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Small Claims: WHERE DOES SERBIA STAND?

A comparative analysis

DRAFT

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Acknowledgements

This report examines the procedural law and court practice for resolving small claims in Austria, Denmark, Estonia, Germany, Latvia and Slovenia and compares them to the procedure in Serbia with the aim to outline ideas and possibilities for optimizing the latter. Work was funded by the Multi-Donor Trust Fund for Justice Sector Support in Serbia (MDTF-JSS). The Fund has been established with generous contributions from 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.

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Acronyms

CEPEJ	Council of Europe European Commission for the Efficiency of Justice
CoE	Council of Europe
ECHR	European Convention of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
SFRY	Socialist Federal Republic of Yugoslavia
WB	World Bank

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Executive Summary

1. The purpose of this report is to provide recommendations for the optimization of the procedure for resolving small claims in Serbia based on a comparison with Austria, Denmark, Estonia, Germany, Latvia and Slovenia. The report is funded by the Multi-Donor Trust Fund for Justice Sector Support in Serbia (MDTF-JSS) and is informed by a broader World Bank initiative to support justice policy dialogue and reform in Western Balkan countries. The analysis is primarily intended for the legal community in Serbia including policy makers, judges, lawyers and the academia.

2. Small claims procedures are designed to resolve civil and commercial disputes below a certain value threshold and are therefore simpler, quicker and cheaper than the general procedure. The small claims procedure in Serbia is applicable to civil disputes with a value below EUR 3000 and commercial disputes with a value below EUR 30 000. Compared to other jurisdictions, these thresholds are very high, especially the one for commercial claims. Unlike comparator jurisdictions, in Serbia judges have no discretion in whether to apply small claims rules or not. This means that the simplified rules would be applied even to complex cases with a relatively high value. **It is recommended to give judges discretion to decide whether and which procedural simplifications should be applied, based on the complexity of the case.** Furthermore, in light of the numerous cases with minimal value, **Serbia could either reduce the existing threshold for commercial cases or introduce a second, lower threshold below which more simplified rules would be applicable.**

3. Fees for small commercial claims with a value above EUR 1000 in Serbia are the highest among comparator jurisdictions while fees for claims with minimal value are among the lowest. The fees for commercial cases are higher than the fees for civil cases of the same value. It is recommended to equalize the fees for civil and for commercial cases of the same value possibly by reducing the latter. One striking peculiarity of court fees in Serbia is the manner of their payment. In all comparator jurisdictions, a single fee is due for a case within a single instance and it is payable at the time of filing the claim. In Serbia, one fee is due for filing the claim, a second fee – for the judgment and a third fee is payable by the defendant for responding to the claim. Serbia is also an exception in allowing the case to proceed even if the fee has not been paid. The low court fees for cases with a very small value coupled with the payment of a fraction of the total fee at the time of filing the claim and the possibility to proceed with the case even if the fee has not been paid, could be encouraging frivolous litigation. **Paying a single court fee in advance, as a precondition for commencing litigation, would discipline claimants, spare the time of judges and relieve enforcement authorities of collecting unpaid fees.**

4. Under best international practices small claims are either filed electronically through a single judicial portal or, if such portal is not available, by using structured forms that facilitate the process for judges and parties. In Serbia, there are no such forms and no electronic filing through a judicial portal. **Introduction of forms both for the claimant's action and for the defendant's response in small value claims is recommended in the short-term. In the long term, a possibility for electronic filing of all claims via an electronic portal could be introduced.**

5. Most jurisdictions simplify the collection of evidence in small claims. Simplifications take two principal forms: they either introduce a stricter relevance assessment or simplify the form in which evidence is presented. Serbia has neither of these two simplifications. As a result, even in cases with minimal value, the court may hear numerous witnesses and admit an expert assessment with a cost greatly exceeding the value of the dispute. **The recommendations are to introduce a stricter relevance assessment, simplify the form of evidence and restrict the use of expert assessments in cases with very small value.**

6. In small claims procedures, the pre-trial stage is typically shortened in the interest of increasing speed and decreasing costs. While many jurisdictions omit the preparatory hearing or hold it via the phone, it is much rarer to omit the written phase of the pre-trial stage. The Serbian small claims procedure drastically shortens the pre-trial stage and judges have no discretion to conduct a written exchange of documents, even if the case proves complex. This may, further down the line, necessitate a larger number of court hearings in order to clarify issues and collect evidence that could have been clarified and collected quickly and cheaply in a written preparatory stage. **For complex small value cases, it may be more efficient to conduct a written preparatory phase and clarify the issues in dispute in advance rather than go straight to the main hearing.**

7. One of the traditional features of small claims procedures has been to assign a more active role to the judge with a view to making the process faster and more efficient and assisting self-represented litigants. Judges in all examined jurisdictions approach very cautiously this subject lest they should deviate from the **adversarial principle**. The practice of the European Court of Human Rights (ECtHR) demonstrates that some initiative by the judge in guiding the collection of evidence or instructing the parties on their rights and obligations is not considered contrary to the adversarial principle. **If Serbia seeks to give a more active role to judges in small claims, the appropriate place to start is to allow for more initiative in the collection of evidence.**

8. Hearings tend to be the most time-consuming element of litigation. In Serbia, even though no preliminary hearing is conducted in small value cases, legal practitioners report that numerous other hearings might be necessary. On the other hand, many comparator jurisdictions allow for a written-only procedure that avoids a hearing altogether. Any measures to avoid hearings or minimize their number could contribute greatly to reducing the time and costs of the procedure. **As a rule, small claims should develop only in writing unless one of the parties has specifically requested a hearing.**

9. Shorter timelines bring discipline into the processing of small claims. Serbia has shortened very few timelines. **Introducing additional shorter timelines similar to the ones used in the EU cross-border procedure is recommended with a view to bringing more discipline into the movement of small claims.**

10. Serbia, similarly to other comparator jurisdictions, simplifies the content of the judgment in small claims procedures. This is in line with international practice; therefore, no further simplifications are recommended.

11. The grounds for appealing the court's pronouncements in small claims proceedings are usually limited. The most typical limitation to appealing the judgment is to restrict appeal

on the facts as established by the first instance. Serbia's solution in this regard appears reasonable and is in line with the typical manner of regulating this aspect of the procedure.

12. There are almost no simplifications of the second-instance small claims procedure in Serbia. While the assumption is that most small claims, judgments would not reach second-instance due to the limited grounds for appeal, in reality, they frequently do. Therefore, **the report recommends introducing further simplifications for the second-instance case, such as having it examined by a single judge as opposed to a panel of three judges.**

13. The rules on legal representation and recovery of costs in small claims are usually, the same as for the general civil procedure: parties may be represented by a lawyer; self-representation is admissible; the costs for legal representation need to be covered by the losing party. Serbia does not deviate from these general rules and just few comparator countries do. For example, legal representation by persons with legal education who are not attorneys-at-law may be permitted or the maximum recoverable cost for a lawyer could be limited. **Limitations on the recoverable costs may restrict access to justice of parties with lesser financial means who should be the principal beneficiaries of such procedures; therefore, this report does not recommend changes to the current rules.**

14. Small claims are seen by many as the perfect candidate for the use of mediation but most European states struggle with encouraging its use. The introduction of compulsory initial mediation sessions for some types of cases holds promise but is not appropriate for all small claims. **Additional empirical evidence from countries that have such a rule would be important in deciding whether Serbia could introduce compulsory initial mediation sessions for some types of small value cases** (e.g. neighbor disputes, medical malpractice disputes, insurance claims).

15. In almost all comparator jurisdictions, except Denmark, case management systems do not differentiate between small claims and general ones and there is no available statistics. Thus, it is impossible to tell what share of litigation these cases take, what their average processing time is, what the dynamic over time is as well as how various changes in procedure affect caseload and/or processing times. **It is recommended that Serbia should start collecting such disaggregated statistics as basis for policy decisions on the future development of the procedure.**

1. Background

16. Serbia Judicial Functional Review[1] of 2014 finds that overall the country's judicial system performs at a lower standard than that of EU Member States despite having lighter workloads and more judges and staff than EU average. The reasons are manifold, including complicated procedural laws and business processes that cause delay, high court and attorney fees that hamper access to justice and backlog that drags the system down.

17. The Functional Review recommends streamlining the procedure for small claims with a view to its acceleration. Findings regarding small claims in the report are based on perception. It is impossible to quantify the scale, the average duration or the appeal rates for such cases because the case management system does not regard them as a category separate from general civil or commercial litigation. Interlocutors cited in the review have observed that such cases "languish" or are "stuck"[2] at the Basic Courts.

18. In recent years[3], small claims have been receiving increased attention. The World Bank flagship publication, Doing Business, recognizes that *"small claims courts or simplified procedures for small claims, as the form of justice most likely to be encountered by the general public, play a special part in building public trust and confidence in the judicial system. They help meet the modern objectives of efficiency and cost-effectiveness by providing a mechanism for quick and inexpensive resolution of legal disputes involving small sums of money. In addition, they tend to reduce backlogs and caseloads in higher courts."*[4] As a consequence, the World Bank has identified the availability of a small claims court or a simplified procedure for small claims as a good practice for the purposes of its indicator on Enforcing Contracts.[5]

19. In 2017, the World Bank, with funding from the Kingdom of the Netherlands, developed a report reviewing the landscape of small claims procedures in all EU Member States[6]. The study highlights the main features of small claims procedures and details a series of options available for those countries that wish to introduce a small claims procedure or reform the existing one. The report was presented in several Western Balkan countries and was met with interest. Serbian counterparts, in particular, felt that in order to make some of the report's recommendations actionable, they would need in-depth comparative

[1] World Bank Group. 2014. Serbia Judicial Functional Review. Washington, DC. © World Bank. https://openknowledge.worldbank.org/handle/10986/21531 License: CC BY 3.0 IGO.
[2] Ibid. p. 135.
[3] For a historical review of the development of small claims procedures, see Annex 2 to this report.
[4] See Enforcing contracts, Good Practices at http://www.doingbusiness.org/data/exploretopics/enforcing-contracts/good-practices#Introducing.
[5] A third of the score for this indicator is made up of the 'court structure and proceedings index', which has five components, the availability of a small claims court and/or simplified procedure for small claims being one of these five components. The other four components contributing to the 'Court structure and proceedings index' are: Availability of specialized commercial court, division or section, availability of pretrial attachment, criteria used to assign cases to judges and evidentiary weight of woman's testimony. See Enforcing Contract Methodology at http://www.doingbusiness.org/Methodology/Enforcing-Contracts.
[6] Harley, Georgia; Said, Agnes Cristiana. 2017. Fast-tracking the resolution of minor disputes: experience from EU member states (English). Washington, D.C.: World Bank Group. http://documents.worldbank.org/curated/en/670181487131729316/Fast-tracking-the-resolution-of-minor-disputes-experience-from-EU-Member-States

information on a few of the EU Members States' small claims procedures. This is how the present comparative analysis came into being.

20. Serbia has a long-standing tradition in the area of small claims procedures. The Socialist Federal Republic of Yugoslavia (SFRY) was one of the pioneers in the introduction of small claims procedures in continental Europe. It did so in 1972. These provisions were closely based on the Austrian model. They were applicable to claims with a value of less than 800 dinars. These provisions regulated in much detail the content of the protocol of the main hearing and stipulated that the court judgment needed to be pronounced at the end of the main hearing. Grounds for appeal were limited. Interestingly, SFRY small claims provisions differed from the Austrian ones in that they provided for a compulsory initial conciliation session in some types of small value disputes.

21. Since the introduction of the current small claims procedure, it has undergone several important changes. Firstly, the monetary threshold in small claims procedure was raised thus increasing the array of cases to which the simplified procedure is applicable. The current threshold was introduced in 2009. Furthermore, after the enactment of the Civil Procedure Law of 2011, these provisions became applicable not only to claims for performance but also to declaratory actions, thus further expanding the procedure's scope. Finally, the 2011 changes to the second-instance proceedings specifically restricted the second instance court from scheduling a hearing in the appellate proceedings against the judgement in small claims dispute. The overall direction of the changes has been to continuously expand the scope of the procedure rather than introduce additional simplifications to it. Such continuous expansion of the scope however, may mean that additional simplifications are less and less likely because they would affect a great number of cases.

2. Methodology

22. This comparative analysis examines how the procedure for resolving small civil and commercial claims is regulated in the law and implemented in the court practice of six European Union jurisdictions (Austria, Denmark, Estonia, Germany, Latvia and Slovenia). It then compares that to the small claims procedure in Serbia. Based on the comparison, the analysis makes recommendations for optimizing the small claims procedure in Serbia[7]. The aim of this report is to outline and examine critically the types of simplifications used in comparator jurisdictions and discuss which ones bring about the greatest gains in terms of reducing the length and cost of the procedures and could be appropriate for the Serbian context. It is expected that the primary user of this analysis would be the legal community in Serbia, including policy makers, judges, lawyers and the academia.

23. The choice of comparator EU jurisdictions is based on several criteria. To ensure relevance, the selected countries are part of the continental law tradition, do not have fundamentally different legal systems as compared to Serbia and have not established small claims courts as separate judicial institutions. To ensure variety of approaches, three of the chosen jurisdictions are from the so-called "old democracies" of Western Europe and the remaining three represent East European nations which have been part of the Eastern bloc. Finally, to ensure quality of comparators, the team chose countries whose justice systems perform at a relatively high level based on the standards of the Council of Europe European Commission for the Efficiency of Justice (CEPEJ). Where appropriate, the research juxtaposes national rules on small claims with the rules on cross-border small value disputes under Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure (hereinafter Regulation (EC) No 861/2007).

24. The premise of the analysis is that the procedure for resolving small value claims (referred to as fast-track procedure, simplified procedure, written procedure, small claims procedure, etc.) tends to differ from general civil procedure in that certain procedural requirements are eased, simplified or waived with a view to making the procedure cheaper and faster and facilitating access to justice. Therefore, while there might be many differences between the way a small claim would be processed in one system as opposed to another, the research team focused only on those elements of the small claims procedure that deviate from the general civil procedure in the same country. Where appropriate, the report includes citations of the manner in which various matters are regulated in comparator jurisdictions.

25. The methodology entails desk research of legislation, academic papers, practically-oriented writings and caselaw, as well as focus groups with legal practitioners. The research is based on extensive input from country rapporteurs (one per comparator jurisdiction and one for Serbia) who have provided detailed information on numerous aspects of the small

[7] The research was conducted in parallel with a comparative analysis of the small claims procedure in Bosnia and Herzegovina undertaken in the framework of the BiH Commercial Justice Technical Assistance Program implemented by the World Bank (WB) and financed by the UK Good Governance Fund. The BiH research juxtaposes BiH procedure with the rules in the same six EU jurisdictions. Progressing with the Serbian and the Bosnian comparative analyses simultaneously allowed for cross-fertilization of ideas among team members. While the comparative information is the same for both reports, findings and analytical emphasis differ significantly due to the considerable differences between small claims procedures and governance structures in BiH and in Serbia.

claims procedure while comparing it to the general rules of civil procedure in each respective jurisdiction. In May 2018, the project team conducted one focus group with lawyers and one with judges in Belgrade in order to solicit their opinions on the features of the examined small claims procedures in EU jurisdictions that could be appropriate for the Serbian context. The views expressed in the framework of the focus groups informed this paper.

26. The report acknowledges that the procedural requirements of any system seek to establish guarantees for fair trial. Therefore, any attempt at simplification must strike a careful balance between efficiency and fairness and must always stop short of breaking the fair trial standard. This fine balancing act is the principal challenge faced by any system wishing to introduce a simplified procedure for small claims. For this reason, where relevant, the analysis discusses the caselaw of the European Courts of Human Rights.

27. In terms of organization, the report follows the development of a typical small claims procedure exploring its elements such as threshold below which the procedure is applicable; fees; filing the claim; collection of evidence including the level of initiative admissible for judges in adversarial systems; preparation of the case; hearings; timelines; judgement; grounds for appeal; fees for appeal; rules for the appellate court; and the potential of alternative dispute resolution in small claims. Finally, the report presents its conclusions and recommendations.

3. Thresholds

Findings:

- Systems with high thresholds for small claims lead to a situation where the small claims rules are applicable to a very broad category of cases. Such systems are conducive to fewer procedural simplifications. In Serbia, the thresholds are very high, especially for commercial claims, while there are numerous cases with a strikingly small value in which costs vastly exceed the value of the claim.
- Unlike comparator jurisdictions Serbian judges have no discretion in whether to apply small claims rules or not.

Recommendations:

- Consider reducing the commercial cases threshold. Alternatively, Serbia could keep the current threshold with the current simplifications while introducing an additional, lower threshold to which more significant simplifications could be applicable.
- Give judges discretion not to apply some or all of the small claims rules if they consider the case too complex.

28. Regardless of the differences among various small claims procedures and the level of simplification, they share one common feature – the application of the respective rule is triggered by a certain monetary threshold. The special rules apply when the value of the dispute is below that threshold.

