a lesbian. My life is not worth any less." Focus group with LGBT activists

Enforcement of court decision is generally considered important, but it appears to be most important for owners of small businesses and farmers who are often faced with disputes where they are not able to

collect receivables or damages from other business entity. In such cases they rarely decide to initiate a lawsuit due to impossibility to collect damages/debts because other enterprise went bankrupt before or during the court proceeding. Even when the court decides in their favor, it is impossible to enforce this decision, and companies that initiate court proceedings have to pay high court fees, VAT on goods that are not paid for and tax on profit, regardless of whether the debt is collected or not.

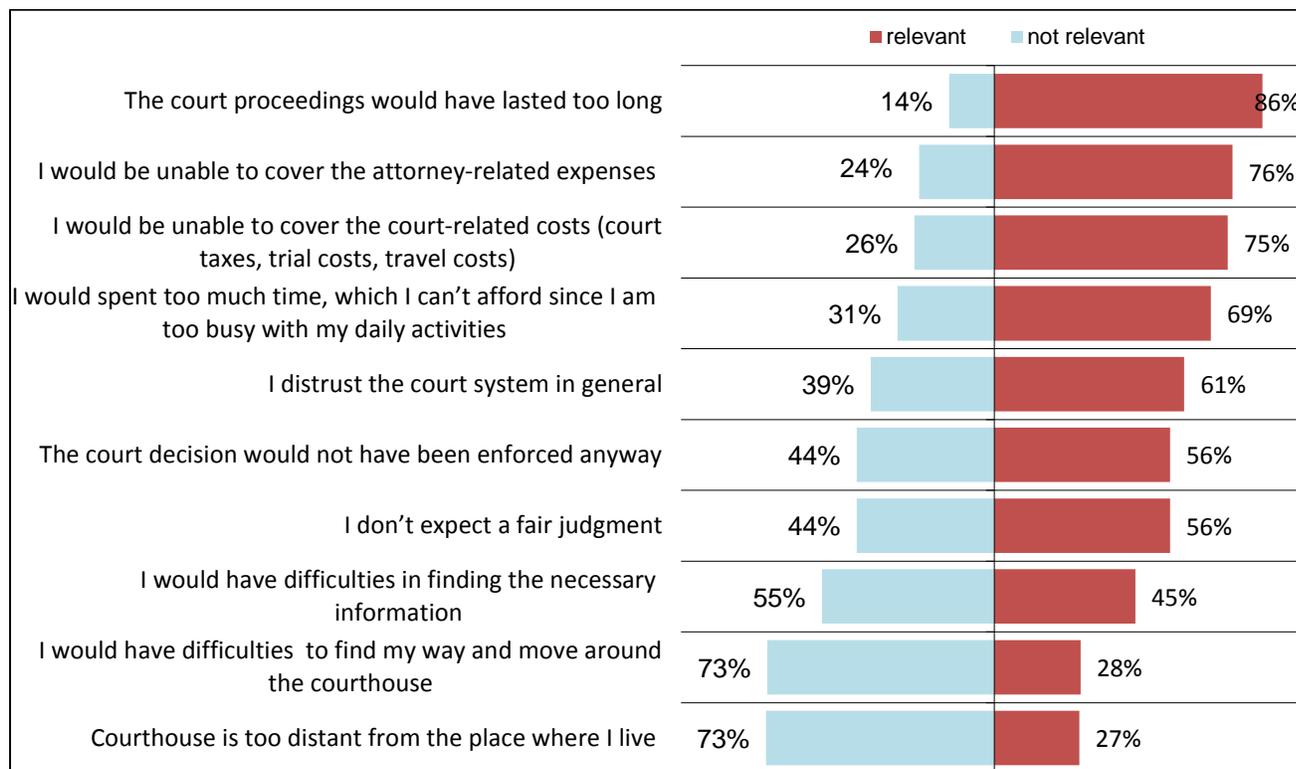
„One is completely alone here, and one feels like giving up the whole business, both because of money and nerves. It hurts me most of all to know that I am right, and I still receive that miserable court envelope where they inform me that enforcement decision was rejected because of other party's plea or closure of company. I considered this as my debacle because I trusted that man and I gave him the goods, and then I trusted the state that it will quickly and honestly do its job, and I finally realised that all that was in vain. In this entire circle everyone earned money except me: the court collected the taxes, the other party took the goods and used my money, the state took VAT, and I was the only one who financed all that.“ Focus group with small business

All the mentioned weaknesses of judiciary are believed to be consequences of the fact that there is no mechanism to control the work of courts, They reduce **trust in this system** in all focus groups, especially among those who are trying to run a private business (company or farm) and members of LGBT population. Members of LGBT population perceive insufficient cooperation between courts, prosecutor's office and the Police as one of the major problems in judiciary regarding cases of discrimination, including also likely shifting of responsibilities of these institutions to the other two. Other participants pointed out corruption in the judicial system as a huge problem, which is also considered extremely widespread.

Relevance of prompted reasons against settling disputes in the court

While costs of court case and duration dominate among the spontaneously mentioned reasons in the quantitative study, when citizens are offered a list of reasons, they are a lot more likely to notice also other problems of court accessibility as relevant in their case. When citizens see a list of reasons instead of answering spontaneously, the results change a bit. The reasons most relevant for most citizens are still costs of court case and its duration, but in a different order. In addition, citizens are also a lot more likely to single out other relevant reasons they didn't think of when answering spontaneously. More than 60% of citizens indicate distrust in court system in general, and more than half that court decision would not be enforced anyway, and that they do not expect a fair judgment. Even 45% suggest that finding necessary information would be a problem, and more than a fourth that they would have difficulties in finding their way around the courthouse and that courthouse is too distant from the place where they live. (Figure 2.3).

Figure 2.3: RELEVANCE OF REASONS FOR MAKING DECISION ABOUT SETTLING OR NOT SETTLING THE DISPUTE IN THE COURT (How relevant each of reasons is for you personally if you were in position to make decision about settling or not settling the dispute in the court?) Base: Total target population



3. Demographic differences in perceived accessibility of judiciary

Compared with population average, citizens with low education, older citizens, and citizens who live out of urban areas feel that the judicial system is less accessible to them in terms of basic accessibility. Citizens with low education (elementary school and less) and citizens over 60 years of age perceive the judicial system as less accessible to them in all aspects of basic accessibility: in terms of costs, availability of information, distance of court building and finding one's way in the courthouse. Citizens who live out of urban areas, compared with population average, see more problems in obtaining necessary information, finding their way in the courthouse and distance of the courthouse.

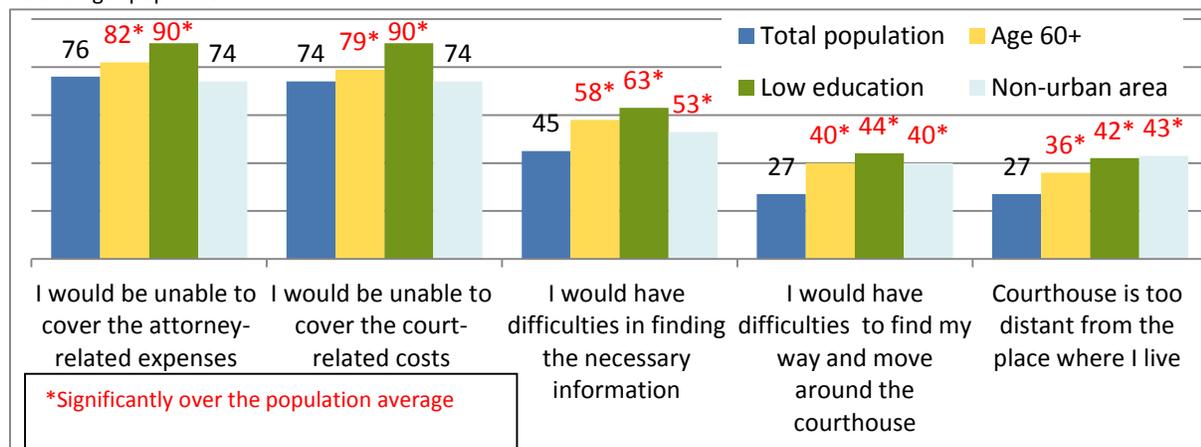
If they were in a situation to decide whether to take a dispute to court or not, 90% of poorly educated citizens and 82% of the elderly would consider trial costs a problem (which is 24%, and 6%, respectively, more than population average regarding lawyer-related costs, and 26%, and 5%, respectively, more in terms of court costs); 63% of the poorly educated and 58% of the elderly stated that they would have a problem with finding necessary information (18% and 13%, respectively, more than population average); 44% of the poorly educated and 40% of the elderly believe they would have problems finding their way in the courthouse (17% and 13%, respectively, more than population average), while 42% of the poorly educated and 36% of the elderly believe they would have problems with distance of courthouse from their place of residence (15% and 9%, respectively, more than population average). (Figure 3.1)

Focus group discussions suggest that citizens themselves perceive socio-economic status as one of the main determinants of accessibility of justice. Participants unanimously claim that **the judicial system is not equally accessible to all citizens**, but that accessibility depends on socio-economic position. Giving up potential court case due to estimation that outcome won't be positive even though it should be, according to the law, is particularly present if the other party to a case is considered „strong“ in terms of material wealth, „connections“, position. It is generally believed that choice of lawyer determines the course and outcome of the process to a great extent, and choice of lawyer depends on available finances. Expensive lawyer does not only mean great knowledge and professional skills, “but the price also includes acquaintance with the judge“.

„Cases end quickly and efficiently only if you are a big shot and if you are rich. We are all allegedly equal, only that some are „more equal,“ so justice is a lot more accessible to them.“ Focus group with general population

Most citizens who live out of urban areas, 53%, think that they would have problems with accessing information (8% more than population average); 40% think they would have problems finding their way in the courthouse (13% more than average), while 43% consider distance of a courthouse a problem (16% more than population average). (Figure 3.1)

Figure 3.1: SHARE OF THE CITIZENS OLDER THAN 60 YEARS, LOW EDUCATED PEOPLE AND PEOPLE LIVING IN NON-URBAN AREA WHO PERCEIVE THE PROBLEMS OF ACCESSIBILITY TO JUDICIAL SERVICES AS RELEVANT IN MAKING DECISION ABOUT SETTLING THE DISPUTE IN THE COURT (The following are the reasons some people named were important to them when they considered the issue of taking or not taking a dispute to the court. How relevant each of them would be for you personally if you were in position to make decision about settling or not settling the dispute in the court? Scale: 1. not relevant at all 2) mostly not relevant 3) mostly relevant 4) highly relevant) Base: Total target population

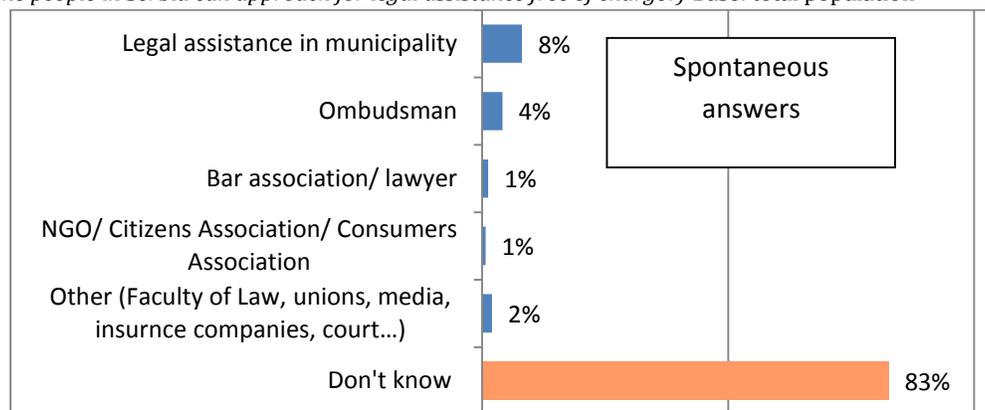


4. Citizens' awareness of the organizations providing legal assistance free of charge

Great majority of citizens of Serbia, 83%, are not aware of any organization or institution that provides legal assistance free of charge. Only 8% of citizens say that legal assistance is available in municipalities, and 4% mention the ombudsman; total of 1% mention NGOs, or civil associations, or consumer associations. It is interesting that 1% mention even the Bar Association as an organization providing legal assistance free of charge. Others (about 2%) mention unions, the Faculty of Law, media, insurance companies and court. (Figure 4.1)

Finally, only 3% of citizens say they have used free legal assistance and great majority of these 3% (93%) were satisfied with it.

