

Mapping the Way through the Court and Enforcement Procedures in Serbia

December 2014

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PREFACE

This report identifies and maps procedural steps according to the law on the books and actual practice for a selected number of types of proceedings in Serbian courts. The work on the report was conducted in 2014 by the company IPSOS. The survey was funded by 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 and additional analytical work is available at www.mdtfjss.org.rs.

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1. Introductory remarks

This report complements the Serbia Judicial Functional Review, which assesses the current functioning of the broader judicial system in Serbia and outlines options and recommendations to inform Serbia's ongoing and planned justice reform initiatives in the view of EU accession.¹ The aim of this report, however, is to illustrate the steps court users take in order to protect their interests through procedures carried out by courts or bailiffs. The focus is on the difference between the procedure on the books and actual practice.

The report analyses these differences in specific types of cases, which had been identified by stakeholders as potentially challenging for those seeking justice:: (1) cases of domestic violence processed by criminal courts, both under the Criminal Procedure Code that was in force from 2001 to 30 September 2013 and under the Criminal Procedure Code which entered into force on 1 October 2013; (2) divorce proceedings, primarily those initiated by alleged victims of domestic violence, together with separate procedures that apply to requests for protective interim measures; (3) cases where one party requests eviction, including both civil proceedings carried out in accordance with the Civil Procedure Code and enforcement proceedings that might follow such proceedings; (4) special enforcement proceedings for settlement of claims in the area of utilities and similar services, which are, after the adoption of the 2011 Act on Enforcement and Security, carried out exclusively by "private" bailiffs, introduced by this Act. Although the research focused on the functioning of the judicial system in those types of cases, some of its findings inevitably apply to criminal and civil proceedings in general, as well as to certain enforcement proceedings.

As to the methodology, the first step was to prepare a map of the procedure *de jure* for every of these types of cases. The maps show all procedural steps from beginning to end and provide the analytical basis to this report.² The second step was to conduct in-depth interviews with those who regularly participate in these types of proceedings, i.e., attorneys with considerable experience in such cases and "private" bailiffs carrying out special enforcement proceedings for settlement of claims in respect of utilities and similar services. The primary purpose of the interviews was to assess how those proceedings take place in practice, that is, to compare what happens in practice (the *de facto* procedure) with the procedures envisaged by law (the *de jure* procedure), and to identify problems that may occur during the procedures and potentially affecting their effectiveness.

It should be noted that, as regards the duration and costs of the proceedings, the interviewees were not asked to provide the exact statistics of the proceedings they were involved in. Instead, they were asked to estimate how much time each procedural step takes, how much time it takes for the proceeding to reach a first instance decision, how much time the whole proceeding takes, the costs of the procedure and to give their opinion as to the most important challenges that arise during the proceedings.

¹ The Serbia Judicial Functional Review is available at www.mdtfjss.org.rs

² All maps are available at www.mdtfjss.org.rs

The research focused on the proceedings carried out after 1 January 2011. Nevertheless, since many of those proceedings started before that date, impressions of the interviewees and therefore the findings of the research were certainly influenced by court practice before 2011.

It must be noted that the interviewees were persons from the jurisdiction of all four Appellate Courts in Serbia. Hence, one of the aims of the research was to assess whether regional differences in the functioning of the judicial system exist, and if they do, to identify their cause.

2. Executive summary

Across all examined procedures, timeliness and predictability of timeframes is a cross-cutting issue. In general terms, the judicial system in Serbia does not require its users to take steps that are not envisaged by law. In other words, at least with regard to the necessary procedural steps, the way through court and enforcement proceedings is foreseeable. The length of the proceedings, however, is often more difficult to predict. As a consequence, the same same is true for the costs of the proceedings.

Even though the procedural steps are normally defined and therefore foreseeable, it should be borne in mind that a lawsuit cannot proceed if it does not contain the defendant's correct address. This means that in some cases plaintiffs have to obtain that address from the police, which usually takes approximately a month, but can take more time than that. On top of that, the police require those who ask for someone's address to prove legal standing, i.e., to show that they have a legitimate interest to know that address. In practice this usually means that plaintiffs have to request the competent court to issue a document that confirms their legal standing.

Regardless of whether it is necessary to obtain the defendant's address from the police, courts often fail to deliver official acts properly. This results in delays and causes significant difficulties. Such problems occur somewhat less often in enforcement proceedings carried out by "private" bailiffs, due to the fact that many of them use private companies (which are considerably more efficient than court or state owned services) for this purpose or have their own delivery services.

Courts often do not respect time limits set by law. In particular, courts rarely deliver written judgments within the envisaged time limits. This is true for both criminal and civil proceedings. Also, appellate proceedings that last longer than envisaged by law are far from being rare. Furthermore, second instance courts quash first instance judgments in a considerable number of cases, which normally leads to retrials and prolongation of proceedings. Moreover, the recent reforms of the judiciary and various organizational challenges in many cases led to changes of presiding judges. The new judges therefore have to start from the beginning and inevitably this take a long time, often years.

Nevertheless, there are procedures that are, generally, applied without serious difficulties and without delays. For instance, the interviewed attorneys unanimously assessed that courts operate very well in proceedings concerning requests for interim measures for protection against family violence, reacting promptly, always within the time limits set by law. Also, it appears that "private" bailiffs manage to perform their duties within the required time limits.

Criminal Proceedings

As regards criminal proceedings, in particular those concerning domestic violence, several major problems commonly arise.

First, it appears that the majority of cases of domestic violence are not reported to prosecutors, for a number of reasons. Victims are often afraid of perpetrators or believe that their families would suffer if the perpetrator is prosecuted. Also, it is not unusual that witnesses, usually family members or neighbors of victims or perpetrators, are unwilling to report violence or to testify against perpetrators. Certainly, a significant number of victims and witnesses are reluctant to report domestic violence to the police and the judiciary because they distrust them. Finally, it has been argued that the police in many instances do not report domestic violence to the prosecutor if the victim seems unwilling to testify, even when evidence other than the victim's testimony is available.

Second, even when the police and prosecutors take action against the alleged perpetrators of domestic violence, there is a high likelihood that the charges will be dropped at some stage because the victims will back away from their previous allegations, in some cases due to the lack of appropriate support necessary for victims of violent crimes throughout the proceedings.

Third, according to those involved in trials concerning domestic violence, sentences imposed on perpetrators are often unduly lenient. In particular, the judiciary must ensure that plea bargaining, which has become increasingly popular among prosecutors in recent years, does not lead to sentences that leave victims without appropriate satisfaction for injuries they suffered.

Fourth, criminal trials take a lot of time. According to the majority of the interviewed attorneys, domestic violence cases usually require between one and two years, provided that the case does not have to go to retrial.

Fifth, courts have established a practice of refusing to deal with claims for damages in criminal proceedings, even though the rules allow for that. Instead, they advise victims to initiate a separate civil proceeding, which means that these proceedings have to go through another, time and money consuming process. It appears that there is no reasonable explanation for such a practice.

Finally, it should be noted that the costs of criminal proceedings are rather high, in particular when it comes to defence attorney fees, which seems far from being easily affordable for the majority of citizens. Of course, victims can avoid attorney related costs by opting against being represented by an attorney, but defendants might be faced with serious problems if they choose to be unrepresented.

Divorce proceedings

Generally, getting a divorce in Serbian courts is not difficult, particularly if the court does not have to make decisions on child custody, child and spousal maintenance or decisions related to marital assets. In such cases, trials finish relatively quickly, normally in not more than a few months. If, however, decisions like those just mentioned have to be made, divorce proceedings require more time. While courts decide on child custody and child and spousal maintenance within a period that is not too long, disputes

concerning marital assets often take years, especially if they are complex and the parties are unwilling to co-operate.

Costs of simple divorce proceedings are relatively low, especially compared to other types of proceedings. This is mainly due to the fact that court fees are low. In cases where marital assets are at stake, costs of proceedings can be high, in particular if attorneys' engagement requires a lot of time.

It is important to note that, on many occasions, problems arise when judgments from divorce proceedings have to be enforced, in particular those including decisions on child and/or spousal maintenance, simply because many people have incomes stemming from the "grey economy", which can remain "hidden" for bailiffs. Those who do not pay maintenance are criminally liable, but attorneys familiar with the functioning of the judiciary in proceedings against such individuals report that these trials rarely finish within a reasonable period of time.

Eviction proceedings

According to attorneys regularly involved in eviction proceedings, these are amongst the lengthiest proceedings carried out by Serbian courts and plaintiffs who seek eviction are often faced with a lot of uncertainties and difficulties. This is true for both civil proceedings regulated by the Civil Procedure Code and enforcement proceedings governed by the Act on Enforcement and Security.

First, the duration of the proceedings is not easily predictable. Nonetheless, it is likely that an eviction proceeding will take a lot of time, usually at least a couple of years. The majority of attorneys claim that many of the civil proceedings they have been involved in recently last for three or more years and still have not been concluded. For instance, one of the interviewed attorneys representing banks in eviction cases reports that none of the civil proceedings he initiated during and after 2011 has been finished by the beginning of 2014.

There are a number of factors that contribute to such prolonged civil proceedings. They include, *inter alia*, problems that occur when lawsuits or summons to hearings have to be delivered to defendants or witnesses. Additional challenges are related to parties' (usually defendants') obstructions aimed at prolonging the proceedings, the fact that judges often do not use the first preliminary hearing or the first main hearing in the best way, delays during the main hearing (the period between two hearings is often longer than a few months), appellate proceedings longer than envisaged by law, the fact that presiding judges often change during the trial etc. Finally, it is not rare that plaintiffs who seek eviction face significant problems even after the court decides in their favor. They often cannot recoup costs of the proceedings, which might be pretty high, either because defendants do not have means to pay these costs or because their property and incomes remain out of the court's reach (because property was transferred to other persons or because the income stems from the shadow economy).

With regard to enforcement proceedings, attorneys generally do not complain that courts are slow in their decision-making. In fact, it appears that the overwhelming majority of judges regularly make

decisions within the time limits set by law. Problems usually arise when court decisions on eviction have to be enforced. According to the attorneys, when a debtor refuses to leave the property, it is unlikely that the first attempt to evict her or him will be successful. Cases where the first attempt to evict succeeds are rather rare (for instance, one very experienced attorney assessed that it happens in not more than 3% of cases). This is mainly because courts bailiffs and the police fail to apply relevant laws, i.e., to use their powers, which allows debtors to avoid enforcement. There are, however, expectations that the recent introduction of “private” bailiffs will bring improvement. In fact, it has been asserted that it already did improve the efficiency in eviction cases.

As to the costs of enforcement proceedings, the attorneys mentioned that on some occasions creditors have to do or pay things that, according to the applicable rules, should be done or paid for by bailiffs or the debtors. In particular, they claimed that in some places creditors usually have to provide and pay transport for court bailiffs and later cannot recoup costs of it, while in other places the police require those who seek eviction to pay for their assistance during evictions, even though it should not be the case because that police work is already financed by the state.

Finally, it has been argued by the attorneys that the legislative framework regulating enforcement is not sufficiently detailed and could therefore considerably be improved.

Special enforcement proceedings for settlement of claims in respect of utilities and similar services under the 2011 Act on Enforcement and Security

There is no doubt that the entry into force of the 2011 Act on Enforcement and Security and the introduction of “private” bailiffs, who completely replaced court bailiffs in enforcement cases concerning claims in the area of utilities and similar services, improved the effectiveness of enforcement proceedings in such cases considerably.

Nevertheless, the “private” bailiffs are unanimous in saying that there is still a lot of room for improvement, given that changes of several rules and practices could make enforcement proceedings more efficient and lower their costs.

First, it appears that the bailiffs agree that the Act on Enforcement and Security should be amended so that a motion to enforce shall be filed with the bailiff appointed for the area in which the enforcement debtor, not the creditor (as it is stipulated now), lives or is headquartered, simply because bailiffs who work in the area where debtors live are in a much better position to gather information on their assets, to take certain actions and carry out the whole proceedings. Also, costs of proceedings would be considerably lower if such a rule were to apply.

Second, if the cases stemming from utilities and similar services were distributed evenly among all bailiffs appointed for the territory where debtors live, possibly by the Chamber of Bailiffs, the space for corruption in state-owned companies would be significantly smaller. In particular, some big companies hire only one or two bailiffs, allegedly because they share their profit with the managers of those

companies, and work on the number of cases that is too big to be dealt with properly, which then leads to various irregularities in the proceedings.