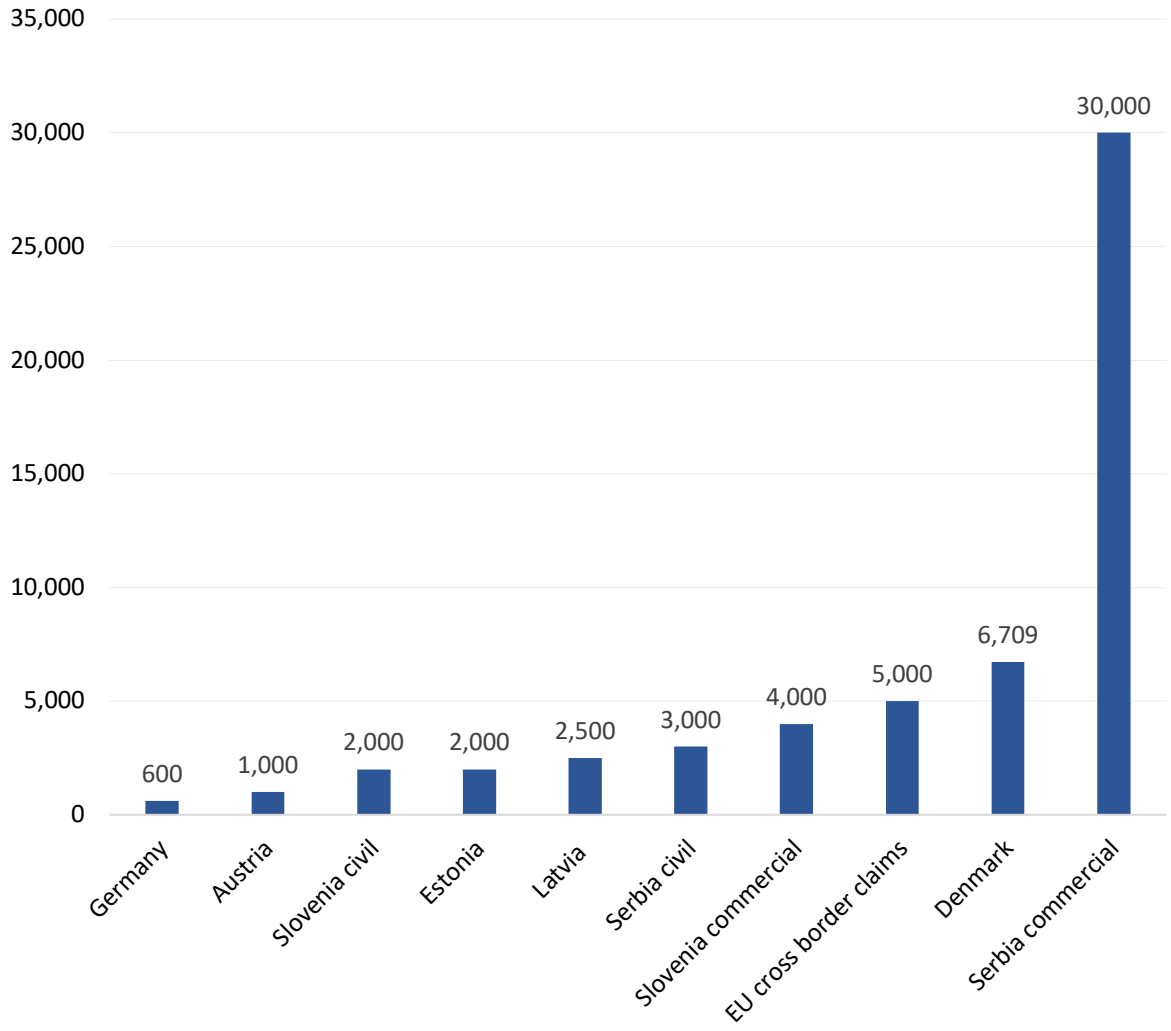
3.1. Threshold levels in absolute amount and as percentage of GDP

29. The level of the threshold in a country represents an important policy choice since it determines the range of claims to which the special rules would be applicable. If the threshold is low, the procedure would have a narrower scope of application. It might then be conducive to more simplifications because fewer cases and lower pecuniary interest would be affected. By contrast, if the threshold is high, a large percentage of all civil/commercial cases would qualify for the special rules. This might be conducive to a system with fewer simplifications.

30. The small claims threshold in Serbia is set to EUR 3000 for civil claims and EUR 30,000 for commercial claims. The high thresholds mean that the small claims procedure has a very broad scope of application. This scope is ever broader in Serbia where the small claims procedure is applicable not only to claims for performance but also to declaratory claims. Figure 1 illustrates the variance of thresholds in comparator countries with Serbia displaying some of the highest thresholds, especially in respect of commercial cases.[8]

[8] All monetary amounts (thresholds, fees) for jurisdictions that are not part of the Eurozone were converted to Euro using applicable exchange rates as of the time of drafting this report. Since fluctuations of exchange rates occur on a daily basis, slight inaccuracies of these Euro equivalents are possible at any time.

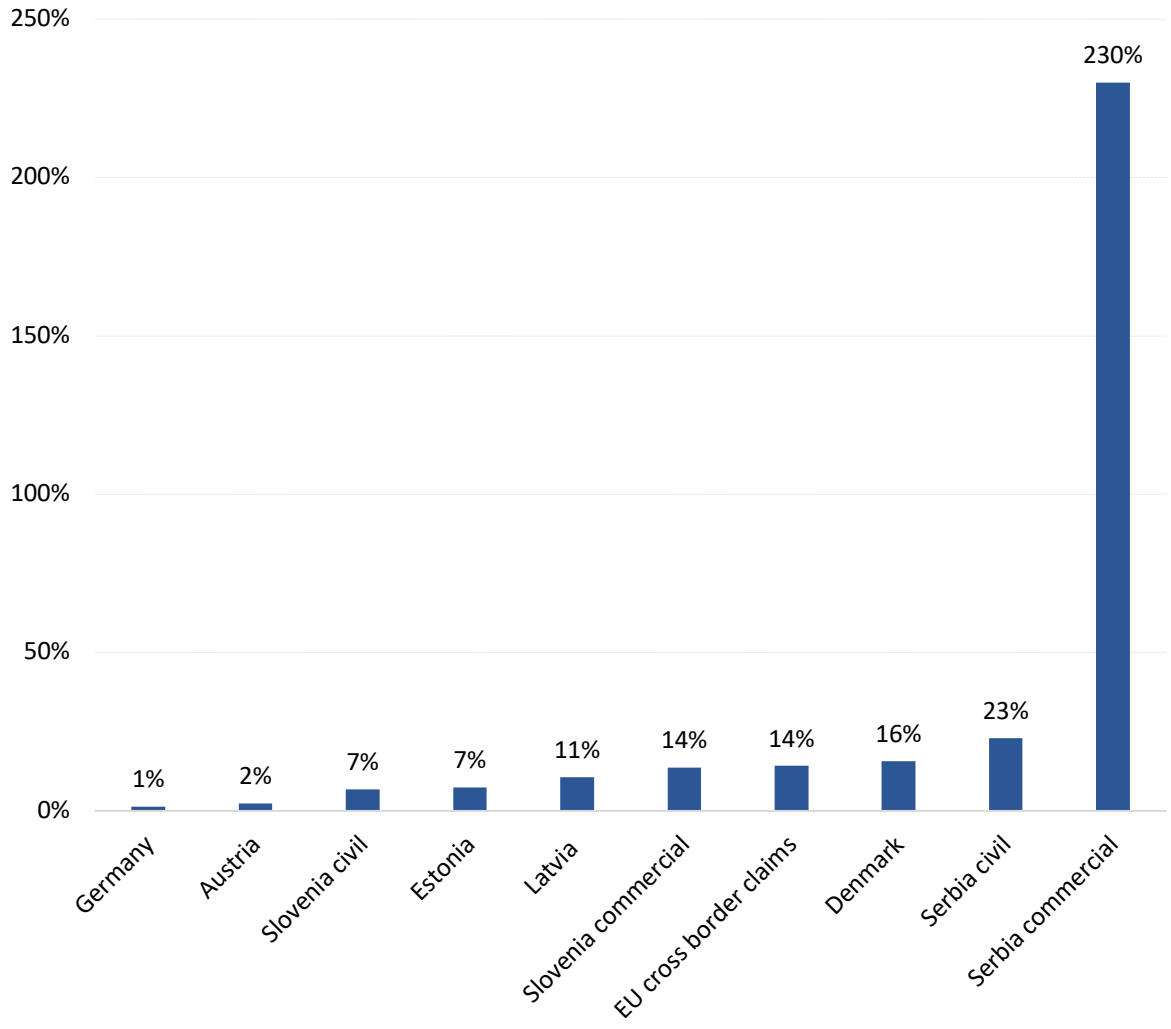
Figure 1: Thresholds (in EUR)



31. For context, threshold should be examined in light of the economic conditions in each jurisdiction; here, again, Serbia's thresholds rank the highest among all comparators. When thresholds are compared as percentages of the GDP per capita of the respective jurisdiction, Serbia's commercial claims threshold and Serbia's civil claims threshold rank as, respectively, highest and second highest among the compared jurisdictions. [9]

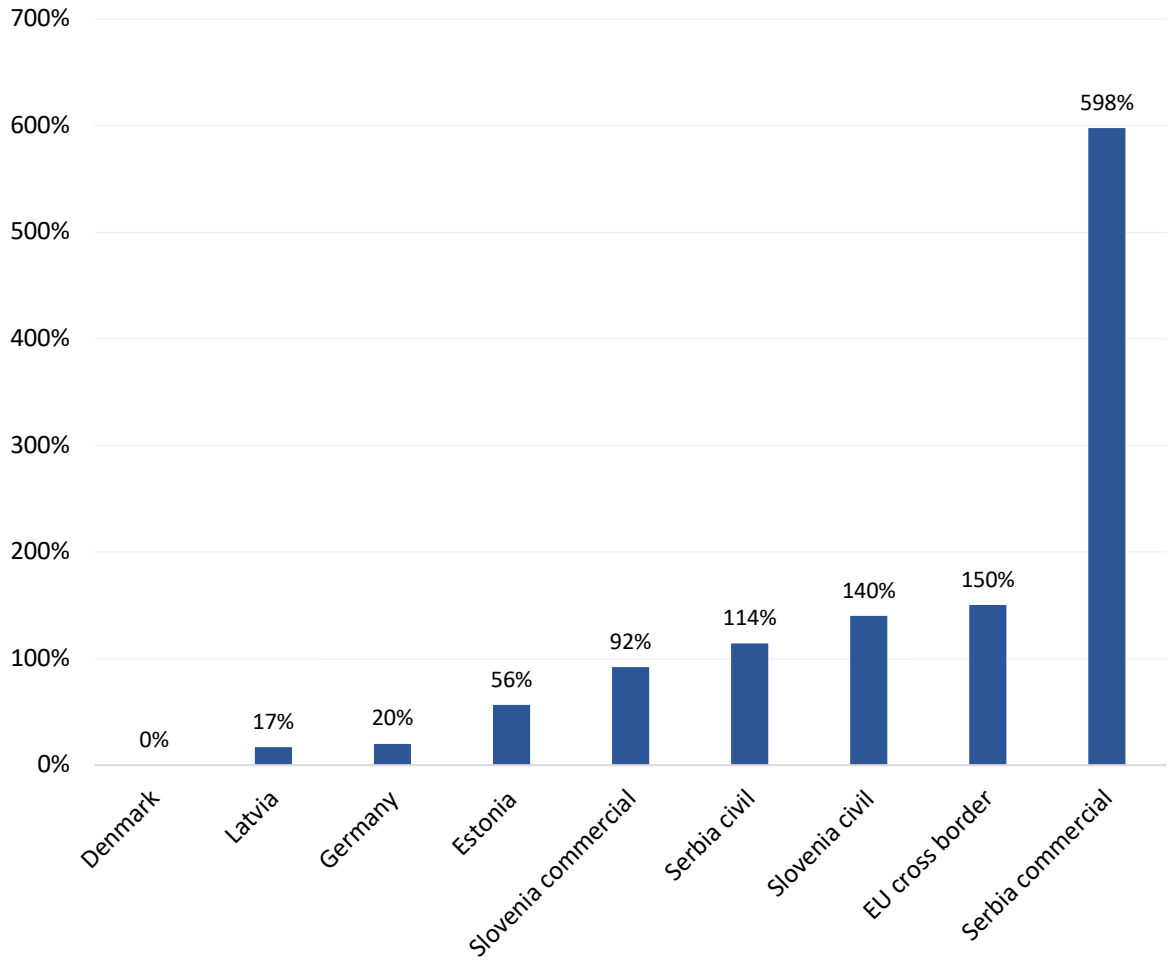
[9] Data on GDP per capita is obtained from The World Factbook of the Central Intelligence Agency at https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html. The latest available data on GDP per capita for each country was selected. The US Dollar values provided therein were converted to EUR at the time of drafting this report.

Figure 2: Threshold as % of GDP per capita



32. Thresholds for small claims procedures tend to undergo evolution over time. Usually, they increase. Thus, when the possibility for simplifying the procedure was introduced in Germany in 1991, the threshold was DM 1000 (EUR 500) and in 1993 it was raised to DM 1 200 (corresponding to the current value of EUR 600). Similarly, in Slovenia, the threshold for small civil claims of EUR 834 was increased in 2008 to EUR 2 000 and the threshold for small commercial claims – from EUR 2 086 to EUR 4 000. In Estonia, the initial amount of EUR 1 278 was raised in 2009 to EUR 2 000. The threshold applicable to cross-border small claims under Regulation (EC) No 861/2007 was increased in 2017 from EUR 2 000 to EUR 5 000. The same upward movement can be observed in Serbia. In 2009, the threshold for civil claims in Serbia was increased from EUR 1 400 to EUR 3 000 and for commercial claims – from EUR 4 300 to EUR 30 000. The percentage increase of the threshold in comparator jurisdictions from the introduction of the procedure until today (including the one for EU cross-border claims) is illustrated in Figure 3 below.

Figure 3: Percentage increase in threshold for small claims over time



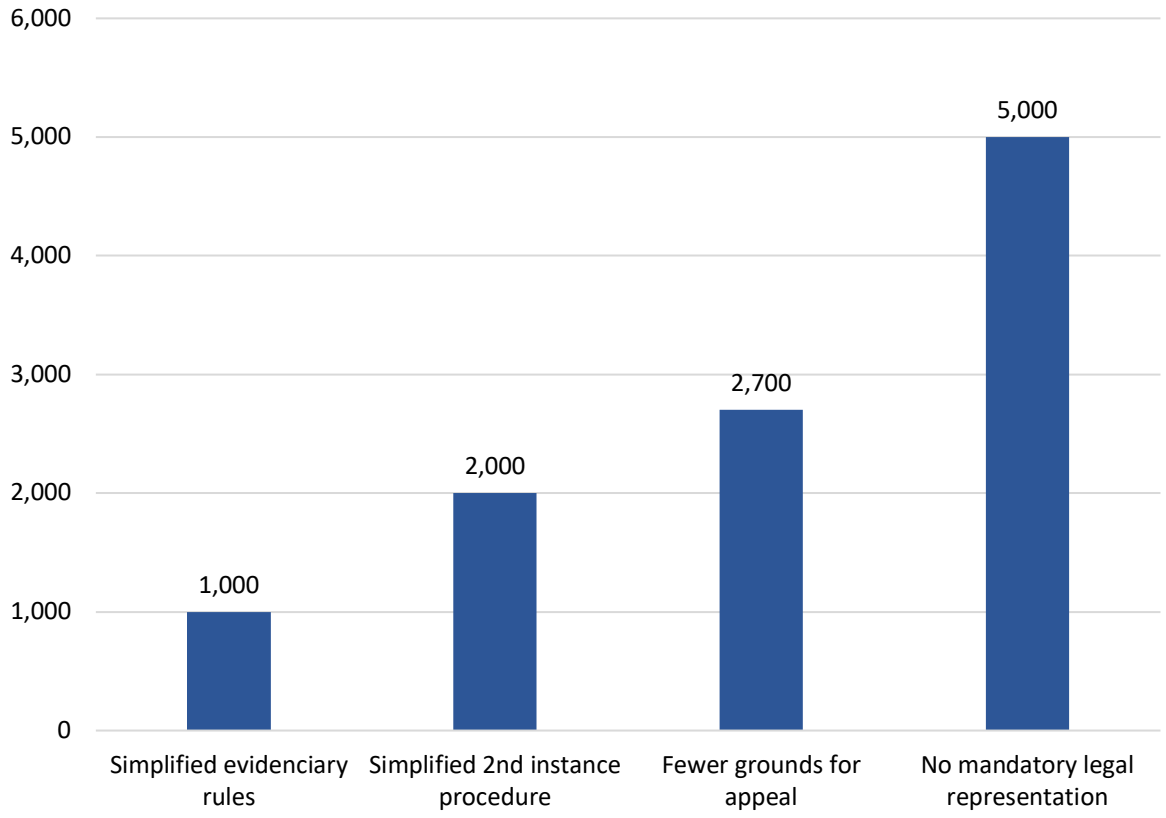
33. As illustrated in Figure 3, thresholds tend to increase over time but the steep increase of the threshold for commercial claims in Serbia was unparalleled. The justification for such increase is usually a finding that these procedures contribute to speedier and more economic resolution of disputes as well as a desire to open up the fast-track procedure to a wider range of cases. These justifications are often balanced against a recognition that any simplification has the potential to affect parties' right to fair trial and therefore should be undertaken with caution. Specifically, in the case of Serbia, the draft law that introduced that increase did not provide a justification of why the threshold for commercial disputes would be raised so dramatically.

34. Generally, when a country has set a high threshold, it is more difficult for its legal community to accept significant simplifications to the procedure. Conversely, if the threshold is low and the simplifications would affect just cases with low material interest, practitioners tend to more readily accept significant simplifications to the procedure. Given that in Serbia the threshold is very high, it can be expected that there would be resistance to introducing more significant procedural simplifications for small claims.

3.2. Multiple thresholds

35. Although most examined systems introduce a single threshold, multiple thresholds can also be introduced within a single jurisdiction. Thus, in some jurisdictions, different thresholds trigger the easing of different procedural requirements. Austria is one such example. The threshold of EUR 1,000 referenced in the Figure 1 is applicable to the simplification of evidentiary rules. However, the threshold for simplifying the second-instance procedure is set at EUR 2,000, the one for limiting the grounds for appealing the court judgment at EUR 2,700 and the threshold for allowing self-representation at EUR 5,000.

Figure 4: Types of thresholds in Austria (EUR)



36. The example of Austria illustrates that a system could function well with multiple thresholds. If a jurisdiction wishes to test a more radical simplification of the procedure, it could make such simplifications applicable only to claims with a very small value thus reducing the risk of them negatively affecting cases with a higher value. Serbia also offers an example of a different threshold that triggers the application of a particular rule. Specifically, an appeal against the first-instance judgment which orders that an individual pay a sum of money whose principal amount does not exceed EUR 300, respectively for entrepreneurs or legal persons – EUR 1 000, does not postpone its execution. Hence, Serbian legal system may be amenable to accepting a situation where some rules are applicable to claims with a value that is lower than the general thresholds for small claims.

3.3. Flexibility of the threshold

37. In Serbia, the triggering of the small claims procedure is perfectly inflexible which means that neither the court nor the parties can choose whether the simplified rules should apply or not. Whenever the value of the claim is below the threshold, the courts are obliged to apply the simplified rules. As a result, claims that may be relatively high in value and complex in nature but fall under the threshold go through the simplified procedure. Similar rules are applicable in Slovenia and Latvia. There, too, the small claims procedure cannot be waived at the court's or parties' discretion.

38. In the other comparator jurisdictions, the court may choose not to apply the simplified rules even when the value of the claim is below the threshold. In Denmark, the court may decide ex officio not to apply the simplified procedure due to the complexity of the case. It is also possible not to apply the small claims procedure if the case, even though not very complex, is deemed to be of great importance to the party. In Estonia, Germany and Austria, the general procedure is applicable by default unless the court decides to use some of the possible simplifications, e.g. to apply more liberally some of the evidentiary rules[10].