Figure 4.1: SHARE OF CITIZENS WHO WERE ABLE TO NAME ANY ORGANIZATION OR INSTITUTION PROVIDING TO THE CITIZENS LEGAL ASSISTANCE FREE OF CHARGE (*Can you name any organization or institution the people in Serbia can approach for legal assistance free of charge?*) Base: total population



Results from focus groups imply that engagement of legal assistants can empower citizens in their decision to initiate court proceedings. Namely, while citizens who approached free aid in municipality and didn't get adequate assistance usually gave up on court process, experiences of LGBT population were quite the opposite. Majority of court cases related to violation of LGBT rights have been started with active participation of NGOs, while individuals start cases on their own very rarely. Organizations provide legal and financial assistance, with active support and encouraging individuals before and during the process.

APPENDIX

METHODOLOGY

Quantitative survey

Realization: Field research conducted in the period from 17– 25 January, 2014

Sample frame: Population of Serbia 18+

Sample size: 1003 respondents

Type of sample:

Three-stage random representative stratified sample

Unit of the first stage: Territory of polling place

Unit of the second stage: Households (SRSWoR – random walk)

Unit of the third stage: Respondents within a household (Kish tables)

Type of survey: Omnibus, face to face in respondents' household (CAPI)

Place of survey: 67 municipalities from Serbia, 127 local communities, Central Serbia, suburban and Urban

Post-stratification: By gender, age and region

Sampling Error: $\pm 1.45\%$ for the occurrences with the expected incidence of 5%

$\pm 2.86\%$ for the occurrences with the expected incidence of 25%

$\pm 3.31\%$ for the occurrences with the expected incidence of 50% (marginal error)

Qualitative survey

Type of survey: focus groups- the group discussion facilitated by a trained moderator that lasted for 120 minutes per group

Number of conducted groups: 4 groups

Number of participants per group: 8 participants per group (with the exception of group with LGBT activists which had 5 participants)

Structure of groups:

- **Mainstream population:** citizens of Belgrade, economically active, aged 25 to 66 years, with experience with civil and criminal cases or that type of disputes that were not settled in court

- **Farmers:** citizens of village Klenak who generate earnings from agricultural activities and have experience with business related disputes
- **Owners of small enterprises:** entrepreneurs and owners of enterprises with maximum 5 employees who are registered in Belgrade and have experience with business related disputes
- **Members of LGBT populations, activists:** NGO activists who deal with the rights of LGBT population (Gej strejt alijansa (GSA), Kvirija centar, Labris, Inicijativa mladih za ljudska prava)

Place of survey: 3 groups were conducted in Belgrade, while group with farmers was conducted in village Klenak (municipality of Ruma)

Realization: 28.02.2014.- 03. 03. 2014.

Annex 2 - Access to Judiciary (Gender Analytical Report)

METHODOLOGY

Objective of the survey that will be presented here is to analyze the position of women in judicial system, from perspective of service users and those who work in the system. It is based on qualitative methods of data collection. As quantitative study within the survey on judiciary has already been completed, qualitative methodology has been chosen to provide a deeper insight and context for interpretation of some of the obtained data which relate to gender topics. Two methods were used – discussion in focus groups and in-depth interviews.

ABOUT FOCUS GROUPS DISCUSSION:

Discussion in focus groups is one of the methods of qualitative research which makes possible deeper understanding of behavior, attitudes, motives, etc. The group discussion is facilitated by a trained moderator, and in this research the duration of focus group discussion was circa 90 minutes on average. There were 8 participants in each focus group discussion. This research concept makes possible collection of extensive information in a relatively short period of time, but the results can only be considered as opinions typical for particular segment of population.

STRUCTURE OF THE GROUPS:

A total of 6 focus group discussions were realized within this study, of which 3 were with the women who had some court case or dispute which could have been a subject of court proceedings, and 3 were with the women from legal profession: judges, lawyers and associates in Prosecutor's Office. Structure of the groups was defined in such a way to reflect the type of cases for which women usually turn to court.

Target group	Number of participants	Structure	Date
Divorce cases (custody, child support, division of property)	6	1 custody case 2 share of properties 3 alimony	21. 05. 2014
Violation of labor law	8	3 cases of being fired after maternity leave 2 court cases for unpaid salaries 1 informal work 1 mobbing situations 1 problems with severance pay	21. 05. 2014

Paternity proceedings and deprivation of parental rights	6	3 women who have problems with paternity 3 women with potential deprivation of parental rights	22. 05. 2014
Female lawyers	8	Private practice, small offices, all type of cases	22. 05. 2014
Female judges	5	3 crime cases 1 enforcement 1 litigation	23. 05. 2014
Female prosecutor associates	4	Working in Public Prosecutor's Office in Belgrade	26. 05. 2014

KEY FINDINGS

Introduction: Results from quantitative study

Follow up study of the research Perceptions of Judiciary Performance in Serbia (2010) was conducted in 2013. This was a quantitative study covering representative samples of several populations: general population, business sector, lawyers, judges, public prosecutors and employees from administrative sector.

Differences between male and female court users

Similar to baseline survey the data obtained from the persons who participated in a court case that was concluded in the past 3 years **did not indicate significant differences between the answers of female and male respondents**. Just several significant differences were observed when it comes to experience with judicial; system, but they mainly do not indicate a different treatment by the court.

Difference between genders is primarily reflected in type of court cases and position in the process that they are in. Majority of female respondents who participated in the survey had a civil case (81%), in contrast to male respondents who participated in civil cases to a much lesser extent (49%), but they participated in higher percentage in criminal (24%) and Misdemeanor (26%) cases. Female respondents were mainly in position of plaintiff/ accuser (44%) or party in the proceedings (37%), while male respondents were the defendants in as much as one half of the cases. Both female and male respondents had a lawsuit against other physical persons in majority of cases, although female respondents did it in higher percentage (77%) than male respondents (62%). On the other hand, higher percentage of male respondents had a process in which the other party was a state institution (21% against 7% in case of women).

On indicators of efficiency of court processes, accessibility, quality and integrity no gender-related differences were found between men and women who participated in the court proceedings. The only significant difference indicates that smaller percentage of women were pronounced guilty in criminal cases (53%) in comparison with men (75%), but this data should be analyzed taking into account the subject of the case, which this size of sample doesn't allow.

Differences in perception of judiciary between men and women in general population

If we observe the entire sample of general population which also includes the citizens who did not have contact with judicial system, the differences in perception between men and women can be detected. **The differences in perception among general population show that female citizens have a more positive perception of judiciary than male citizens.**

Statistically significant differences between male and female citizens can be noticed if we observe the efficiency of judicial system. **Female citizens generally have a somewhat more positive perception of the efficiency of judicial system** in Serbia, although negative perception is prevalent both among men and women (17% of women have positive opinion and 12% of men). Similarly, higher percentage of female respondents (43%) than male respondents (32%) think that court system is fair, unbiased and not corrupted.

Men are more critical regarding quality of work of judiciary. Men are more likely to evaluate quality of judiciary in the past few years negatively (46%). Also one third of women evaluate quality of work of judiciary negatively (33%).

Evaluation of fairness of judiciary has the same trend, or we can notice more positive attitude of women, and more critical attitude of men: **women perceive fairness of judiciary more positively** (58%) than men do (46%). On the other hand, when assessing fairness of judiciary through evaluation of equal treatment of citizens in terms of their gender, age, place of residence, education, socio-economic status, disability and nationality, there are no statistically significant differences between men and women. Although there are no differences, almost a third of men and women believe that the judicial system doesn't treat men and women equally.

More positive attitude of women towards judiciary is also visible when assessing trust in the judicial system in general. **Women have more trust** (30%) than men do (22%), but women also have more trust in other state institutions as well.

What's interesting though is that these differences are smaller or don't exist among respondents with experience with the judicial system.

Findings from Focus Groups: Disputes Women Are Often Facing

Selection of participants in focus group discussion who had court case or some dispute, coincides with assessment of professionals regarding the cases in which women turn to court more frequently than men. These are mainly the disputes from the area of family law: custody, child support, paternity suit, deprivation of parental rights. Another situation related to the violation of labor rights is the fact that women often happen to be sacked after maternity leave, but these cases are not brought before the court. All mentioned cases will be presented in this section from perspective of users of court services and female professionals (judges, associates in Prosecutor's Office, lawyers).

Family Law: Disputes with Ex Partner / Father of a Child

After the breakup of marriage or common-law marriage, women who have a child with ex-partner are often faced with some of the following problems:

- **Inappropriate amount of child support and irregular payment**
- **Inequitable division of joint property**
- **Custody over children**

In some cases women are also faced with utter disinterest of other parent to perform his or her parental duties:

- **When there is a need to deprive a parent from his or her parental rights**
- **Negation of paternity in common-law marriages**

In such cases women try to exercise their own and their children's rights before the court, but, due to general distrust of judicial system they often give it up. This part of the research presents the biggest problems that participants in FGDs were faced with trying to exercise their rights.

Problem of child support

It is estimated that one out of three or even one out of two parents in Serbia doesn't pay child support for own child. As in great majority of the cases mothers have custody over children, they have to take care about all costs related to upbringing of children due to non-payment of child support.

Participants in focus groups pointed several problems in the process of determining the child support and then the sticking point in the process of collection of the unpaid child support. Professionals also mentioned the same situations, but they arbitrate responsibility somewhat differently.

1. During the official process of divorce or when the child is born out of wedlock, and the common-law marriage breaks down, **the court decides on the amount of child support** which the other parent who has custody over the child has to pay. The money is intended for child support, and the amount of child support is determined based on child's needs and income of the parent who pays child support. Participants in focus groups almost unanimously agree that the determined amount of child support is

not sufficient for basic needs of the child (cost of education, excursions, clothes, toys). Majority of mothers receive between 8 and 10 thousand dinars for one child, which according to them, is just a small portion of other parent's income. They believe that, due to inability to ascertain the real incomes, the court determines such trifling amounts of child care.

In such cases the other parent conceals income in order to pull down the child care amount to the lowest possible level. Incomes are reduced in several ways:

- **By illegal work (on black market):** The person receives salary in cash, while officially registered as unemployed, or is registered with a minimum wage while the rest of salary is received in cash. Such system of salary is possible only in private enterprises, and such cases are not rare. In majority of cases this is the decision of the employer, but in some cases the employee himself asks to be removed from the records in order to pay as small as possible child support.
- **Change of property owner:** It often happens in Serbia that households are multigenerational, and in these cases the official owner of real estate is mainly someone from the oldest generation, and not the person involved in dispute over child support. Nevertheless, in some cases, when they have an immovable property, the persons involved in a dispute transfers the ownership to his parents.

Participants in focus groups who had a problem with child support are dissatisfied with the mechanism available to the court to ascertain the amount of child support. On one hand they hold the state responsible for allowing so many people work in the gray zone, but also the courts which are incapable of ascertaining the real income, or in some cases underestimates the needs of the children.

Snežana is unemployed. She has a child from common-law marriage. The determined amount of child care is not proportional to real income of the father.