Some courts, in particular in Belgrade, do not fulfil their enforcement-related duties in accordance with law. This problem could be addressed by establishing specialised units that would deal with all enforcement-related issues and increasing the courts' capacities for dealing with those issues.

Accountability mechanisms are far from being sufficiently developed and the bailiffs state that they would welcome more effective control of their work.

The bailiffs emphasize that data-bases they often use to access information on citizens' addresses and vehicles could be maintained significantly better. This would make the enforcement proceedings more efficient and save a lot of time, both for them and the police, which maintains those data-bases and responds to bailiff requests for information from these data-bases. Also, they argue that enforcement proceedings would be more efficient and less expensive if all individuals' bank accounts and savings deposits were registered in one data-base, possibly maintained by the National Bank of Serbia (Serbia's central bank), so that they can find out if one has a bank account by checking in that data-base instead of writing to all existing banks in Serbia, like they do at the moment. Furthermore, registries of real estate should be better organized and maintained in order to allow enforcement within the time limits determined by the Act on Enforcement and Security.

Like in all court proceedings, there are significant problems with delivering bailiffs' and court decisions to debtors in enforcement proceedings. The majority of the bailiffs therefore agree that a set of measures should be taken in order to address problems with delivery of their conclusions to enforcement debtors. Some believe that the relevant regulations should be amended, while others think that people in charge of delivering those documents should be better trained and more clearly instructed.

It has been argued by some bailiffs that the Tariff Rulebook is too complex and should therefore be amended so the parties to the proceedings can predict the costs more easily. Also, it appears that it leaves a lot of space for arbitrariness..

3. Criminal proceedings in cases of domestic violence

The following text is a brief overview of the key findings from research into the effectiveness of domestic violence criminal proceedings brought under the Criminal Procedure Code in force between 2001 and 30 September 2013, as well as those conducted after 1 October, when the new Criminal Procedure Code entered into force. The research, which was conducted from November 2013 to March 2014, focused on court practice during the period between 1 January 2011 and the beginning of 2014.

At the beginning of the research a map of the procedure *de jure* was produced. This map is a representation of all procedural steps that must or might be taken for a domestic violence proceeding to finalize. After that, thorough interviews were conducted with 10 attorneys with considerable experience in such proceedings (the same group of attorneys was interviewed with respect to the 2013 Criminal Procedure Code). These attorneys work in the territories under the jurisdiction of the Belgrade Appellate Court and the Kragujevac Appellate Court. The majority of the attorneys have represented both victims of domestic violence and those accused of it (seven of ten interviewees have represented both victims and accused, two of them accused only, while one of them has represented victims only). The primary purpose of the interviews was to assess how domestic violence proceedings work in court practice, i.e., to compare what happens in practice (the *de facto* procedure) with the procedure envisaged by law (the *de jure* procedure), and to identify problems that occur during the procedure and possibly affect its effectiveness.

As regards the duration and costs of the proceedings, the interviewees were not asked to provide the exact statistics about the proceedings in which they were involved. Instead, they were asked to estimate how much time each procedural step takes, how much time it takes for the proceeding to reach a first instance court decision, how much time the whole proceeding takes, the costs of the procedure and to give their opinion as to the most important problems that arise during the proceedings.

3.1. Proceedings under the Criminal Procedure Code that was in force from 2001 to 30 September 2011

3.1.1. Additional steps

Apart from the procedural steps presented in the *de jure* map, there are no other procedural steps that victims, courts, prosecutors or defendants in practice took with respect to determining defendants' criminal responsibility. However, as determination of someone's criminal responsibility may not be enough to provide just satisfaction to the victim, it should be borne in mind that Serbian courts have established a practice according to which they almost without exception refuse to make decisions on damages, even though the CPC (both the 2001 CPC and the new CPC) allows alleged victims to submit claims for damages in criminal proceedings. Hence, after criminal proceedings finish, victims who want to claim damages have to file a civil lawsuit and initiate new, separate proceedings. Although those convicted of a crime are rather unlikely to escape responsibility for damages, separate proceedings are

undoubtedly time and money consuming for victims, defendants and the judiciary. As to costs in particular, one of the interviewees said that, if a victim, for example, claimed and got RSD 400,000,³ the court fees her or she had to pay were approximately RSD 40,000 if the victim did not appeal. If an appeal was submitted and dismissed, the total court fees rose to almost RSD 60,000 (for the plaintiff; fees that would have been paid by the defendant would have been higher as well). If an appeal was upheld, the total court fees were approximately RSD 75,000. At the end of the proceedings the party that lost the case would have to pay all costs of the proceeding, including both court fees and attorney costs, which are likely to be somewhat higher than court fees. However, parties to civil proceedings often face significant difficulties when they have to reimburse costs. To sum up, there is no doubt that the judges that carry out criminal proceedings would save a lot of time and money for both victims and defendants, let alone their colleagues who conduct civil proceedings, if they would make decisions on damages during the criminal proceedings.

The de jure map of criminal proceedings under the 2001 Criminal procedure Code



³ In April 2014 the approximate currency exchange rate was 1 Euro = 116 RSD.

3.1.2. Duration of proceedings

With regard to the duration of the proceedings, the interviewed attorneys gave somewhat conflicting information. On one hand, the majority of them (particularly in Belgrade) said that proceedings in their cases took a lot of time. According to that majority, the absence of plea bargaining in Belgrade meant that proceedings usually require between a year-and-a-half and two-and-a-half-years. However, a couple of attorneys from Belgrade said that they had cases which took approximately three years, sometimes even more. One attorney said that she has a case where the proceedings started in 2009 but has not been concluded to date (beginning of 2014). Attorneys from Kragujevac stated that proceedings in some cases finish within less than a year, but it appears that the majority of domestic violence cases require between one and two years, provided that the first judgment is not quashed and sent for retrial. In such cases it takes between two and three years before the final judgment is made.

Conversely, a couple of lawyers (one in Belgrade and one in Kragujevac) with considerable experience in representing defendants stated that proceedings progressed quickly and usually finished within a year, sometimes close to six months. They asserted that the police and prosecutors, as well as courts, operate much better in cases of domestic violence than in cases of other crimes. Although seemingly contradictory, these claims might be explained by the fact that these two lawyers usually represented persons accused of graver forms of domestic violence, who, unlike clients of the majority of the interviewees, were detained before and during their trials and eventually sentenced to imprisonment. Therefore, it seems reasonable to assume that courts make decisions more quickly in cases where the defendant is in detention and accused of a graver form of domestic violence.

3.1.3. Where delays occur

According to the attorneys from Belgrade, the longest delays in the majority of their cases occurred during proceedings on appeal. All but one of them asserted that proceedings on appeal never finished within time limits set by the CPC (four months or, in case the defendant is on remand, three months). In their cases the second instance court made decisions in no less than six months and usually needed more than a year. According to these attorneys, it is not rare that appellate proceedings take a year-and-a-half or two years. One attorney said that, in his cases, proceedings on appeal finished within the time limits set by the CPC. The attorneys from Kragujevac indicated that in their cases appellate proceedings did not require as much time as in cases carried out by Belgrade courts, but that these proceedings rarely finish within less than four months. A few of them said that in their cases significant delays occurred because the second instance court ordered retrial.

Both Belgrade and Kragujevac attorneys said that domestic violence proceedings often progress slowly because members of the family are reluctant to testify, because witnesses or the accused (who are not on remand) do not appear before court when summoned or find a different way to obstruct the proceedings, and also because the prosecutors cause delays. But they also underlined that on many occasions delays occur because of reasons other than the parties' behavior. Specifically, many of the interviewees said that in several of their cases delays occurred because the judges changed during the

proceedings or because the first instance judgments were quashed, which resulted in a retrial. Also, they said that courts relatively often fail to properly inform parties about dates of hearings. Moreover, attorneys underlined that court schedules, in particular in Belgrade, are too busy and the courts cannot schedule hearings frequently enough. Therefore, it is common that the period between two hearings is longer than a few months.

The interviewees also asserted that the first instance courts almost never delivered written judgments within the time limits determined in the CPC (i.e., step 10, or step 6 in summary proceedings, takes more time than envisaged by law).

3.1.4. Where other problems occur

First, the attorneys say that only a small number of domestic violence cases are reported to prosecutors, for various reasons. In this regard, victims are often reluctant to report it to the police or a prosecutor, either because they are afraid of the perpetrator or because they think that the family would suffer (for instance, if the family financially depends on the perpetrator), or because they do not believe that the police and the judiciary will protect them properly. Also, neighbors or other witnesses of domestic violence usually do not report it to the police because they think that 'what happens behind someone else's closed door is not their business' or because they are also afraid of the perpetrator's possible reaction. It is also common for the police to not report domestic violence to the prosecutor's office if the victim seems unwilling to testify, even when evidence other than the victim's statement is available (e.g., where there are medical reports on injuries suffered and witnesses willing to testify).

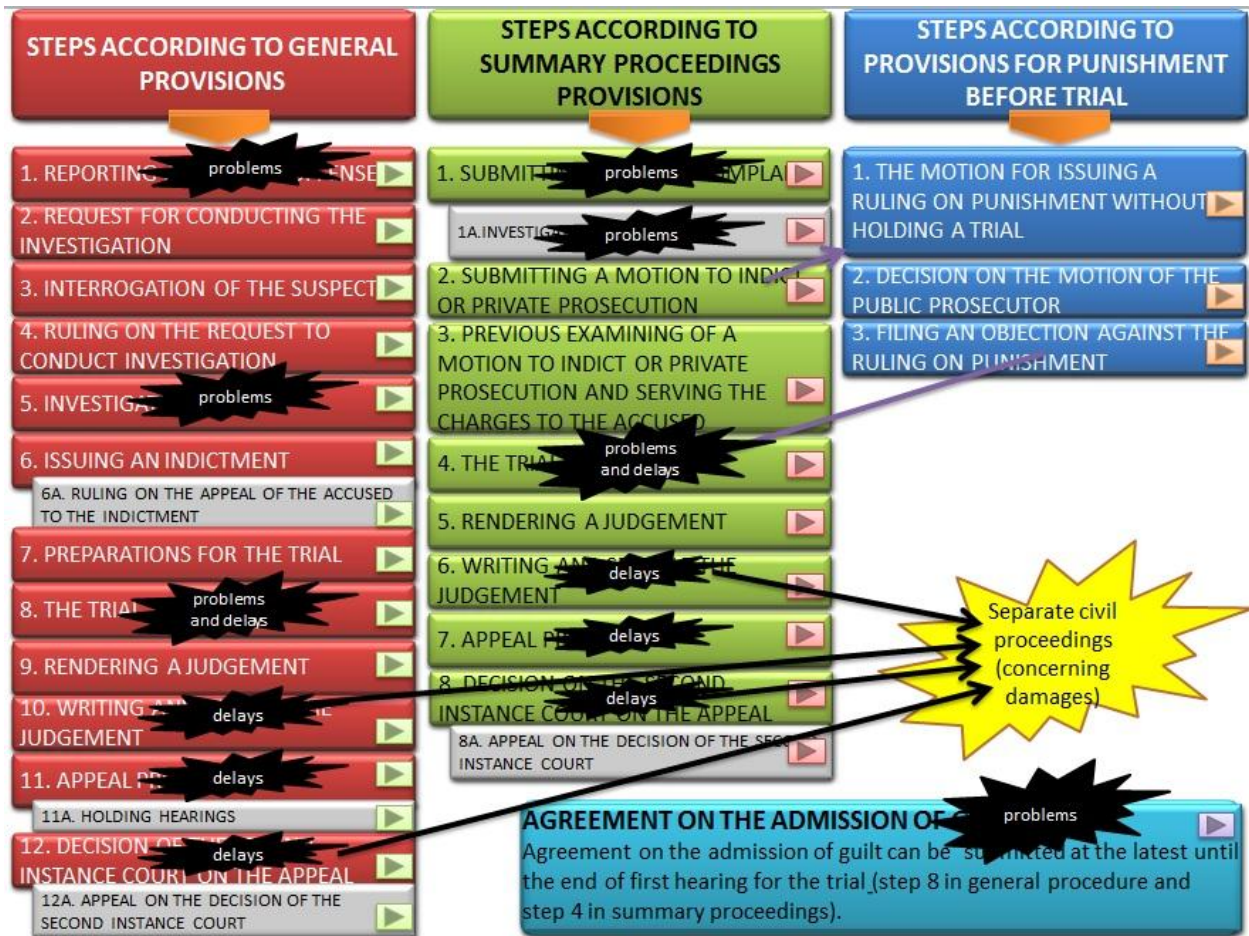
According to the interviewed attorneys, even where domestic violence has been reported to the police and the prosecutor and they have taken adequate action, it is likely that the charges will be dropped at some stage of the procedure, because the victim will back away from her or his initial allegations. One experienced attorney, who almost exclusively represents persons charged with domestic violence, stated that in approximately 70% of his domestic violence cases charges were dropped because victims changed their testimonies and refused to further cooperate with the prosecutors. This usually happens in early stages of the proceedings, even before the indictment is issued, but also occurs frequently during the trial.