39. In Denmark, the threshold is flexible also depending on the parties' choice. They may select whether the small claims procedure would apply or not without regard to the value of the claim. The parties may agree that the fast-track procedure shall apply although the value of the dispute exceeds the threshold. If the parties are consumers, they may enter into such an agreement only after the dispute has arisen. If the parties are non-consumers, they may make this choice both before and after the dispute has arisen. The parties may also agree that the fast-track procedure shall not apply even though the value of the dispute is below the threshold. This is only possible after the dispute has arisen.

3.4. Litigation over minimal amounts

40. In Serbia, legal practitioners voice a particular concern – that the justice system is being burdened with claims of minimal value. An often-cited example are the claims of Serbian lawyers and court experts who may have received their due payments by the state with some delay. According to interviews, these professionals sue the state for the small amounts of interest accrued due to the delayed payments. Even though the value of such claims is minimal, the goal is to obtain, upon their successful completion, a recovery of the legal expenses for the case, which may exceed the value of the claim. Some legal practitioners see such claims as vexatious or as abuse of procedural rights and suggest the introduction of minimum amounts below which monetary civil claims would not be admissible.

41. The introduction of a minimum value under which a claim would be inadmissible is not advisable and would violate the right of access to justice. Parties may have an interest to sue even for minimal amounts because the results of a court case do not have only a financial dimension. A very good example are claims for defamation or libel where sometimes the claimants seek a damage of just one unit in the respective currency (e.g. EUR 1) and the

[10] Approaches to and examples of regulating small claims in the examined jurisdictions are presented as Annex 3 to this report.

real purpose is to have their name cleared. This view is also supported in the practice of the European Court of Human Rights.

Box 1: Case of Urechean and Pavlicenco v. The Republic of Moldova

(Applications nos. 27756/05 and 41219/07)

The President of Moldova Mr. Voronin participated in two television programs. While interviewed he stated that *"during the ten years of activity as a Mayor of Chisinau, Mr. Urecheanu did nothing but to create a very powerful mafia-style system of corruption"*. When referring to the second applicant and to other persons, the President stated that all of them "came straight from the KGB".

Both applicants brought libel actions against the President, seeking a retraction of the impugned statements and compensation. The first applicant sought compensation of 0.1 Moldovan lei (MDL), while the second applicant claimed MDL 500,000 plus payment of her court fees and legal costs. Both the first-instance and the appellate court discontinued the proceedings in the case on the grounds that the President enjoyed immunity and could not be held responsible for opinions expressed in the exercise of his mandate. The applicants brought a claim with ECtHR alleging that their right of access to a court had been breached.

While the main arguments in this dispute related to the immunity of state representatives, one aspect of the decision is relevant to minimal value claims:

"24. The Government further maintained that the first applicant was not a victim within the meaning of Article 34 of the Convention, because the amount of compensation he had claimed before the domestic courts (MDL 0.1) had been so low as to suggest that the true purpose of his libel action had not been to obtain redress for being defamed, but rather to make a political example of the President and the governing party. In the alternative, the Government submitted that the first applicant's application was inadmissible under Article 35 § 3 (b) of the Convention because he had suffered no significant disadvantage.[…]

26. The Court does not consider the amount of compensation claimed by the first applicant in the libel proceedings instituted by him of any importance to the assessment of his victim status for the purposes of the present case (see, mutatis mutandis, Thoma v. Luxembourg, no. 38432/97, §§ 39, 50 and 51, ECHR 2001-III)."

42. While prohibiting litigation over minimal amounts may not be advisable, there are other mechanisms to discourage vexations litigation. Businesses and citizens in most jurisdictions would rarely file such minimal claims because there is hardly a business case to be made for seeking to collect minor sums through expensive and slow litigation.[11] The mechanisms for discouraging such litigation include a country's rules on court fees, the rules on recovery of legal expenses and various rules aimed at limiting the abuse of procedural rights. These mechanisms, rather than an outright prohibition, can effectively manage the procedural behavior of litigants without affecting the right of access to justice. The issue of voluminous litigation over minimal amounts could also be addressed by the introduction of a second, lower threshold below which some additional simplifications could be applicable.

43. Finally, in light of the very high thresholds in Serbia, a degree of judicial discretion in the application of the simplified rules could be introduced. In exercising such discretion, judges could consider both the value of each particular case and its complexity. Judicial

[11] A survey of EU citizens commissioned by Directorate-General Justice of the European Commission asked respondents in EU member states what is the minimum amount for which they would be willing to go to court over a dispute with a retailer, provider or business partner. The survey shows that generally the respondents would not go to court for less than EUR 458 (in Latvia). In other EU member states, the amount was even higher. See Special Eurobarometer 395, European Small Claims Procedure, April 2013, page 46 at http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_395_en.pdf.

discretion is a widely used feature of small claims procedures. Interestingly, in the framework of focus groups judges felt that such discretion would be beneficial while lawyers expressed some skepticism. This paper takes the position that the introduction of judicial discretion in whether to apply simplifications and which ones to apply is advisable. The purpose of small claims procedures is to bring more efficiency into the resolution of disputes. For complex disputes, the application of all simplifications may prove counterproductive and instead of ensuring efficiency may burden the court and the parties and even slow down the trial. Furthermore, the lack of flexibility in the application of the simplified rules makes legislators more cautious in introducing newer and braver simplifications of the procedure since in the absence of discretion such simplifications may affect adversely some complex cases. For this reason, judicial discretion in this area is considered a good practice and is recommended.

4. Fees

Findings:

- Fees for small commercial claims with a high value in Serbia are the highest among comparator jurisdictions (while fees for claims with minimal value are among the lowest). The fees for commercial cases are higher than the fees for civil cases of the same value.
- The payment of many fees per court instance is contrary to the international practice and burdensome for courts. The fact that the fees for cases with a very small value are among the lowest in comparator jurisdictions coupled with the payment of just a fraction of the total fee at the time of filing the claim may encourage frivolous litigation.
- In most jurisdictions the case would not be examined if the fee had not been paid. ECtHR finds that the discontinuation of a civil procedure in case of non-payment of the fee does not constitute a denial of access to justice, as long as there are appropriate mechanisms in place to ensure that the amount of the fee is proportionate to the financial situation of the parties.

Recommendations:

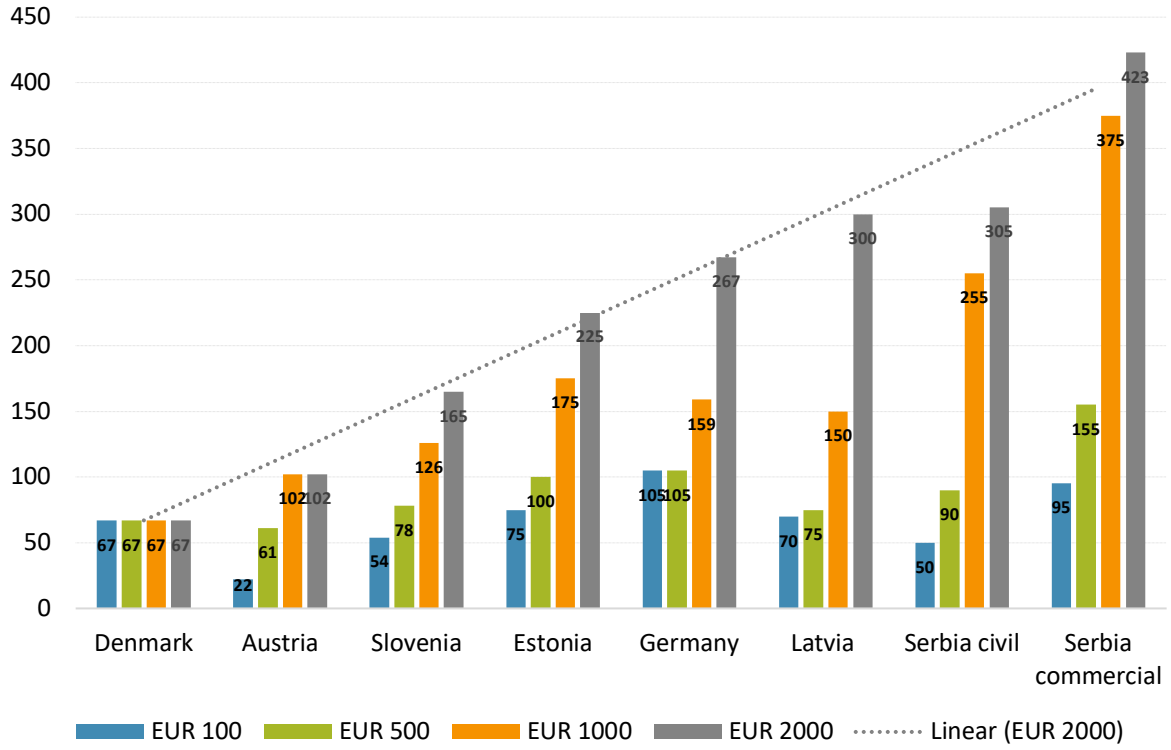
- Equalize the fees for civil and for commercial cases of the same value possibly by reducing the latter.
- Introduce a single fee per court instance payable at the outset of the procedure.
- Allow the court to discontinue the case if the fee has not been paid unless a fee waiver has been approved.

4.1. Level of court fees

44. Court fees in Serbia are generally higher than in other comparator countries, especially for claims with higher value.[12] Of the comparator jurisdictions, only Denmark has a flat fee of EUR 67 that is applicable to all cases with a value of maximum EUR 6709 in both the general civil procedure and the fast-track procedure. In the rest of the comparator countries, there is, similarly to Serbia, a progressive scale of fees, depending on the value of the claim. Figure 5 shows the amount of the fee (in EUR equivalent) for claims with a value of EUR 100, EUR 500, EUR 1,000 and EUR 2,000[13] before the courts of first instance.

[12] Only the level of the main, indispensable fees is discussed. For Serbia, these include the fee for filing the claim, the fee for the defendant's response and the fee for the issuance of the judgment. In most countries, there are small additional payments related to examining a case which may or may not be referred to as fees but which technically fall in the category of expenses (e.g. fees for sending summons to the parties and rarely – fees for searching for defendant, publications in official gazette about obligation or appear to the court, fee for repeated issue of decision, judgment and executory document, for invitation of witness to the court).
[13] For consistency, the figure includes information on claims above EUR 600 for Germany and claims above EUR 1000 for Austria although these are not considered small claims in these countries.

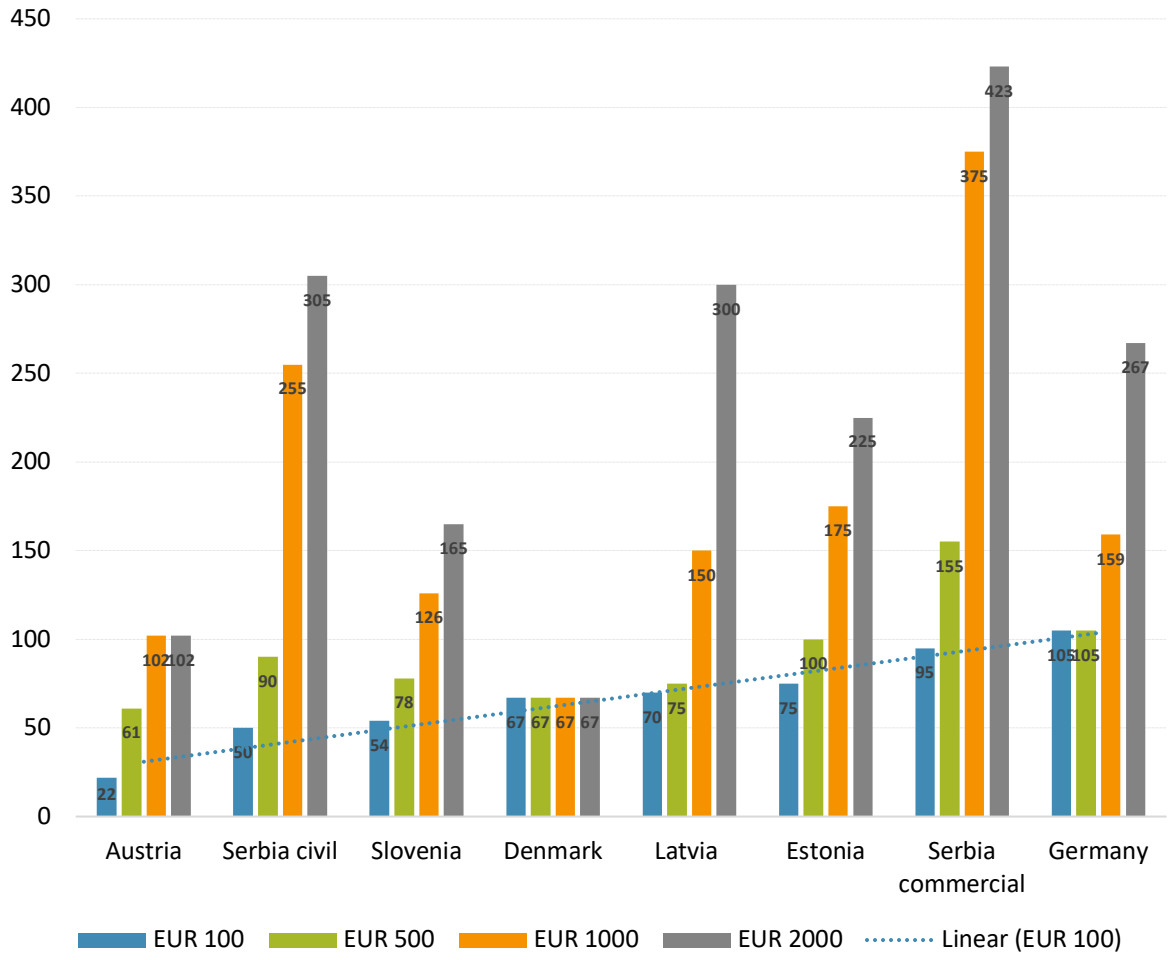
Figure 5: Court fees (EUR) sorted lowest to highest per EUR 2000 claim



45. Small claims procedures in Serbia appear to be less affordable than those elsewhere. A small claims procedure with a value of EUR 1000 or more would be the cheapest in Denmark. Conversely, Serbian court fees are among the highest, especially as the value of the claim increases. These trends are particularly striking in light of the fact that Denmark is among the comparator countries with the highest GDP per capita whereas Serbia has the lowest GDP per capita of all comparator countries

46. Serbian small claims procedures are more affordable for claims that have very low value, e.g. EUR 100. Figure 6 below ranks the same court fees from lowest to highest based on the fee that is due for a claim of EUR 100. In this value range, the differences between jurisdictions are not so pronounced but still the fees for commercial cases in Serbia rank among the highest. The fees for non-commercial cases in Serbia, for very small value claims, rank among the lowest. While this circumstance makes such claims affordable, it may encourage the proliferation of frivolous or vexatious litigation. By way of comparison, the court fee for claims with a value of EUR 100 in Germany is EUR 105, i.e. it exceeds the value of the claim. In this manner, Germany strongly discourages litigation over very small amounts and such claims would only be brought if the claimant is convinced not only that the case has merit but also that the defendant has sufficient assets to later on cover the costs of litigation.

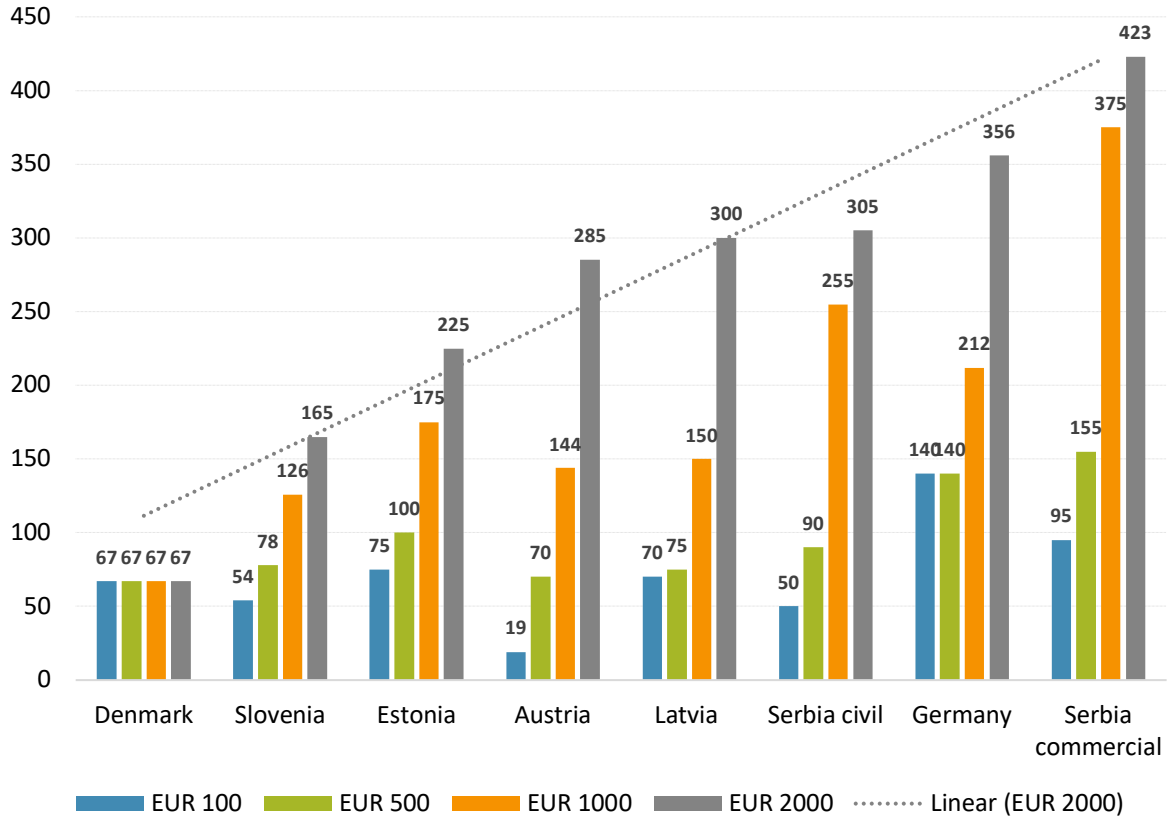
Figure 6: Court fees (EUR) sorted lowest to highest per EUR 100 claim



47. The fees payable for the second instance examination of small value commercial cases in Serbia are the highest among comparator jurisdictions. In most examined jurisdictions, including Serbia, the court fee for appealing a decision for a certain monetary amount is the same as the fee for the first-instance case. Only in Germany and Austria, the fees for appeal are generally higher than in the first instance.[14]

[14] As discussed previously, only claims before EUR 600 are considered small claims in Germany. Also, in Germany, appeal in such cases is very rarely allowed. Nevertheless, for the purposes of comparison, the court fees that would be payable to the second instance court in Germany for claims with a value of EUR 100, EUR 500, EUR 1000 and EUR 2000 have been presented.

