Improving the Delivery of Justice in Serbia

REPORT

TITLE

Improvement of Equal Opportunities within the Serbian Judicial System

in three areas of interest to IMG

Produced for IMG / International Management Group

Milan Antonijevic

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1. **Abbreviations:**

CSO – Civil society organization

EO – Equal opportunities

EU – European Union

FOI – Freedom of information

HJC – High Judicial Council

HR – Human resources

IDP – Internally displaced person

IMG – International Management Group

JA – Judicial Academy

JJ – Juvenile justice

JJC – Juvenile Justice Council

LGBT – Lesbian, gay, bisexual and transgender

MCG – Model Court Guideline

MFA – Ministry of Foreign Affairs

MOJ – Ministry of Justice

NMFA – Norwegian Ministry of Foreign Affairs

PWD – Persons with disability

SCC – Serbian Constitutional Court

SIPRU – Social Inclusion and Poverty Reduction Unit (within the Government of Serbia)

UNICEF - United Nations Children's Fund

**2. Executive Summary / Equal Opportunities within the Serbian Judicial System**

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| * **Equal opportunity** is a stipulation that all people should be treated similarly, unhampered by artificial barriers or prejudices or preferences, except when particular “distinctions“ can be explicitly justified[[1]](#footnote-1).
* **Equal opportunities within this research were mainly elaborated through five target groups: persons with disability, national minorities, female gender, refugees and IDPs. Focus was on three components that IMG covers: refurbishment of court buildings in Nis, Vranje, Pirot, Uzice and Leskovac, juvenile justice system and the work of HJC.**
* **Equal opportunities as related to persons with disabilities** have been in focus of the courts. Therefore, nearly all courts of interest to IMG have undertaken certain measures to enable people using wheelchairs to access some parts of the court buildings and Norwegian/IMG infrastructural support is highly appreciated. None of the seven courts that IMG is renovating through the programme “Improving the delivery of justice” will enable access to all relevant parts of the building, mostly due to high costs of converting buildings to become fully accessible[[2]](#footnote-2). In some of the cases elaborated, as pointed out by IMG staff, inadequate court buildings give no solution for making accessible more than one courtroom and premises used by citizens for direct contact with court staff (administration). Conducting work on adapting all premises of the courts could be seen as too big and inadequate investment. However, reorganization of the courts[[3]](#footnote-3) and low cost interventions could potentially provide larger accessibility for persons with physical disabilities and this has to be pointed out in all contacts with the court administration.
* People with hearing and visual impairment should be more in focus of the courts and specific technical and other assistance could be provided to them.
* National minorities are represented in certain numbers in courts as staff and judges[[4]](#footnote-4). Use of minority language could be wider than the one requested by the law[[5]](#footnote-5) and material in relation to court proceedings produced in the court could also be available in minority languages in areas with larger minority population, such as the courts in Vranje, Pirot etc. As an example, it should be suggested/considered that courts in southern Serbia (in Vranje, for instance) have material both in the Albanian and the Serbian language, including websites in minority languages, while in Pirot Bulgarian language could be used as well. In addition, language courses, if organized by courts, should cover minority languages, besides English. A proactive approach towards minority rights has to be supported.
* Both judges and court staff should be more sensitive to minority issues and sensibility should be permanent as well as education on wider concept of equal opportunities.
* Raising awareness through training on discrimination and EO is widely needed for judges and court staff, as well as other personnel hired in the court, in order to achieve a higher level of sensibility towards problems that minorities face.
* Strategic documents produced by courts[[6]](#footnote-6) and action plans specifying measures for advancement of equal opportunities do not exist. The adoption of these documents should be coordinated and adjusted to the needs of a specific court, bearing in mind especially that different courts have different needs. A principle of accessibility to all persons (including court staff, parties and everyone else appearing before the court) should be formally introduced in strategic documents that courts, MoJ or HJC adopt.
* Harmonization of strategic documents could be set as priority and measures towards EO in general in the Judicial Reform Strategy should be developed, clearly devised and fully implemented[[7]](#footnote-7).
* Gender balance in the courts among judges, presidents of the courts and court staff is visible[[8]](#footnote-8).
* Measures towards enabling more highly qualified women to work as court staff and on decision-making positions in the court administration (court managers) may be set as a long-term goal. Even though gender balance among presidents of the courts and judges exists, gender perspective as related to other decision making positions should be in the focus.
* Refugees and internally displaced persons do not have assistance to ensure equal treatment and none of the measures go towards easing the access to justice for this marginalized category. Some progress could be attained on national level in this area. Lowering high charges/fees required for accessing courts for certain social categories, including refugees and IDPs is seen as one of the measures needed. Also, there is no visible affirmative action towards refugees and IDPs, although they are qualified as marginalized groups. The **juvenile justice** system is still fragile and protection of minors must be included as a priority in the Serbian judiciary, as high numbers of reoffenders among minors show that the system is failing. JJ system needs specific and personalized approach and provisions enabling personalized treatment. Trainings for judges and court staff on special needs of minors within the court proceedings should be organized.
* Separate premises for minors (as witnesses and victims) should be established in the courts, both higher or basic[[9]](#footnote-9) and used in practice, accompanied by a special obligation of the court to report on the use of these premises.
* A special highly skilled service (which would include a psychologist) should be considered (either as internal, employed by the court, or external in the center for social service) in order to manage cases involving minors and other vulnerable groups that need special support before the court. Courts could also consider engaging HR experts who could cover these issues and work together with court staff and judges on other issues.
* The focus of the JJ system should be on vulnerable groups of minors such as the Roma, LGBT and other minorities with specific protective measures.
* The role of the **High Judicial Council** in coordinating activities directed at equal opportunities before Serbian courts is not developed. The establishment of disciplinary procedures, evaluation of judges[[10]](#footnote-10) and measures towards enabling all marginalized groups (including PWD) to have equal access to the judicial system should be a priority.
* In the same manner as the courts, the HJC should adopt a strategic document and action plan in order to mainstream steps towards enhancing EO. According to the current notion, the HJC is working on a strategy document covering the period 2013–2018.
* Affirmative action, defined both in the Constitution of Serbia and the Law on the Prohibition of Discrimination, has to be introduced in the judicial system on numerous levels and this has to be done in coordinated efforts of the HJC, MoJ, court administrations, Judicial Academy, CSOs and other stakeholders.
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**3. Introduction**