„He acknowledged the child, and the child support was determined. He is a rich man and we are at the edge of poverty. I am very dissatisfied. Sometimes I think that we are in “Candid Camera” show. When all of us were in the courtroom the judge told us that the child support is determined to be between 5 000 dinars and 8 000 dinars, but since he was an entrepreneur, she fixed it at 8 000 dinars. I was only crying because I was left alone with the child. I asked the court to ascertain his life style to prove how comfortably he lives. But no one did the fieldwork. He is now registered as being on a sick leave. According to official report of Tax Office the revenue of his company in 2013 was 0 million dinars. The judge's explanation is that this amount is sufficient for a child. Even social assistance is bigger than that, and I am not employed, I don't have parents, I am completely alone.“

Both the lawyers representing women in such situations and the judges who make the decisions are aware of various manipulations with the amount of income, but they think that the court is doing everything possible so that the children would get the appropriate support. In their opinion, the cause of problems is widespread gray economy and the fact that the state doesn't have adequate mechanisms to eliminate gray economy and illegal work in it.

Lawyer: If they have a child, it's a tragedy. Fathers do not pay child support because they believe that the money is going to mother, not to the child. In such cases the court is not responsible but the state. In fact he earns 2 000 Euros and officially he receives a minimal wage.

Judge: Everyone who is registered receives a minimal wage. They have a minimal wage and a villa in Dedinje. This is the problem of the state. Courts cannot do anything about that.

2. Despite the fact that the court has determined the amount of regular monthly child support, it often happens that **child support is not paid**. Almost all participants who are single mothers have been faced with that problem. When judge's decision on child support is not respected, mother who represents the child can initiate enforcement proceedings by submitting an application for enforcement, and she could also start criminal proceedings against the father for not paying the child support.

Forced execution is carried out by confiscation and sale of the debtor's assets, by deducting the amount of child support from the wages paid by the employer to the account, or otherwise. Due to the mentioned formal absence of any property, and the fact that salaries are received in cash, possibilities of the court are very limited. Deducting the amount of child support from the salary is possible only if the person is employed in state-owned enterprise or public institution.

Judge's associate who works with enforcements states that it is very difficult to get hold of the data about the debtor's property: If I ask from the Credit Bureau to see in which banks the debtor has accounts, they simply state that this is not in their competence. This means that I have to go to all banks individually. This is a harassment of the court. That is, the court is very humiliated by the available mechanisms. I almost have to make my own investigation.

If they decide at all to claim the unpaid child support women mainly initiate **criminal proceedings**. Representatives of Prosecutor's Office state that that this is one of the proceedings which is considered to be urgent, and mainly efficient. The judges share the same opinion, but the problem of enforcement remains. The process is mainly conducted through the following steps:

- **Opportunism:** the debtor is given a deadline (mainly from 3-6 months) to pay the overdue child supports amounts, and if he does that within the defined deadline, the criminal proceedings will not be initiated. According to professionals, great majority of fathers do not pay the debt, but prolong the beginning of process in this way.

Associate in Prosecutor's Office: „I finished only one case based on opportunism.“

- **Criminal proceedings with the most probable suspended sentence:** The debtor is given a deadline to pay the remaining child support amounts, but if he doesn't do it the suspended sentence is revoked (and prison sentence is pronounced instead of suspended one). Nevertheless, this type of sentence is not frequently passed in cases of criminal proceedings because of unpaid child care.

Associate in Prosecutor's Office: It is the best if the sentence is conditioned, so there are no double standards.

3. Representatives of judicial system think that these proceedings are initiated as urgent ones, and that the system functions well. However, they mentioned the problem of inconsistent judicial practice regarding statute of limitations and problem of length of proceedings due to inability to deliver the subpoena and court decisions. They think that the women themselves make a mistake because they avoid lawsuit for years, so the debt becomes so big that it is impossible to pay it at once.

On the other hand, users of court services think that the proceedings are not efficient and they last too long. They also mention failure to appear in court and unfounded appeals of the other party as the factors which influence the efficiency of court proceedings.

When one is given a term until which the child care must be paid (opportunism), and the money is not paid until that date, the court should react ex officio, instead of me sending the letters afterwards. The court doesn't work at all. Since September I don't have a Public Prosecutor. He hasn't been assigned for nine months. I went there to inquire. And the judge also hasn't been assigned.

Nevertheless, **the judgment isn't a guarantee either that the debt will be paid.** According to one of the judges who participated in FGD, the state must secure a mechanism, not the judiciary: «*We don't have a mechanism to withdraw the money by default. There should be some sanctions on the level of state to ensure the payment of child support. This issue must be solved by the state, not by the court and judiciary.*»

Women who do not receive the child support initiate the proceedings several times. They think that, being single mothers, they aren't protected either by the state or the judiciary.

I sued him four times. The first sentence was to pay 200 000 dinars within 6 months. He didn't pay anything. He should have gone to jail for such thing, and pay the money for humanitarian purposes. Then I went to another court, and filed a request for enforcement which couldn't be collected. After ten months the judge received some slips proving that he made the payment, so I received a reply form her that he was paying everything in time. I didn't receive any money whatsoever, and he showed her the slips.

For mothers who are not employed and they take care about the children, child support is sometimes the only income. On the other hand, when they have a court decision about the amount of child support, they

do not have the right to social assistance even when father doesn't pay the child care. In such cases they have the money only on paper.

Representatives of Prosecutor's Office also report of occasional abuse of the process, that is, women who turn to court because of unpaid child support, while in reality they regularly receive it. This is possible in situations when father pays child support in cash, but without a receipt, so there is no material proof that the money was actually given to mother. Nevertheless, such malversations are revealed soon and mothers risk being accused for false reporting.

Division of common property

According to representatives of judicial system and lawyers, all property acquired during marriage is mainly divided evenly between the former spouses. The problems occur in cases when **immovable property acquired before the marriage is owned by parents of one of the partners, and both partners invested in this property during marriage**. As in majority of cases in Serbia the property is mainly owned by male partners, female partners usually try to realize their right to division of property within divorce proceedings, although they are not the official owners of these immovables.

The experts estimate that it is necessary to possess material proof about joint investment or have a witness to prove it, to ensure that the party in proceedings who is not an owner proves her or his right to division of immovable property. They also think that it is difficult to make generalized conclusions, because each lawsuit has its specificities, but women are generally thought to be unprepared for such situations. Namely, majority of them do not think in advance about the possibility of divorce, so they do not keep the bills or receipts.

Due to the perceived long duration of proceedings and high costs, plus fear that they will lose, a number of women give up the lawsuit for division of property.

Jelena is a divorced mother of a nine-year old son. Before the divorce, she lived with her husband in an apartment his parents gave him, and invested money in its renovation. After her husband told her he had no love for her any more, Jelena and her son moved in with her parents. There was no reconciliation and her ex-husband started a new relationship. She gave up the lawsuit for division of assets thinking that it would last too long, cost too much and be too difficult to prove.

My lawyer told me that I made a mistake because I left the apartment. He told me that I should have stayed there in order to get something. Women suffer beating and things just to get something for their children, since judiciary is the way it is. I gave up the lawsuit for division of assets because it would last too long and I would have to pay the judge and lawyer at each hearing. One hearing with a lawyer costs 100 Euros. Writing a pleading for divorce costs 150 Euros. I can't stay in the same apartment with a man who tells me that he doesn't want me anymore.

However, lawyers state that some women who turn to them for help just give up the divorce in order not to lose „roof over their heads.“ These are mainly unemployed women, and there are a lot of them in Serbia, they have children and they can't return to their parents' home out of some reason.

Lawyer: „A woman comes with a formed notion about how much she should take. But such calculation is often mistaken. Women give up sometimes when they see they won't get much. Women who live in the West don't have to suffer a bad marriage because of poor financial situation, as women here do, because the state is supporting them.“

Court disputes over child custody

Representatives of the judicial system as well as professionals from private practice assess the Family Law positively in general. They believe that **women are in a good position, especially in child custody cases.** They state that mothers usually get the children after divorce and that these processes are rather efficient.

Lawyer: As for family issues, it's quite fine, since women are usually given custody over children unless they are alcoholics, drug addicts and the like. I think that judiciary is favoring women a bit there, but there is a problem with proving child support and the social system is to blame there. I have no other objections.

However, when father won't give up the fight for guardianship, **processes can last for several years even,** which is a complex stress for the family and children in particular.

Judge: Each process is sad and terrible if the court is to decide who will take the child. And if they don't adhere to that decision, then you are in a situation that can make you crazy. Child is screaming and Social Welfare Center gave it to the mother and you know that Center is to solve it, it's huge stress for me. I had a case once that Social Welfare Center suggested imprisonment of a parent. Just imagine the stress for that child. We don't have a team that cures, we just have a team that intervenes.

Both representatives of the judicial system and women who took part in a court proceeding of setting custody, underline **importance of Social Welfare Center** in that process. Team of experts in Social Welfare Center (psychologist, pedagogue, social worker) is in charge of divorce process and suggests the court which parent to give the child to. Court doesn't have to accept this suggestion, but it mainly does. Users of court services describe the employed in Social Welfare Center as indifferent, incompetent, inefficient and even corrupt in some cases: *These services are in charge of everything and court decisions depend on them. The court is not thinking about you. It just accepts Center's suggestion.* Judges are not as harsh towards the employed in SWC, but they consider **inefficient and not skilled enough staff one of the main reasons for long procedures.**

Judge: The main problem is that Social Welfare Centers are underperforming and they are not enabled to do something like that, so you are in a situation that things are agonizing and too long. It's a major trigger for such long processes. Performance of Social Welfare Centers is scandalous.

Another common reason for inefficiency of court proceedings is **deliberate stalling of the other party to a proceeding** in terms of not appearing at hearings, avoiding to receive subpoenas and complaining on issued decisions.

Although court decision is usually made in favor of mother, some **fathers do not adhere to court decisions**. It happens that some of them avoid giving children to their mother who is a legal guardian or they take children by force. Another criminal proceeding is initiated then for non-compliance with decisions and child abduction. These processes can also last long and they depend a lot on the Police (for example locating a father who keeps changing addresses). In addition, it is not possible to unite all proceedings, given that they have different grounds (civil proceeding, different crimes).

We shall here present a case of one single mother and her extensive process regarding child custody. Experts state that this case is kind of extreme and rare in practice, but we shall present it here as an example of the extent to which inefficiency of the court system and different factors can affect a family. We underline that the case is described based on mother's testimonial during a focus group discussion, and that it doesn't include document analysis or formal court decisions.

Dušica, 36 years old, is a graduate economist from Belgrade, currently unemployed. More than 6 years ago (2009.) she initiated divorce proceedings, but she withdrew the charges before going to court, thinking that it would be too stressful for children at the moment when starting school and kindergarten. As a reaction to Dušica's withdrawal of charges and after she becomes unemployed, her husband files a complaint for divorce. „He told me that he would take the children and that I should leave. I went to my mother's and informed the Social Welfare Center that children were with me. They asked me where I got the courage to do that. My husband told them I was crazy and unstable. The woman from the Social Welfare Center threatened me that they would deprive me of my parental right if I didn't return the children. Then I found out that she was bribed by my ex-husband.“

Frightened by the Center threats, Dušica returns her children to the apartment where she used to live with her husband and goes to the Social Welfare Center to the appointment. During that visit, her husband calls her on the phone and tells her that the door lock is replaced. „He told me that I didn't live there any longer. He said «Children are safe, and you do whatever you like». The employed in SWC heard it, but they didn't react. They told me he was a teacher.“

Dušica filed a report to the police because of the changed door lock. At the next appointment in SWC, in the presence of her husband, the social worker handed her a piece of paper with handwritten instruction on her access to children with the comment „either this way or no way“. From the moment the door lock was changed (in the summer), Dušica couldn't get in touch with her children, and she didn't know where they were.

At the first hearing, a temporary measure was adopted that father was the guardian, while mother had the right to see her children by the already issued model. Temporary measure is in effect until expert analysis. „He went to the judge and told her that I had left the community and she believed

him because he brought a false statement of a false witness.” Dušica files a complaint, but nothing happens for months. The model of access is not implemented at first, and when she finally starts to see her children at the order of the Center, it is always with the father present, in an apartment where children don’t actually live, but are registered at that address. Dušica claims that the conditions in this apartment are extremely poor: heating is off, and all furniture is gradually thrown out with continuous molesting by the ex-husband.