Figure 7: Second instance court fees (EUR) sorted lowest to highest per EUR 2000 claim



48. The high value of second-instance fees in Serbia is, like in the first instance, counterbalanced by the fact that the court would examine the case even if the fee has not been paid and that the fees would be paid in installments (fee for filing of the appeal, fee for the defendant's response and fee for the judgment). Court fees are one of the mechanisms to influence the behavior of litigants and may act as a deterrent to appeal. As with the first-instance litigation, the lower financial burden at the outset of the procedure, as well as the possibility to avoid payment altogether can contribute to frivolous appeals. Therefore, it is advisable to consider the payment of a single fee at the outset of the second-instance procedure as a prerequisite for examination of the case.

49. Not only are Serbian fees overall significantly higher than those in comparator countries, but also the fees for commercial cases are higher than those for civil cases of the same value. This puts commercial entities at a disadvantage compared to individual litigants. Indeed, commercial cases are examined by commercial courts while civil ones fall under the jurisdiction of general courts. Nevertheless, the content of the procedure is the same A situation where access to justice is particularly expensive for businesses is especially burdensome for small and medium-sized enterprises that have fewer financial resources to defend their rights in court. Furthermore, it is a principle of EU law that fees for administrative services shall be cost-based, i.e. "proportionate to the cost of the procedures and formalities with which they deal."[15] For the purposes of this rule courts are equated with administrative

[15] See Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, (49).

authorities.[16] When the fee for a service with the same content varies, the amount of the fee may not be based on the cost of the service.

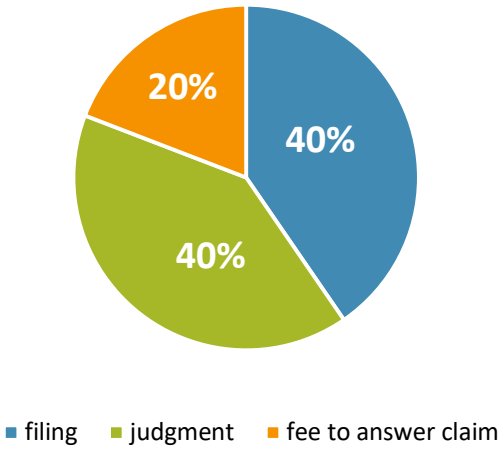
50. In order to address the issues identified herein, Serbia could re-examine the level of court fees. Firstly, it could equalize the fees for civil and for commercial cases of the same value possibly by reducing the latter. This would put businesses and individuals on an equal footing in respect of their access to justice. Secondly, if cases of minimal value abound, filing of such cases could be discouraged by a slight increase of the fee in this value segment.

4.2. Structure of the fees

51. One striking peculiarity of the Serbian system is the payment of several fees within one court instance. In Serbia, one fee is due at the time of filing the claim and a second fee (usually of the same amount) is due at the time of issuing the court judgment. There is also a fee payable by the defendant for filing the response to the claim. Figures 5, 6 and 7 above show the combined amount of the three main fees for Serbia (the fee for filing the claim plus the fee for answering the claim by the defendant plus the fee for issuing the decision), i.e. the approximate fee for the entire case.

52. Having several types of court fees within a single court instance is highly unusual. The fee for the defendant's response is particularly hard to justify. Responding to a claim is a procedural right of the defendant and it seems unjustified that the exercise of a procedural right should be tied to the payment of a fee. By way of comparison, in all comparator jurisdictions, a single fee is due for the case in one instance and it is payable at the time of filing the claim by the claimant.[17] If at some point the case is terminated because parties have reached a settlement or for another reason, part of the paid fee may be returned but there are no separate fees for the defendant's response and for the judgment.

Figure 8: Components of the court fee in Serbia



[16] Ibid., Article 1, p. 9.

[17] In Denmark, there is a single fee for the small claims procedure; however, for the ordinary civil procedure one fee is due at the time of filing the case and a second one after the preparation of the case has been finalized and the main hearing has been scheduled.

53. The structure of the fees in Serbia means that the fee paid initially by claimant for claims that are not commercial is quite low for claims of very low value (e.g. a value of EUR 100). At the time of filing the claim, the claimant should pay only the fee for filing, i.e. typically 40% of the total fees for the case. When the initial investment of the claimant is very low, this may encourage frivolous or vexatious litigation. Furthermore, when there is more than one fee per instance this poses an additional administrative burden on judges in terms of making sure the fee is calculated properly, notifying parties, etc.

54. For the above reasons, this report recommends simplification of the structure of court fees. Specifically, one fee could be payable per court instance, at the outset of the procedure. The introduction of this measure could contribute to discouraging frivolous litigation by raising the initial investment that the claimant must make in order to litigate. This would also reduce the administrative burden to courts related to calculating and ensuring payment of the fees. If the fee structure is simplified, an effective mechanism should be put in place for ensuring the swift return of part of the fee on the rare occasions when this is necessary (e.g. because the parties have reached a settlement). Comparator jurisdictions do not report of any particular problems with the partial return of the court fee upon settlement. Nevertheless, if Serbia chooses to introduce a single fee, it should ensure that the system for returning overpaid fees, where necessary, does not burden either the court or the parties.

4.3. Consequences of non-payment of the fee

55. Another aspect of the fees policy is the behavior of the court in cases where the due fee has not been paid, either at the time of filing the claim or at the time of notifying the party that that the fee is due. In most comparator jurisdictions, the court would not proceed to review the case in this situation, unless the claimant has been specifically relieved of the obligation to pay the fee. This is the rule in Denmark, Germany, Latvia, Estonia and Slovenia. Of the comparator jurisdictions, only in Austria, the court would proceed with the case if the fee has not been paid. This is due to access to justice considerations. However, non-payment of fees in Austria is extremely rare since most claims are filed by attorneys through the electronic system and there is an authorization in the law that the system shall automatically withdraw the due amount of the court fee from the attorney's account.

56. In Serbia, if the court fee is not paid within the deadline set by the court, the court proceeds to examining the case regardless. Indeed, the party from which the payment is requested is obliged to pay additional 50% as a penalty. Nevertheless, the fact that litigation would proceed even without any initial payment, creates an environment conducive to frivolous claims. Especially as regards cases with very small value, such as the ones claiming small amounts of interest on delayed payments owed by the state, which nevertheless have merit and the claimant can be sure to win, the court system may in essence be subsidizing such litigation. It is not clear how actively the state enforces claims for unpaid court fees. If it is excessively expensive or burdensome for the government to collect such unpaid fees, it may give up enforcing them and this may in turn lead to a perception that justice is free.

57. Whenever the matter of demanding the payment of court fees in advance is raised, access to justice considerations come to the fore. It is because of such considerations that neither Austria, nor Serbia stop the proceedings, if the fee is not paid. In this regard, it is instructive to examine the practice of the European Court of Human Rights (ECHR) on the

relationship between the right of access to justice and the collection of court fees. Access to justice forms part of everyone's right to have to have any claim relating to their civil rights and obligations brought before a court or tribunal under Art. 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. ECtHR has consistently stated in its jurisprudence that the right of access is one very important aspect of the right to a court since the *"fair, public and expeditious characteristics of judicial proceedings are indeed of no value at all if such proceedings are not first initiated."*[18] However, ECtHR has also repeatedly proclaimed that the right to a court is not absolute and states may introduce certain limitations to it, as long as these limitations have a legitimate aim, are proportionate and ensure that the very essence of the right is not impaired.

58. One of the most common limitation to the right of access to court is the obligation to pay a state fee. ECtHR has on numerous occasions examined the matter of whether the requirement to make prior payments such as court fees or security deposits as pre-conditions for allowing appeal violate Art. 6 § 1. In its jurisprudence, ECtHR has never regarded the obligation to pay a court fee in order to initiate court proceedings as a per se violation of the Convention. It always examined the particular circumstances of the case and found violations in the cases where the amount of the fee was prohibitively high.

***Box 2 : Case of Kreuz v. Poland*[19]**

In the Case of Kreuz v. Poland, the court had to specifically answer the question of *"whether the obligation to pay court fees in civil proceedings imposed by Polish law in itself amounted to a violation of Article 6 § 1 of the Convention"*. In answering this question, the Court stated:

"In the instant case the applicant first contested the general rule whereby access to Polish civil courts depended on the payment of a court fee amounting to a certain percentage or fraction of the claim being lodged […] The Government maintained that collecting court fees for proceeding with civil claims could not be seen as in itself contrary to Article 6 § 1 […]

Having regard to the aforementioned statement of principles established by its case-law, the Court once again recalls that it has never ruled out the possibility that the interests of the fair administration of justice may justify imposing a financial restriction on the individual's access to a court […] Furthermore, the Court considers that while under Article 6 § 1 fulfilment of the obligation to secure an effective right of access to a court does not mean merely the absence of an interference but may require taking various forms of positive action on the part of the State, neither an unqualified right to obtain free legal aid from the State in a civil dispute, nor a right to free proceedings in civil matters can be inferred from that provision […]

The Court accordingly holds that the requirement to pay fees to civil courts in connection with claims they are asked to determine cannot be regarded as a restriction on the right of access to a court that is incompatible per se with Article 6 § 1 of the Convention."

In this particular case, the Court proceeded to examining the amount of the fee, which was equal to the average annual salary in Poland at that time, together with the applicant's ability to pay the fee, and concluded that in the particular case the amount of the fee was excessive and had impaired the very essence of the applicant's right of access.

59. As long as there are appropriate mechanisms in place to ensure that the amount of the fee is proportionate to the financial situation of the parties (e.g. effective legal aid

[18] ECHR Case of Kreuz v. Poland, Application no. 28249/95, at http://hudoc.echr.coe.int/eng?i=001-59519, para 52.
[19] Ibid. paragraphs 58 – 60.

and/or fee waiver), the discontinuation of a civil procedure in case of non-payment of the fee, does not constitute a denial of justice. Indeed, Serbia is exceptional in allowing court proceedings to continue even where the fee has not been paid. Given the fact that in most EU jurisdictions court fees need to be paid in advance and otherwise the court would not proceed to examining the, it is worth considering whether Serbia could introduce such a strict rule. Paying a single court fee in advance, as a precondition for commencing litigation, would discipline claimants, spare the time of judges and court clerks spent on repetitive notifications to the parties regarding the obligation to pay various types of court fees and relieve enforcement authorities of the efforts invested in collecting unpaid fees.

5. Filing the claim

Findings:

- Under best international practices small claims are filed using forms that structure the claim and facilitate judges and parties. In Serbia there are no such forms.
- Under best international practices claims are filed electronically through a single judicial portal. In Serbia this is not possible.

Recommendations:

- In the short term, introduce mandatory forms both for the claimant's action and for the defendant's response. Such forms should be available in electronic format.
- In the long term, create an opportunity for fully electronic filing of all claims via an electronic portal.

60. Small claims procedures should be as accessible to litigants as possible; therefore, simplifications to the procedure may be introduced from the outset – filing the claim. They may range from advice to litigants provided by court staff through possibilities for electronic filing to the use of forms that structure the claim. In Serbia, the court staff is not authorized to aid non-represented claimants wishing to file a small claim. Also, there are no forms for filing small claims and the structure of the suit follows the general rules. Furthermore, there is no electronic portal for filing civil claims. It is in principle possible to file a claim via e-mail signed with electronic signature but this possibility is used infrequently. By contrast, comparator jurisdictions have such simplifications.

61. The first possible simplification entails allowing oral claims and having court personnel aid claimants, if necessary. If the persons who wish to file a claim are not represented by a lawyer and are not qualified to themselves compose the text, it may be beneficial to facilitate them. German and Austrian law permit oral filing of claims before lower level courts. In Austria, such oral claims are recorded by judges or court trainees on behalf of judges. This possibility is applicable to all civil claims filed with the lower level courts, i.e. claims with a value of up to EUR 15,000. Germany also allows parties to file orally claims that are in the jurisdictions of the lower level courts, i.e. with a value below EUR 5,000. In Germany, however, these oral claims are not recorded by judges but by court clerks. Article 11 of Regulation (EC) No 861/2007 takes a similar approach by introducing an obligation for member states to provide parties to cross-border small claims with practical assistance in filling out the forms.

62. The possibility of filing oral claims is generally used infrequently. In Austria, such claims are rare, not least due to a perception that the case may end up with the judge who has put the oral claim in writing and that might affect his impartiality. In Germany, interviews with judges indicate that recording oral claims is regarded as a normal part of a court clerks' work and this possibility is used more frequently. A research on the implementation of the

cross border small claims procedure in EU Member States found that this requirement is being implemented in slightly more than half of the Member States[20].

63. Simplifications could also introduce easy-to-use forms to be filled out by claimants. Such forms are used in Latvia[21], in Denmark[22] and are applicable also to cross-border disputes under Regulation (EC) No 861/2007[23]. Forms facilitate claimants who could be encouraged to file a claim without being assisted by a lawyer, if there is a clear format. They also help judges who receive better structured and clearer claims. Forms could be introduced just for claimants, but a more even-handed approach would entail introducing such forms also for the defendant's response. For example, Latvia and Regulation (EC) No 861/2007 require the introduction of such forms also for the defendant.

Box 3: Civil Procedure Law, Latvia

Section 250.[23] Explanations of a Defendant

(1) Explanations regarding a statement of claim in simplified procedure shall be drawn up in conformity with the sample approved by the Cabinet.

(2) A defendant shall indicate the following information in the explanation:

1) the name of the court to which explanations have been submitted;

1.1) the given name, surname, personal identity number, declared place of residence of the plaintiff, but, if none, the place of residence; for a legal person - the name, registration number and legal address thereof;

1.2) the given name, surname, personal identity number, declared place of residence and the additional address of the defendant indicated in the declaration, but, if none, the place of residence; for a legal person - the name, registration number and legal address thereof. In addition, the defendant may also indicate another address for correspondence with the court;

1.3) an electronic mail address for correspondence with the court, and if he or she has registered his or her participation in the online system, also include an indication of registration if the defendant (or his or her representative whose declared place of residence or indicated address for correspondence with the court is in Latvia) agrees to electronic correspondence with the court or he or she is any of the subjects referred to in Section 56, Paragraph 2.3 of this Law. If the declared place of residence or indicated address of the representative of the defendant is outside Latvia, in addition he or she shall indicate an electronic mail address or notify regarding registration of his or her participation in the online system. If the representative of the defendant is a sworn advocate, an electronic mail address of the sworn advocate shall be indicated additionally;

1.4) the name of the credit institution and the number of the account to which court expenses is to be reimbursed;

2) [Repealed on 29 November 2012];

3) the number of the case and subject-matter of the claim;

4) whether he or she recognizes the claim fully or in any part thereof;

5) his or her objections against the claim and substantiation thereof, as well as the regulatory enactment on which they are based upon;

6) evidence that confirms his or her objections against the claim;

[20] ECC-Net European Small Claims Procedure Report, September 2012, page 20 at https://ec.europa.eu/info/sites/info/files/small_claims_international_claims_2012_en.pdf.

[21] See Justice portal, Latvia at https://likumi.lv/ta/id/299326-noteikumi-par-vienkarsotaja-procedura-izmantojamam-veidlapam.

[22] See Justice portal, Denmark at http://www.domstol.dk/selvbetjening/blanketter/staevningogsvarskrift/Pages/default.aspx.

[23] See Justice portal, EU at https://e-justice.europa.eu/content_small_claims_forms-177-en.do?clang=en.

7) requests for requisition of evidence;

8) the fact whether it is requested to recover the court expenses;

9) the fact whether it is requested to recover expenses related to conducting of the case, indicating the amount thereof and attaching the documents justifying the amount;

10) the fact whether the trial of the case in a court hearing is requested, by justifying his or her request;

11) other circumstances that he or she considers as important for examination of the case;

12) other requests;

13) the list of documents attached to explanations;

14) the time and place of drawing up of explanations.

64. Yet another simplification in filing small claims has been introduced in Denmark where the document instituting the procedure must comprise only a short description of the case, as opposed to the general civil procedure where the description must be detailed. This simplification may allow the claimant to not use legal assistance at the stage of filing.

65. One of the most convenient forms of facilitating the filing of claims is the use of an IT platform. No comparator jurisdiction has introduced an IT platform servicing only small claims.[24] Where such platforms are available, they are applicable system-wide to all civil claims. This is the case in Denmark, Austria and Estonia. For example, in Estonia, documents can be submitted by e-mail or through an information system accessed via a dedicated portal[25]. If petitions and other documents can be submitted through the IT portal, these shall not be submitted by e-mail, unless there is good reason thereof. The system enables citizens to initiate civil, administrative and misdemeanor proceedings and monitor these proceedings as well as submit documents to be processed. In the system, individuals can only see the proceedings in which they themselves are involved. Electronic filing of civil claims via a court portal is also available in Austria. The system[26] could be used by anyone, but for lawyers, notaries, banks and insurance companies, it is obligatory.

66. In Latvia, similarly to Serbia, electronic filing is possible not through a dedicated IT system but through electronic mail signed with electronic signature. This possibility in Latvia is used with growing frequency, as more natural persons and representatives of legal persons have E-signatures. Supporting documents to the claim can be submitted electronically signed with E-signature or can be sent to the court by mail in a paper form. Latvian banks support the E-signature system and issue confirming documents on payment of court fees signed with E-signature. In other comparator jurisdictions, such as Slovenia and in Germany, electronic filing of civil claims is not possible.

67. Interviews with the legal community in Serbia suggest an interest in introducing user-friendly forms for small claims procedures in Serbia. This would be in line with the findings of the Functional Review, according to which *"[t]here are no checklists, standardized forms or templates for routine aspects of case processing, nor is there a consistent approach to drafting routine documents, such as legal submissions, orders, or judgments."*[27] The forms

[24] For example, for uncontested claims procedures such as orders for payment, there are often dedicated IT systems for filing and processing the claims.

[25] See Justice portal, Estonia at http://www.rik.ee/en/international/public-e-file.

[26] See Justice portal, Austria at https://webportal.justiz.gv.at/at.gv.justiz.formulare/Justiz/Geldleistung.aspx.