Serbian judiciary and selected courts should be dedicated to the principles and goals of EO, such as fairness, equality, courtesy, and respect for all individuals. These are the cornerstones of activities and operations in the court system that embodies the judiciary's commitment to equality under law and fairness in the administration of justice.

These principles of fairness and equality of opportunity should be applied to employees, applicants for employment, volunteers, and other members of the public who may come into contact with the court system.[[11]](#footnote-11)

Although progressive legislative schemes have been initiated in Serbia to address various social problems, their implementation is poor or non-existent. Ensuring equal access to the justice system, and equal treatment of those employed within the justice system is equally challenging. Legislative measures, including constitutional guarantees, legislation and policy documents, exist, but are not being effectively implemented. This lack of implementation and a generally low regard for the rights of minorities and marginalized groups demonstrate that EO is not a well understood concept within the Serbian justice system, nor is it fully applied in practice.

Striving not to be pessimistic, we will present an exhaustive list of measures and recommendations that could enhance EO in practice. These measures are not necessarily linked with high costs and can also have an impact on the change of attitude towards minorities.

The aim of this paper is to analyze EO in the three areas of interest to IMG and, moreover, to propose measures that could be implemented in the short term. These measures should preferably not be expensive and, beyond infrastructure spending, need to include campaigns to foster attitudinal change as well as efforts to improve management of the court system.

Finally, a lack of statistical data, especially on the usage of court services by people with disabilities, minorities, and especially the Roma, makes it difficult to develop EO promotion policies on a sound evidentiary basis. This has to be recognized as a challenge and addressed by the justice system and the HJC.

***3.1 Methodology and tasks***

The research focused on three components of the IMG programme:

* 7 courts in 5 cities: Leskovac, Pirot, Niš, Vranje and Užice;
* High Judicial Council;
* Measures for improvement of the juvenile justice system in Serbia.

The research was conducted in order for the IMG programme to extend the policy of EO to cover target groups and categories that enjoy different levels of statutory protection from discrimination within the scope of the programme.