The majority of the attorneys stressed that more often than not sentences imposed by the courts are unduly lenient. Further, they emphasized that, due to prison overcrowding or other, often unknown reasons, some persons convicted of domestic violence wait for months, if not years, before they are sent to serve their prison sentence. Needless to say, many of them remain in position to continue to harass their victims. The interviewees emphasized that there is a need to establish a more efficient and transparent system of judgment enforcement. They asserted that they sometimes do not know if the convicted person was sent to prison or if he or she was not, why it has not happened (of course, this applies to situations where they represented the victims; those who represent the defendants know if their client served the sentence).

3.1.5. What works well

Unfortunately, apart from the two above mentioned attorneys who believe that the police and the judiciary in domestic violence criminal proceedings operate considerably better than in cases of other crimes, the attorneys could not say that the courts generally carry out these proceedings in a satisfactory manner. Nevertheless, most of them stated that the introduction of plea bargaining, which occurred a few years ago, brought some positive changes. According to the attorneys, prosecutors are willing to use plea bargains often and a considerable number of cases conclude without trial. However, several of them expressed concerns about this tendency, asserting that on many occasions plea bargains are used in a way that does not give victims any satisfaction. Namely, they argued that plea bargains too often lead to sentences that are unduly lenient and, in cases where the perpetrator remains out of prison, sometimes leave the victims in danger of new violence.

The de facto map of criminal procedure under the 2001 Criminal Procedure Code



3.1.6. Costs

When it comes to the costs of the procedure, victims do not have to pay any court fees and do not need to be represented by an attorney. However, if they opt to hire an attorney, they have to pay all attorney costs, including fees, transportation and accommodation. Attorney fees, which apply to defence attorneys as well, are determined in the Attorney Tariff on Costs and Fee Rates but these rates are not fixed and can be negotiated (standard tariff rates are presented in the table below).⁴ However, attorneys and their clients are not allowed to agree on fees that are more than 500% higher or more than 50% lower than the standard tariff rates. Although the interviewed attorneys were unwilling to talk about the fees they charge, some of them indicated that they work for fees that are lower than the standard tariff fees. Taking into account the fact that the standard tariff rates that apply to criminal proceedings are very high for the majority of citizens, this is not surprising.

Possible sanction	Up to 3 years of imprisonment	Imprisonment between 3 and 5 years	Imprisonment between 5 and 10 years	Imprisonment between 10 and 15 years	Imprisonment over 15 years
Submission of private charges; Objection/answer to charges; Proposal for repealing detention; Application for parole; Appeal on a decision on the prolongation of detention; Petition for pardon, etc.	16,500	22,500	30,000	45,000	60,000
Fee for submission of an appeal; Retrial	33,000	45,000	60,000	90,000	120,000
Visit and consultations with the defendant in detention/prison (per hour); Postponed	9,750	12,750	16,500	24,000	31,500

⁴As the research related to the period during which the Attorney Tariff on Costs and Fee Rates changed, it must be noted that the rates presented in this table are the rates that applied at the end of that period, i.e. during 2013.

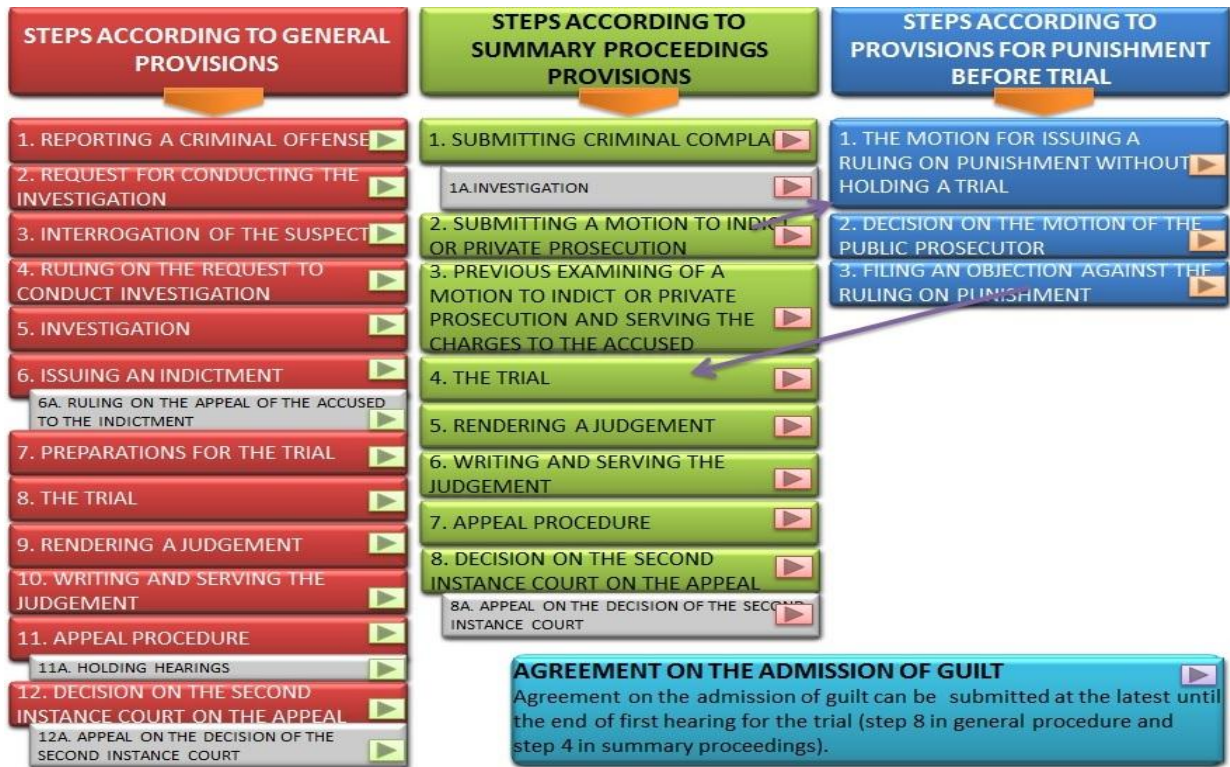
hearing					
Attendance and assistance during examination of defendant; Representation of the harmed party	18,000	24,000	31,500	46,500	61,500

3.2. Proceedings under the Criminal Procedure Code that entered into force on 1 October 2013

At the beginning, it must be noted that, since the new CPC entered into force, none of the interviewees has had a case that had gone through all procedural steps presented in the *de jure* map. Hence, the attorneys were not in a position to say how much time the whole procedure takes. Nevertheless, almost none of them expect that the new Criminal Procedure Code will make domestic violence proceedings more efficient. In fact, they expect that domestic violence, as well as other crimes, will be prosecuted more slowly and with more difficulties than before, mainly because prosecutors are not ready for the role that they have in the new adversarial system that replaced the inquisitorial system. However, the attorneys noticed that, since the new CPC started to apply, prosecutors are more widely using plea bargains, which means that many cases are being concluded without trial. Specifically, some of the attorneys assessed that prosecutors try to reach plea bargains in approximately 75% of all cases. The other attorneys could not give such an assessment but confirmed that plea bargaining has become more widely used. Several of them expressed concerns about this tendency, asserting that on many occasions plea bargains are used in a way that does not give victims any satisfaction. In particular, they argued that plea bargains often lead to sentences that are too lenient and, in cases where the perpetrator remains out of prison, sometimes leave the victims in danger of new violence.

As regards the most important problems that arise during domestic violence criminal proceedings, the interviewees expect that the entry into force of the new CPC will not bring any significant change. Hence, the problems that made prosecution of domestic violence under the previous CPC difficult are expected to remain.

The de jure map of criminal procedure under the 2013 Criminal Procedure Code



The de facto map of criminal procedure under the 2013 Criminal Procedure Code



4. Divorce proceedings

The purpose of the following text is to provide a brief overview of court practice in divorce proceedings, in particular those initiated because of family violence, and to describe where and why it departs from the relevant laws. The text is based on research conducted in the period between November 2013 and March 2014. The research itself, however, relates to the court work in the period between 1 January 2011 and 31 December 2013.

The research started with an analysis of legal provisions that apply to divorce procedures. This analysis resulted in a map of the procedure *de jure*, which presents all steps that, according to the relevant laws, a party to the proceeding or a court must take before the case is decided on the merits. As the research was conducted with a particular focus on divorce caused by family violence, this *de jure* map includes steps that an alleged victim of family violence has to take in a separate procedure where he or she requests the court to order specific protection measures.

After the *de jure* map was prepared, in-depth interviews were conducted with 11 attorneys who have experience in divorce proceedings in order to find out how the procedure is applied in practice, in particular in cases where proceedings were initiated mainly because of domestic violence. These attorneys work in the jurisdiction of the Belgrade Appellate Court and the Kragujevac Appellate Court. The primary purpose of the interviews was to assess whether divorce procedure in practice differs from the procedure envisaged by law, i.e., if there are any additional steps that a party to the proceedings or the court has to take before the case is decided on the merits. The interviews would also assess whether the steps envisaged by law are being taken within the timeframes determined by law. In other words, the aim of the whole exercise was to compare the procedure *de jure* with the procedure *de facto* and to identify problems that occur throughout the procedure and possibly affect its effectiveness.

In relation to the duration and costs of the proceedings, the attorneys were not asked to provide the exact statistics from the proceedings in which they were involved. Instead, they were asked to estimate how much time each procedural step takes, how much time it takes for a proceeding to reach a first instance court decision, how much time the whole proceeding takes, the costs of the proceeding and to give their opinion as to the most important challenges that arise during divorce proceedings.

The most important findings reached through the interviews will be summarised in the following paragraphs.

4.1. Additional steps

As regards the steps that a party to divorce proceedings or a court has to take before the case is decided on the merits, these are the steps envisaged by law (presented in the *de jure* map). In other words, courts respect the relevant laws and do not require any additional steps. However, one should bear in

mind that, in order to initiate a procedure or to resolve problems that someone is faced with after divorce, in some cases a party to a divorce procedure has to take two more steps.

First, although parties to divorce proceedings usually know each other's address, (i.e., registered residence) which is necessary to file a lawsuit or to initiate proceedings for enforcement of judgments, on some occasions that is not the case. As changing a residence is very simple and can be done in a day or two, parties to divorce proceedings often use that flexibility of law to obstruct the case. Since a lawsuit cannot initiate the procedure if it does not contain a correct address of the defendant (residence registered with the police), a plaintiff has to ensure that he or she she knows the correct address, which sometimes means that he or she has to obtain that address from the police. Until recently, the police used to give addresses to anyone who claimed they need an address in order to file a lawsuit or to initiate proceedings for enforcement of judgment. However, due to reasons connected with the protection of privacy, this practice recently changed and the police now require some proof of legal standing before they provide an applicant with someone's address. In practice, this means that a plaintiff has to request the court to issue a document that confirms her or his legal standing (i.e., a legitimate interest to know someone's address) and submit it to the police. According to the attorneys, the whole operation takes approximately a month or longer and a plaintiff or creditor has to pay a fee of approximately 4 to 5 Euros in addition to the costs of the required attorney work. Therefore, when looking at the *de jure* map, one should bear in mind that the above procedure might be necessary before step 1 is taken, or before procedure B or procedure C is initiated.

Secondly, some persons who went through divorce procedure face significant difficulties when it comes to enforcing judgments, in particular with child and spousal maintenance. It is not rare that those who lose their child custody battles avoid paying child maintenance, let alone spousal maintenance. In such situations, if proceedings for enforcement of judgments do not work, custodians and those entitled to spousal maintenance often have no choice but to initiate criminal proceedings as those who avoid paying maintenance are criminally liable. This crime is prosecuted *ex officio* by state prosecutors, which means that a person entitled to maintenance does not have to bear costs of the criminal procedure. However, according to the interviewed attorneys' experience, criminal proceedings in such cases rarely finish within a year or a year-and-a-half (particularly in Belgrade), even though the relevant law requires that such cases be decided expeditiously.