[27] World Bank Group. 2014. Serbia Judicial Functional Review. Washington, DC, p. 16.

shall be available on the websites of justice institutions in downloadable and editable formats and shall be filled out electronically, regardless of whether they are subsequently submitted on paper or electronically. The introduction of forms, for the claimant as well as for the defendant, is the simplification in filing that can be implemented in the shortest term and at a low cost. Forms would help structure the claim, may in some simple cases allow for self-representation and could be convenient to judges. However, measures should be taken to discourage filling out of forms by hand. In the longer term, the goal should be to file not only small claims but all types of claims through an IT portal.

6. Collection of evidence

Findings:

- Unlike comparator jurisdictions, Serbia has no stricter relevance assessment in small claims and no criteria on rejecting evidence.
- Unlike most comparator jurisdictions, in Serbia the requirements to the form of evidence in small claims are no different than those in the general procedure.
- Experts assessments are expensive and time-consuming but judges in Serbia are not able to forego such assessments even in cases with very small value.

Recommendations:

- Provide that in small claims judges shall apply a stricter relevance assessment than in general litigation and shall admit only evidence which is necessary and not excessively costly.
- Provide that in small claims witness statements shall, as a rule, be submitted in writing and oral hearings of witnesses shall be admitted only as an exception.
- Provide that expert assessments shall be approved in small claims only in exceptional circumstances and considering the value of the claim and the cost of the assessment.

68. Small claims procedures usually provide for some type of simplification related to the collection of evidence, including the use of court experts. Such procedural simplifications should always be introduced and implemented cautiously because the evidence presented in a case directly impacts its outcome. Hence, imposing significant limitations on the evidence that parties present may violate their right to fair trial. The extent of the evidentiary simplifications in the examined jurisdictions simplifications varies greatly.

69. Compared to other jurisdictions, Serbia has introduced very few simplifications in the area of collecting evidence. The only rule is that in small claims, the parties must present all facts on which they base their claim and to propose evidence that confirms the presented facts no later than the conclusion of first hearing. By contrast, in general civil procedure, all facts and evidence should be presented at the preparatory hearing, which is not scheduled for small value disputes. The parties may, through filings or at later hearings, present new facts and propose new evidence only if, by no fault of their own, they could not present or propose them in the preparatory hearing, or at the first hearing of the trial, if the preparatory hearing was not held. This rule is applied generously both in general and small claims proceedings. As regards the use of court experts, the rules for Serbian small claims are no different than those under the general civil procedure. On the form of evidence, general civil procedure in Serbia allows for written witness statements as opposed to oral once but this rule is applied rarely. No special rules on evidence are available in the small claims procedure.

70. For claims with a small value, Austria has introduced deviations from the general evidentiary requirements that provide for a stricter relevance assessment than in the general procedure. For claims with a value under EUR 1 000, the court can disregard evidence offered by the party if full clarification of all the relevant circumstances would be disproportionately difficult. In this case, the judge must make a non-arbitrary ruling in good faith, which may be reviewed at successive stages of appeal. Even though there are no special

rules on the use of court experts, the possibility for refusing to admit evidence extends to that matter as well. Specifically, given that the court can disregard the evidence due to disproportionate difficulty, the use of an expert might be considered difficult and/or expensive and might not be allowed.

71. In Slovenia, the court can limit the time and scope of evidence ensuring proportionality between the adequate protection of parties' rights and the goal of achieving speedy and cost-effective proceedings. In order to do that, the judge must draw up a precise and rational plan of procedural actions and give priority to evidence that can be taken quickly, simply and with as little cost as possible (e.g. submitting written witness statements; concentrated and clear hearing of parties and witnesses). To this effect, the judge can ask the party to choose among several witnesses only the ones that can say the most about the case. Furthermore, the judge can make some types of inquiries (e.g. with state authorities) more informally, for example by telephone instead of in writing.

72. In Estonia, the court can also deviate from the formal requirements for taking of evidence and recognize means of proof not provided by law, including statements which are not given under oath. This provision is used when a party has requested the hearing of a witness. Instead of summoning the witness to court, the court can accept a written statement. It is also possible to question a witness over the phone. In Estonia, the small claims procedure is not different from the general one in respect of the use of court experts.

73. In Denmark, in the fast-track procedure, only evidence which is important to the case may be presented whereas in the general civil procedure evidence may be presented unless it is deemed without relevance for the case. Any presentation of evidence in the fast-track procedure is thus subject to the court's approval which is given when it is likely that the evidence would be of importance for the case. This rule represents only a slightly more stringent relevance assessment compared to the general civil procedure. Furthermore, the court determines the form of the evidence, usually after discussion with the parties. In this regard, the judge has more leeway to decide if a witness should be heard personally or a written statement would be sufficient. Danish procedural rules display significant deviation from the general civil procedure in respect of the use of court experts. If a complex expert opinion is needed, the case does not remain in the small claims track but is referred to general civil procedure. In the fast-track procedure, the court may, upon request from a party, decide on a simplified expert opinion in the form of a written statement from an organization or from an individual expert. The expert would normally not be summoned unless there are weighty reasons for an appearance. If the written expert statement is given by an organization, it would be followed by oral explanations only in exceptional circumstances. Another difference in small claims is that the questions to the expert are prepared by the court and not by the parties as in the general civil procedure. The court shall, however, present its questions to the parties for comments before sending them to the expert.

74. In Germany, the rules on taking evidence for claims below EUR 600 are rather relaxed. In the general civil procedure, the principle of direct evidence gathering applies, i.e. witnesses, experts or parties must be heard in front of the court in the presence of the parties, while in the simplified procedure, the court may question witnesses, experts or parties over the telephone or in writing.

75. Regulation (EC) No 861/2007 also introduces simplifications in the area of evidence, both in terms of a stricter relevance assessment and in simplifying the form of the evidence. Like other jurisdictions and in line with the goal to avoid, to the extent possible, the holding of a hearing, oral testimony or expert evidence may be taken only if it is necessary for giving the judgment. Like in Austria, in deciding whether to collect certain evidence, the court shall take costs into account.

76. To summarize, simplifications regarding evidence take two principal forms; they tend to relate either to a greater liberty for the court in assessing whether to admit certain evidence or to simplifying the form in which evidence is presented. These two simplifications could be used in combination. Serbia has introduced a slightly different rule on evidence (as regards the time at which it should be presented and only because there is no preparatory hearing in the small claims proceedings and therefore it would be impossible to apply the general rule) in the small claims procedure but it has not utilized either of the two most typical forms of simplification. The Functional Review points out that *"judges are reluctant to decide on a case without reliance on an expert witness, but the cost of engaging the expert witness may outweigh the value of the claim."*[28] Regardless of the costs and delay that expert assessments can result in, no simplifications are available in the small claims procedure.

77. Based on the above findings, Serbia could consider the introduction of further simplifications in the area of the admissibility and form of evidence. The explicit introduction of a stricter relevance assessment in the small claims procedure based on criteria such as necessity and cost could empower judges to exercise discretion and common sense when admitting evidence to a larger extent than they currently do. The extended use of written witness statements instead of oral ones in the small claims procedure (as a rule rather than as an exception) is also an option supported by the comparative examination. Lastly, it is particularly appropriate to introduce restrictions on the use of expert witnesses in cases with very small value since the use of expert opinions is costly and causes delays.

[28] World Bank Group. 2014. Serbia Judicial Functional Review. Washington, DC, p. 135.

7. Principle of adversarial proceedings

Finding:

- Some initiative by the judge in guiding the collection of evidence or instructing the parties on their rights and obligations is not considered contrary to the adversarial principle.

Recommendation:

- If Serbia seeks to give a more active role to judges in small claims, the appropriate place to start is to allow for more discretion and initiative in the collection of evidence.

78. One typical feature of small claims procedures is to assign a more active role to the judge in order to make the process faster and more efficient and assist self-represented litigants. Some judges are overly cautious with regard to such initiative for fear that they might infringe upon the principle of adversarial proceedings. Therefore, a short discussion of the meaning of the adversarial principle and its relationship to fair trial seems warranted.

79. The development of civil procedure in common and in continental law has witnessed a gradual convergence between the adversarial principle that was initially typical for common law systems and the inquisitorial process associated with continental systems. Traditionally, the judge in the adversarial procedure was seen as a referee of the parties' competition who was not necessarily under a duty to ascertain the truth.[29] This was a passive judge who sought procedural rather than substantive justice.[30] However, the classical adversarial process in England proved costly and time-consuming. Therefore, the new Civil Procedure Rules of 1999 implemented wide-reaching reforms that introduced the role of the informed judge who had more control and initiative in managing the case. This judge *"can use his knowledge of the case and the powers given to him for the purpose of case management to ensure that he gets the information he needs to create a real prospect that the decision will be based on the nearest approximation possible to the truth".*[31] The reforms of British civil procedure imported in it features that were previously seen as inquisitorial in nature.

80. By contrast, continental civil procedure was considered to traditionally embody inquisitorial elements. Thus, a 1965 reform of French civil procedure saw a great enhancement of the powers of the French court to control the progress and preparation of cases. The judge could engage in fact-finding, make binding orders to the parties and had a duty to seek the truth.[32] This was an active judge who would strive not only for procedural but also for substantive justice. Still, these inquisitorial features of the procedure would be balanced against the principle of equity of arms guaranteeing that the judge's involvement in instruction and fact-finding would not give an unfair advantage to either party.

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[29] In a landmark case of the English adversarial system, Air Canada v Secretary of State for Trade, [1983] 2 AC 394, the prominent English justice Lord Denning held that *"when we speak of the due administration of justice this does not always mean ascertaining the truth of what happened. It often means that, as a matter of justice, a party must prove his case without any help from the other side."*

[30] Jolowicz, J. A. Adversarial and Inquisitorial Models of Civil Procedure, The International and Comparative Law Quarterly, Cambridge University Press, Vol. 52, No. 2 (Apr., 2003), pp. 281-295.

[31] Ibid., p. 288.

[32] Ibid. p. 291.

81. Countries of the former Eastern bloc have traditionally belonged with the continental legal family but before the fall of the Iron Curtain, the inquisitorial element in their civil procedure was more pronounced than in Western Europe. After the end of the Cold War, the pendulum swung in the opposite direction. East European nations introduced wide-ranging reforms in order to make civil procedure adversarial. In some cases, these reforms were seen as limiting excessively the power of judges to introduce a measure of efficiency in the courtroom and ensure ascertaining of the truth. Therefore, in recent years, these countries have cautiously started to allow judges a more active role in directing procedure thus redefining once again the meaning of the adversarial principle.

82. Nowadays, some inquisitorial elements in the adversarial process are so common that they are rarely questioned. In its practice, ECtHR sees adversarial proceedings as one of the elements of the fair trial. However, it does not interpret the term "adversarial" in the same sense as the classical common law doctrine and does not view the judge's active participation in fact-finding or his instruction to parties as violations of the adversarial principle. In the current understanding of ECtHR, *"the right to adversarial proceedings means in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision"*[33]. The violations of the adversarial principle that ECtHR finds are usually related to instances where evidence and documents have been obtained by the court and one party has not been provided with access to these documents or evidence and has had no opportunity to comment on them.

83. In light of the above, some initiative by judges in guiding the collection of evidence or instructing the parties on their rights and obligations is not considered contrary to the adversarial principle. Quite the opposite, in their strive for efficiency, many countries allow judges to be active and provide limited guidance to the parties, especially in the framework of small claims procedures in which litigants may not have legal representation. Some examples of this active role of the judge were presented in the section on evidence above.

84. In Serbia, the judge is not expected to guide the parties to a small value case more actively than in the general civil procedure. In the summons they receive upon initiation of the procedure, the parties can find some instructions as to their rights and obligations and the consequences of non-appearance but this is a standard form whose content is not influenced by the judge. Also, given that the judgment in small claims proceedings is pronounced immediately after the closing of the trial, orally, at that point the law obligates the judge to shortly explain it and advise the party about the conditions to file an appeal. However, in conducting the proceedings, the judge is as active as in the general civil process.

85. Similarly, in Latvia, Austria and Slovenia, the role of the judge in small claims procedures is no different than that in the general civil process. Indeed, in Slovenia, for example, the judge needs to see that all decisive facts are stated, incomplete statements are supplemented, means of evidence are adduced, and all necessary explanations are given in order to establish the facts and legal relations in dispute. In the general civil procedure this is usually done orally in the main hearing. Since the small claims procedure is often conducted in writing, the judge may do so earlier on and in writing. However, this difference in the

[33] Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (civil limb), Updated to 31 December 2017.

judge's behavior does not stem from assigning to him an essentially different role but from the very structure of the procedure.

86. By contrast, the systems of Denmark, Estonia and Germany provide that in small claims procedures the judge would have a more active role than usual. In Denmark, once the claim has been filed and the defendant has responded, the judge shall seek to clarify the case as well as further evidentiary needs in discussion with the parties. The court shall give guidance to the parties who have no legal skills and are not assisted by a lawyer. As opposed to the general civil procedure, the court shall prepare the main hearing by making a list of claims, arguments and evidence. The aim is to reduce the need for legal representation substantially. During the main hearing, the judge is responsible for guiding the parties, but less so if a party is represented by a lawyer. Furthermore, in the fast-track procedure in Denmark, the questions to the expert are written by the court and not by the parties. In Estonia, too, the court is expected to be more active and is entitled to collect evidence at its own initiative. This rule saves a lot of time because the court is not dependent on the party's motion to collect evidence. In Germany, the judge is expected to provide some instruction and guidance to self-represented parties. These rules shall be applied very cautiously so as not to tilt the balance of powers between the parties and violate the equity of arms principle.

87. Overall, judges in all examined jurisdictions are cautious when showing initiative or assisting self-representing parties. The requirement to assist self-represented litigants through guidance is often not effective since judges are hesitant to apply it. Conversely, judges are more comfortable if their active role relates to the collection of evidence because this ultimately contributes to finding the objective truth. Therefore, if Serbia seeks to give a more active role to judges in small claims, the appropriate place to start is to allow for more discretion and initiative in the collection of evidence rather than provide advice to parties.

8. Preparation of the case

Finding:

- Drastically shortening the preparatory phase of the case, as Serbia has done, may necessitate a larger number of court hearings in order to clarify issues and collect evidence that could have been clarified and collected more quickly and cheaply within a well-structured preparatory phase conducted in writing.

Recommendation:

- Introduce a well-structured preparatory written phase in small value cases with short timelines and an obligation that parties should present/request all evidence that is available to them during that phase. Such written phase could be used to determine whether a hearing shall be conducted at all or the case could be resolved in a written-only procedure.

88. The preparatory phase of small value cases is another area where countries introduce simplifications. In all comparator jurisdictions, a standard civil case incorporates a pre-trial stage and a trial. The pre-trial stage normally involves a written and an oral phase. The written phase comprises exchanges of documents between the parties, submission of evidence and other similar activities. The oral phase entails a preliminary hearing. Not all systems differentiate between a preliminary hearing and a main hearing; some civil procedure acts may regulate hearings without labeling them as preparatory or main ones. A typical feature of small claims procedures is that the preliminary stage of the process is shortened, in the interest of increasing speed and decreasing costs. While many jurisdictions omit the preparatory hearing of the pre-trial phase or hold it via the phone, it is much rarer to omit the written phase.

89. In Serbia, the preparatory phase of the process is shortened most drastically as compared to the other examined jurisdictions. The claim is not submitted to the defendant for a reply and no preliminary hearing is scheduled in the framework of the small claims procedure. Instead, upon receiving the claim, the court directly summons the parties to the main hearing.

90. Most comparator countries shorten the preparatory stage of the case on one manner or another. In Estonia, the court can shorten it by either waiving the written phase or by deciding not to hold a court session. The judge may also decide to shorten the timelines. It is up to the individual judge to decide whether to use these possibilities or not, as well as which ones to apply, i.e. whether to request a response to the claim, whether to hold a preliminary hearing and what shall be the applicable timelines. If a preliminary hearing is held, it may take the form of a phone call with each individual party. Such phone calls, as a replacement of a preliminary hearings, are being conducted also in Denmark where in order to save time and expenses for the parties, they could be held outside of regular office hours. In Germany, the court can set a very short term of approximately 3-5 days for the defendant's response. It is also possible for the judge to clarify additional matters on the phone rather than hold a preliminary hearing.

91. Not all judges feel comfortable talking to parties on the phone. In the framework of this research, some Serbian judges have expressed concern that the verification of the parties' identities in a phone call would not be reliable. By way of example, in Estonia, where some judges use the opportunity to clarify issues and prepare the case on the phone, verifying the identity of the party has not been raised as an issue. It is considered that since the party has itself provided a telephone number, it would respond to that phone personally. Some judges in Estonia consider that the most serious issue with a phone conversation in pre-trial proceedings is the need to inform the opposite party of the content of the conversation with a view to the need to comply with the adversarial principle. Judges take notes of the conversation, but it can be difficult to ensure that the information obtained from one party is disclosed to the other one in its entirety.

92. The legislation of some comparator countries regulates in detail the written phase of the preliminary proceedings while allowing for omission of the oral phase altogether. In Latvia, the written phase of the small claims proceedings is extensive and there are mandatory forms for the written response of the defendant. In Slovenia, while a preliminary hearing would generally not be scheduled, the legislator has imposed restrictions on the written submissions stipulating that each party may file only one preparatory pleading within short timelines. Facts and evidence presented outside of these pleadings shall be ignored. The procedure for cross-border small claims under Regulation (EC) No 861/2007 also does not incorporate a preliminary hearing but instead provides for clear timelines for the exchange of documents.

93. One of the functions of the preparatory phase of the case is to make sure that there is enough clarity in the case in order to have a main hearing as effective as possible. Oftentimes, especially in countries where the aim is to have a fully written small claims procedure, the preparatory phase of the case helps the court decide whether a main hearing would be necessary at all. It is striking that Serbian judges have a much lesser margin of appreciation on how to conduct the small claims procedure as compared to all other examined jurisdiction. They not only have no right to decide that the case is too complex for the simplified trail but also cannot choose to request a written response to the claim or to conduct a pre-trial hearing.

94. For some types of complex small value cases, it may be more efficient to conduct a written preparatory phase and clarify the issues in dispute in advance rather than go straight to the main hearing. A mechanical elimination of the preparatory phase of the case by law may, further down the line, necessitate a larger number of court hearings in order to clarify issues and collect evidence that could have been clarified and collected more quickly and cheaply at a well-structured preparatory stage conducted in writing. Therefore, it is recommended to allow exchange of documents in the preparatory stage of the small value cace or, alternatively, give judges discretion to evaluate whether conducting a written phase would contribute to making the procedure more efficient. It could also be useful to bring more discipline into the preliminary phase by obligating parties to present/request all their evidence in writing with the claim and the defendant's response and precluding them from presenting at a later stage (e.g. the hearing) evidence that was available to them during the preliminary stage.