The analyses covered the position of target groups that include, inter alia, women, minorities, persons with disabilities, internally displaced persons, refugees etc. The Plan and Recommendations developed by the Consultant covered all three components of the programme.

The Plan and Recommendations document developed by the Consultant is in line with institutional mechanisms and international standards for EO applicable in Serbia.

On the basis of the research methodology, the author of this study conducted semi-structured in-depth interviews[[12]](#footnote-12) with representatives from the seven courts, representatives from the Judicial Academy, IMG, Belgrade Law School, while UNICEF, IMG, HJC, JA provided material for the researcher. Some of the material was requested from institutions using the Law on Free Access to Information; however, responsiveness of institutions, first of all from the HJC, was not high[[13]](#footnote-13). The material available, such as annual reports on functioning of the courts and the HJC was an additional source of information used for writing of this report. Consultations were also conducted with civil society organizations[[14]](#footnote-14) dealing with these issues in Serbia.

Data collected and presented in this research show that the situation is similar in other courts, not only the 7 listed above, and conclusions and recommendations could be easily widened to cover different regions in Serbia.

**Emphasis in this paper is given to the lines of improvement of the programme[[15]](#footnote-15), with specific recommendations.**

1. **Current status of the programme with specific recommendations for each component**
	1. ***Project Component 1 – Courts and Equal Opportunity***

Equal opportunities in courts in southern Serbia could be defined in a document IMG is planning to develop, the “Model Court Guideline[[16]](#footnote-16)”.

IMG programme supports accessibility of the court buildings for persons with physical disabilities[[17]](#footnote-17).

However, visual and hearing impairment are less in the focus. In order to make further improvements, information and signs in the court have to be adjusted to the needs of persons with various disabilities, in all seven courts. Signs (directions) should be clearly marked for persons with disabilities, and special emphasis should be put on signs for people with visual disability, using the Braille letters and tactile paths (rubber flooring)[[18]](#footnote-18) in appropriate places within the court buildings

According to data provided by IMG, in the courts in Leskovac (Basic Court) and in Pirot information and signs will be adjusted to the needs of persons with various disabilities.

Specific aid could be provided, such as tactile paths for persons with visual disability. Special hearing and other equipment (for example: microphones and speakers on court counters in the courtrooms etc.) in the reception area and in premises where services are provided to citizens are advised to be provided for persons with hearing impairment.

Civil society organizations of persons with disabilities could be consulted and involved in developing best solutions[[19]](#footnote-19).

There was no training for court staff related to EO, discrimination, affirmative action etc. and raising sensitivity regarding these matters of the staff and judges is highly needed.

Research conducted shows that persons with disabilities do not work in courts in numbers that would be adequate (close) to the percentage of persons with disabilities in the general population in Serbia[[20]](#footnote-20). Persons with disabilities are present with very representatives amongst the court staff.

Until now biggest progress when speaking on accessibility was made in the court in Uzice, while courts in Vranje, Niš, Leskovac and Pirot have enabled access to some parts of the building. With the support of NMFA, courts have enabled access to ground floors or administrative premises (counters), except in Uzice where more space is accessible.

Web presentations of the courts have reports on the work in previous years, however EO is not recognized as a priority and the chapter on enhancing the equal opportunity aspect is not included in these reports.

The Law on the Court System defines that when choosing the court assistant[[21]](#footnote-21) special attention shall be given to the national structure of population, to the adequate representation of national minorities, and to the knowledge of legal terminology in the minority language. This measure, if fully implemented, would be one of the affirmative measures[[22]](#footnote-22) for national minorities enabling their adequate representation in the court and changing the negative national structure with a very small percentage of court employees being members of minorities (especially in the Sandžak region, Vojvodina and southern Serbia – close to the border with Kosovo). The exact data and percentages are not available as there is no tool for reaching relevant data. This is only a remark from the author of the study and from the practice of free legal aid providers (including the Lawyers Committee for Human Rights – YUCOM and CHRIS network) in these communities.

Obligations deriving from the Law on the Prohibition of Discrimination are in line with providing EO before the Serbian judiciary. In that sense, women, national and sexual minorities, persons with disabilities, internally displaced persons, refugees are the ones for which the judiciary has to provide full protection, respect and an environment without discrimination.

that the Consultant found that the coordination of EO policies between different courts (related regionally and in hierarchy – Basic Court, Higher Court etc.) and adjustment of existing practices are non-existent. In addition, strategic documents and action plans that promote EO and anti-discrimination policies within the courts are not being enacted.