She made recordings of the apartment and she took the recordings to the SWC, but there was no reaction. Dušica also initiated a criminal proceeding together with a civil proceeding. A year passed, but there was still no expert analysis. „He refused to pay for expert analysis, so I paid 70 000 dinars in 2011. We had five expert sessions, and he brought the children only twice. Court expert’s analysis says that he is not fit to be a parent.“

Expert report arrives after one year, early in 2012. Thereunder shall be issued a temporary solution outside the hearing, and mother becomes the guardian and father gets to see the children by the model previously made for the mother. Father won’t give the children up and Dušica initiates enforcement proceedings. „ I was forced to initiate enforcement proceeding in March. He got the fine of 150 000 dinars, and then of a million dinars. He took the children to Montenegro twice without my consent. He changed nine addresses and I reported all that. I reported him for not adhering to court decision and for illegal keeping of underage children. The police tell me they can’t find him, and he is a teacher and he goes to school every day to work. The Police came to his address three times and they didn’t find him. His brothers work in the police force and when he was in custody twice, he was released because his children had no one to live with. He has never appeared before the investigating judge and I have never seen a document saying that he was released from custody. “

Also in 2013. Dušica is trying to track the address where her children live. She only sees them in school at school breaks, but she can’t take them from school because it would be considered hijacking, and her divorce proceeding was still not complete. She claims that her children are neglected in terms of hygiene, but no one reacts to the recordings she takes to the Social Welfare Center.

Dušica’s parents who haven’t seen their grandparents since 2009. filed charges against their father. After a long proceeding, the Appellate court confirms the decision in 2013. that grandparents can see the children in the Social Welfare Center, for an hour on the first Wednesday each month. Father doesn’t adhere to this decision, but he takes the children to the Center in August. Dušica was in the Center then and she took the children with the approval of the employed. Father tried to take them away. „Children rushed to me when they saw me and I said ‘This is the enforcement’. I wanted to do that before many witnesses. I asked whether I had the right to take my children, and they told me in the Center – “Yes, of course”. As soon as they told me that, I ran down the stairs where Andrija was trying to take them away. He grabbed them both and started to run to the other side of the street that was not under the jurisdiction of the Social Welfare Center. If he only succeeded to cross the street, everything would have failed because he was preparing papers to flee abroad. I myself stop him without anyone interfering or reacting, not even the security guards. I call the Police and they ask me why the Social Welfare Center didn’t call. I finally take my children and enter a taxi. That was the first time I was alone with my children. I inform the police and all other services that I took the children and they tell me ‘Relax madam.’

One day after she took the children, her ex-husband tries to take them away from the house in Surčin. Attempted kidnapping and life in constant fear last for the next few months. „I was stretching laundry out to dry. I enter the house and see my child’s legs hanging over the balcony and Andrija pulling him, trying to kidnap him, while the child is screaming. I call the Police and they ask me whether there is any physical contact. I save the child, take him inside, and I am under siege for two hours while he is banging on the door and climbing the balcony. I call the police again, and they tell me to come to

them and report what's happening. Then he was always around waiting, following us and waiting for an opportunity to take the children. I complained and they told me to submit a motion to the court. Even my neighbors reported him for disturbing public peace and order. He dared to do that because the judiciary did nothing."

In October 2013, the Social Welfare Center makes a motion for restraining order, but the decision was never issued. The first new hearing was held in December. Father didn't appear. The case was prolonged because of the reform of judiciary. Dušica is officially still married, with temporary decision on guardianship. One hearing was held in in 2014. Father didn't appear again, because he refused to receive the subpoena even though he was informed by phone. Four judges have already worked on the case because of the judiciary reform. „Each new judge asks for a lot of time to get familiar with the case because it is very complex “.

At the end of 2013, Dušica receives a temporary decision that children should spend their winter holidays with their father. She consults the Social Welfare Center. „They tell me that I let him take the children to their friends' birthday parties, and if he returns the children then it would be a signal that he would also return them from their winter holiday. He did return them from a birthday party and I gave him the children in order to adhere to the court decision, since otherwise it would just be in his favor in our divorce proceedings.“ Although he is to leave children at home with their grandfather, father takes children to Dušica's workplace and she gets fired. While daughter is approaching her mother, he takes the son away.

The son is still with his father, in spite of the temporary decision on guardianship. He enrolled him in another school. According to Dušica, he showed the school director the first temporary measure that was no longer in effect. After talking to the director, and after some time, Dušica takes her son from school and takes him home. Eight days after that his father takes him away again from his school in Surčin and Dušica hasn't seen him since and child hasn't come to school. Dušica urges the Ministry, the ombudsman, the media and all relevant institutions and files charges against the Social Welfare Center. The proceeding is still underway.

„My son is not going to school. Misdemeanor proceeding is initiated against Andrija because my child went to school for only 8 days since the beginning of this semester. Andrija is still coming to school because he wants to kidnap Milica. Children are hiding her in school. I haven't worked ever since because I am her guardian now and I am trying to protect her. Criminal proceeding is already underway. Andrija appeared in only one hearing when he gave a document from a Primary Healthcare Unit saying that my son was grabbed from his mother's hands and that he is coming accompanied by his father. My son was not with his father that day, but with me. I have it in writing. I will press criminal charges for that as well. All I have is a restraint order for him. I went to the SWC the other day and they told me that the judge asked for reports from both SWC and both police units and that I was to go to the Institute for Mental Illnesses to check whether I was mentally ill. They are doing this just to prolong the proceeding. They won't find anything. What has the system done to protect me? Nothing. What has the system done to protect my children? Nothing. A disaster.“

Establishing paternal affiliation

Focus group participants, whose children were not acknowledged by their biological fathers voluntarily, were primarily faced with some **personal barriers** when deciding whether to establish paternal affiliation in court. Impression is that these women consider the decision to give birth to their children their own

decision, denying any responsibility of the partner, unless he wants to play his role of a parent. This is the reason why they mainly don't perceive court establishing of paternal affiliation as a formal way to exercise their child's rights, which this process actually is, in the opinion of professionals. On the contrary, these mothers perceive court proceeding as a pressure put on father to accept the child emotionally, which they consider impossible. „I can't force him to accept the child if he doesn't want to. I decided to have this child, it has nothing to do with him.“

Women who are willing, though, to judicially establish the rights of their children consider this process **financially unattainable**. Price of expert DNA analysis is about 250 Euros, and it was a lot more expensive in the past. Respondents, mainly unemployed, don't have this money. They are aware that their costs would be reimbursed after issuing of court decision, but they don't have the initial money for the lawyer and fees. They also give the proceeding up if they see that they won't be able to charge the late alimonies (father works in illegal market, he owns no real estate).

Marija has a nine-year old daughter with her former friend. The pregnancy was not planned, since the relationship was not emotional, but friendship. Soon after the child was born, he moved to the UA. He didn't acknowledge the child and he sees her occasionally. Marija is thinking about initiating a paternity suit, primarily in order to define child support, and about filing charges retroactively for not paying child support in the past. Money is the major barrier here and the fact that child's father lives abroad.

When my daughter's father left for America in 2005, I needed 800 Euros to establish paternal filiation. I didn't have that money. I don't have it now either because I am unemployed. Plus I couldn't catch him because he was leaving. Where was I to get so much money? I was cornered. I will sue him as soon as I collect some money, but this is not a guarantee that I will get alimony for all these years. Court will decide, but it can't pay instead of him, unfortunately. He doesn't own any real estate, he doesn't live here. Who knows how long it will all last. He won't even appear in court. And when I get the court decision, it will just remain a dead letter.

Given that several factors, both personal and associated with court proceedings, take part in making the decision on initiating a proceeding, it happens sometimes that women have to wait for several years. As for those who decide to file charges after 10 years of waiting, they have a problem because these cases are **subject to a statute of limitations**. When a child turns 10 years of age, mother can no longer file charges, but only the child can. Such a proceeding, while the child is still underage, is unacceptable for mothers, because they believe that it would be too much of a stress for the child.

I didn't know that I was to sue him because he was financially stronger than me and I didn't think I would succeed. I was afraid he would take my child away. I was only 22 and I didn't know anything. When I decided to do it, it was subject to a statute of limitations. I was making a mistake by not submitting documents on time. That's why the complaint was withdrawn. They told me that Ivana had to file charges, and I couldn't watch my child being represented in court by someone else. I didn't want to put her in that kind of situation.

Termination of father's parental rights

Focus group participants whose spouses or partners did not adequately perform their parental role during marriage or a relationship, state that these fathers usually lose interest to remain an active part of their children's life after break-up. Most of them never see their children, so **there is no need that they are formally deprived of their parental rights**. As they say, this is a „relief“ for them because it would be very difficult for them to opt for this step even when necessary. They primarily fear condemnation of their children - *„I don't want her to tell me one day You wouldn't let me see my father, you drove him away. I let her see on her own what her father is like, that he doesn't call, that he doesn't come when he promises... She has stopped asking about him now.“*

When fathers leave their children, the only barrier that single mothers are faced with is **administration related to children** in cases when signatures of both parents are necessary. As they say, they can complete most things on their own, such as obtaining a passport, but traveling abroad is the most difficult problem to solve.

The only way to travel with children, if father refuses to give consent, is to file a complaint for **partial deprivation of parental right related to travels**. In case representatives of Social Welfare Center want to help, they can issue a certificate that mother can travel with children even if the process is still underway. However, some focus group participants who don't have good communication with the other parent didn't know how the system functioned and which steps they should have taken in order to travel with children.

„He was given a model of access that he didn't adhere to. When the child was to travel to Rhodes, he didn't want to sign the papers. I was very persistent because the trip was for free, so I asked the Social Welfare Center for the permit. First I had to initiate a court proceeding for partial deprivation of parental right regarding making decisions on travels. I begged them. My child was allowed to travel. When she turned 18, I didn't need the permit anymore, so I withdrew the charges.

Violation of Labor Law

Violation of labor law in Serbia is considered as very frequent. However, participants in focus groups which were faced with such situations at workplace believe that this is not a gender-related topic, because it hits equally both women and men, while the judicial system is equally accessible or inaccessible to both women and men when it comes to labor disputes. The only situation which is considered as a „typical female problem at work “ is when a women is fired after maternity leave.

Fired after maternity leave

Several participants in focus group discussions were faced with such situation, when after the maternity leave they could no longer count with their job. The employers in questions provided to them quite decent working conditions and had a very good relationship with them prior to pregnancy. Respondents believe that their rights are violated in this way, that women, particularly mothers are utterly unprotected, but they also think that the **employers take advantage of „loopholes“**. Namely, in each of such cases the employers justified the dismissal by reduced workload or elimination of their job position, which the law treats as a legitimate reason for dismissal. Due to such situation the women do not opt for court proceedings primarily because they have doubts about positive outcome, and they also think that they **don't have time and money** needed for that.

Jasmina worked in a bakery and had an indefinite term employment contract. Working conditions were very good. The problem arises when she opens a maternity leave and the employer refuses to pay her for that period. She turns to inspectorate for help.

On 9th August I was supposed to return to work, but on 8th August the bookkeeper called me to come and sign the dismissal document although I had a permanent job. I was told that they didn't need the worker any more. I considered bringing them to court. The bakery is still working, and there are two workers in it. But my child was small and I didn't have money for a court process. My line of thinking was that it was costly, long, and that I wouldn't be able to do anything because of corruption, plus they had money and I didn't.

Female judges who participated in FGD have never had an opportunity to try the cases related to dismissal after maternity leave. They think that **such cases are not brought before the court**, because this is the practice in Serbia to fire the worker after maternity leave, particularly if they have a fixed-term employment contract. *„Our associates in the court also have fixed-term employment contracts. This happens in the court as well.“*

Other violations of labor law

Frequent violation of labor rights is considered to be a consequence of several factors. The first reason is widespread gray economy which remains almost totally beyond control of the state. The second reason is a huge unemployment rate due to which the workers agree to work under the worst possible conditions, and the employers are allowed to violate the labor law massively under the logic „if you don't want to work, there are others who will“. The third reason comes from the fact that the laws, which are generally good, simply aren't implemented because inspection services are corrupt, while the work of judiciary is inadequate because they do not process these cases efficiently enough.