4.2. Duration of proceedings

Obviously, when spouses agree to divorce, the procedure concludes very quickly. In all other cases, the duration of divorce proceedings may vary significantly, depending on the complexity of every given case (e.g., the parties' willingness or lack of willingness to cooperate with each other and with the court, the value of their joint property or assets, and whether they have children or not). The interviewed attorneys said that courts usually make decisions on divorce itself relatively quickly (within a few months). Decisions on child custody, child and spousal maintenance and decisions related to marital assets take more time. Disputes over marital joint property and assets are actually resolved in separate

proceedings, which may last for years or even decades (or, in words of some attorneys, ‘a half of one’s life’).

In relation to the duration of procedures where a divorce, child custody and child and/or spousal maintenance needs to be decided, it takes, according to the attorneys in both Belgrade and Kragujevac, between one and two years in cases of average complexity. Some of the attorneys said, however, that they had divorce cases which were completed after four or five years. Divorce proceedings which take less than a year seem to be rare. Although the duration of divorce proceedings in Belgrade and Kragujevac appears to be the same, there is a significant difference when it comes to the duration of the first instance proceedings and proceedings on appeals in these two locations. Specifically, according to the Belgrade attorneys, first instance proceedings often finish within a year, but proceedings on appeals usually take a lot of time and almost never finish within nine months, as required by the Civil Procedure Code (CPC). In their experience, proceedings on appeals usually take between a year and a year-and-a-half, if not more. It is interesting that in Kragujevac, according to the local attorneys, proceedings on appeal usually finish within nine months, as envisaged in the CPC, but first instance proceedings take more time than in Belgrade.

The de jure map of divorce proceedings



4.3. Where delays occur

As stated above, delays may occur even before the procedure is initiated, if a plaintiff has to obtain the defendant's address from the police. Further, it has already been mentioned that in Belgrade proceedings on appeals usually do not finish within the envisaged time limit, which is nine months. As to other delays, most of them occur during the main hearing (step 8 in the *de jure* map), for various reasons.

According to the attorneys from Kragujevac, delays often occur in cases where decisions on child custody and child maintenance have to be made because the local social care centres, which have to be invited to give their opinion on custody, take a lot of time to do so (i.e., up to six months). Information gathered from the Belgrade attorneys indicates that the Belgrade social care centres need somewhat less time for the same task.

In many instances delays occur because one of the parties obstructs the proceedings in a number of ways. Some obstruct the delivery of documents (such as summons for hearings), some do not appear before the court when summoned, some propose witnesses whose testimonies are not necessary or find other ways to obstruct or prolong the proceedings.

However, it should be stated that on many occasions delays occur because of reasons other than the parties' behavior. Specifically, almost all attorneys said that in many of their cases delays occurred because the judges changed during the proceedings or because the first instance judgments were quashed, which resulted in a retrial. Further, they reported that courts very often fail to properly inform parties about dates of hearings. In addition to that, attorneys underlined that court schedules, in particular in Belgrade, are too busy and courts cannot schedule hearings frequently enough. Therefore, it is not unusual that the period between two hearings is longer than a few months.

Finally, all attorneys said that courts almost never deliver written judgments within the stipulated time limits (hence, step 10 from the *de jure* map takes more time than the Civil Procedure Code envisages).

4.4. Where other problems occur

Several of the interviewed attorneys said that on many occasions the quality of written expert witness testimonies provided was not satisfactory, which causes either delays or court decisions that are not fair.

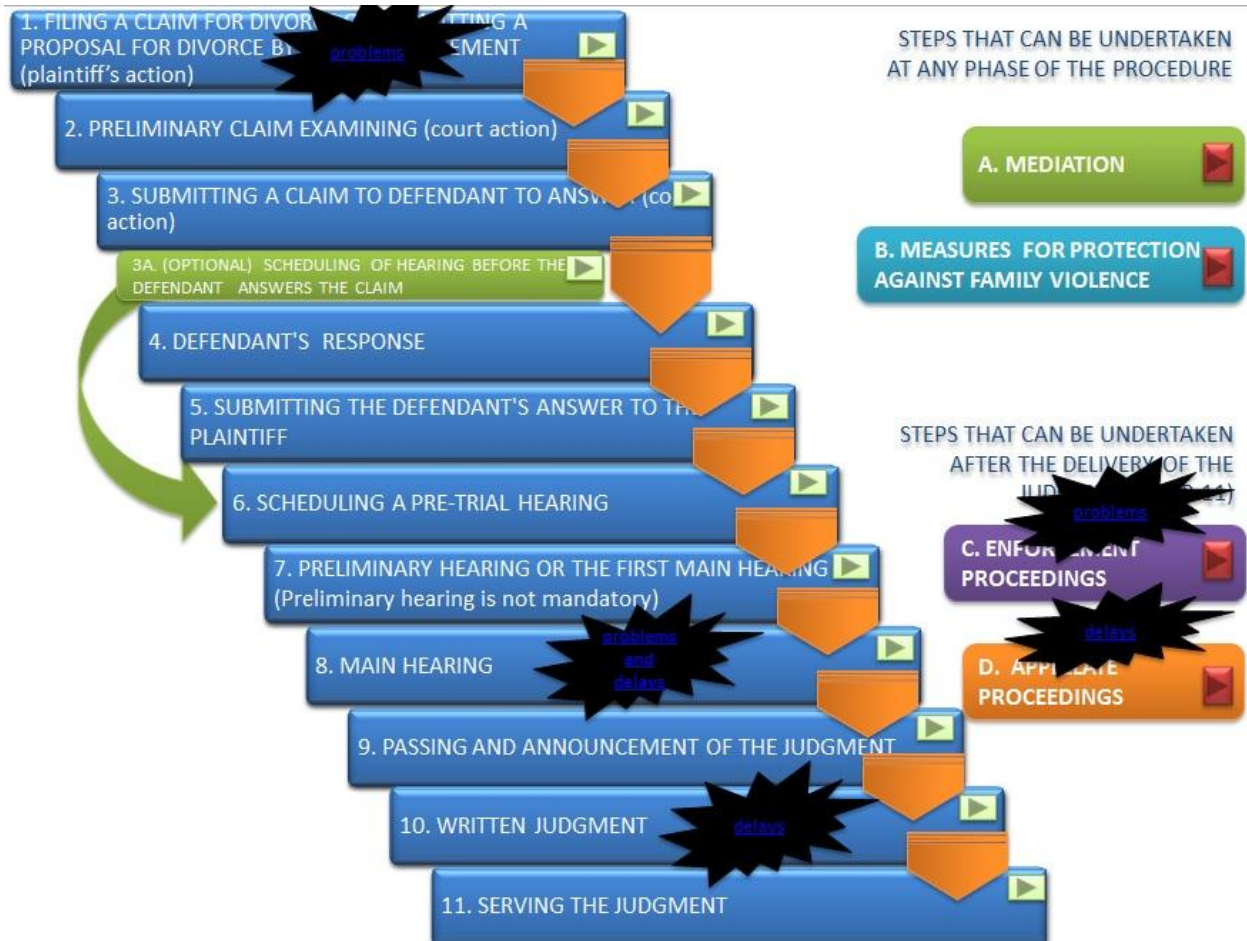
Nevertheless, the attorneys were unanimous in saying that the most important and often insurmountable problems arise when judgments are to be enforced, in particular those parts of judgments containing decisions regarding child and/or spousal maintenance. In particular, due to the considerable size of the shadow economy, those who should pay maintenance costs can often 'hide' their income and thus leave those entitled to maintenance without the amount granted in the judgments. Apart from the reasons connected with the shadow economy and the debtors' ability to

avoid paying maintenance costs (e.g., by simulated transactions), problems with enforcement of judgments also occur due to the general ineffectiveness of the proceedings for the enforcement of judgments.

4.5. What works well

Almost without exception, the attorneys asserted that courts operate very well in proceedings concerning requests for measures for protection against family violence. According to the attorneys, courts respond to requests for protection measures urgently, always within the required time limits. Even enforcement of protection measures works much better than enforcement of other court decisions. Nevertheless, a couple of the attorneys believe that courts sometimes accept requests for protection measures too easily, which might result in abuse of the procedure.

The de facto map of divorce proceedings



4.6. Costs

Like the duration of the proceedings, the costs (both attorney costs and court fees, as well as other costs of the proceedings) vary significantly and depend on a number of factors, including the complexity of the case, number of hearings, number of motions made during the proceedings, value of the claim (in cases where joint property and assets have to be determined and divided).

Pursuant to the Attorney Tariff on Costs and Fee Rates, attorneys are entitled to all material costs stemming from a given case (such as transportation and accommodation costs, compensation for absence from office, *per diem*, and telephone bills), as well as to attorney fees, which are determined for every type of legal proceeding and every legal action/motion. Despite the fact that the Attorney Tariff allows payment per hour, that type of remuneration is very rare, particularly in divorce proceedings. In fact, none of the interviewed attorneys bills per hour. Although they were reluctant to speak about the fees they charge, it appears certain that they use the fees envisaged in the Attorney Tariff to negotiate fees. According to the Attorney Tariff, attorneys and their clients are not allowed to agree a fee that is more than 500% higher or more than 50% lower than the standard tariff rate. It may well be that in practice some lawyers charge even less than 50% of the tariff rate to reflect what clients can afford to pay. This may be particularly the case in poorer areas of the country, such as rural areas in southern and eastern Serbia.

As to the rates envisaged in the Attorney Tariff, the exact amounts are determined with regard to matters where the value of the claim cannot be expressed in money (divorce itself and child and spousal maintenance), while with regard to matters where the value of the claim can be expressed in money fees depend on the value of the claim (this applies to claims concerning joint property and assets and their division). The standard rates determined by the Attorney are presented in tables below:

Attorney fees that apply to procedures where the value of the claim cannot be expressed in money⁵

Type of procedure	Fee for submission of a motion	Fee for attendance at a hearing	Fee for attendance at a postponed hearing	Fee for submission of an appeal
Divorce	16,500	18,000	9,750	33,000
Child and spousal maintenance	6,000	12,750	7,125	22,500

Attorney fees that apply to procedures where the value of the claim can be expressed in money

⁵ All amounts are expressed in RSD. In April 2014 the approximate currency exchange rate was 1 Euro = 116 RSD.

Value of the claim	Fee for submission of a motion (e.g. initial claim, answer to the claim, other motions, etc.)	Fee for attendance at a hearing	Fee for attendance at a postponed hearing (1/2 of the amount of the fee for the motion + 1.500)	Fee for submission of an appeal
< 450,000	6,000	7,500	4,500	12,000
450,000-750,000	9,000	10,500	6,000	18,000
750,000.01-1,500,00	11,250	12,750	7,125	22,500
1,500,000.01-3,000,000	16,500	18,000	9,750	33,000
3,000,000.01-6,000,000	22,500	24,000	12,750	45,000
6,000,000.01-12,000,000	30,000	31,500	16,500	60,000
12,000,000.01-24,000,000	37,500	39,000	20,250	78,000
24,000,000.01-48,000,000	45,000	46,500	24,000	90,000
48,000,000.01-120,000,000 (on every 300,000 the fee of 45,000 is to be increased by 30)	45,000 + 30 per each 300,000	45,000 + 30 per each 300,000 + 1,500 din.	½ of the amount of the fee for the motion + 1,500	amount of the fee for the motion + 100%
120,000,000.01-300,000,000 (on every 900,000 the fee of 52,200 is to be increased by 30)	52,200 + 30 per each 900,000	52,200 + 30 per each 900,000	½ of the amount of the fee for the motion + 1,500	amount of the fee for the motion + 100%
>300,000,000 (on every 4,500,000 the fee of 58,200 is to be increased by 30)	58,200 + 30 per each 4,500,000 up to a maximum of 88,200	58,200 + 30 per each 4,500,000 up to a maximum of 88,200	½ of the amount of the fee for the motion + 1,500	amount of the fee for the motion + 100%

Court fees are determined in the Act on Court Fees. A court fee that a plaintiff has to pay when filing a divorce lawsuit is RSD 2,660.00. The same amount has to be paid as a first or second instance judgment

fee and an appeal fee. It therefore cannot be said that divorce proceedings are expensive, at least as far as court fees alone are concerned and the case concerns divorce alone, not joint assets. In fact, these are among the least expensive court proceedings.