Interviews conducted with representatives of 7 courts showed that the practice of equal employment opportunity, affirmative action and anti-discrimination policies and procedures are not visible in the courts, therefore, documents enabling systematic changes in these areas could be helpful.

Furthermore, language equality requires provision of sufficient number of interpreters and translators so that citizens can exercise their rights before the courts, regardless of their ethnicity and nationality.

Furthermore, court fees have to be adjusted to conform to the financial ability of citizens and legal entities. Free legal aid and representation for appropriate categories of citizens should be provided.

In addition, more accurate statistical data is needed on all grounds, especially as related to minority issues. In that sense, data on the usage of the court system in minority languages (Albanian, Bosnian, Hungarian, Bulgarian etc.) could strengthen policy drafting, and mainstreaming EO into the Serbian judicial system.

Finally, the Model Court Guideline (MCG) should be built on good practice both in Serbia and internationally, thus giving implementable and realistic framework, with specific requirements that would lead other courts towards improving standards within courts, with special focus on EO. The document should cover measures related to court administration (suggestions for better quality and performance), as well as from the point of design and refurbishment of the court building. Toilets and other special equipment for all disabilities etc. could be set as requirements[[23]](#footnote-23). The MCG also has to be updateable, subject to future new developments of relevant technology and tools.

* 1. ***Recommendations for Component 1 – Equal opportunities in 7 courts***

 4.2.1. **Persons with disabilities**

* Improve accessibility of buildings for persons with physical disabilities (evaluate the work to be done and cost effectiveness of certain measures). Similar treatment, unhampered by artificial barriers should be a standard in Serbian courts. Physically disabled people should have access to courtrooms and public prosecutor's offices, as well as parts of the courts where services are provided to citizens (counters and other premises).
* Reorganization of the courts and low cost interventions could provide additional spaces accessible for persons using wheelchairs and this has to be pointed out to the court administration.
* Principle of accessibility of as many parts of the building as possible (from the point of investment) has to be introduced in the strategic and policy documents that the courts, MoJ or HJC adopt.
* Evaluate effectiveness of signs and markers within court buildings for all aspects of disability.
* Investment in adjusting court buildings for persons with hearing impairment and visual impairment will enable these categories of PWD to use the court system.
* Introduce Braille letters in appropriate places within the court buildings [[24]](#footnote-24).
* Introduce markers on the floor and walls for easier movement of people with visual impairment.
* Encourage employment of persons belonging to marginalised groups – especially persons with disability and persons belonging to a minority – within the court administration staff. Applying provisions on affirmative action laid down in the Constitution and relevant laws, could be a clear signal that courts are decisive to mainstream anti-discrimination policies and EO.
* Coordinated campaign presenting accessibility of court buildings for all categories of persons with disabilities could help develop consciousness within court staff, judges and the general public. At the same time, it would empower all citizens with hearing and visual impairment as well as physical disability to use services that courts provide, or to apply for positions within the court. Interviews with IMG staff showed that promotional campaign will be conducted in Leskovac, and a documentary produced and shown.
* Proper translation of hearings to sign language in cases where needed (when any of the parties or judges are having hearing impairment). Encourage small number of court personnel (including judges) to take training on sign language as a way of their sensibilisation, not as a direct need.
* On their web pages as well as by telephone, courts should give information on facilities for persons with disabilities, and inform whether there are restrictions in the infrastructure.
* Organizations of persons with disabilities should be consulted and involved in developing best solutions and should take part in promotion of measures within the courts.
* Courts should provide/follow accurate statistical data on PWD that are using court facilities, working within the courts etc.