9. Hearings

Finding:

- Unlike other comparator jurisdictions, Serbia does not provide for rules that would limit court hearings in small value cases.

Recommendation:

- Provide that small claims shall, as a rule, develop only in writing unless one of the parties has specifically requested a hearing.

95. The most typical simplification regarding the hearing of a small value case relates to whether an oral hearing is mandatory or could be avoided. Other simplifications, albeit of lesser significance, relate to the manner in which the minutes of the hearing are taken[34]. In Serbia, small claims procedures incorporate a hearing. Its importance is high, given the absence of a preliminary phase of the case and the obligation of parties to present all facts on which they base their claim and to propose evidence that confirms the presented facts no later than the conclusion of first hearing.

96. Hearings are also conducted in the small claims procedures of Austria and Denmark; by contrast, in Estonia, Latvia, Slovenia and Germany, the aim is to have the procedure in writing, if possible, avoiding a hearing altogether. In Slovenia, if after the receipt of defense plea and preparatory pleadings (all in writing), the court finds that no dispute exists on facts and there are no other obstacles to give a decision, it can decide without a hearing, unless a party has specifically demanded a hearing in the written phase of the case. Similarly, in Latvia, small claims shall by default be reviewed in writing. Only when the claimant or the defendant explicitly request a hearing, providing argumentation, a judge may decide to conduct it. The judge may also, at his own discretion, decide that an oral hearing is needed, even if the parties have not asked for it. In Germany, too, an exclusively written procedure can be used for small claims unless the parties specifically request to be heard. In Estonia, even if the party requests to be heard, it is not necessary to hold a court session for that purpose. The party can be heard by other means (e.g. by phone). A hearing may be avoided also under the EU cross-border small claims procedure.

97. The countries which allow waiving of the hearing usually mandate that it shall nevertheless be held if one of the parties explicitly requests it. It is considered that a party's right to fair trial may be violated if the court disregards its request for a hearing. According to international standards, however, the right to fair trial may not be violated even if one party requests an oral hearing and the court refuses. The refusal may be made only in exceptional circumstances and must be well reasoned. Furthermore, the hearing need not necessarily be

[34] The simplification regarding the rule on taking minutes of the hearing is available in two comparator jurisdictions. In Estonia, the court enters procedural acts in the minutes only to the extent it deems it necessary and the parties may not file any objections to the minutes. Similarly, in Slovenia, the court draws up only a summarized record of the main hearing that includes the most important statements made by parties, the essential data on the evidence produced and the decisions announced at the main hearing which are subject to appeal. This simplification contributes to the more informal nature of the procedure and may facilitate conducting of some stages of the process by phone, especially the preliminary stage.

done in person but may utilize modern communications technologies. These matters are very illustrated in an ECtHR decision against Estonia, which considers its small claims procedure.

Box 4 : Case of Ponka v. Estonia[35]

The applicant, Mr. Ponka, a Finnish national, was convicted of murder in Estonia and transferred to Finland to serve his sentence. The owner of the apartment where the murder took place brought a civil suit against Mr. Ponka in Estonia claiming damages in an amount corresponding to appr. EUR 1806. The court ruled that the case was to be resolved in simplified proceedings and that if the parties wished to be heard, they had to inform the court. In his response, Mr. Ponka requested a court hearing and asked that he and two witnesses be questioned. The court dismissed the request and based its judgment on the findings of the criminal case.

Mr. Ponka brought a case before the ECtHR contenting that he did not receive a fair civil trial due to the lack of an oral hearing, which constituted a violation of Article 6 § 1 of the Convention. Indeed, the Court found a violation of the right to fair trial in this case.

"The Court recognises […] that member States may find it useful to introduce a simplified civil procedure for the adjudication of small claims. Such a simplified procedure may be in the interest of the parties as it facilitates access to justice, reduces the costs related to the proceedings and accelerates the resolution of disputes. The Court also accepts that member States may decide that such a simplified civil procedure should normally be conducted via written proceedings – unless an oral hearing is considered necessary by a court or a party requests it – and that the court may refuse such a request. Such a simplified civil procedure for the adjudication of small claims must of course comply with the principles of a fair trial as guaranteed in Article 6 § 1. The domestic provisions and their application in the domestic courts must therefore ensure respect for the right to a fair trial, in particular when deciding on the necessity of an oral hearing, on the means of taking evidence, and the extent to which evidence is to be taken. […] In this context the Court also reiterates the obligation under Article 6 § 1 for the domestic courts to give reasons not only for judgments but also for major procedural decisions issued in the course of the proceedings […].

According to the Court's established case-law, […] the right to a "public hearing" within the meaning of Article 6 § 1 entails an entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing […] [A] hearing may not be required when the case raises no questions of fact or law which cannot be adequately resolved on the basis of the case-file and the parties' written observations […] The Court has also held that, other than in wholly exceptional circumstances, litigants must at least have the opportunity of requesting a public hearing, even though the court may refuse the request and hold the hearing in private […]. With regard to the opportunity to request an oral hearing, the applicant had such an opportunity and he made use of it […] The Court observes that the domestic court in substance gave no reasons for deciding the case in written proceedings […]. It merely cited a provision of the law that set a threshold amount for cases which could be examined in written proceedings and explained that such proceedings could be used if a party had significant difficulty in appearing before the court due to the length of his or her journey or for another good reason. The court did not explain why this provision was applicable in the applicant's case.

[…] The Court has also taken account of the practical problem of the applicant serving his prison sentence in Finland […], whereas the civil proceedings against him took place in Estonia. It notes that "hearing" the applicant did not necessarily have to take the form of an oral hearing in a court room in Estonia. However, it does not appear that the domestic court considered other alternative procedural options (such as the use of modern communications technology) with a view to ensuring the applicant's right to be heard orally. […]

The above considerations are sufficient for the Court to conclude that there has been a violation of the applicant's right to an oral hearing under Article 6 § 1 of the Convention."

98. The scheduling and conducting of hearings, coupled with the accompanying adjournments, cancellations, re-scheduling, are perhaps those elements of the process which result in the most delay and burden for the courts and the parties alike. In Serbia,

[35] ECtHR Case of Ponka v. Estonia, Application no. 64160/11, at http://hudoc.echr.coe.int/eng?i=001-142950.

even though no preliminary hearing is conducted in small value cases, legal practitioners report that numerous other hearings might be necessary. The Functional Review reports that there is an average three-month time lag between hearings in Serbian courts[36]. Thus, scheduling a second hearing in a small value case could prolong it excessively. Any measures to avoid hearings or minimize their number could contribute greatly to reducing the time and the costs of the procedure.

99. Therefore, this report recommends the introduction of the possibility for a written-only small claims process unless the parties have specifically requested a hearing. Such measure could greatly reduce the duration and the cost of proceedings. This is also one of the reforms which, if unacceptable for claims with a value up to the current threshold, could be accepted more readily for claims under a lower threshold. Alternatively, the number of hearings in small claims procedures could by law be limited to just one.

[36] World Bank Group. 2014. Serbia Judicial Functional Review. Washington, DC, p. 83.

10. Timelines

Finding:

- Shorter timelines bring more discipline into the movement of small claims. Serbia has shortened very few timelines in the procedure. Most of them are applicable once the first-instance judgment has been pronounced and do not affect the overall speed of the procedure.

Recommendation:

- Introduce shorter timelines for small claims similar to the ones in the EU cross-border procedure.

100. The purpose of small claims procedures to make litigation faster can be furthered by introducing shorter timelines for some procedural actions. In Serbia, such shorter timeline is provided for pronouncing the court judgment. Both in small claims procedures and in general civil procedure, the judge is obliged to pronounce the judgment immediately but in the general civil procedure, for more complex cases, the law allows the judge to postpone announcing the judgment by eight days after the conclusion of the trial. In small claims such possibility is not available. The judgment in both the general and the small claims procedure must be put in writing within 8 days after announcement and in complicated general procedure cases it may be postponed by 15 more days. Other timelines, which are shorter in the small claims procedure as compared to the general one, are the ones that apply once the judgment has been pronounced. In the small claims procedure, parties may file an appeal against the first-instance judgment within 8 days from its delivery. In the general civil procedure, the deadline for filing an appeal is 15 days. Also, the deadline for undertaking the action ordered by the judgment is 8 days, instead of 15 days in general litigation proceedings. If the court has failed to decide on all claims or on part of the claim, the deadline for filing a request for supplementary judgment is shorter in small claims proceedings - 8 instead of 15 days. Finally, the deadline for filing the reply to the appeal is yet again 8 instead of 15 days.

101. Other comparator jurisdictions have also shortened the statutory timelines in the small claims procedure. Slovenia has introduced shorter timelines for filing the written statements of the parties in the preparatory phase (8 days after receipt the plea from other party as opposed to 30 days in the general procedure); for performance of the adjudged obligation (8 as opposed to 15 days); and for appealing the judgment (8 as opposed to 30 days). Denmark has shorter deadlines for the issuance of the judgment (14 days as opposed to 4 weeks in the general procedure) and for the duration of the main hearing (a maximum of half a day as opposed to no limits in the general procedure). Latvia also has shorter timelines in small value cases for the issuance of the judgment and its entry into force.

102. In a few comparator jurisdictions, the rules on small claims do not stipulate specific shorter periods but give judges discretion to shorten non-mandatory timelines as appropriate. Thus, in Estonia indicative timelines such as the time for the defendant's response or the interval between the date of service of summons and the date of the court session could be shortened by the court to better suit the needs of the simplified procedure. The term for appeal can also be shortened, if the parties agree and inform the court. In Germany, too, the law does not specifically prescribe shorter timelines for claims with a value

of less than EUR 600. However, judges may use the significant discretion they have in order to speed up the proceedings. For example, under the German Code of Civil Procedure, the period between serving the summons and the date of the hearing shall be at least one week in cases in which the parties must be represented and at least three days in other proceedings. Since judges have a wide discretion in this area, in general civil procedure they would normally give the defendant two weeks to indicate intention to defend against the claim and two more weeks for preparing a response. In a small claim, the judge may give the defendant the minimum 3-day notice for appearing at the court or responding to the claim.

103. The small claims procedure that probably introduces the most timelines is the EU procedure for cross border small claims:

- The claim and the supporting documents should be dispatched to the defendant within 14 days of receiving the properly filled in form;
- The defendant shall submit his response within 30 days of service of the claim;
- The court shall dispatch a copy of defendant's response, together with any relevant supporting documents, to the claimant within 14 days of receiving the response;
- The claimant shall have 30 days from service to respond to any counterclaim;
- The court shall give a judgment within 30 days of receipt of the response from the defendant or the claimant if not oral hearing or additional information are necessary;
- If an oral hearing is deemed to be necessary, the oral hearing shall be scheduled within 30 days from the summons; and
- The court shall give a judgment within 30 days of the oral hearing if it was held.

104. Serbia could further shorten some timelines in a manner similar to the EU cross-border procedure in order to bring more discipline into the movement of small value cases. Still, it has to be noted that most comparator jurisdictions provide for shortening of only a few timelines and only by a little, by law or by judicial discretion. Thus, although this measure has a disciplining effect, it cannot in itself contribute significantly to much speedier proceedings.

11. Content of the judgment

Finding:

- In Serbia, the judgment in small claims shall be simpler than that in the general procedure. This is in line with international best practices.

Recommendation:

- No changes are recommended.

105. Yet another area where simplification is possible, relates to the content of the court judgment. In Serbia, the judgment in small claims shall be simpler than that in the general procedure. It needs to contain only established facts, indication of evidence based on which these facts were established and the legal rules on which the judgment was based. It may therefore omit the detailed description of all the allegations parties have made.

106. Other comparator jurisdictions also allow judges to omit part of the judgment in small claims procedures. In Latvia, Estonia and Slovenia, the court may choose whether to issue a full or a short judgment. In the descriptive part of the short judgment, the Latvian court states only the claim and the legal basis for the parties' actions and may omit their explanations; in the reasoning, it needs to point to the legal provisions based on which it has acted and may omit the facts of the case, the evidence on which it bases its conclusions, the arguments for rejecting evidence as well as the conclusions on the validity of the claim. Within 10 days of the issuance of a short judgment in Latvia, a party may request a full one, which is usually done it intends to appeal. In Estonia, the court may omit the descriptive part and the reasoning (this kind of judgment would contain only introduction and conclusion). In this case, the court shall supplement the judgment if a party notifies it, within 10 days after service, of its wish to appeal. Alternatively, the court may issue a simplified judgment. It may not be supplemented but shall contain limited reasoning that sets out the legal grounds and the evidence on which the court based its conclusions. In Slovenia, if the court opts to issue a short judgment, the reasoning shall contain an indication of the claims and facts upon which they are based, a legal warning on the right of appeal and a note that a full reasoning would only be added to the judgment if a party announces an appeal within eight days from receipt of the short judgement and pays a court fee. In Germany, the general legal provision that allows simplifications for claims under EUR 600 does not exempt the courts from a reasoned judgment but allows omitting the grounds of a judgment in cases where the reasons have been included in the minutes of the court session.[37] Austria and Denmark do not simplify the content of the judgment in small claims procedures.

107. The extent to which the content of the judgment is simplified in Serbia seems reasonable in the light of all other similar rules in comparator jurisdictions. Overall, while the simplification allowing the court to shorten its decision may be convenient to judges, it is by no means as significant as to lead to measurable economies.

[37] For this interpretation of the rule § 495a ZPO, see Chamber Decree of 19.07.1995 (ref.: 1 BvR 1506/93), BVerfG.

12. Grounds for appeal

Finding:

- Serbia's solution regarding grounds for appealing small claims judgments is reasonable and in line with the typical manner of regulating this aspect of the procedure in comparator countries.

Recommendation:

- No changes are recommended.

108. Another typical feature of small claims is that appeal against the court's pronouncements may be limited. There are two dimensions of this rule. First, the grounds for appealing the judgment may be fewer than in the general civil cases. Secondly, appeal against rulings of the court other than the judgment might also be restricted. Both simplifications are available in Serbia.

109. In Serbia, the judgment of the first-instance court in small claims proceedings may be appealed only on the grounds of explicitly enumerated significant violations of the civil procedure and and/or due to improper application of the substantive law. The judgment cannot be appealed based on procedural violations other than the ones that are specifically listed in the law or on the basis of incorrectly or incompletely established facts. Furthermore, in small claim proceedings, an appeal is allowed only against court resolutions concluding the proceedings. Other court resolutions, which under the general rules may be subject to appeal, may in this case be challenged only by an appeal against the judgment concluding the proceedings.

110. In Slovenia and Austria, the grounds for appeal in small claims procedures are very similar to those in Serbia. In Slovenia, the judgment may be appealed only on the ground of severe violation of civil procedure provisions and violations of substantive law. Like in Serbia, the judgment may not be attacked on the ground of erroneous or incomplete determination of facts. The second type of restriction on appeal is also present here - appeal is allowed only against resolutions of the court, which conclude the proceedings; other resolutions may be challenged only by the appeal against the court act concluding the proceedings. Austrian law allows only limited appeal in cases with a value of up to EUR 2 700. The grounds for appeal in such cases are restricted to points of law or grounds for invalidity (i.e. extremely serious procedural errors). Other procedural errors cannot be challenged, nor can the findings on the facts or the assessment of the evidence by the first-instance court.

111. In Estonia and in Latvia, the grounds for appeal in small claims procedures extend also to facts and evidence. In Estonia, appeal would be accepted if a permission thereof had been specifically granted in the judgment of the first-instance court or if a provision of substantive law was clearly applied incorrectly or a provision of procedural law was clearly violated or evidence was clearly evaluated incorrectly and this could have materially affected the decision. If the appellate court refuses to accept an appeal, the party can challenge this ruling with the Supreme Court. In Latvia, the grounds for appealing the judgment are just slightly narrower than in the general civil procedure. Appeal is admissible if the first-instance court has incorrectly applied or interpreted the substantive law, breached a provision of

procedural law, incorrectly found the facts or incorrectly assessed the evidence. It is also necessary to state in the appeal the specific provision of substantive law which was applied or interpreted incorrectly, the provision of procedural law that was breached, the facts established incorrectly, and the evidence assessed erroneously and how it has affected trial of the case. Indeed, these grounds for appeal are rather broad, but they are still stricter than in general civil procedure.

112. The most restrictive rules on appeal are present in Germany. It essentially does not allow appeal of the first-instance judgment in cases with a value of up to EUR 600. There are two exceptions to this rule. First, appeal would be possible if it is specifically permitted in the judgment of the first-instance court. This is rare, but the court may decide so if it deems that the case is of fundamental importance (regardless of its insignificant value) or that a decision by the appellate court is required to further develop the law or ensure consistent caselaw. Secondly, if a party considers that its right to be heard has been violated, it can file an objection and the first-instance court would need to re-open the proceedings to rectify the situation. It has to be noted that only the first option constitutes a right to appeal per se.

Box 5: Civil Procedure Code, Germany

Section 511

Appeal available as a remedy

(1) Appeals are an available remedy against the final judgments delivered by the court of first instance.

(2) An appeal shall be admissible only if:

1. The value of the subject matter of the appeal is greater than 600 euros, or if

2. In its ruling, the court of first instance has granted leave to appeal.

(3) The plaintiff in the appeal is to demonstrate to the satisfaction of the court the value pursuant to subsection (2) number 1; the plaintiff in the appeal may not file a statutory declaration in lieu of an oath.

(4) The court of first instance shall admit an appeal in cases in which:

1. The legal matter is of fundamental significance or wherever the further development of the law or the interests in ensuring uniform adjudication require a decision to be handed down by the court of appeal, and wherever

2. The judgment does not adversely affect the party by an amount higher than 600 euros.

The court of appeal is bound to the admission.

113. To summarize, Serbia's solution in the area of appealing the court judgment in small claims is reasonable and in line with international practice. Most countries limit the grounds for appeal in small claims. The only exception is Denmark, where the grounds of appeal are the same for both the small claims and the general civil procedure. The most typical limitation is the one that does not allow appeal on facts of the case as established by the first instance (Serbia, Slovenia, Austria). The most restrictive rules of appeal are available in Germany. This report does not recommend changes to Serbia's current rule in this regard.

13. Appellate procedure

Finding:

- The second-instance procedure for small claims in Serbia is only minimally different from the general one.

Recommendation:

- Have second-instance small claims be examined by a single judge as opposed to a panel of three.