However, in proceedings concerning joint property and assets fees depend on the value of a claim, and may therefore be much higher than fees in proceedings concerning divorce alone. As in other cases, court fees in divorce proceedings can be waived. However, the CPC lacks guidance as to how the provisions allowing waivers should be applied. According to the attorneys, waivers are rare, although persons who initiate divorce proceedings because of family violence are amongst those most likely to receive a fee waiver, given that they can show that they have no income or that they financially depend on their spouses.

5. Eviction procedure (including court and enforcement procedure)

The following text provides a brief overview of the key findings from research into the effectiveness of civil proceedings in cases concerning eviction, including proceedings to enforce a judgment. The research was conducted between November 2013 and March 2014 and focused on court practice during the period between 1 January 2011 and 31 December 2013.

The research started with an analysis of legal provisions that apply to civil proceedings that a natural person or a legal person has to initiate in order to evict someone, including the procedure for enforcement of judgments. This analysis resulted in a map of procedure *de jure*, which presents all procedural steps that have to be taken between the submission of an initial claim and the moment when a plaintiff gets into possession of her or his property.

After the *de jure* map was made, in-depth interviews with 13 attorneys who have experience in eviction proceedings were conducted in order to find out how the procedure is applied in practice. These attorneys work in the jurisdiction of the Novi Sad Appellate Court and the Niš Appellate Court (although few of them have cases across the country). The majority of the attorneys have represented both plaintiffs and defendants. As one of the research goals was to assess whether parties before the courts are equal, among the interviewed attorneys were both those who represent natural persons ('ordinary people') and those who represent financially stronger legal persons, in particular banks, taking into account that some of their loans are secured through arrangements relating to real estate. The primary purpose of the interviews was to assess whether the eviction proceedings in practice differ from the procedure envisaged by law (i.e., if there are any additional steps that a party to the proceedings or a court has to take before the issue is resolved), and to assess whether the steps envisaged by law are being taken within the envisaged timeframes. In other words, the aim of the whole exercise was to compare the procedure *de jure* with the procedure *de facto* and to identify challenges that occur throughout the procedure and possibly affect its effectiveness.

When it comes to the duration and costs of the proceedings, it should be noted that the attorneys were not asked to provide the exact statistics from the proceedings in which they were involved. Instead, they were asked to estimate how much time each procedural step takes, how much time it takes for a proceeding to reach a first instance court decision, how much time the whole proceeding takes, what are the costs of the proceeding and to give their opinion as to the most important challenges that arise during eviction proceedings.

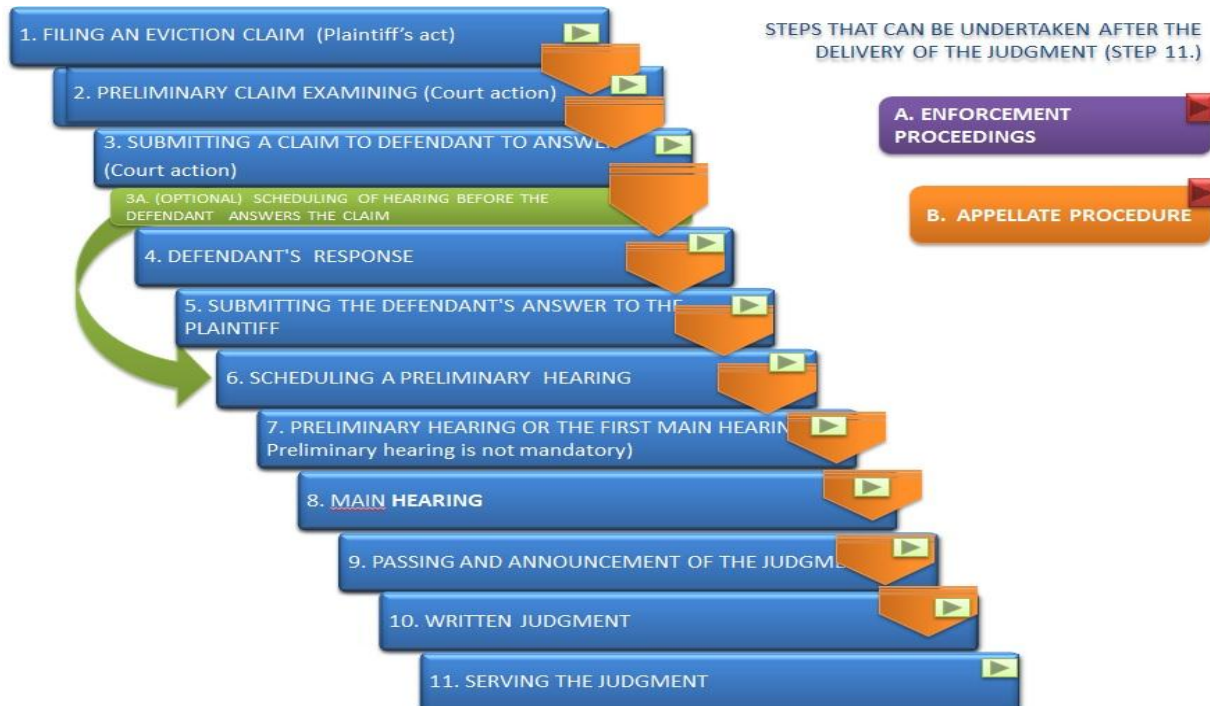
The most important findings reached through the interviews will be summarised in the following paragraphs. As an eviction may require two procedures, i.e., the civil procedure conducted according to the Civil Procedure Code (CPC) and the procedure for enforcement of judgment (carried out in accordance with the Act on Enforcement and Security), these two procedures will be discussed separately.

5.1. Civil proceedings initiated by an eviction lawsuit, regulated by the Civil Procedure Code

5.1.1. Additional steps

According to the attorneys, parties to proceedings of this kind normally do not have to take any steps apart from those envisaged by the Civil Procedure Code (presented in the *de jure* map). In eviction procedures, a step that plaintiffs in other proceedings often have to take before they initiate the proceedings, finding information on the defendant's registered residence, is required less frequently. This is due to the fact that the registered address of many defendants is the address of the real estate over which the dispute exists. However, if a defendant's registered residence is not the same as the address of the real estate in question, the plaintiff has to ensure that he or she knows the defendant's address, which usually means that he or she has to obtain that address from the police. Until recently, the police used to give addresses to anyone who claimed they need an address in order to file a lawsuit or to initiate proceedings for enforcement of judgment. However, due to reasons connected with the protection of privacy, this police practice recently changed and the police now require some proof of legal standing before they provide an applicant with someone's address. In practice, that means that a plaintiff has to request the court to issue a document that confirms his or her legal standing (i.e., a legitimate interest to know someone's address) and submit it to the police. According to the attorneys, the whole operation takes approximately a month or longer and a plaintiff or judgment creditor has to pay to the police a fee of approximately 4 to 5 Euros, in addition to the costs of the required attorney work. Therefore, when looking at the *de jure* map, one should bear in mind that the described procedure might be necessary before step 1 is taken, or before procedure A is initiated.

The de jure map of eviction procedure



5.1.2. Duration of proceedings

The attorneys stated that civil proceedings in eviction cases take a lot of time, i.e., usually between two and three years, although many cases take more than three years. For instance, one attorney, who represents banks in eviction procedures and has handled more cases than other interviewed attorneys, said that none of the civil proceedings he initiated during and after 2011 has been finished at the date of the interview (February 2014). Several other attorneys mentioned that they have cases that were initiated more than three years ago and still have not been concluded. In short, the attorneys almost unanimously agreed that civil proceedings concerning eviction are among the lengthiest proceedings in the Serbian judicial system. Only one of them, a lawyer representing banks in Novi Sad, said that the majority of his cases finish within a reasonable timeframe, that is around a year or less.

5.1.3. Where delays occur

Not surprisingly, defendants in these proceedings usually take every opportunity to prolong or obstruct the proceedings. They are often successful. Many delays occur when lawsuits or summons to hearings have to be delivered. Several attorneys stated that judges sometimes delay the scheduling of the first preliminary hearing or the first main hearing and do not always use that hearing in the best possible way, which later results in prolonged proceedings.

As in other civil proceedings, significant delays occur during the main hearing (step 8 of the de jure map). At that stage, the period between two hearings is often longer than a few months.

Practically all interviewed attorneys said that courts almost never deliver written judgments within the stipulated time limits (hence, step 10 takes more time than the Civil Procedure Code envisages).

When it comes to the length of appellate proceedings, it appears that they vary significantly. The majority of interviewees stated that in their cases appellate proceedings lasted longer than the CPC envisages (nine months). Nevertheless, a few of them asserted that in a considerable number of their cases appellate proceedings finished within the required time limit. In particular, two attorneys from Novi Sad who represent banks said that appellate proceedings normally finish within nine months or less. This might be explained by the fact that their offices are specialised, with enough good staff, but it should be also borne in mind that banks, unlike many individuals, usually have a lot of documents that can support their claim or help during proceedings, while plaintiffs in other cases often rely on witnesses and other less easily available evidence.

It should be emphasized that in many cases delays occur because of reasons other than the parties' behavior. The majority of attorneys said that in many of their cases delays occurred because the judges changed during the proceedings or, less often, because the first instance judgments were quashed, which resulted in a retrial.

5.1.4. Where other problems occur

According to the interviewees, apart from the length of proceedings, the most important problem that they faced in eviction cases is that many of the judgments were not enforced. Problems that exist in enforcement proceedings will be addressed later in this text. Here we have to mention that successful plaintiffs usually cannot recoup costs of proceedings because defendants do not have means to pay these costs or because their property and income remain out of the courts' reach (either because the property was transferred to other persons or because the income comes from the shadow economy). Hence, although they did not cause the dispute and the judgment goes into their favor, more often than not plaintiffs will have to bear costs of the proceedings, which, given the average length of the proceedings, are likely to be high.

5.1.5. What works well

Unfortunately, it appears that in the majority of cases too many things do not work well and the proceedings generally cannot be considered effective. However, as stated above, some attorneys' experience is more positive and in their cases courts tend to make decisions within a reasonable timeframe.

The de facto map of eviction procedure



5.1.6. Costs

Costs of the proceedings mainly depend on the value of the claim (which is normally equal to the amount of annual rent) and the number of hearings, and can thus vary significantly. However, taking into account the fact that proceedings in eviction cases take a long time, these costs are generally high. As already stated, both court fees and attorney fees, which usually form the bigger part of total costs, depend on the value of the claim.

Pursuant to the Attorney Tariff on Costs and Fee Rates, attorneys are entitled to all material costs stemming from a given case (such as transportation and accommodation costs, compensation for absence from office, *per diem*, and telephone bills), as well as attorney fees, which are determined for every type of legal proceeding and every legal action/motion. Despite the fact that the Attorney Tariff allows payment per hour, that type of remuneration is very rare. The majority of attorneys use the fees envisaged in the Attorney Tariff to negotiate fees. According to the Attorney Tariff, attorneys and their clients are not allowed to agree on a fee that is more than 500% higher or more than 50% lower than the standard tariff rate. The standard tariff rates are presented in the table below.

Value of the claim	Fee for submission of a motion (e.g. initial claim, answer to the claim, other motions, etc.)	Fee for attendance at a hearing	Fee for attendance at a postponed hearing (1/2 of the amount of the fee for the motion + 1,500)	Fee for submission of an appeal
< 450,000	6,000	7,500	4,500	12,000
450,000-750,000	9,000	10,500	6,000	18,000
750,000.01-1,500,000	11,250	12,750	7,125	22,500
1,500,000.01-3,000,000	16,500	18,000	9,750	33,000
3,000,000.01-6,000,000	22,500	24,000	12,750	45,000
6,000,000.01-12,000,000	30,000	31,500	16,500	60,000
12,000,000.01-24,000,000	37,500	39,000	20,250	78,000
24,000,000.01-48,000,000	45,000	46,500	24,000	90,000
48,000,000.01-120,000,000 (on every	45,000 + 30 per each 300,000	45,000 + 30 per each 300,000 +	½ of the amount of the fee for	amount of the fee for the

300,000 the fee of 45,000 is to be increased by 30)		1,500 din.	the motion + 1,500	motion + 100%
120,000,000.01-300,000,000 (on every 900,000 the fee of 52,200 is to be increased by 30)	52,200 + 30 per each 900,000	52,200 + 30 per each 900,000	½ of the amount of the fee for the motion + 1,500	amount of the fee for the motion + 100%
>300,000,000 (on every 4,500,000 the fee of 58,200 is to be increased by 30)	58,200 + 30 per each 4,500,000 up to a maximum of 88,200	58,200 + 30 per each 4,500,000 up to a maximum of 88,200	½ of the amount of the fee for the motion + 1,500	amount of the fee for the motion + 100%

5.2. *Enforcement proceedings in cases of eviction in the jurisdiction of the Novi Sad Appellate Court and the Niš Appellate Court, regulated by the Act on Enforcement and Security*

5.2.1. Additional steps

According to the interviewed attorneys, apart from the steps envisaged by law (presented in the *de jure* map) there are no additional steps that have to be taken by parties or courts in enforcement proceedings. Unlike in civil proceedings carried out pursuant to the CPC, those who are required to be evicted cannot prolong the procedure by avoiding receipt of the enforcement order. Hence, the problems with completion of various acts that exist in civil proceedings are not present in enforcement proceedings.