The workers are supposed to be protected by the law. But this is just a dead letter. Such things don't exist here because all of us are frightened for our existence. If my superior is nervous and if he shouts at me, I am already used to it, because this is an everyday practice. At any moment I can be fired. And I can't afford to be fired.

In this section we will present some of the cases with violation of workers' rights that FGD participants were faced with. They mainly decided to avoid the court dispute.

1. According to the same model as getting fired after maternity leave, the workers receive unjustified dismissals on the grounds of reduced workload or they are offered a position which they can't accept. Participants in FGD think that private employers can fire the workers at any moment, although that worker performs his or her tasks correctly. They give up the court proceedings because they are convinced that it would be very difficult to win against the employer with a big capital. On the other hand, when it comes to work in small private enterprises, they think that eventual court decision to return to work is not sustainable in the long run because „how can I work with them when I brought them to court“.

Maja has worked for four years at the famous café chain. Several weeks after the sick leave from which she returned earlier under the pressure of her superiors she gets an offer to accept a new position in Obrenovac or she will be fired. As due to child's school and work in shifts she couldn't accept traveling from Belgrade to Obrenovac, Maja refuses the offer. After two months she receives a decision on dismissal, which she doesn't want to sign.

„I turned to legal adviser of Čukarica municipality, but she sent me to labor inspectorate. I showed my papers to the inspector. He told me to find a good lawyer, and since my employer was a very rich and influential man, he was sure that I wouldn't win the case. He told me openly that I didn't have any chance. „Corruption. I didn't have any money and they did have it.“

2. The workers who have gone through such situations not only believe that the dismissals were unfounded, but they were forced to **give up the severance pay which they are entitled to after dismissal according to law.**

After maternity leave it was decided that I wasn't needed any more in photo shop in which I had been working for years, and I was told to sign the paper where I waived severance pay. We called the inspection and they told us that, if they were going to fire me, they should fire me as a redundant worker. I went to the bookkeeper and she gave me the decision that I was a redundant worker. I didn't want to sign that I waived the severance pay, but she told me that they could fire me because of several other reasons after which I was not eligible for severance pay and I wouldn't have 6 months of paid contributions in National Employment Service. I accepted it because of this. The amount of severance pay would be around 30 000 dinars and I didn't want to sue them for such a small amount. Maybe I should have done that, but I am not vindictive.

3. Very frequent cases are those when **overdue wages which haven't been paid are not paid at all after the dismissal**. Participants in FGD mainly tried to make a kind of pressure on employers in order to avoid a long and too expensive process. The respondents who had a court case describe it as inefficient. Since the companies in question were mainly the ones in bankruptcy, the money has never been paid to them despite the court decision.

I left the company as redundant. I was given severance pay, but I was not paid for the last two months at work when I was on my vacation. I sued them for 78 000 dinars of unpaid income. The proceeding was really tormenting. I felt stupid and miserable when they refused it for the first time, and without any grounds. How could the court deny it when I had it all in writing about my vacation and everything? It was not paid. Why is the judge postponing this? New fee paid each time and another lawyer's wage. It all cost 37000 dinars and lasted a year. I came to the court to prove it. What am I to prove when it is all written down? They tell me that there are many others like me. A complaint was filed for something absolutely clear. It is still in court now. I received judgment in my favor and I thought it was the end. I haven't received any money, and I am to get 78 000 and perhaps interest on it. It is just a dead letter for the time being. I feel humiliated because I have to chase something that belongs to me and that I have earned. I will never think of suing anyone ever again.

4. **Sexual harassment at work** is almost not considered violating their rights among focus group participants. Almost all of them were subject of interest of their superiors or their colleagues were. Although they didn't like being in such a position, they didn't think it was something to be reported. Responsibility for this is simply transferred from employer to woman. Woman is the one to set the limit. „*The director tried to come on to me once, but I refused. He tried, I refused it and that was it. It works with some and doesn't work with others. It all depends on what a woman wants.*“

What bothers them is their colleagues' inappropriate vocabulary and jokes with sexual connotations, but they don't consider this harassment, and they don't consider it important. In their opinion, this should not be a subject to a court proceeding because „*Even rape is difficult to prove, let alone this.*“

5. Awareness of **mobbing**, as a situation that can be a subject of a court proceeding, is somewhat better developed among them. However, although they are faced with outpouring of employers' fury, inappropriate requirements and harassment, they are trying to defend themselves from that

on their own. They believe that no employee could prove mobbing in court because there is no proof of it.

„They all see it, but they are afraid for their job. No one will testify for you. I wouldn't testify for others. I can't afford to lose my job.“

Problems Present in all Mentioned Court Cases

In all the discussed court proceedings, either civil or criminal, women, as a party to a case, were faced with similar problems. Professionals also confirm that these really are barriers for efficient processes.

No matter if they had a dispute with an ex-partner or company, women were faced with **deliberate stalling of proceeding** by the other party to the case/legal entity. Almost as a rule, the other party didn't appear at hearings and used all legal possibilities to avoid appearance in court. Given that court system is faced with case overload, periods in between hearings are long.

He can fail to appear several times, the law allows it, but the next hearing is not in three days but in three months.

In order to prolong the proceeding, the other party **avoids receiving a subpoena for hearing**. This not only obstructs the court proceeding, but also disables enforcement of judgment. Judges, lawyers and prosecutors complain about the postal service and they consider delivery a systemic problem, but a problem not under the jurisdiction of the judicial system.

Judge: The problem of delivery is serious because we need the address, we can't deliver subpoenas without it.

Lawyer: These issues are not solved systemically. What do the postmen do? They are corrupt. Even a judge can't do anything about it. A subpoena is left at the door and it is considered orderly delivery. It's ridiculous.

One of the ways to avoid taking a subpoena is to **change address and be registered at a „false address“**, an address where person doesn't live actually.

I couldn't submit divorce papers because I didn't know his address. He wouldn't tell me. He kept saying that he was going to tell me in five days and he never did. I was told in court that I was to find the address. Then he made some criminal offences and fled to Montenegro. I know that he lives in Podgorica, but he is not registered there. He is registered at a false address in Novi Sad. I had to pull some strings to find his address. Just imagine that neither the Police nor the court can find someone who is socially fully active. They say that personal identification number is not enough.

Both users of court services and judges believe that this is **primarily the result of the Police underperformance**, who are not doing enough to locate the person who doesn't appear at hearings or stalls enforcement.

The Police should look for him and catch him, it's an arrest warrant, and not let him run away. If they don't find him three times at one address, they give up, they are so casual and flexible. They let him go, they say they have nothing to do with it. They should wait for him in the street and stop each car that passes.

Judge: There are people who have a false address abroad and they actually live here. You have a problem with delivering decisions and you waste five months. They have some false address, and you have to check that. Police officers even say: "Let the man be, his wife is molesting him for alimony". I had cases when I found out where a person was through an electoral list before the Police found him.

Users of court services who **had cases during one or two of the latest judiciary reforms**, believe that this additionally extended the already not efficient enough proceedings. Due to reorganization of courts and change of the number of judges, most of them had several different judges, and one respondent even had her case file lost.

My file was lost in the reform process. I went to the archives to look for it myself and when I found it they told me that there was a conflict between courts and that it was unclear which court was competent for it. What does it have to do with me?

PERCEPTION OF GENDER EQUALITY WITHIN THE JUDICIARY AND IN PRIVATE LAW PRACTICE

Quantitative study results point out that professionals within the judicial system, or **judges and prosecutors, notice gender differences in their profession to a lot lesser extent than representatives of private law practice do**. Namely, most judges (73% of men and 68% of women), as well as most prosecutors (63% of men and 64% of women) believe that men and women in their profession have equal opportunities to progress. Those who do notice differences, mainly believe that the other gender is favored: 18% of men judges and same percentage of men prosecutors believe that their female colleagues have better opportunities to be promoted, while 19% of women judges and even 31% of women prosecutors believe the opposite.

Results are similar also regarding the opportunity to earn money within the profession: 89% of men judges and 81% of women judges, as well as 83% of men prosecutors and 84% women prosecutors agree that men and women have equal opportunities. Some women who report that inequality does exist, believe that men are in a better position (4% of women judges and 15% of women prosecutors think that men earn more), while men who think that inequality exists don't

share a uniform opinion (equal shares believe that men stand better chances and that women stand better chances).

On the other hand, **lawyers' responses point to great gender differences within this profession, or significantly better position of men.** Even 47% of women lawyers believe that their male colleagues stand better chances to be promoted, and 20% of men lawyers agree. As for income in private practice, differences are even more visible: 52% of women and 29% of men lawyers claim that men are in a better position in this profession.

Responsibilities of women in the legal profession and the justice system

Focus group discussions confirmed quantitative results. Women who have private practice and who work in the justice system agree that „*being a lawyer is not very convenient for a woman* “. Lawyers, judges and prosecution associates primarily notice unequal presence in private practice and in the justice system: **there are a lot more men lawyers, while there are more women in courts and in prosecution.**

The primary reasons are **working time and workload**, or reduced possibility of balancing professional and personal responsibilities of women who have private practice. All respondents agree that women lawyers have bigger load.

Lawyer: It is very hard to be a woman lawyer because you have to work all day long. In the morning, you are in court, you write lawsuits at night, we work 24h almost. It is very hard if you have small children.

In addition, private practice is considered a lot more insecure regarding income, although income is a lot higher than in judiciary. Better income is the reason why more men choose to be lawyers, while job security and regular income are benefits of working in the judicial system in case of women.

Prosecution associate: A job in judiciary is a state job and you have limited working hours. Your employer can't just fire you and women want to exercise their rights by the Labor Law. When you are a lawyer, you have no working hours, you work on weekends, you work in the afternoon and you don't have time for your family or private life, and men won't do with just a salary in a state institution.

Opportunities for promotion in the judicial system

Regardless of whether they work within the judicial system or out of it, focus group participants – women practicing law, absolutely **deny presence of different opportunities for women and for**

men within the system. Insensitivity for gender issues in their profession is present among older respondents especially, mainly judges.

Judges **deny presence of different opportunities for promotion in their profession**, although they notice that there are equal numbers of men and women at the position of president of court, while there are a lot more women at lower positions. They consider this just a coincidence. They admit that quality and hard work are not the only criteria for promotion, but men and women have informal ways and informal support networks that facilitate promotion equally at their disposal. As for their colleagues who took part in the quantitative study and stated that their male colleagues had better opportunities than they did, they think it's just rationalization of their own failure and unaccomplished ambitions.

Judge: *„It depends on how skilled you are, it has nothing to do with gender. I really think that gender is not relevant at all. “*

Prosecution associates who are a lot younger and with less work experience, still **notice the difference regarding the position of men and women within their institutions.** They assess that mainly men take the positions of public prosecutors, while women are usually at lower positions. In their opinion, this is a consequence of women's decision to commit to their family, and they usually stay off work for several years due to taking a maternity leave. To confirm their hypothesis, they state that men get promoted a lot earlier, while women tend to do that at their more mature age, when their children grow up.

Prosecution associate: *Women at high positions are already accomplished and their children are independent, and men break through while they are younger. Women can't do it because they have to run home whenever children are sick. Mother is primary and most important and it's the greatest sacrifice in a woman's life. Men have these three years that we take for children.*

Woman's load of family and household responsibilities is usually not considered a consequence of unfair and unjust division of responsibilities between spouses, but is rather attributed to woman's biological predisposition to take care of her family *«No one can replace mother»*. Just a few focus group participants relate women's poorer position at work with home responsibilities that might be shared by spouses, but it is again attributed to cultural heritage and patriarchal environment.

Judge: *„This is expected of a woman. A man is not expected to iron when he comes home from work. Expectations of women are greater in general. It is terrible that there is still no balance there.“*

Given that public institutions have clearly defined system for wage determination (depending on position, years of work experience...), focus group participants believe that there are no differences between incomes of men and women working at same positions within judicial institutions.