114. Usually, the simplified procedural rules in small claims apply just to the first-instance hearing of the case. Few jurisdictions, however, provide for simplifications also at the appellate level. In Serbia, the examination of the case at a second instance, for both small claims and for general civil procedure, should in principle be done without an oral hearing. However, in the general civil procedure, the second-instance court may schedule a hearing, if it finds it necessary to repeat the presentation of evidence or to examine evidence that had been rejected by the first-instance court, in order to establish the facts correctly. Also, the court of second instance would schedule a hearing when the first-instance judgment was revoked and the contested decision is based on incorrectly and incompletely established facts or when the procedure before first-instance court entailed a substantial violation of civil procedure. These possibilities to schedule a hearing before the second-instance court in Serbia are generally not available for small claims given that appeal on the facts is not allowed. However, since the second-instance court could return the case to the first instance only once, in exceptional circumstances, when first-instance court consistently makes essential procedural violations, due to the impossibility of a second return of the case and to ensure compliance with Article 6 of the ECHR and the principle of fair trial, the second-instance court could hold a hearing and a pronounce a final judgment in a small value disputes. Thus, the second-instance procedure for small claims in Serbia is only minimally different from the general one.

115. The country that introduces the most numerous simplifications in the second-instance procedure is Denmark. There, the requirements to the document initiating the appeal are less formal than those under the general civil procedure. The same applies to the defendant's reply, which in the fast-track procedure should only include his remarks without any other formal requirements. In the general procedure, the parties shall present their evidence no later than two weeks before the main hearing, whereas in the fast-track second instance procedure there is no deadline. Furthermore, while in the general civil procedure the appellant is required to submit to the court a complete set of hard copies of the documents presented in the case, there is no such requirement in the fast-track procedure. Finally, in the general second-instance procedure the main rule is that there should be an oral hearing, but the court may decide to omit it. In the fast-track procedure the rule is the opposite – these should be no oral hearing unless the court deems that it is necessary to have it. Thus, as a rule, the appeal in small claims is decided on the basis of written documents.

116. In most other comparator countries, the simplifications of the second instance small claims procedure are also minimal, if any; the most meaningful simplification is found in

Slovenia. In Austria, if the value of the claim is up to EUR 2000, an oral hearing would be scheduled only if the court considers that to be necessary. Other comparator jurisdictions, like Estonia and Latvia, do not introduce any simplifications in the appeal procedure for small claims. In Germany, there is practically no appeal of decisions for claims with a value below EUR 600. In Slovenia, appeals to small value judgments are normally examined by one judge unless the case is considered complex, which would warrant examination by a panel of three judges. This approach economizes on the time and efforts of second instance judges.

117. Serbia could simplify its second instance procedure for small claims based on the Slovenian example by reducing the number of judges on appeal from a panel of three to a single judge. In the focus groups, this suggestion received wide support. While the assumption is that most small claims judgments should not reach second-instance because of the limited grounds for appeal, the reality in most countries is different and these judgments are frequently appealed. One of the purposes of small claims procedures is to relieve courts of having to spend too much time and effort on cases with a low value. If that applies to the first-instance court, there are even stronger reasons to apply the same logic to higher courts.

14. Legal representation and recovery of costs

Finding:

- If limitations are imposed on the admissible recovery of costs in small claims cases and these limitations differ from the ones applicable to general civil procedure, this may create a perception of injustice and limit the access to the procedure of parties with lesser financial means.

Recommendation:

- No changes are recommended.

118. Small claims procedures are often designed with the expectation that they would require a lesser degree of legal assistance than the general civil procedure. This expectation relates to the aim of reducing the cost of the procedure. However, small claims procedures in comparator countries do not display some striking differences in the rules on legal representation as compared to general civil procedure. Usually, the same rules apply as for the first-instance general civil procedure: parties may be represented by a lawyer; self-representation is admissible; the costs for legal representation need to be covered by the losing party. Below, the report shall examine only the deviations from these general rules. In Serbia, there are no special rules on legal representation and recovery of costs applicable to small value disputes.

119. Self-representation is almost always allowed in the first-instance disputes with a low value to which small claims procedures are applicable. One exception is Slovenian small claims procedure for commercial claims where the parties need to be represented by a practicing lawyer or another person who has passed the state judicial examination. In Austria, legal representation is mandatory for claims above EUR 5000.

120. Furthermore, two comparator jurisdictions, Estonia and Denmark, allow legal representation by persons who are not attorneys-at-law in small claims procedures. In Estonia, the court can allow legal representation by persons who are not specified by law as contractual representatives of participants in the proceeding.[38] For example, a contractual representative in simplified proceedings in Estonia could be a law student or a lawyer without a Master's Degree. Similarly, in Danish small claims procedure, it is possible for a party to choose to be represented by a non-lawyer, and it is also possible to recover expenses incurred for a non-lawyer in the same manner as for a lawyer.

121. In order to reduce the costs in small claims, the legislator or the jurisprudence may set limits to the amount of legal costs that would be reimbursable for the winning party. Denmark is the comparator jurisdiction that sets detailed rules in this regard. There, the

[38] In general civil procedure, contractual representatives in court may be: an attorney-at-law; another person who has acquired at least a state-recognized Master's Degree in the field of law or a corresponding qualification under the Education Act or a corresponding foreign qualification; a procurator in all court proceedings related to the economic activities of a participant in a proceeding; one plaintiff based on the authorization of the co-plaintiffs or one defendant based on the authorization of the co-defendants; an ascendant, descendant or spouse of a participant in a proceeding; another person whose right to act as a contractual representative is provided by law. (Article 218 of the Code of Civil Procedure, Estonia).

preparatory phase of the proceedings is expected to be very limited in nature; therefore, a lawyer may only take part in the main hearing. While parties may be assisted by a lawyer also in other parts of the proceedings, such legal costs would not be reimbursed. As a result, the maximum recoverable cost under the small claims' procedure amounts to approximately 30% of the maximum recoverable cost under the general civil procedure for a claim of the same value (because a case with a value below the threshold would not necessarily be examined under the small claims procedure). After the dispute has arisen, the parties may agree that the rules regarding recovery amounts do not apply. However, in the absence of such agreement, a winning party who has chosen to use a lawyer will almost never get full compensation for her actual costs in the small claims' procedure.

122. The significant limitations on the recovery of legal costs are among the main reasons for criticism of the fast-track procedure in Denmark. Since the introduction of these rules, there has been a drop in the government's expenses to cover legal aid towards lawyers' costs. One of the reasons for this drop seems to be the introduction of the fast-track procedure, where the legal aid will in most instances does not cover the actual time spent by lawyers but only the time for the main hearing. While it is expected that parties not having legal representation would receive guidance by the judge and the court staff, that guidance is not always sufficient. At the same time, it may be difficult for parties to obtain guidance from a lawyer because of the limitations on recoverable costs. Thus, the limitations on recoverable costs may at times create tension and affect adversely the affordability of the procedure.

123. Other countries restrict the recovery of legal costs in small claims procedures based on the general rules of procedure. The court in Estonia may exercise discretion in approving or disapproving legal expenses while making sure that the total expenses for the case do not exceed its value. In Latvia, the court may reduce the amount of reimbursable expenses for legal assistance considering the principle of justice and proportionality and assessing the objective circumstances related to a case, particularly, the level of complexity, the number of court hearings and the court instance. Therefore, if a case is simple and no court hearing has been held, the judge may significantly decrease recoverable advocate expenses. Unlike Denmark, that has guidelines as to the admissible levels of recoverable legal costs, in Latvia there is discordant court practice in this area. Thus, in some cases the court approves the recovery only of a portion of these costs with the argument that the case had been simple and no hearing had been held. In other cases, the court fully approves the requested amounts without any discussion of the complexity of the cases.[39] This situation creates the impression of arbitrariness and breeds legal uncertainty.

124. Regulation (EC) No 861/2007 also introduces a possibility to limit costs for legal representation. The Regulation stipulates that the unsuccessful party shall bear the costs of the proceedings but the court shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim. This rule seems to be very moderate in its approach as compared to the ones discussed above.

[39] Some of the cases that have been examined in this regard are: judgment in a general civil procedure case C24123316 of 03.05.2018; judgment in a general civil procedure case C33493817 of 24.05.2018; judgment in a general civil procedure case C19039417 of 14.05.2018; judgment in a general civil procedure case C33800416 of 30.08.2017; judgment in a general procedure case C30559113 of 23.01.2017; judgment in a general procedure case C30575010 of 22.02.2012; judgment in a small claim case C33581616 of 26.01.2017; judgment in a small claim case C32250516 of 20.02.2017; judgment in a small claim case C12255916 of 14.11.2016.

125. Overall, if limitations are imposed on the admissible recovery of costs in small claims cases and these limitations differ from the ones applicable to general civil procedure, this may create a perception of injustice and limit the access to the procedure of parties with lesser financial means who should be the principal beneficiaries of such procedures. Therefore, it is a risky and controversial measure. This report does not recommend changes to the current rules regarding legal representation and recovery of costs in small value disputes.

15. Alternative dispute resolution

Findings:

- Serbia's legal tradition is familiar with the initial mediation session but currently there are no rules on mediation incorporated in the small claims' procedure. At the same time, the limited experience of continental Europe with the initial mediation shows that it is not appropriate for all types of small claims.

Recommendation:

- If the experience of other European countries demonstrates consistent success with the use of a compulsory initial mediation session for specific types of disputes, consider introducing this mechanism for those types of small claims (e.g. neighbor disputes, medical malpractice disputes, insurance claims).

126. Small claims are considered by many to be the perfect candidate for the use of alternative dispute resolution (ADR). Achieving a settlement had been one of the primary goals of traditional small claims courts in common law countries. The ambition to resolve such cases quickly and cheaply fits nicely with the advantages that ADR has to offer.

127. Nevertheless, neither Serbia, nor any other comparator jurisdiction have incorporated ADR in the procedure for resolving small claims. The judge in Serbia can invite the parties to settle the dispute no later than the preliminary hearing if she considers that the nature of the dispute is appropriate. Also, in all comparator jurisdictions, the court fee would be reduced significantly if the parties do settle but these rules are applicable to all civil cases and are not tailored to small claims. While ADR shows excellent results in many common law countries, it struggles in continental Europe.

128. The one comparator jurisdiction that has attempted to do more is Germany. In 2013, its Civil Procedure Code attempted to give an impetus to amicable resolution of small claims by providing[40] that regarding certain types of disputes, namely property disputes with amount up to EUR 750 before the District Court, disputes between neighbors, disputes about defamation and disputes over breaches of the prohibition of discrimination, the provincial legislature may stipulate that prior to starting court action, a compulsory conciliation must be carried out by a conciliation authority established or authorized by the State Justice Administration. After 2013, many German states introduced compulsory conciliation for disputes with amount up to EUR 750 but after several years of implementation, all these states repealed the rule for small-value disputes because of disappointing results. It was found that just a fraction of these conciliations had been successful and that the requirement was applied only formally, without being a true attempt at reaching a settlement. While the compulsory conciliation requirement had been repealed everywhere in respect of disputes with a value of less than EUR 750, the states of Bavaria, Brandenburg, Mecklenburg-Vorpommern, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony-Anhalt and Schleswig-Holstein still require a conciliation attempt in conflicts between neighbors, defamation disputes and partly for claims under the General Equal Treatment Act.

[40] Section 15a (1-2), Civil Procedure Code, Germany.

129. Nevertheless, in addition to the compulsory conciliation applicable to certain disputes in a few German states, optimistic reports come from Italy. In 2014, Italy introduced a required initial mediation session in matters such as joint real estate ownership, real estate, division of assets, inheritances, family business agreements, real property leases, medical malpractice liability, damages from libel, and damages from insurance, banking and financial contracts. Plaintiffs are required to file a mediation request with a provider and attend an initial mediation session before recourse to the courts may be granted. At this stage, an administrative filing fee is requested – EUR 40 for claims with a value below EUR 250,000. If one party does not attend this initial session, the judge will sanction that party in subsequent judicial proceedings. After the initial session, each party may decide not to proceed with mediation and file a court case. The parties may also choose to mediate. In this case, mediation should last no more than 90 days and additional fees would be due based on case value.[41] Four years after the introduction of this law, 180 000 mediations had been initiated. While it is not clear in what portion of those cases the parties decide to proceed with mediation after the initial session, for those that do proceed, the reported success rate is approximately 50%. Furthermore, since 2013, a substantial decrease has been recorded in filed cases of the same type, namely 30% decreases in disputes over joint ownership of real estate; 40% in disputes over rental apartments, and 60% in adverse possession disputes. While it is not clear if this reduction was due, wholly or partially, to the initial mediation session, the Italian model warrants further observation.

130. Serbia's legal tradition is no stranger to the compulsory conciliation session either. The Civil Procedure Law of SFRY obliged the claimant in a small value dispute in which both parties had residence in the same court area or were with the same organization or community, in which there was a Peace Council, to first approach that Peace Council and attempt to reach an amicable settlement. If one or both parties did not respond to the invitation of the Peace Council for attempting to settle or if this attempt failed, the Peace Council was obliged, within three months from the date of receipt of the case, to hand the matter over to the ordinary court. Moreover, if the claimant reached out directly to the court, the court had to refer the matter to the Peace Council itself and would only take it back if no settlement was reached within three months. Obviously, this predecessor of the initial compulsory mediation session was applied in a very different social context. The research team has no data on the effectiveness of this provision. Nevertheless, the fact that the legal tradition in Serbia is acquainted with this type of rule means that the experience of countries which have introduced compulsory initial mediation sessions could be relevant to Serbia.

131. Furthermore, even at present Serbia has some experience with the initial mediation session. An initial conciliation session is required before going to court by family law and by labor law (for harassment claims). Similarly, under the Criminal Procedure Law[42], claims for compensation of damages for unjustified imprisonment must first be initiated before the Ministry of Justice. Should there be no amicable solution of this dispute, the party is entitled to file a claim before court. There used to also be a requirement under the Civil Procedure

[41] The description of the Italian mediation model is based on D'Urso, Leonardo. Italy's Required Initial Mediation Session: Bridging the Gap between Mandatory and Voluntary Mediation, Alternatives to the High Cost of Litigation, The Newsletter of the International Institute for Conflict Prevention & Resolution, Vol. 36, No. 4, April 2018 at https://onlinelibrary.wiley.com/toc/15494381/2018/36/4.

[42] Art. 588 of the Law on Criminal Procedure.

Code[43] to make a proposal for amicable settlement with the Public Attorney's Office before filing a claim against the State, a unit with territorial autonomy or local self-governance. However, the Constitutional court found that provision to be unconstitutional and it was amended; currently, this is no longer an obligation but just a possibility, which is used rarely.

132. Overall, while compulsory initial mediation sessions appear to be the most effective impetus to the use of ADR in continental Europe, the German experience warns against attempts to introduce this requirement for all types of small claims. A compulsory session may add time and costs to the resolution of disputes, which for small value claims represent a bigger relative burden than for claims with a higher value. Such sessions seem to be more viable in some narrowly defined types of disputes. Italy has chosen the type of dispute, rather than its value, as a criterion for introducing the initial mediation session requirement. In Germany, too, the rule is still applicable in respect of some disputes. In Serbia, the rule exists for some types of labor and family law cases. The future experience with this requirement (especially in Germany and Italy where it affects a broad category of cases) and the statistics on the types of cases in which the initial mediation session most frequently leads to settlement would be important in informing the choice of other jurisdictions that might be considering a compulsory initial mediation session.

[43] Art. 193 CPC.

16. Statistics

Findings:

- Serbian court statistics do not disaggregate civil and commercial cases based on the value of the claim.

Recommendation:

- The case management system of Serbian courts should be adjusted to allow for the measurement of small claims both in terms of volume and duration of the procedure.

133. This study notes one common deficiency across systems; in almost all comparator jurisdictions, including Serbia, the statistics regarding small claims are very poor. In fact, the case management systems of these jurisdictions do not differentiate between small claims and general civil (and in the case of Serbia and Slovenia also general commercial) cases. Therefore, in these systems it is impossible to tell what share of litigation these cases take, what their average processing time is, what the dynamic of these cases over time is, as well as how various changes in procedure affect caseload and/or processing times. This is unfortunate because it prevents rigorous analysis of small claims procedures, which could become basis for policy decisions.

134. The only comparator jurisdiction that provides disaggregated data on its small claims procedure is Denmark. Danish fast-track procedures have been measured both by national statistics and by a 2013 report developed by Deloitte on assignment by the Danish Ministries of Justice and Finance. Thus, according to official statistics, out of 44 509 civil cases that were filed in Danish lowest-level courts in 2017, 21 841 filings were for small claims. In other words, even though in Denmark the threshold for such claims is only 16% of GDP (as opposed to 230% of GDP for commercial cases in Serbia), they still represent almost 50% of all civil (including commercial) cases in the country. Furthermore, Denmark has data on the duration of such cases. The Deloitte report estimates that the average duration of a fast-track procedure is 117 days. When looking only at fast-track procedure cases where a main hearing was conducted (i.e. where the case was not dropped before the main hearing), the average duration is 298 days. By way of comparison, a general civil procedure case has an average duration of 347 days, i.e. nearly 1 year. For general civil procedure cases where a main hearing was conducted (i.e. where the case was not dropped before the main hearing), the average duration is 570 days. An additional statistic in the Deloitte report shows how many minutes court staff used in civil court cases. In general civil cases, court staff spends an average of 720 minutes on a case, while in fast-track cases it spends an average of 353 minutes. Statistics show that Danish small claims procedures are faster and cheaper than the general cases, which means that the simplified rules are meeting their goal.

135. In other countries, it is not possible to make such assessment with certainty. It is recommended that Serbia addresses this gap and adjusts its case management system that would allow for the measurement of small claims both in terms of volume and duration of the procedure. This data could serve as a basis for policy decisions on the future development of the procedure.

17. Conclusions

136. This analysis demonstrates that while Serbia has introduced numerous simplifications to its small claims procedure which are in line with international practices, there are several aspects of the procedure where the country's policy choices are in stark contrast to international practices. These are the areas in which Serbia should consider reforms.

137. The first one of these areas is the extremely broad scope of the procedure due to the unusually high level of the threshold, especially for commercial claims. This means that the simplified rules introduced by the procedure affect a massive volume of cases, some of which may have a relatively high value. The broad scope of the procedure is coupled with a lack of discretion for judges. They cannot choose whether to apply the simplified procedure or not regardless of the complexity of the case. In combination, the high threshold and the lack of discretion may lead to some undesirable outcomes. One of these consequences would be the need to decide a complex case with a relatively high value (which still falls under the threshold) using the simplified rules thus not giving the case sufficient attention. Another consequence is that further simplifications to the procedure can be very hard to accept, given the broad category of cases that would be affected. For these reasons, this report recommends reduction of the commercial cases threshold. Alternatively, Serbia could keep the current threshold with the current simplifications while introducing an additional, lower threshold to which more significant simplifications could be applicable. It is also advisable to give judges discretion to choose which simplifications to apply to each particular case.