Nevertheless, it should be noted that a creditor must sometimes do certain things and pay extra money for things that, according to law, are not required from her or him. In particular, several attorneys said that they often have to do something and/or pay something that should be done by court bailiffs and later recouped from judgment debtors. For instance, one attorney from Niš said that she usually has to provide and pay transport for court bailiffs and normally cannot recoup costs of it, while few attorneys said that in some places they have to pay the police to come and assist during evictions, even though it should not be the case because the police work is financed by the state.

5.2.2. Duration of proceedings

Despite the interviews, it is hard to draw any conclusions as to the average duration of eviction proceedings, including the eviction itself. Assessments of the attorneys vary from “approximately 6 months, often less than that” to “hardly less than 10 or 11 months”, but it appears that the majority

would be closer to the latter assessment. Several attorneys had cases where the eviction order was enforced after more than a year, sometimes even after a couple of years.

It must be noted that the majority of the attorneys said that in their experience a considerable number of judgments or enforcement orders have never been enforced. One of the attorneys from Novi Sad, who represents banks and has handled more cases of this kind than the other interviewed attorneys, asserted that in cases where the debtor is strongly determined to stay in possession of the property, that debtor is likely to succeed and the judgment or enforcement order will never be enforced.

5.2.3. Where delays occur

The attorneys stated that delays usually do not occur because courts are slow in making decisions on enforcement. In other words, courts generally make decisions within the envisaged timeframe (presented in the *de jure* map). Cases in which courts fail to implement the procedure within the required time limits, mentioned by a few attorneys, seem to be rare (however, it should be mentioned that a couple of attorneys asserted that courts in some places in Serbia sometimes need even 9 months to issue an enforcement order).

The biggest delays occur when an eviction itself has to be enforced. When a debtor refuses to leave the property, it is rather unlikely that the first attempt to evict her or him will be successful. In fact, the majority of attorneys claimed that cases where the first attempt to evict someone finishes successfully are infrequent. In particular, one very experienced attorney from Novi Sad who was involved in hundreds of cases assessed that the first attempt to evict someone succeeds in not more than 3% of all cases.

According to the attorneys, delays occur because bailiffs and the police often do not implement the relevant laws, in particular provisions defining their powers. In other words, they argued that these powers are not always used, which allows debtors to avoid enforcement. Several attorneys stated that “whenever a debtor threatens that he will do something violent, the police and bailiffs are the first to leave the place”.

The attorneys believe that the legislative framework regulating enforcement is not sufficiently detailed and could be significantly improved.

5.2.4. Where other problems occur

Besides the problems that result in delays and the fact that a certain number of enforcement orders are never enforced, the attorneys emphasized that, like plaintiffs in civil eviction proceedings, creditors usually cannot recoup costs of proceedings because debtors do not have the means to pay these costs or because their property remains “hidden” from the court (either because the property was transferred to other persons or because the income comes from the shadow economy). Therefore, even though debtors should normally bear costs of enforcement, these costs are normally borne by creditors.

5.2.5. What works well

As reported by the attorneys, in general all steps that a judge has to take proceed without delays and within the envisaged time limits. It is the act of eviction itself, which is carried out by court bailiffs or “private bailiffs”, which proves to be the most problematic step in enforcement of eviction orders. Nevertheless, it should be noted that several attorneys asserted that “it seems like everything will work better with private bailiffs”. In fact, a couple of them reported that the recent beginning of work of private bailiffs already brought some improvement.

5.2.6. Costs

Costs of enforcement proceedings mainly depend on the value of the claim (which as a rule equals the amount of annual rent). When the debtor is absent during the eviction and none of the adult members of her or his household or her or his proxy is present during enforcement, costs that the enforcement creditor will have to bear include costs stemming from safekeeping of the debtor’s moveable property. As stated above, all these costs, which have to be paid in advance, more often than not cannot be recouped. Nevertheless, enforcement costs are normally much lower than costs of civil eviction proceedings (for instance, one attorney from Niš mentioned that in one of her cases the costs of civil proceedings, including her fees, were RSD 170,000, while costs of enforcement which ensued were RSD 30,000, and added that this proportion can be taken as usual).

6. Special enforcement proceedings for settlement of claims in respect of utilities and similar services under the 2011 Act on Enforcement and Security

In the following paragraphs a brief overview will be provided of the results of the research into the effectiveness of special enforcement proceedings for settlement of claims in the area of utilities and similar services, regulated by the 2011 Act on Enforcement and Security (AES). Since 2012, when the first “private” bailiffs were appointed, these proceedings are carried out exclusively by them, instead of court bailiffs. While “private bailiffs” report that these proceedings are still carried out by court bailiffs in some places, the research, which was conducted from April to June 2014, dealt only with proceedings carried out by “private” bailiffs.

At the beginning of the research a map of the procedure *de jure* was prepared. This map is a representation of all procedural steps that must be taken or might be taken during enforcement proceedings. After that, in-depth interviews were conducted with eight bailiffs who work in Belgrade and Vojvodina (mostly in Novi Sad). It should be noted that, unlike in enforcement proceedings in general, in cases concerning claims in the area of utilities and similar services a motion to enforce is filed with the bailiff appointed for the area in which the enforcement creditor is headquartered (in other enforcement proceedings a motion to enforce is filed with the court of bailiff in the area where the enforcement debtor’s residence or headquarters is). Therefore, as the biggest utility companies are based in Belgrade and Novi Sad, the interviewed bailiffs have had a chance to participate in these proceedings more often than their colleagues appointed for other areas. Specifically, to date the majority of them have each been involved in several thousands of cases of this kind. The primary purpose of the interviews was to assess how special enforcement proceedings work in practice, i.e., to compare what happens in practice (the *de facto* procedure) with the procedure envisaged by law (the *de jure* procedure), and to identify challenges that occur during the procedure and possibly affect its effectiveness.

When it comes to the duration and costs of the proceedings, the interviewees were not asked to provide the exact statistics from the proceedings in which they were involved. Instead, they were asked to estimate how much time each procedural step takes, how much time the whole proceeding takes, the costs of the procedure and to give their opinion as to the most important problems that arise during the proceedings. Having in mind that the duration and costs of enforcement proceedings mostly depend on the type of enforcement, this overview will be divided in two parts, one dealing with the steps that have to be taken before the realisation of enforcement (Step 5 of the *de jure* map) and which are common for all types of enforcement, and another dealing with specific types of enforcement, each of which requires specific steps envisaged by the AES. Before starting with an overview focused on these steps, a couple of challenges will be addressed that reportedly arise with regard to a step that precedes the enforcement procedure, which is an enforcement creditor’s decision on a bailiff to whom a motion to enforce (as an act that initiates the procedure) will be submitted. At the end, costs of enforcement proceedings will be discussed with respect to the whole procedure, not individual steps.

6.1. Distribution of enforcement cases

Pursuant to the AES, an enforcement creditor can freely choose a bailiff. In other words, utility companies are not required to distribute cases to all bailiffs appointed for their territory. The majority of the interviewed bailiffs indicated that this rule causes serious irregularities. A few of them indicated that managers of certain state-owned utility companies receive bribes from a small circle of bailiffs who, in return, exclusively deal with thousands of cases of these companies. For instance, none of the interviewed bailiffs from Belgrade works on cases coming from the only, state-owned electric power company (*Elektrodistribucija Beograd*, i.e., *Elektroprivreda Srbije*). Similarly, none of the interviewed bailiffs from Novi Sad receives cases from *Informatika*, a city-owned company that receives payments for a number of services, including heating. As indicated above, the bailiffs believe bribery is a reason for such decisions by management of these companies. Furthermore, some of them claimed that their colleagues who work on thousands of cases coming from these companies often fail to operate in accordance with the law, particularly with respect to time limits envisaged by the AES. Specifically, one bailiff asserted that these bailiffs sometimes need five months to react to a motion to enforce, despite the fact that time limits set by the AES are much shorter and can be measured in days. Since neither effective control of the bailiffs' work (let alone proper control over public utility companies' management) nor appropriate sanctions for their illegal acts exist, such irregularities remain unpunished. A few of the interviewed bailiffs stated that a repeated failure to act in accordance with the AES should be a reason for bailiffs' dismissal, which is not the case at the moment.

Nevertheless, many big companies, both state-owned and private, such as *Telekom* (national phone operator), *Telenor* (private mobile phone operator) or *Srbijagas* (main gas company), distribute their cases evenly to all bailiffs appointed for the territory of their headquarters. The majority of the interviewed bailiffs believe cases should be distributed evenly to all bailiffs, perhaps through the Chamber of Bailiffs.

6.2. Special enforcement proceedings during the stages preceding the realization of enforcement (Steps 1-4 in the de jure map)

6.2.1. Additional steps

In addition to the first four steps presented in the *de jure* map, the only additional step that sometimes has to be taken before the realization of enforcement is sending a letter to the police requesting the enforcement debtor's registered address. In particular, enforcement creditors sometimes submit a motion to enforce with a wrong address of the debtor, usually because they are unaware of the fact that the debtor changed her or his address after the debt occurred. In such situations, a bailiff has to write to the police and ask them to provide the information on the debtor's registered residence. According to the bailiffs, in Belgrade and Novi Sad the police usually needs between a month and two months to respond, while in smaller cities and towns they normally respond more quickly, sometimes in about a week. Neither the police nor the bailiffs charge for this service. The bailiffs have different assessments as to how often they need this service. As reported by one bailiff from Belgrade, this service might be

necessary in approximately 20% of all cases, while one of her colleagues from Novi Sad said the percentage of cases where this kind of police assistance is necessary might be even considerably higher.

6.2.2. Duration of proceedings

As the *de jure* map indicates, an enforcement creditor has to request the debtor to perform the obligation before it can file a motion to enforce to a bailiff. The time that utility companies leave to their debtors to pay used services varies but is usually short (approximately a week). The duration of proceedings from Step 2 (when a motion to enforce is submitted and an enforcement proceeding is officially initiated) to Step 4 of the *de jure* map (before the realisation of enforcement) mainly depends on whether the conclusion of the bailiff was delivered to the enforcement debtor (and whether it was done in the first or second attempt) or it had to be displayed on notice board of the court (see the *de jure* map). Provided that there is no need to obtain an enforcement debtor's address from the police and the first attempt to deliver the bailiff's conclusion is successful, the realization of enforcement can begin and usually begins approximately 25 to 35 days after the motion to enforce was submitted. In cases where a bailiff's conclusion could not be delivered to the enforcement debtor and it thus had to be displayed on notice board of the court, the part of the proceeding that precedes the realization of enforcement can be prolonged by about a month.

Since objections filed by enforcement debtors against bailiffs' conclusions do not stay the enforcement, those objections do not affect the duration of proceedings. Nevertheless, it should be noted that Belgrade courts, in particular the First Basic Court (which is by far the biggest court in the country), normally fail to rule on objections within five workdays from the day the court received the objection, as required by the AES. According to the Belgrade bailiffs, the Belgrade courts are usually not even close to satisfying this requirement and need months to rule on objections. The only exception seems to be the Belgrade Commercial Court. Conversely, the bailiffs from Vojvodina said that courts in Vojvodina generally comply with the AES and rule on objections within the envisaged time limit. As to the percentage of cases where an objection is filed, the majority of interviewed bailiffs stated that approximately 5% of enforcement debtors file objections to a court. A couple of them said that in their cases that percentage is lower, while another couple said that in their experience that percentage might be slightly higher, but definitely under 10%. With regard to results of these objections, all bailiffs asserted that a very small percentage of objections are eventually sustained.