CONCLUSIONS

General assessment of accessibility

Both the female users of judicial system and women who work within this system agree that judicial system in Serbia is equally accessible to men and women, so they do not distinguish court users on the basis of gender. These data are corroborated by findings of quantitative study, where no gender-related differences were observed among court users. But general assessment of accessibility differs significantly between the court users and providers of court services. Judges and associates in Public Prosecutor's Office think that judicial system is accessible to everyone, even too accessible, which results in excessive caseload in the courts which are not basic courts (*„For just 980 dinars you can sue anyone you want, and all that comes to us“*). On the other hand, female participants in focus groups who had a court case or gave it up, think that the system is not accessible enough to either gender, primarily in financial sense. They think that expenses for the court and lawyers are too high because of inefficient processes and unfeasible due to poor enforcement of judgments.

Court cases typical for women

Participants in focus group discussions notice the gender-related differences only in the existence of court cases which are more frequently initiated by women. Since after the divorce or termination of common-law marriage custody over children is usually given to women, «court cases typical for women» are the ones through which the women try to exercise the rights of their children: payment of child care, division of common property, deprivation of parental rights. As regards all other cases, including violation of labor law, the professionals estimate that they are equally frequent among women and men, and that both genders have equal treatment by judicial system.

All participants single out inadequate alimony and inefficient implementation of the decision on payment of alimony as the major problems in family law cases. However, while users are dissatisfied with performance of the judicial system because it has no mechanisms to set real father's income and real sum of alimony, and secure regular payment, judges and prosecution associates consider this a state issue and consider the state responsible for providing these mechanisms. Similar barriers for efficient court proceedings were observed in all discussed cases: the other party to a case failing to appear in court, undelivered subpoenas, unfounded complaints, but professionals agree that these are again state issues and not judicial system issues.

Position of women in judiciary

As being generally not sensitive to gender issues when it comes to court cases, women in the justice system do not perceive a difference in the position of women and men within the system they work in. The only difference they notice is different share of men and women lawyers and

those working in judiciary, and also bigger share of men in private and women in public practice. This difference is attributed to woman's decision to commit to her family, which implies choosing a public institution, and man's ambition for financial achievement provided by private practice. And that small number of respondents who notice too large number of men at high positions in judiciary, disproportional with total number of employed men and women, consider this a „normal consequence“ of woman's biological predisposition to be a mother. While women stay off work for several years because of maternity leave, men of their age are promoted. However, discussion participants don't perceive unequal distribution of family responsibilities as a barrier for woman's promotion, but as an inevitable consequence of her decision to have a family.

Annex 3 – Access to Justice Focus Group Discussions (Summary)

METHODOLOGY

ABOUT FOCUS GROUPS:

Discussion in focus groups is one of the methods of qualitative research which makes possible deeper understanding of behaviour, attitudes, motives, etc. The group discussion is facilitated by a trained moderator, and in this research the duration of focus group discussion was circa 90 minutes on average. There were 8 participants in each focus group discussion. This research concept makes possible collection of extensive information in a relatively short period of time, but the results can only be considered as opinions typical for particular segment of population.

STRUCTURE OF THE GROUPS:

Participants in focus groups were the representatives of various populations:

- **Mainstream population:** citizens of Belgrade, economically active, aged 25 to 66 years
- **Farmers:** citizens of village Klenak who generate earnings from agriculture activities
- **Owners of small enterprises:** entrepreneurs and owners of enterprises with maximum 5 employees who are registered in Belgrade
- **Members of LGBT populations, activists:** NGO activists who deal with the rights of LGBT population (Gej strejt alijansa (GSA), Kvirija centar, Labris, Inicijativa mladih za ljudska prava)

In each group, except the one with LGBT activists, majority of respondents had some dispute which had a good ground for being brought to court, but they gave up the court process. Smaller number of respondents (2 or 3) has a dispute in the same period, but they are not satisfied with the work of judiciary, and they wouldn't go to court again in similar situation. In case of mainstream population the respondents had civil and criminal cases, while the farmers and owners of enterprises had business related disputes.

Towns	Population	Number of participants	Date
Belgrade	Mainstream population	8	28. 02. 2014
	LGBT population	5	04. 03. 2014
	Small business	8	04. 03. 2014
Klenak (municipality of Ruma)	Farmers	8	03. 03. 2014

KEY FINDINGS

MAINSTREAM POPULATION

Judiciary system in Serbia is evaluated as inefficient, low quality, and most of all, inaccessible to „ordinary citizens“. As a result of such situation, the court proceedings are not even instigated every time when there is ground for it.

The reasons why the citizens who had a dispute which could be resolved in court didn't instigate the proceedings after all highly coincide with experiences of those who participated in some court proceedings. Court proceedings are avoided due to unfavourable accessibility of the judiciary:

- **Basic access to judiciary:** affordability of court costs, access to necessary information, geographical distance of the court
- **Access to justice:** duration of the proceedings, personal time spent (days off at work), willingness of witnesses to testify, personal health (loosing nerves), prosecution field the case, fair judgment, trust in judiciary (corruption), enforcement of court decision, work of judge, efficient mechanism for complaining about the inadequate operation of the court and judge

Basic access to judiciary

Costs of court proceedings are considered as one of the biggest obstacles when it comes to access to judicial system. Court processes, particularly litigations, are considered too expensive, even by economically active citizens, such as participants in our focus groups. Even in case when they have the necessary money, participants in focus group discussions think that such civil cases are not worth the money.

- The opinion is that the largest share of costs goes to lawyers as the **lawyer's fee**, because this fee is considered as too high (every appearance in front of the court is charged from 50 Euros on). At the same time it is believed that majority of the lawyers prolong the already sluggish court process in order to earn as much money as possible from it (the bigger number of hearings, the more money for the lawyers).
- In civil cases it is often necessary to have **expert opinion** (for example, surveying the land, etc.).
- This adds to the already high costs (e.g. 200 Euros for land surveyor) of **court office fees**, and **travel expenses** if the court proceedings are held in the court located in some other town.

„The problem here is money, and the fact that the whole process would unnecessarily be stretched to a very long period of time. The hearing is postponed because one of the parties doesn't appear, and I have to pay the lawyer for every appearance in court, and so it goes on for years. Plus I have to have money to go there. I can not instigate the proceedings here, because the woods is not here. I have neither money nor time for that, because the courts function the way they function, and I would have to take days off work to finish it, and I would have to pay for all that. It isn't worth the money.“ Litigation about ungrounded use of inherited woods which was not instigated

If the citizens decide to reduce the costs through own engagement in court process, they are faced with **inaccessibility of information**. The sources of information available for them are very limited.

- **Free legal assistance in municipality** was not helpful at all, since majority of respondents were advised to approach the lawyer

„One has no place to collect information from, all information are inaccessible, so the only solution is to browse Internet and eventually come to some trivial and ordinary information. This free legal assistance in municipality is good for nothing, because one can get no information there. This is a tragedy. When I went there the crowd was very big, and the lawyers did not have time to devote to everyone, just several minutes. Plus they were very impertinent and unpleasant.“

- **Internet** provides the opportunity to find out information about the laws and rights of the citizens, but this is very complicated and time consuming for the amateurs, and, on the other hand, the practice often differs from theory and laws.

„You read that such case can be concluded in particular period of time, you read about your rights, the duration of particular processes, but when you get involved in this story it's something utterly different, it is much longer and more complicated.“

- **Information about the process itself** are often unavailable for the citizens, as the case was with participant whose case was from the domain of criminal law (physical assault). Prosecutor's office still hasn't instigated the proceedings, or it wasn't explained to them where and how they could get the information (for example, why they haven't received the decision from probate proceedings for months).

Nikola P, employed, 35 years old, after probate proceedings he hasn't received any information for months about his case from the court although he believed that the case was concluded.

Probate proceedings was held in September, the situation was clear as water from the mountain spring, I had a life care contract with my late father, my brothers signed the consent that everything should be left to me. January came and I still didn't receive any decision from the court. I asked my neighbour who was employed in the court what I should do, and she told me to write a letter to President of court with all information about the hearing, attached documents, etc. I would never believe that I would have to write to President of court for such an ordinary thing, but I did this and submitted it to court registry on 27.1. After that I received a letter from the judge where she summoned me to come to her office on 15. 3. On that meeting she asked me to tell her some details from with my father ... because, when you go out of court office judicial assistants continue working on the case, not the judges. Until the next hearing the judge has practically nothing to do with our case, only the assistants. Her assistants were not able to interpret my case although they had all documents, so I had to explain everything to the judge. I received the decision

on 20. 4. And I had to pay 11. 000 dinars as court fee. When I sold some of my inherited property after that (a scooter), no one told me that the probate decision becomes final after a month if no one files a complaint, and only after that period you must go to court to get a court seal on the final decision. I found out about that only because I was selling that scooter, although several months have passed since I received the decision in three copies. So we had to backdate the decision and seal, and I could sell the scooter. Until that moment I wasn't even aware that my court decision was not final.

Access to justice

Another important reason for giving up the potential dispute solution in court is **excessive duration of proceedings**. Experiences of participants in focus groups who had some court case coincide with expectations of participants who gave up looking for solution in court: The processes last for years, there are too many hearings, and time intervals between two hearings are too long (assumably, if there are 3 hearings a year, this means that the litigation would last for 5-10 years). *Long intervals between the hearings* are considered to be the result of inefficient judiciary, overburdened judges, and frequent change of judges during the process.

*„A judge in Pančevo was on my case for one year. We had a hearing every month, and only after a year he told me that he wasn't competent for my case, so I had to go to other judge. And what about my costs for coming to the court, absence from work, what about that ...“
Litigation over custody*

On the other hand, it is believed that **excessive number of hearings** is often the result of deliberate obstruction of the proceedings by one party on lawyer's advice (failing to come to the hearing, request for postponement, etc.).

„Lawyers advise their accused clients not to come to the court, because they have the right not to appear up to 3 times. And the lawyers earn more money. „

Long processes with big number of hearings require **significant personal involvement of parties in the process and are extremely time consuming**. Citizens who work in private companies are faced with serious **problem of absence from work**. Namely, the courts work only on weekdays, so although they have the right to be absent from work if they have a court hearing, the employed citizens are forced to ask for a day off (from annual holiday). At the same time, owners of private companies do not look favourably on frequent absenteeism.

„Not to mention our costs, our time, and all other things, this is terrible. It really makes me feel horrible when I am not guilty and I have to go through all that.“

- In addition to financial costs and time, the citizens are even more concerned about the **stress that they are exposed to due to long and inefficient processes**

which they expect. Each new hearing, particularly those where other party is absent, represents an extraordinary nuisance.

„I can only say that no one would be able to compensate me for my nerves..“

- **Stress** was particularly accentuated by female participants who had long litigations over custody, whose children were exposed to repeated psychological testing due to repeated hearings

„As a result of inefficient court, my children were forced to go through 5 mental institutions where they were tested, from Palmotićevo (Institute for Mental Health) on...“

One of the reasons for not initiating the court proceedings is also **fear that case will not be proven in court**, usually because the witnesses deny to testify in favour of plaintiff. This is particularly so in cases of violation of labour rights (illegal work and unpaid salaries), when testimony of other employees is often the only way to prove that the persons whose rights were violated actually worked in particular company. Although they believe in good faith of their colleagues who are often in the same position on their jobs, they are aware that likelihood of their testimony is very small because of fear from losing their job, so they usually give up initiating a court procedure.

Ivan, 35 years old, worked for 6 months illegally, as unregistered worker, and didn't receive a single salary. Owner of private company constantly prolonged payment of salary, and his excuse was that he could not collect the money from his debtors. With the help of his friend who is a lawyer he wrote a complaint thereby threatened his employer. The situation was settled outside of court when the employer paid a part of overdue salaries.