**4.2.2. Minorities**

* National minorities are represented in certain numbers in courts[[25]](#footnote-25); however, both judges and court staff should be more sensitive to the inclusion of minorities. Laws regulating the court system do not include provisions that enable affirmative action for minorities, except in regards to the position of court apprentices[[26]](#footnote-26). This already existing measure set out in the law should be fully implemented and new provisions could be included to the existing legal framework. Advocacy campaign could be supported by IMG.
* Use of minority languages could be wider than what is required by law[[27]](#footnote-27) (the standard for municipalities where minorities traditionally live, as described earlier).
* Material produced in the court, including guidance manuals, could be available in minority languages. In specific regions that IMG covers these could be the Albanian, Bosnian[[28]](#footnote-28), Roma and Bulgarian language[[29]](#footnote-29).
* Conduct research on language skills (minority languages and others) of the judges and court staff.
* Language courses could be organized by courts for court staff to cover minority languages. Also courses could be organized for judges, as knowing some of the minority languages (such as Albanian in southern Serbia) will be additional sensibilisation for minority issues.
* Courts should provide/follow accurate statistical data on minorities that are using court facilities, working within the courts etc.

**4.2.3. Gender**

* Introduce measures towards enabling more highly qualified women to take leading positions within the courts. Although the research conducted in August shows that the number of court presidents is gender balanced[[30]](#footnote-30), other functions within the court administration should be balanced as well (court managers etc).
* Support diversity among judicial employees on decision-making positions, with special focus on gender balance. In that sense IMG could support a limited research and mainstream equal participation of women and men on those positions.

**4.2.4. Refugees and Internally Displaced Persons**

* Lower high charges/fees required for accessing courts for certain social categories, including refugees and IDPs. There is no visible affirmative action towards refugees and IDPs, although they are qualified as marginalized groups. These measures should be raised on the Ministry level.
* Research showed refugees and internally displaced persons do not have at least equal treatment and none of the measures go towards easing the access to justice for these marginalized categories. Progress could be done at the national level in regards of high fees required for accessing courts and advocacy action could be supported.

***4.3. Project Component 2 – Reform of the Juvenile Justice System***

The **juvenile justice** system is still fragile and protection of minors must be included as a priority in the Serbian judiciary, since high numbers of reoffenders among minors show that the system is failing to revert them.

A specific and personalized approach is needed and all provisions enabling personalized treatment should be used and implemented. Also, new and innovative approach to the JJ system has to give a set of measures that could result in advocacy activity for changes in the legislation.[[31]](#footnote-31)

Measures set towards EO in the Judicial Reform Strategy should be fully implemented and further developed. In that sense, trainings with judges should be conducted and a set of different measures introduced.

During the research (interviews) it was stated that IMG is working on providing specific premises for minors, victims and witnesses within the courts, with specific equipment allowing long distance testifying and following court proceedings. The preparation of these premises is currently ongoing, they are finished or in the process of refurbishment[[32]](#footnote-32) and supply of technical equipment for audio/visual taping of testimonies and live streaming.

Data on usage of these premises should be included into the annual report of every specific court. Courts where IMG had invested in these facilities should have the obligation to report on their use and effectiveness.

Special attention should also be given to the preparation of minors, either as victims, witnesses or as other participants in the case. It could be considered that one expert person (psychologist from Social Center) leads the whole process and prepares the minor for court proceedings. It helps introducing personal approach, bearing on mind specific needs of minors, fears from the trial etc.

A special service for the preparation of witnesses and victims (minors and other vulnerable groups) should be provided. Specialized professions, such as psychologists in social centers should be consulted.

Good practice is seen in Croatia where volunteers and students support these services and thus help the process of preparation of victims and witnesses for trials, with special attention given to data protection and sensitivity of these cases. This particular model could be replicated in the Serbian judiciary as it requires no additional funds and helps building interdisciplinary approach in JJ.

Introduction of EO in juvenile justice institutions, in particular in relation to girls, LGBT and Roma children, as the most vulnerable groups who are most likely to be exposed to violence, can be done by introducing specific treatment programmes and educating both professionals working with children and security staff.

All these measures will lead to more effective trials with well-prepared witnesses and victims, thus putting them in a better and less stressful position.

The main areas that the juvenile justice component is focusing on are related to improving implementation of diversionary measures, rights of children in juvenile justice institutions and strengthening the Juvenile Justice Council (JJC) and IMG should continue the support these areas. Only with effective JJC, reacting on all complaints and closely monitoring JJ institutions the system could be more adjusted to the needs of minors.