6.2.3. Where delays and other problems occur

According to the majority of the interviewed bailiffs, most important and most frequent challenges arise with respect to delivery of bailiffs' conclusions to enforcement debtors. As stated above, first problems that inevitably result in delays may occur if an enforcement debtor's address has to be obtained from the police. Even when an enforcement debtor's address registered with the police is known to the creditor and bailiff, delivery might be difficult or impossible, because of various reasons (e.g., because he or she does not actually live at that address, which is not unusual, because of mailmen's negligence etc.). In such situations, bailiffs' conclusions have to be displayed in a court. Of course, as common

people do not regularly walk through courts and look at notice boards in these institutions, that is unlikely to result in debtors' awareness of the conclusion. Hence, some bailiffs argue in favour of establishing an electronic, online notice board where every citizen would be able to check if there is any enforcement proceeding initiated against them. Taking into account that displaying conclusions on notice boards in courts requires a number of formalities, they believe an online system of notifications would save a lot of time and money and allow for more efficient enforcement proceedings.

With regards to the number of cases where a conclusion has to be displayed in a court, the overwhelming majority of the interviewed bailiffs' assessed that that happens in approximately 30% of all cases. However, one bailiff said that she has to display her conclusions in a court in approximately 60% of her cases, if not more. Therefore, it is clear that in a considerable number of cases delivery related problems cause significant delays, which might prolong proceedings by a couple of months (for instance, if an address had to be obtained from the police and the conclusion had to be displayed in the court). Finally, it should be noted that there are courts, such as that in Stara Pazova (a town in Vojvodina, some 30km from Belgrade), which are completely unaware of their duties under the AES and refuse to display bailiffs' conclusions on their notice boards.

To address the described problems with delivery, bailiffs take various measures, some of which might affect the costs of the proceedings, although not greatly. Some have their own delivery services or use private alternatives, which they employ either when the first attempt made through the national postal service company failed or when they assume it is likely to fail (one of the bailiffs said that she knows exactly in which outlying areas of Belgrade the national postal service company usually fails to deliver so there she delivers by her own service or by a private one), while some use the national company exclusively, mainly because they do not want to take responsibility for irregularities that might occur with respect to delivery. With regard to the costs of delivery, most of the bailiffs asserted that these remain approximately the same regardless of whether they use their own delivery service or the national company, although some indicated that the costs of delivery might be higher if their own or a private service is employed. The above mentioned bailiff who usually does not use the national postal service company in the outskirts of Belgrade stated the costs of delivery by private companies are up to four times higher than if the national company is used. However, these costs are relatively low and form only a minor part of the entire costs of proceedings.

Significant challenges arise, at least in Belgrade, with respect to the procedure for obtaining statements of assets from enforcement debtors and they will be briefly presented here. As explained in the *de jure* map, the AES stipulates that an enforcement creditor or a bailiff (if authorized by the enforcement creditor) may file a request with a court to obtain a statement on the assets of the enforcement debtor. Such a request may be filed together with a motion to enforce or at any time during the proceedings, prior to their completion of course. In practice, such requests are usually filed after the bailiff tried to obtain information necessary for enforcement but could not find any regular income identifiable through the data-base maintained by the Pension and Disability Insurance Fund (*PIO*) or any information on the enforcement debtor's assets using other sources of information. Challenges arise, specifically in Belgrade, when a court issues a ruling ordering an enforcement debtor to appear before the court and

give a statement of assets to the judge or to submit a statement of assets to the court. According to the bailiffs from Belgrade, courts in Belgrade, in particular the First Basic Court, are very slow and need a year or often considerably more to perform this duty. For example, one of the bailiffs from Belgrade who started working seven months before the interview has never received a statement from a Belgrade court. Practices of the interviewed bailiffs as to how often this procedure is initiated vary greatly. One of the Belgrade bailiffs said that he initiated this procedure in 50% of his cases, some of his colleagues from Belgrade said “often” but could not specify, while some stated that they do it in 5% of their cases or “almost never”. Obviously, this reportedly problematic practice of the Belgrade courts discourages bailiffs from using this procedure. The bailiffs from Vojvodina do not use this procedure at all, but not because courts in this part of the country operate similarly to those in Belgrade (the Belgrade bailiffs themselves confirmed that courts outside of Belgrade perform this duty much better). They explained that they do not use this procedure both because they usually find information on enforcement debtors’ assets in a different way, and because they do not believe that enforcement debtors would give complete and accurate information on their assets.

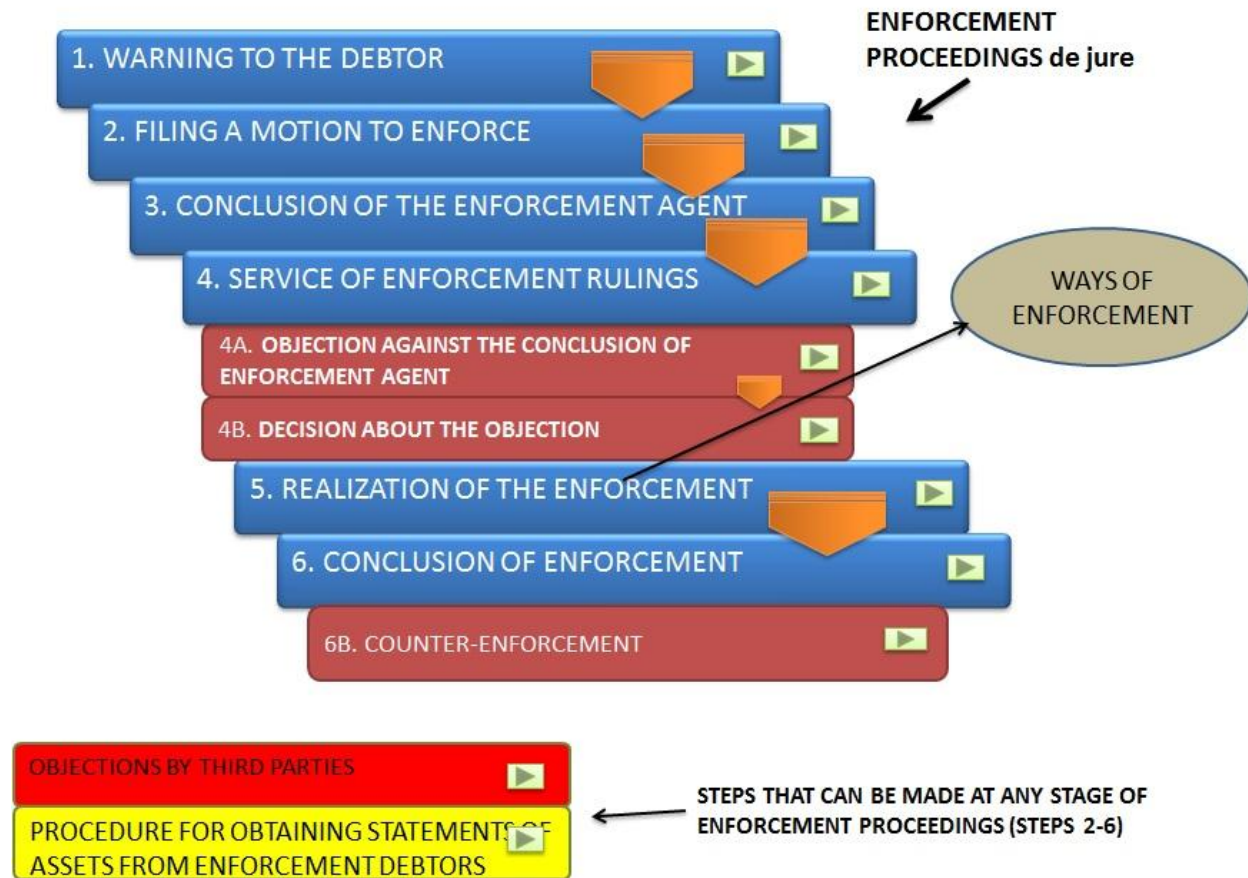
6.2.4. What works well

According to the bailiffs, utility companies usually prepare their cases well, i.e., they inform their clients before they file motions to enforce and submit all required documents to bailiffs. Hence, cases where bailiffs dismiss an inadmissible or incomplete motion or reject it as groundless are rare. Furthermore, all interviewed bailiffs claimed they always manage to make conclusions within the envisaged time limit (within eight days after they receive a motion). Nevertheless, as indicated above (in the part concerning distribution of cases), some of them stated that they are aware that there are their colleagues who fail to make conclusions within the required time. The bailiffs also underlined that irregularities other than a failure to make a conclusion within eight days also happen rarely, which is confirmed by the very small number of sustained objections against conclusions.

According to the AES, if a bailiff does not dismiss or reject a motion to enforce, he or she will issue a conclusion ordering the enforcement debtor to settle the claim and pay any specific costs within eight days of receipt of the conclusion. If the debtor pays within this time, the proceeding will be concluded and the realization of enforcement (Step 5) will not be needed. Based on the Belgrade bailiffs’ claims, one could conclude that in between 3% and 5% of all cases debtors pay their debt within eight days and avoid further costs. In Belgrade, it appears that additional 10 to 15 per cent contact the bailiff during that period in order to arrange payment in instalments. Utility companies based in Belgrade are generally willing to accept this way of payment. In Novi Sad, however, the percentage of those who pay within eight days is considerably higher. According to the bailiffs who work there, between 20 and 25 per cent of all debtors pay their debt within eight days. It seems that particularly legal entities and entrepreneurs tend to pay their debt within this time limit. Similarly, the percentage of those who use this period to contact the bailiff and negotiate instalment payments is also higher than in Belgrade. One of the interviewees from Novi Sad asserted that in her experience approximately half of all debtors contact her office within eight days and arrange for instalment payments. Like in Belgrade, utility companies in Vojvodina are willing to accept instalment payments. At least in part, the difference

between enforcement debtors' behavior in Belgrade and Novi Sad might be explained by different practices of Belgrade and Novi Sad enforcement creditors and bailiffs. These practices will be explained in the following paragraphs. Here it should be added that some of the bailiffs from Belgrade asserted that the behavior of enforcement debtors in Belgrade changes and the percentage of those who pay the debt within eight days after the receipt of the bailiff's conclusion is increasing.

The de jure map of special enforcement procedure



6.3. Realisation of enforcement in special enforcement proceedings (Step 5)

6.3.1. Types of enforcement bailiffs and enforcement creditors prefer

As presented in the *de jure* map, the AES envisages seven different ways of enforcement to settle pecuniary claims. Namely, enforcement can be conducted on: (1) moveable assets; (2) real estate; (3) claim of enforcement debtor; (4) wages and other regular pecuniary income (usually pensions); (5) account of enforcement debtor; (6) savings deposits and current accounts; and (7) securities and stakes in companies.

If an enforcement debtor is a legal entity, enforcement is first attempted against its account, then against movable assets, its claims and eventually against real estate.

When an enforcement debtor is a natural person, both bailiffs and enforcement creditors prefer to enforce against wages and other regular pecuniary income. Even though this way of enforcement might result in a payment in instalments, it is preferred to enforcement against saving deposits and bank accounts, for a few reasons. First, a bailiff needs only one day (in fact, a few hours) to check if the enforcement debtor is employed or receives regular income other than wages. A bailiff gets this information from the Pension and Disability Insurance Fund (*PIO*), which maintains a centralized electronic data base containing all relevant information. On the other hand, if a bailiff wants to check if the enforcement debtor has savings deposits or a bank account, he or she has to write to all existing banks (the bailiffs report that approximately thirty banks exist in the country) asking that question. Even though some of the bailiffs communicate with banks through e-mails, the whole operation takes some time to complete. According to the bailiffs, some banks respond quickly, in a couple of days, while some take much more time. On top of that, enforcement debtors who do not have any regular income are unlikely to have savings deposits or bank accounts and this action thus in the overwhelming majority of cases does not bring any results. Also, as many utility companies are led by people appointed by political actors, it seems like they want to allow the citizens, i.e., their voters, to settle claims in the most convenient way.