138. The second area in which Serbia's rules deviate significantly from international practice is the preparatory phase of the case which for small claims is drastically shortened. In every other comparator jurisdiction, the written part of the pre-trial phase is preserved and is used to clarify the issues under dispute and evidentiary matters. Very importantly, this phase is used to determine whether an oral hearing would be necessary in order to solve the case or it could be decided in a fully written procedure. This report recommends that Serbia shall introduce a well-structured written pre-trial phase tied to strict timelines and a rule that parties shall be precluded from presenting/requesting at a later stage evidence that was available to them during the written pre-trial stage.

139. The third area where Serbia could improve its small claims procedure relates to limiting hearings. The scheduling and conducting of hearings tend to be the most time-consuming part of a civil process; therefore, most jurisdictions try to avoid hearings to the extent possible. They do so by allowing for written-only small claims procedures, clarification of some matters on the phone, accepting written statements by witnesses and court experts as opposed to hearing them in person, etc. The process is conducted only in writing unless one of the parties requests an oral hearing. Therefore, in order to evaluate whether a hearing is necessary, it is important to have a written pre-trial stage. According to the caselaw of ECtHR, a court can conduct the process only in writing even if one of the parties has requested a hearing, but the refusal to grant the request must be well reasoned. Alternatively, it is admissible to schedule a distance hearing using the possibilities provided by modern information technologies.

140. Fourthly, the court fee structure of Serbia appears to encourage frivolous litigation, charge commercial entities excessively and increase the administrative burden of courts and enforcement authorities. Court fees in Serbia are quite low for claims with very low value but rank the highest among comparator jurisdictions for claims with a value of EUR 1 000 and above. Furthermore, unlike other comparator jurisdictions where a single fee is due for the case within one court instance, in Serbia, three fees are due – for filing the claim, for the defendant's response and for the judgment. This "payment in installments" decreases the financial burden to the claimant at the time of filing the claim and lead to a situation where the decision to litigate for minimal amounts may be taken too lightly. A last factor that may contribute to frivolous or vexatious litigation is the fact that Serbian courts would examine the case even if the fee had not been paid whereas in other jurisdictions, the case would be discontinued in the absence of payment. The payment of several fees per court instance, as well as the examination of the case even if the fee has not been paid may have the additional downside of burdening courts and enforcement authorities with repeated notifications to litigants and collection of undue payments. The report recommends that Serbia reform its fees system by requiring the payment of a single fee per court instance as a pre-condition for commencing litigation.

141. The most important findings and recommendations of this analysis are the ones outlined above. A full overview of the report's findings and recommendations is provided in the table below. It lists only those findings that result in recommendations.

	Key Finding	Recommendation
1	Systems with high thresholds for small claims lead to a situation where the small claims rules are applicable to a very broad category of cases. Such systems are conducive to fewer procedural simplifications. In Serbia, the thresholds are very high, especially for commercial claims while at the same time there are numerous cases with a strikingly small value in which costs vastly exceed the value of the claim.	Consider reducing the commercial cases threshold. Alternatively, Serbia could keep the current threshold with the current simplifications while introducing an additional, lower threshold to which more significant simplifications could be applicable.
2	Unlike comparator jurisdictions Serbian judges have no discretion in whether to apply small claims rules or not.	Give judges discretion not to apply some or all of the small claims rules if they consider the case too complex.
3	Fees for small commercial claims with a high value in Serbia are the highest among comparator jurisdictions while fees for claims with minimal value are among the lowest. The fees for commercial cases are higher than the fees for civil cases of the same value.	Equalize the fees for civil and for commercial cases of the same value possibly by reducing the latter.
4	The payment of many fees per court instance is contrary to the international practice and burdensome for courts. The fact that Serbia's fees for cases with a very small value are among the lowest in comparator jurisdictions coupled with the payment of just a fraction of the total fee at the time of filing the claim may encourage frivolous litigation.	Introduce a single fee per court instance payable at the outset of the procedure.
5	In most jurisdictions the case would not be examined if the fee had not been paid. ECtHR finds that the discontinuation of a civil procedure in case of non-payment of the fee does not constitute a denial of justice, as long as there are appropriate mechanisms in place to ensure that the amount of the fee is proportionate to the financial situation of the parties.	Allow the court to discontinue the case if the fee has not been paid unless a fee waiver has been approved.
6	Under best international practices, small claims are filed using forms that structure the claim and facilitate judges and parties. In Serbia there are no such forms.	In the short term, introduce mandatory forms both for the claimant's action and for the defendant's response in small claims. These forms should be available in electronic format.
7	Under best international practices, claims are filed electronically through a single judicial portal. In Serbia this is not possible.	In the long term, create an opportunity for fully electronic filing of all claims via an electronic portal.
8	Unlike comparator jurisdictions, Serbia has no stricter relevance assessment in small claims and no criteria on rejecting evidence.	Provide that in small claims judges shall apply a stricter relevance assessment than in general litigation and shall admit only evidence which is necessary and not excessively costly.

9	Unlike most comparator jurisdictions, in Serbia the requirements to the form of evidence in small claims are no different than those in the general procedure.	Provide that in small claims witness statements shall, as a rule, be submitted in writing and oral hearings of witnesses shall be admitted only as an exception.
10	Experts assessments are expensive and time-consuming but judges in Serbia are not able to forego such assessments even in cases with very small value.	Provide that expert assessments shall be approved in small claims only in exceptional circumstances and considering the value of the claim and the cost of the assessment.
11	Some initiative by the judge in guiding the collection of evidence or instructing the parties on their rights and obligations is not considered contrary to the adversarial principle.	If Serbia seeks to give a more active role to judges in small claims, the appropriate place to start is to allow for more discretion and initiative in the collection of evidence.
12	Drastically shortening the preparatory phase of the case, as Serbia has done, may necessitate a larger number of court hearings in order to clarify issues and collect evidence that could have been clarified and collected more quickly and cheaply within a well-structured preparatory phase conducted in writing.	Introduce a well-structured preparatory written phase in small value cases with short timelines and an obligation that parties should present/request all evidence that is available to them during that phase. Such written phase could be used to determine whether a hearing shall be conducted at all or the case could be resolved in a written-only procedure.
13	Unlike other comparator jurisdictions, Serbia does not provide for rules that would limit court hearings in small value cases.	Provide that small claims shall, as a rule, develop only in writing unless one of the parties has specifically requested a hearing.
14	Shorter timelines bring more discipline into the movement of small claims. Serbia has shortened very few timelines in the procedure. Most of them are applicable once the first-instance judgment has been pronounced and do not affect the overall speed of the procedure.	Introduce shorter timelines for small claims similar to the ones in the EU cross-border procedure.
15	The second-instance procedure for small claims in Serbia is only minimally different from the general one.	Have second-instance small claims be examined by a single judge as opposed to a panel of three.
16	Serbia's legal tradition is familiar with the initial mediation session but currently there are no rules on mediation incorporated in the small claims' procedure. The limited experience of continental Europe with the initial mediation shows that it is not appropriate for all types of small claims.	If the experience of other European countries demonstrates consistent success with the use of a compulsory initial mediation session for specific types of disputes, consider introducing this mechanism for those types of claims (e.g. neighbor disputes, medical malpractice disputes, insurance claims).

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- Civil Procedure Law, Slovenia
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- Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure

Annex 2. Historical review of the development of small claims

The origins of small claims courts can be traced back to the common law tradition.[44] Complex and legalistic litigation in common law countries was perceived to be out of reach to the ordinary man. Therefore, as early as the 18th century, Northern Ireland, England and Wales began establishing courts and tribunals that would dispense cheap, informal justice. Very often the decision-makers were not judges but lawyers or even laymen who were expected to adjudicate based on their general notion of what was fair and equitable.

In the United States, the first small claims courts were established in the early 20th century. The US model featured five major components: (1) court costs were minimized; (2) pleadings were greatly simplified; (3) trial procedure was left to the discretion of the judge and formal rules of evidence were eliminated; (4) judges and court clerks were expected to assist litigants during trial preparation and at trial so that legal representation would be rendered unnecessary; and (5) judges were given the power to allow payment of the adjudicated amount in installments.[45] Additionally, court fees were extremely low.

In the 1960s and 1970s, the consumer protection movement fueled renewed interest in small claims courts throughout the United States, Canada, Australia and New Zealand. A concern was raised, especially in the United States, that these courts had been colonized by debt-collection companies and large businesses, which overshadowed the courts' initial purpose to serve wage earners and small businessmen. Discussions abounded, both in the United States and in other jurisdictions with small claims courts, as to whether it would be wise to prohibit legal representation altogether thus levelling the playing field for all litigants and/or to limit these courts' jurisdiction to only consumer claims thus shutting the door to large plaintiffs and re-directing them to the general civil procedure. Some jurisdictions indeed made such steps[46]. Quebec prohibited legal representation in small claims courts. Australia limited the jurisdiction of small claims tribunals to consumer claims and permitted legal representation only in those cases where all parties had consented. New Zealand, too, excluded advocates from the procedure and required claimants to prove that the matter for which adjudication was sought was indeed under dispute in order to prevent the use of small claims tribunals as a cheap forum for debt collection.

Another prominent feature of small claims courts was the emphasis placed on conciliation. Thus, in Australia, the tribunal would be charged with the duty to use its best endeavors to bring the parties to an acceptable settlement. Only after that could a matter be adjudicated[47].

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[44] This historical examination is largely informed by Whelan, Christopher (ed.). 1990. Small Claims Courts - A Comparative Study, Clarendon Press: Oxford.

[45] See Weller, Ruhnka and Martin, American Small Claims Courts, p. 5, ibid.

[46] Many of the discussed common law jurisdictions have a federal structure or otherwise hosted a variety of small claims courts, each with its own specifics. Therefore, while some commonalities and trends are discussed herein, it should be kept in mind that there were wide variations of rules and features of small claims courts, even within one and the same country.

[47] See Yin and Cranston, Small Claims Tribunals in Australia, 1990. Small Claims Courts - A Comparative Study, Clarendon Press: Oxford. p. 59.

Similarly, in New Zealand, the primary function of the tribunal was to attempt to bring the parties to an agreed settlement[48].

In continental Europe, the interest in small claims was limited and generally emerged later in time. One notable exception is Austria-Hungary, which introduced a special procedure for small claims as early as 1873. Its provisions were largely taken over in the Civil Procedure Code of 1895. These early small claims provisions were limited in the simplifications they introduced as compared to the common law jurisdictions. They regulated the content of the simplified protocol of the main hearing and further required that as a rule such cases should be decided in just one hearing. The judgment would normally be pronounced orally, within the same hearing. If both parties were present, a written copy of the judgment would be delivered only at the request of a party. If a party was not present at the hearing, a written copy of the judgment had to be delivered to both. Appeal of the judgment was restricted. The successful implementation of an electronic order for payment system in Austria in the early 1980s reduced the need of the small claim procedure dramatically. After several restrictions on the original content of the procedure, the legislature finally annulled the special rules in 1983. The justification was that the maintenance of the small claims procedure would be superfluous in light of the existing restrictions on appeals. Nevertheless, Austria currently has several simplified rules that apply to claims under various thresholds and they have been examined in this comparative analysis.

SFRY's legal system was strongly influenced by the Austrian legal tradition. Therefore, SFRY was one of the pioneers in the introduction of small claims procedures in continental Europe. It did so in 1972. The provisions were applicable to claims with a value of less than 800 dinars and were very similar to the early Austrian provisions. They also regulated in much detail the content of the protocol of the main hearing and stipulated that the court judgment needed to be pronounced at the end of the main hearing. Grounds for appeal were again limited. Interestingly, SFRY small claims provisions differed from the Austrian ones in that they provided for a compulsory initial conciliation session in some types of small value disputes.

Most European jurisdictions that found it useful to create a special fast-track for small claims did so without setting up special courts but by simplifying some aspects of the civil procedure at the courts of general jurisdiction. Furthermore, while the primary objective of common law countries appears to have been ensuring access to justice, especially for underprivileged groups, consumers and small businesses, in continental Europe the primary purpose of such reforms appears to have been to achieve efficiency. Access to justice was seen as an added benefit, but small claims procedures were usually introduced in order to help courts allocate their limited resources in an efficient manner by making sure that no undue amount of effort would be spent on minor cases.

[48] See Frame, Claims Tribunal System in New Zealand, 1990. Small Claims Courts - A Comparative Study, Clarendon Press: Oxford. p. 75.

Annex 3: Approaches to regulating small claims

Different jurisdictions have taken different approaches to regulating small claims. They range from very detailed dedicated chapters in the civil procedure law, in which every possible simplification of the procedure is listed, through non-exhaustive lists of admissible simplifications, to very laconic, general rules that give judges ample discretion and leave it to jurisprudence to shape out the ultimate scope of possible simplifications. Unlike BiH, most examined jurisdictions do not distinguish between civil and commercial small claims. Slovenia is the only other examined country to make such distinction.

In BiH, the procedure applicable to small value cases is regulated in Art. 428-433 of the Civil Procedure Laws of RS and FBiH and Art. 421-426 of the Civil Procedure Law of BD. In RS, there are also several special procedural rules on commercial cases that extend also to small commercial claims. Apart from that, the provisions of the three laws regarding small claims are basically identical. In areas where the respective sections of the Civil Procedure Laws do not provide for special rules, the general civil procedure rules apply.

In Slovenia[49], Latvia[50] and Denmark[51], the small claims procedure is also regulated in dedicated chapters of the procedural laws. In Estonia, the rules are listed in a single article[52] and some of their aspects are further developed in a few other provisions. The Estonian provision on small claims comprises a non-exhaustive list of manners in which the procedure could be simplified. The court is free to choose which simplifications to apply. In 2006, when this procedure was first introduced, it permitted judges to ease the procedure without specifying which aspects of the process could be simplified. This broad discretion made judges hesitant of whether and how to use the procedure. A legislative amendment of 2009 introduced the current open catalogue of simplifications, which made the procedure operational. Even though the list is non-exhaustive, practitioners report that judges stick to the specified simplifications and do not use additional ones.

Section 405, Civil Procedure Code, Estonia

§ 405. Simplified proceeding

(1) The court adjudicates an action by way of simplified proceeding at the discretion of the court, taking account of only the general procedural principles provided by this Code if the action concerns a proprietary claim and the value of the action does not exceed an amount which corresponds to 2,000 euros on the main claim and to 4,000 euros together with collateral claims. Among other, upon conducting proceedings in such action, it is permitted:

1) to enter procedural acts in the minutes only to the extent the court deems it necessary, and preclude the right to file any objections to the minutes;

2) to set a term which differs from the term provided by law;

3) [repealed - RT I, 21.05.2014, 1 - entry into force 01.01.2015]

4) to recognize persons not specified by law as contractual representatives of participants in the proceeding;

[49] Chapter 30, Civil Procedure Law, Slovenia.
[50] Chapter 30.3, Civil Procedure Law, Latvia.
[51] Chapter 39, Civil Procedure Code, Denmark.
[52] Section 405, Civil Procedure Code, Estonia.

5) to deviate from the provisions of law concerning the formal requirements for provision and taking of evidence and to recognize as evidence also the means of proof not provided by law, including a statement of a participant in the proceeding which is not given under oath;

6) to deviate from the provisions of law concerning the formal requirements for serving procedural documents and for documents to be presented to the participants in the proceeding, except for serving an action on the defendant;

7) to waive written pre-trial proceedings or a court session;

8) to take evidence at its own initiative;

9) to make a judgment in a matter without the descriptive part and statement of reasons;

10) to declare a decision made in a matter to be immediately enforceable also in other cases than those specified by law or without a security prescribed by law.

(2) In the case specified in subsection (1) of this section, the court guarantees that the fundamental rights and freedoms and the essential procedural rights of the participants in the proceeding are observed and that a participant in the proceeding is heard if he or she so requests. A court session need not be held for this purpose.

(3) The court may conduct proceedings in a matter in the manner specified in subsection (1) of this section without a need to make a separate ruling thereon. The participants in the proceeding shall still be notified by the court of their right to be heard by the court.

The most laconic provisions on small claims are available in Germany and Austria. Thus, In Germany, a single short text in its Civil Procedure Code gives the courts discretion in implementing the general rules in cases with a value of up to EUR 600. An additional text limits severely appeal for claims below the same threshold.

Civil Procedure Code, Germany

Section 495a

Proceedings performed at the court's equitably exercised discretion

The court may decide at its equitably exercised discretion on how to implement its proceedings if the value of the claim does not exceed the amount of 600 euros. Upon corresponding application being made, the matter must be dealt with in oral argument.

In Austria, there are different monetary thresholds that are tied to different simplifications. This is not a small claims procedure in the classical sense of the term. Still, it is instructive to explore it because of the close links between the Austrian legal tradition and the legal systems of countries that formed part of SFRY. It is also useful to note that there are systems in which different thresholds can unlock different types of procedural simplifications.

Annex 4: Stakeholders Consulted

Judges:

- Ms. Danijela Peric Smiljanic - First Basic Court in Belgrade
- Ms. Snezana Marjanovic – First Basic Court in Belgrade
- Ms. Jovana Stanic – First Basic Court in Belgrade
- Ms. Jelena Zivanovic Jacovic - First Basic Court in Belgrade
- Ms. Milanka Pjevovic - First Basic Court in Belgrade
- Mr. Aco Rajkovic - First Basic Court in Belgrade
- Mr. Velibor Barovic - First Basic Court in Belgrade
- Ms. Milena Vasic - First Basic Court in Belgrade
- Ms. Sanja Ivankovic - First Basic Court in Belgrade
- Ms. Jasmina Vukovljak Jovanovic – Second Basic Court in Belgrade
- Ms. Vesna Damjanovic – Higher Court in Belgrade
- Ms. Sanja Agatonovic - Higher Court in Belgrade
- Ms. Snezana Maric – Commercial Appellate Court

Lawyers:

- Ms. Ivana Ruzicic – PR Legal
- Mr. Momir M. Radic – Lawyer's Office Radic
- Ms. Dusica Jovanovic - Lawyer's Office
- Mr. Nedeljko Velisavljevic – Lawyer's Office CMS
- Mr. Nemaja Kuzovic - Lawyer's Office
- Mr. Vukašin Petković, General Counsel, Koncern Bambi a.d. Požarevac