I could go to court, but the biggest problem was the fact that my employer could deny that I was working for him because I didn't have a single document, I have 2 witnesses, that is, the two workers who were working with me. The question is whether they would testify in my favour because their work would also be jeopardised. I could have finished this in some two or three years, and I could have received some judgment, but until that time I would have lost all my nerves, and I would have lost my job even before, and these two co-workers could have lost their jobs as well. I couldn't expect them to do something for me if they didn't have any benefit from it. They could have only been harmed by that.

Experience of participants in focus groups also points to the **problem of selective initiation of the proceedings by the prosecutors** in case of some criminal acts. In this case it is believed that Prosecutor's Office protects the attacker because he belongs to Police.

Milan N, 61 years old pensioner from Belgrade was attacked in the yard of his Vracar home during the New Years Eve (2011./2012) by an un known individual who broke into his property. Milan suffered head and body injuries. The Police reacted, apprehended the attacker, but today, 2 years

after the attack, the Prosecution still hasn't initiated the process. Milan himself, with the help of his lawyer, gathered information in order to file a private complaint, but he didn't manage to get the information about the attacker formally. By informal means he found out that the attacker was a police officer.

At 2 o'clock in the morning a group of palls stormed into my yard coming from the nearby pub. One of them attacked me, and he virtually intended to kill me. I somehow managed to rescue myself, the police came, arrested him, took me to Emergency unit in hospital. And even today I can't get the name of this man from Police in order to lodge a private complaint. Their excuse is that they kept him for 48 h, and that the Public Prosecutor was then supposed to press charges against him. But I am asking you, when will this happen? Two years have passed since that, and until this day they neither called me nor the witnesses. And the case becomes cold after five years. Later on I found out through some private acquaintances that this individual was a policeman, that he was drunk, so there is no use in suing him because he was their man. I could have succeeded with this case if we were in some other country, with normal judiciary. As the things look now, I don't expect them to ever press charges against him.

The citizens know that they have the right to represent themselves in the court, but they believe that, even when they have a well grounded case, they can never win if the other party is represented by a lawyer. It is generally believed that choice of the lawyer determines the course and outcome of the process to a great extent, and choice of the lawyer depends on available finances. Expensive lawyer does not only mean great knowledge and professional skills, "but the price also includes acquaintance with the judge". **Corruption in judicial system** is considered extremely widespread, so according to respondents, besides acquaintance with the judge it is also reflected in direct bribing of the judge through the lawyer.

„My lawyer advised me to press charges against this individual, and he told me that I would eventually win. But our judiciary is such that I can not be sure at all whether I will actually win him, because the whole thing boils down to amount of money that will be given in order to win the case eventually, and which party has a stronger string to pull in the court. So this can linger in the court for years until the case becomes statute-barred, so I will not get anything in the end.“ Potential dispute about unpaid wages

„All these lawyers can be equally professional and knowledgeable, but the most important thing is which of them has the best connections.“

Giving up potential court case due to estimation that outcome won't be positive even though it should be, according to the law, is particularly present if the other party to a case is considered „strong“ in terms of material wealth, „connections“, position. Focus group participants unanimously claim that **the judicial system is not equally accessible to all citizens**, but that accessibility depends on socio-economic position.

„Cases end quickly and efficiently only if you are a big shot and if you are rich. We are all allegedly equal, only that some are „more equal,“ so justice is a lot more accessible to them.“

Citizens who took part in a court case were **not satisfied with judges' performance**, and judges were considered one of the main factors promoting inefficient processes. Inadequate work of judges is considered more a consequence of indifference and insufficient knowledge about the subject, than of work overload. Also citizens who did not take part in a court case perceived judges in a similar way.

„You can't imagine the way judges look at you in Serbia. As if you were a marble, a little ball they can kick any way they want.“ Court case over custody

Besides all factors they believe contribute to poor efficacy and low quality of court cases, citizens avoid to settle their problems before court also because they believe **there is no mechanism to control the work of courts**. Such mechanism is expected to supervise court performance and react adequately in case of dissatisfactory activities.

FARMERS

Farmers also think that judicial system in Serbia is not efficient enough, but in terms of accessibility, their major problem is inability to implement the judgment, or collect damages.

Farmers refer to same weaknesses of the judicial system as mainstream population does, as the reasons why they avoid instigating court proceedings. However, there are also some activity-specific factors, which imply that the judicial system is not accessible enough to this part of the population. Farmers are mainly faced with problems of late payment of products purchased by the state, inability to collect damages and errors in calculating interest rates on subsidies. They don't instigate court proceedings in most cases, believing that they will just end up with even more resources lost.

Basic access to judiciary

Unavailability of agriculture-specific information actually refers to frequent changes of decrees regulating this field (for example conditions and processes for obtaining subsidies) and their insufficient clarity for „common peasant“. Farmers also believe that these regulations „have gaps“, which would make them lose potential lawsuit against the state.

„Provisions should stay the same for a longer period of time, so that peasants get informed about them and that they know what to do if they have a problem, how to react. The way things are now, they start doing something, and after 5 or 10 days provisions are changed and they have to do everything all over again...“

Access to justice

Procedure for starting a case being complicated and not clear enough is one of the main reasons for not starting any for damage inflicted on property, plants etc. According to respondents, the law stipulates that if damage is inflicted to a plant, it is necessary that inspector investigates the site and that witnesses are questioned, and they often fear they will lack some procedure or document.

Olivera, 45 years old farmer from Klenak grows fruit. Two years ago, her neighbour was burning waste on the field next to hers; the fire spread and burnt her raspberry plant of 60 acres. The estimated damage was 10 000 Euros. The firemen extinguished the fire and made record of it only after Olivera visited the fire brigade station for four times. In her words, the Police didn't want to investigate the site although they were invited. Olivera asked her lawyer friend for advice, and she decided not to press charges, being afraid that she didn't adhere to all procedures (presence of Police on the site, inspector), and that she wouldn't be able to prove who the perpetrator was. Also, she is afraid that if she got the judgment not in her favour, the other party would sue her for slander.

„You have to prove the other party guilty and you have to have all the witnesses, estimates and everything, to bring with you millions of papers, to protect yourself and prove you are right. Given that no one saw this and that I didn't catch him do this, I would simply lose the case. So it's fine to pay your own costs, but having the other party sue you for slander, you will pay that as well.“

For the inspector to conduct expert assessment, it is necessary to pay the fee first, which is **an extra cost**. At the same time, procedure lasts and in case it rains in the meantime, it reduces the possibility of proving the damage.

You have to pay an expert witness, a professional in agriculture, and his visit costs 15000 to 25000 RSD. If it rains in the meantime, it will reduce the possibility of assessment.

Besides lawyers' costs, farmers have **extra travel expenses** because court is located in another town, and in case they have witnesses, they also have to pay witnesses' travel costs and per diems. However, their most burdening cost is the **time consumed**, given that agriculture requires daily and all-day engagement.

One of the major farmers' complaints about the judicial system is **inability to institute court proceedings for minor damages, or damage inflicted by theft of value lower than 15 000 RSD**. In their words, thefts in the fields are very frequent, and they have mechanism neither to protect themselves nor to collect damages. It is estimated that each household loses about 500 EUR a year in this way.

„They can take whatever they want if it is worth less than 15000 RSD and not be criminally prosecuted for that, being protected by the law. They come, they take and you can't do a thing about it. And 15000 RSD every time. Then you call the Police, and you pray to God that they come. So when my friend Miša the police officer picks up the receiver, the first thing he asks is whether damage is more than 15000. And I say that it is. And he tells me that he will call the general crime department, in Ruma, and that their inspectors will come, and do the assessment and then we'll instigate a proceeding if due. And if damage is less than 15 000 RSD, they won't come at all.“

Potential court proceedings would mainly be conducted against the state, which majority avoids because **they don't believe that positive outcome is possible.**

Željko, 36 years old, from Klenak, engaged in crop growing and animal husbandry. Last year, wild boars from the nearby hunting grounds inflicted damage to his corn crops. The damage estimated is 1000 EUR, and Željko is just one of the local farmers in such a situation, which had already happened in the past. Lawsuits used to be filed against Srbija šume before, and they compensated damages in wood, but it is now necessary to instigate a civil lawsuit against the state. Željko believes that he can hardly win this lawsuit, and that court expenses would be extensive, given that lawsuits usually last for several years.

„This means that three members of the Commission from the village have to come and assess the damage and then we go to court. You, as a citizen, can never win against the state in the court. They will ask me why I haven't fenced my property. And I have a piece here, a piece there, so I can't fence them all. It wouldn't be worthwhile if I calculated all the costs. And, in addition, civil proceedings last forever.“

In cases when it is necessary to instigate private lawsuit against another physical entity who inflicted some damage, legal proceeding is given up even when guilt is proven, because of **impossibility to implement a judgment or collect damages.**

Dušan, 46 year-old farmer from Klenak, is primarily engaged in crop production and vegetable growing. Six months ago, his property was trespassed on, when 1000 Euros worth greenhouse construction was stolen and damage inflicted to his tomato crops. The Police conducted on-site investigation, and Dušan found the perpetrator on his own (he recognized the construction at the local junk yard). The Prosecution has not initiated criminal proceedings yet, but when they do, Dušan won't file a private lawsuit to collect damages. The reason for this is the perpetrator's poor socio-economic status (MA beneficiary), so Dušan estimates that he won't be able to collect damages although the judgment will most probably be in his favour. At the same time, legal proceeding costs, primarily lawyer's fee, will additionally affect his budget.

„I can also file a private lawsuit, but I won't collect damages and it will affect me even more. This legal proceeding would cost me at least 1000 Euros, which would make the total sum lost 2 000 Euros, while now I lose only 1 000 Euros. Plus, if I do this all and he goes to prison, they will reduce his sentence from 6 years to 3 months because of good conduct, so when he leaves the prison he will cut all my greenhouses... I should pray to God that this man doesn't come again and do this again, because I will kill him then and I will go to prison, because I have no other way of protecting myself.“

Another barrier for going to court is **perception of judges as insufficiently expert for agriculture**, besides being perceived as generally inefficient and indifferent.

„That judge has never been to a field. How can he understand what happened there and what kind of damage was inflicted?“

SMALL BUSINESS

Entrepreneurs and micro company owners, as well as farmers, are faced with insufficient availability of the judicial system, which affects their business operations. This primarily refers to resolving disputes over collection of other legal entities' debts.

Basic access to judiciary

Same as farmers, small business representatives complain about frequent change of legislative and regulations, which is accompanied by **insufficient availability of information**. Having no legal department, they are forced to keep informed about regulations, their rights and possibilities on their own in case of legal proceedings. Another option is to engage a lawyer. They have **very high costs** in both cases, even when they decide not to instigate a legal proceeding.

„Most severe problem in small companies is lack of information, since we are simply not able to deal with these things, with different new regulations popping out every day, we are simply stunned. We don't have legal departments, so that we can tell them – here are these invoices, do collect this money or sue them. We have to do it on our own, and I can't do my job and do this at the same time, so I lose money. That's why it's very expensive, really time consuming and burdening. And lawyers also charge a lot for it, with fees and everything.“ Company selling office supplies

Access to justice

Small company representatives believe that **the state and the judicial system are not protecting them enough in cases of damage inflicted by theft**. Focus group participants say that, according to their experience, in cases when perpetrators are not found, companies do not file a private lawsuit because they believe they won't be able to compensate the damage in court.

Nada, 52 year-old owner of a boutique in Belgrade had merchandise stolen from her boutique last January. The Police conducted on-site investigation, but they advised her not to institute a lawsuit since it was estimated that the goods had already been sold, thus impossible to be traced.

„I wanted to file a lawsuit. But when the police officers told me that I was not the only one, that this merchandise was probably already sold in some market and that it was seldom compensated or traced, I gave it up. The officers told me this in a friendly tone so I gave it up knowing that it would be in vain.“

The most common basis for initiating judicial proceedings is the inability to **collect receivables**. Small enterprises rarely decide to initiate a lawsuit, and when they make a decision to do it, they are faced with the problem of liquidation of the enterprise which owes them the money, that is, they stumble upon **impossibility of enforcement of court decision**.