With regard to the second preferred type of enforcement in situations where an enforcement debtor is a natural person, practices in Belgrade and Novi Sad significantly differ. If an enforcement debtor does not have any regular income identifiable through the *PIO* data base, bailiffs in Novi Sad proceed with enforcement against moveable assets. That means they first perform an inventory of moveable assets. These bailiffs report that, after an inventory has been completed, many enforcement debtors pay the debt and costs of proceedings and therefore a valuation and sale of moveable assets are not needed. Specifically, one of them assessed that a sale eventually happens in only 20 to 30 percent of all cases. In all other cases debtors pay their debts in order to avoid a sale of their assets. This bailiff stated that he is so confident that an inventory will result in a payment that he often performs it even if the enforcement creditor has not advanced the costs of it. However, it should be noted that utility companies in Vojvodina normally advance costs of inventories which obviously results in a very high percentage of cases where the enforcement creditors get the amount owed by their customers. According to the interviewed bailiffs from Vojvodina, in cases they concluded to date the debt and costs of enforcement proceedings were paid in no less than 80% of cases, even considerably more than that. Unlike utility companies in Vojvodina, companies based in Belgrade never advance costs of inventory and bailiffs from Belgrade and thus do not apply this way of enforcement, except with regard to vehicles registered with the police. They admitted that such an approach of enforcement creditors results in lower percentage of cases where the debt is eventually paid. Consequently, when it comes to the percentage of cases in which enforcement creditors get the amount owed to them, enforcement proceedings in Belgrade are significantly less effective than such proceedings in Vojvodina (but certainly still much more effective than proceedings carried out by court bailiffs were when these cases were in their jurisdiction). Of course, this is mainly due to the above mentioned fact that Belgrade utility companies' do not want to

advance costs of enforcement against moveable assets. It should obviously be borne in mind that the AES stipulates that a motion to enforce shall be filed with the bailiff appointed for the area in which the enforcement creditor is headquartered, which in practice means that bailiffs from Belgrade (where the biggest utility companies are based, some of which cover the whole territory of Serbia) might deal with cases in which the enforcement debtors live far from Belgrade and costs of enforcement against moveable assets would be high. To sum up, once enforcement against wages or other regular income is impossible, Belgrade bailiffs will try to enforce against savings deposits or bank accounts or by selling the debtor's car, not against moveable assets (with exception of a car, if the debtor has one), like their colleagues from Vojvodina do.

In proceedings concerning claims with respect to utilities and similar services enforcement against real estate is very rare. Other ways of enforcement, i.e., enforcement against a claim of the enforcement debtor and against securities and stakes in companies, are used even less frequently. In fact, it appears that the vast majority of the interviewed bailiffs have never been involved in a case where one of these ways was used.

Possible ways of enforcement under the Act on Enforcement and Security

Enforcement modes



6.3.2. Duration of realisation of enforcement

When it comes to the question of how much time is necessary for realization of enforcement, it obviously depends on the way of realization. All bailiffs use the period required for completion of steps preceding the realisation to complete some preparatory actions which will enable the realization. In other words, while they wait delivery (Step 4) to complete, they try to gather information about the enforcement debtor's wages and other regular pecuniary income and other assets. Hence, once the realization can start they usually know which way of enforcement is possible. With regard to the time each of the ways of enforcement envisaged by the AES takes in practice, the experiences and assessments of the interviewed bailiffs vary. Besides that, some of them were reluctant to give general assessments, explaining that the time required for enforcement mostly depends on the specific circumstances of every particular case. Nevertheless, after the interviews with the bailiffs, one could conclude the following:

- (1) If enforcement is conducted against wages and other regular pecuniary income, accounts of the enforcement debtors or savings deposits, a bailiff can "finish the job" in one day. Once the realization starts, a bailiff already knows if the debtor has regular income, an account or deposits savings and only needs a day to order the enforcement debtor's employer, other legal entity or a bank to pay the amount specified by the bailiff to the enforcement creditor. If enforcement is to be conducted against an account or savings deposits the enforcement creditor will receive the payment in a couple of days. In case enforcement is conducted against wages or other regular income, the enforcement creditor will receive the payment on the day when the wage or other income is due.
- (2) When it comes to the duration of realization of enforcement conducted against moveable assets, the bailiffs' assessments vary.⁶ Nevertheless, we can say that it takes between a month (in "perfect" circumstances) and three or four months. Needless to say, that duration depends on whether the inventoried items were sold at the first auction or a new sale had to be scheduled (for information on the rules governing this way of enforcement see the *de jure* map). When a vehicle has to be sold, the time required for that may depend on how quickly the police will seize the vehicle from the enforcement debtor. When it comes to their work, some of the bailiffs have the impression that it gets better.
- (3) When enforcement has to be conducted against real estate, its duration may vary greatly, and depends primarily on whether the property in question is registered, what is the state of relevant registries ("katastar") and how those maintaining these registries work. In general, the situation in Vojvodina is significantly better than in the rest of the country, both because the number of unregistered objects is much lower, which means the registries are better, and because those who maintain them perform their enforcement proceedings-

⁶ As already stated, bailiffs from Belgrade do not use this type of enforcement (except with respect to vehicles registered with the police) in proceedings stemming from utilities and similar services, but use it in other enforcement proceedings and therefore made assessments based on their experience in those proceedings.

related duties better than their colleagues in other parts of the country. Hence, in Vojvodina the realization of enforcement against real estate usually completes within the period of between three and six months, while in the rest of the country it may take much longer, particularly when the property in question is not registered (i.e., when it does not exist in the relevant registries). This, however, does not mean that enforcement in places other than Vojvodina cannot be completed within the above mentioned period of three to six months. It only means that problems which significantly prolong enforcement against real estate occur much more often outside of Vojvodina. According to the bailiffs from Belgrade, problems with the registries and the slowness of those maintaining them are amongst the most important impediments in enforcement proceedings in general.

It has already been stated that enforcement against claims of enforcement debtors and against securities and stakes in companies happens rarely. Hence, the interviewed bailiffs could not make reliable estimations as to how much time these types of enforcement take.

As to why and where during the realization of enforcement delays and other problems occur, it will only be reiterated that problems might occur if the police does not assist in an appropriate way during the enforcement on moveable assets (e.g., if they fail to promptly inform the bailiff if the enforcement debtor has a vehicle registered with them, if they take a lot of time to seize a vehicle or if they fail to assist during an inventory, in case the debtor behaves in a way that impedes the proceedings by threatening or similar behavior, etc.), even though some of the bailiffs, in particular in Vojvodina, stressed that the police work improved since the AES began to apply. Also, as already explained, serious difficulties arise with respect to registries of real estate. When it comes to the types of enforcement other than that against moveable or real estate, it appears that significant problems do not exist.

6.4. Costs of special enforcement proceedings

The schedule of performance fees and reimbursement of expenses of bailiffs is regulated by a rulebook adopted in 2012 (hereinafter the Tariff Rulebook). According to the Tariff Rulebook, "the determination of performance fees of bailiffs in cases in which the value of the claims can be ascertained shall depend on:

- 1) The value of the principal claims subject to compulsory enforcement;
- 2) The time needed to prepare and perform official actions;
- 3) Fixed fees for individual actions specified in this Rulebook;
- 4) The collected amounts of the claims subject to compulsory enforcement."

Further, the Tariff Rulebook determines how, taking into account these four factors, the fees shall be calculated and it does so in a rather complicated fashion. Bearing that in mind, some of the bailiffs admitted the rulebook should be amended in order to make the calculations less complex. Even before an interview with a bailiff, one who has read the rulebook could see that it leaves a lot of space for arbitrariness. For instance, it stipulates that a bailiff can charge up to 6,000 RSD for preparing submissions to state authorities to obtain information on the assets of the enforcement debtor and also up to 6,000 RSD for preparing submissions to state authority to obtain information on the identity and addresses of the enforcement debtor. Although the Tariff Rulebook says that when calculating these

performance fees bailiffs shall take into account the amount of the principal claim being settled, it does not provide any further guidance with regard to that calculation. Hence, the same action can cost 500 or 6,000 RSD and in both cases the fee will be lawful.

Apart from its complexity and the space for arbitrariness that it leaves, the Tariff Rulebook envisages fees that might be considered high (although it appears that the majority of bailiffs charge fees that are significantly lower than those allowed under the Tariff Rulebook), especially in relation to the value of the principal claim. For example, it appears that costs of enforcement proceedings conducted against wages or a bank account or savings deposits are usually in the range between 12,000 and 17,000 RSD, provided that the value of the claim is under 30,000 RSD, regardless of whether it is, e.g., 4,000 or 28,000 RSD.

Nevertheless, the bailiffs' impression is that their practice regarding fees vary to a considerable degree and admit that there might be a significant difference between the fees charged, depending on the bailiff who carried out the enforcement proceedings.

When it comes to costs of enforcement against moveable assets and real estate, they also vary, depending on the value of the claim, whether the inventoried items were sold at the first or second sale etc., as well as on the bailiff. However, according to one of the interviewed bailiffs, in his practice "an average case" of enforcement against moveable assets results in the costs of approximately 21,000 RSD, while costs of enforcement proceedings against real estate include a fee of approximately 20,000 that has to be paid to an expert who assesses the value of the property and usually arise to approximately 10% of the value of the claim, provided that the claim is big enough to justify this type of enforcement, which is rather exceptional in utility cases. Of course, all costs of enforcement proceedings are paid by an enforcement debtor. But, enforcement proceedings cannot be initiated if an enforcement creditor does not advance a part of the costs, which usually equals the amount of approximately 4,000 RSD in cases where the value of the claim is below 30,000 RSD.

6.5. What changes could improve the efficiency?

At the end of every interview, the interviewed bailiff was asked to suggest changes that could improve the special enforcement proceedings. Their suggestions will be briefly presented in the following text:

- (1) Almost all interviewed bailiffs agreed that the AES should be amended so that a motion to enforce shall be filed with the bailiff appointed for the area in which the enforcement debtor (not the creditor, as the current rule is) lives or is headquartered. According to them, bailiffs who work in the area where debtors live are in much better position to gather information on their assets, to take certain actions and carry out the whole proceedings. Moreover, in such a system costs of proceedings would be considerably lower.
- (2) The interviewed bailiffs generally agree that cases stemming from utilities and similar services should be distributed evenly to all bailiffs appointed for the territory where the enforcement debtor lives or is headquartered, possibly through the Chamber of Bailiffs.
- (3) Some of the bailiffs stressed that courts should establish specialized units that would deal with all enforcement proceedings-related issues (decisions on objections against bailiffs' conclusions, procedure for obtaining statements of assets from enforcement debtors etc.). They believe such

a measure, combined with an increase of their capacity, would make courts, particularly those in Belgrade, more efficient.

- (4) As already indicated, the bailiffs would welcome more efficient control of their work. In this regard, it appears that the existing accountability mechanisms are not sufficiently developed.
- (5) The bailiffs were unanimous in saying that the police work, specifically when a debtor's address or information regarding a vehicle has to be obtained from police registries, should be improved. In particular, almost all argued in favor of establishing an improved data-base within the police which would allow that an individual's address can be obtained in one day, if not in a matter of minutes, like it is the case with the PIO data base.
- (6) The interviewed bailiffs also agreed that it would be very helpful if all individuals' bank accounts and savings deposits were registered in one data-base, possibly maintained by the National Bank of Serbia (Serbia's central bank), so that they can find out if someone has a bank account by checking in that data base instead of writing to all existing banks in Serbia.
- (7) The majority of the bailiffs share the opinion that a set of measures should be taken in order to address problems with delivery of their conclusions to enforcement debtors. Some believe that the relevant regulations should be amended, while others think that people in charge of delivering those documents should be better trained and instructed more clearly. As already said, some of them also think that conclusions should be displayed on an online notice board instead on those in courts. Moreover, several bailiffs believe that the display on court notice boards requires too many unnecessary formalities.
- (8) Registries of real estate should be much better organized and maintained in order to allow enforcement against those assets within the time limits determined by the AES.
- (9) Some of the bailiffs suggested that the Tariff Rulebook is too complex and should therefore be amended to simplify the rules. Moreover, amendments are necessary to reduce the room for arbitrariness as well.
- (10) Finally, one of the interviewed bailiffs is the only bailiff in Serbia who took over an office of another bailiff (who resigned). She stressed that the existing legislation does not regulate such situations, which results in a number of practical problems which seriously affect enforcement proceedings started by one but continued by another bailiff. Hence, the legislator should regulate such situations, which are, according to the interviewed bailiffs, likely to occur more often in the future.