- In some cases **liquidation of other enterprise takes place before initiation of a lawsuit**, so the harmed enterprise decides to give up the process in order to avoid at least additional costs of lawyers and court fees.

Zeljko, 44 years old owner of the enterprise which sells office supplies had several cases where he was unable to collect debt from another legal entity. One of such companies that has not paid the debt was liquidated in the meantime. Željko decided not to enter into the judicial process because he believes that, despite the fact that the verdict would probably be in his favour, he would not be able to recover the damages.

"The buyer does not pay for the delivered goods, and when you decide to press charges you realize that they are bankrupt, that there isn't anyone around, that the company doesn't exist anymore, and the only people which can be found in the premises are bookkeepers and bankruptcy trustees who do not decide about anything. So, in last such case we heard that someone has already sued them, so we were not the only ones, but there was a long cue of creditors waiting before us. We realized that, if we sued that company for the debt which was not so big, we would lose more money than we would get, because all costs were on us, so we gave it up."

- In order to avoid suing the enterprise under liquidation, participants in focus groups who pressed charges checked the status of such enterprise before initiating the procedure. Nevertheless, there were cases when **enterprises were liquidated after the court decision**, so the debts could not be collected again.

Sneža, 40 year old owner of company for the production of socks had several disputes about debt collection. All experiences with the judiciary in these cases were negative. Basically she was unable to collect the debt, although the judgments were in her favour. The biggest problem is that the sued companies were liquidated either during the process or after the court decision.

"Two years ago, a company owed me circa one million dinars. We checked whether they were solvent, and when we found out that they were solvent we pressed charges. We won the case, I paid court fees before and after the court decision, I paid the lawyer, and the owner of that company avoided receiving the court decision. And I cannot collect the debt until he receives the court decision. These companies which owe money engage a lawyer who instructs them how to avoid the receipt of the court decision. When the decision has not been delivered after I do not know how many attempts, it is hung in the Commercial court notice board. But six months have passed in the meantime, and finally their lawyer came and informed us that the company had been liquidated."

Regardless of whether the debt is collected or not, the companies which initiate court proceedings have to pay **high court fees**, VAT on goods that are not paid and tax on profit. Court fees are payable in two parts, the first part is paid after the filing of the complaint and the second part is paid upon receipt of court decision, as tax on enforcement. However, in case when the company which lost the case has been liquidated in the meantime, and the possibility of collection does not exist, it is not possible to recover the court fee or part of the VAT.

„I went to the court to ask them why they didn't return to me the money for court fees since the company which we sued was liquidated, or at least the tax on enforcement which is paid before the actual enforcement, and they told me that it was on me and my manager to consider whether we would or would not enter into this risk with the court.“ Enterprise for production of socks

Owners of enterprises blame the state for these problems in functioning of private sector and inefficient judiciary in terms of inability to enforce court decisions, since the state allowed the citizens to start up limited liability companies with small starting capital and **inadequate penal politics for corporate offenses**.

When they allowed the citizens to start up a limited liability company with 250 Euros of initial capital, they legalized massive theft. This means that someone can pick up the goods with bill of exchange, which is no guarantee whatsoever, never pay for the goods and close down the company after all. Something like that was allowed by the state itself, or by judiciary, or Business Register Agency, or whoever else's mistake it might be. In this way they can close down the company and disappear into the thin air.“

In such system owners of small enterprises feel **completely unprotected in cases when their rights are jeopardized**. At the same time they are forced to sell their goods and services only upon advance payment, because this is the only way to protect themselves. Such way of business operation considerably reduced turnover and profit.

„One is completely alone here, and one feels like giving up the whole business, both because of money and nerves. It hurts me most of all to know that I am right, and I still receive that miserable court envelope where they inform me that enforcement decision was rejected because of other party's plea or closure of company. I considered this as my debacle because I trusted that man and I gave him the goods, and then I trusted the state that it will quickly and honestly do its job, and I finally realised that all that was in vain. In this entire circle everyone earned money except me: the court collected the taxes, the other party took the goods and used my money, the state took VAT, and I was the only one who financed all that.“

LGBT POPULATION

Rights of LGBT population are often violated and they are often exposed to different forms of discrimination, including physical violence. Nevertheless, although the members of this vulnerable group and NGO activists evaluate legal framework as good, they still think that judicial system is not accessible enough to them.

Basic access to judiciary

According to NGO activists who participated in focus group discussion, big number of cases when rights of LGBT population are violated are not reported. One of the most important reasons for such situation is **lack of information among LGBT population about antidiscrimination legal framework and their rights**. Due to this reason a big number of discrimination cases are not recognized, that is, the victims themselves and not aware that what happened to them is subject to criminal prosecution. They usually react in case of physical violence, while other forms of discrimination are less recognized and accepted as inevitable.

“I think that we are getting used to different kinds of discrimination and violence. I know many people who were brutally attacked physically even, and who will tell that to absolutely no one. And all this because they consider it a legitimate part of their life. They think it has to be like that.”

Insufficient availability of information on starting a court procedure is also a barrier for starting a court case. This problem is considered to be more present in small communities where there are no NGOs that would provide free legal help and support to victims.

Most court cases related to violation of LGBT rights have been started with **active participation of NGO**, while individuals start cases on their own very rarely. Organizations provide legal and financial assistance, with active support and encouraging individuals before and during the process.

“Majority doesn’t know what to do in such a situation, so organization is there to help. First of all medical documents necessary for the court, because you have nothing in court without medical files, and this requires urgent reaction because injuries heal quickly and can’t be proved in court. That calls for action as well. But there is also encouragement, then financial support, as we all know how pricey court processes in Serbia are. And how long they take.”

Access to justice

However, one of the most common reasons why even cases of severe physical attacks are not reported to the Police and the judiciary is **insufficiently developed mechanism for protection of anonymity of LGBT persons in court cases**. Many LGBT persons, especially residents of small places, decide not to report their case because it would mean exposing themselves to the public, which they are not prepared to do.

“It is not such a huge problem in Belgrade, because Belgrade is big and it doesn’t necessarily have to happen in your municipality, so that it is visible to your family or something like that. But it is really a problem in smaller places, because their aunts, uncles or neighbours work in the Police, or someone else they know, so it will become known that they have something to do with discrimination of LGBT persons. There is the law of 3P in force in small places – policeman, postman and priest, they are the ones to pull all strings, and if one of them knows something, everyone knows that.”

Members of LGBT population, especially activists, do not perceive court cases merely as a mechanism for protecting their personal rights, but primarily as a form of struggle for the rights of the entire LGBT community. They expect the judicial system and the state to send the message to broader public with adequate penal policy and adequate judgments in cases of discrimination, and educate the public in that way. Efficient court processes and fair judgments would, on one hand, send a message to members of LGBT population to actively protect their rights and report cases of abuse because they will be protected, and on the other, a message to perpetrators that discrimination is punished in Serbia. The legal frame provides good foundation, but implementation and interpretation of laws are inadequate, so the message actually sent is likely to be just the opposite.

“On one hand, I feel this inner anger, because we have laws and the laws have their say, and we can see that it is not observed at all. The state and the judiciary have to take a clear stand and send the message that violence and discrimination are not allowed. You must not harm a gay or a lesbian. My life is not worth any less.”

“My house was broken into 4 months ago, and not for theft. I didn’t even think of starting a court case, but I decided to make the case public. I am kind of aware now, it came to me after 4 months, that this case is simply important and that it should be noted somewhere, since I consider it extreme. I suppose that I wouldn’t be sitting here with you now if I were in there that night.”

Penal policy in the finished court trials, according to members of LGBT population, is not satisfactory, given that perpetrators get minimum punishment. The processes covered most by the media, mainly those associated with threatening the organizers of Pride, were

completed with judgments of probation for perpetrators, and most sentences were even mitigated at retrial.

“We have Miša Vacić who is accused of discrimination on billboards round town as head of one electoral list. What can I say? That’s the end of it. That’s the end of our story of court cases. He was threatening publicly and he was accused of 3 criminal acts and he got a conditional sentence of one year in prison for all 3. This is not just about discrimination, but he had weapons and he obstructed an official.”

Experiences of activists who have followed court proceedings in cases of LGBT persons and have attended the hearings do differ, but they all are mainly negative. **They believe that judges are neither familiar enough with problems of LGBT population**, nor sufficiently conscious and without prejudice. However, according to activists, judges have different attitude and they behave differently if activists are present in the audience - their attitude is a lot more correct, even though they are perhaps not aware of it.

“It is sometimes possible to recognise which party the judge generally favours from the tone of his or her voice at the first hearing, and this really happens sometimes. The judge doesn’t have to say anything, but can miss to warn someone for inappropriate heckling, and that’s already a hint.”

- One of the major complaints against judges is **interpretation of statements of the accused**. Many statements tend to be discriminating, but when interpreted by judges they become soothed or omitted completely, so court records and statements may be interpreted as a sign of penitence of the perpetrator for the offense committed.

“Hearings are not taped, and court records are interpreted by judges, which is usually absolutely different from what was really said in the courtroom. For example, the accused for threatening the organisers of Pride said that if people like them ruled, thinking of LGBT population, it would be tantamount to an atomic bomb, and that he didn’t want his daughter to grow in such an environment. This was not part of the court records and he got just 2 month probation because he repented sincerely. Also Mladen Obradović kept saying „faggots“ and similar insults at the hearing, and the judge recorded it as LGBT persons, so at the end you could read how he sincerely repented.”

The very trial is an additional stress for victims and **fear of facing the perpetrators** is also one of the reasons for giving up a court case.

“Marija Savić for example, she was one of the organizers back in 2009. She was the witness at Mladen Obradović and Miša Vacić trials, the accused had the right to question her, and this was terribly aggravating, I was preparing her for that, and she had a psychological problem to talk to them and to look at them, because she was simply afraid of them.”

Given that some perpetrators are free during trial, and that they are often members of organized groups (for example sports fans), plaintiffs do not feel safe even during the process, and they give the charges up for **fear of revenge**.

“The accused do not necessarily have to be in jail during trial. So I, as a victim, am thinking how he must hate me even more now, he attacked me first, and now I’m suing him, and he will have to pay or go to jail, and he hates me even more now and he will beat me up again. You are protected while in courtroom, but as soon as you go out, you are not safe, you have no bodyguards, and if you are alone in the street and there is no one with you, you must fear that someone will attack you.”

Members of LGBT population perceive **insufficient cooperation between courts, prosecutor’s office and the Police** as one of the major problems in judiciary regarding cases of discrimination, including also likely shifting of responsibilities of these institutions to the other two.

“It is the Holy Trinity: Police, Judiciary, Court and Prosecution. They will always bat you back and forth like a hot potato, for example they will say the Police didn’t do a good job, while the court and the prosecution did great, so they keep doing this among these three pillars that keep the entire system together.”

CONCLUSIONS

The judiciary in Serbia is inefficient and not accessible enough to citizens. This is what members of all tested groups agree on: mainstream population, LGBT population, farmers and small company owners. This is the reason why solutions of disputes are sought out of court or not sought at all. LGBT population is affected in particular, given that they are likely not to report their problems at all, even severe cases of inflicting bodily injuries.

They all agree that processes in Serbia last too long, that they require engagement of a lawyer and that this implies too high costs for them as initiators of court processes.

Court trials are exhausting, and, besides material resources, they also require time and are a source of stress. In case of LGBT population, process may be a repeated traumatization of victim due to encountering perpetrators and fear of retaliation.

It is believed that the very course of court trial and final outcome depend on „who you are, who represents you and who you are pressing charges against“. While members of mainstream population think that the party with a better lawyer who is „on better terms with judges“ stands better chances in civil cases, farmers and company owners believe that it is not possible to win a lawsuit against the state, as well as that it is not possible to collect damages from a legal entity or a natural person. Members of LGBT population are faced with situations when the judicial system does not adequately prosecute perpetrators of crimes against LGBT persons and thus does not contribute to reducing discrimination.