***4.4. Recommendations for Component 2 – Juvenile Justice (JJ)***

* Evaluate measures already implemented (space/premises provided for interrogating of minors, equipment used for trials on minors etc.) and clearly link them to EO.

Introduce EO into juvenile justice institutions, in particular in relation to girls, LGBT and Roma children, as the most vulnerable groups who are most likely to be exposed to violence. For example, educate both professionals working with children and security staff.

Consider introducing personalized treatment of minors appearing before courts and other institutions, as means of support to their needs. Special attention should be given to members of minorities.

* Premises for minors (witnesses, victims) should be functional and used in all cases where such special treatment is necessary.
* Data on usage of these premises should be included into the yearly report of each specific court. Courts where IMG has already invested in these facilities should have the obligation to report on their usage and effectiveness.
* Develop measures against discrimination of minors on multiple grounds, within the judicial system and in JJ institutions. These measures should also be laid down for minors under investigation, minors appearing as witnesses, under indictment or minors appearing in any other role in judicial proceedings.
* Develop action plan for enhancing EO related to JJ with special focus on conditions in the premises provided to minors and services that could ease their position during the trial.

 ***4.5. Project Component 3 – Strengthening the High Judicial Council – HJC***

The future Model Court Guideline produced with the support of IMG could be used further by HJC in raising capacity and EO practices in the Serbian court system.

Ownership over the Model Court Guideline should be clearly given to the HJC as it also has a coordinating function relating to EO.

“Every single candidate for judicial appointment, whoever he or she was, whatever his or her background, and gender, education, racial origin, faith or sexual orientation, should be treated equally and identically throughout every stage in the process”…”the task of the Commission[[33]](#footnote-33) was to identify the best candidate or candidates for the particular appointment under consideration,”…. “the process should be transparent, and the Commission should be accountable for every decision”[[34]](#footnote-34). This standard is still far from being implemented by the HJC and it is its role to mainstream this policy with potential donor support.

The 2010 Annual Report on the work of HJC has no reference to EO, combating discrimination or any work in that direction[[35]](#footnote-35).

The 2011 Annual Report on the work of HJC has reference to the project funded by the Norwegian MFA (implemented by IMG) – “Improving the Delivery of Justice in Serbia”, but with no clear accent on equal opportunities, anti-discrimination policy, affirmative action, etc.

Responsibility for EO will be set in the future over the defined roles of the HJC:

* determining the programme of initial **training** for judges
* adopting the **Code of Ethics** (done in December 2010[[36]](#footnote-36))
* appointing members of first instance **disciplinary body**
* **deciding on disciplinary procedures** in the second instance.
* in March 2011 the HJC adopted the **Strategic Plan** – still not received from the HJC

International standards emerging within the Council of Europe and the EU when fully implemented will have larger impact on the judiciary. In that sense we have to emphasize the report of the Venice Commission that is stating; “diversity within the judiciary will enable the public to trust and accept the judiciary as a whole. While the judiciary is not representative, it should be open and access should be provided to all qualified persons in all sectors of society”[[37]](#footnote-37).

Implementing such a high standard in the Serbian judiciary and the inclusion of marginalized groups and minorities will be a hard task for the HJC, which has to be implemented in years to come. Such a goal must be clearly marked in the HJC’s Strategy that is in the drafting process[[38]](#footnote-38).

Through mainstreaming of this policy, the HJC, supported by the IMG Programme, will provide a professional environment free of discrimination or harassment, and enable all personnel involved to work in an atmosphere of safety, dignity and mutual respect, and shall promote policies and practices that encourage equality of opportunity in all aspects.

Gender equality shall be guaranteed as equal participation of women and men in every stage of planning, decision-making and implementation of decisions during the programme implementation period. All employees shall enjoy gender-equal or gender-neutral treatment relevant for the exercise of rights arising from their employment and on the basis of work performance.

**4.6. Recommendations for Component 3 – High Judicial Council**

* The HJC should mainstream EO in all policies implemented in the court system.
* IMG should encourage the HJC to devise a clear policy on selecting candidates for judicial positions solely on merit. In that sense, the HJC policy should be to select candidates while encouraging diversity in the range of persons available for selection.
* The HJC should introduce a chapter on EO into its annual report.
* The objectives of the HJC should be focused on developing procedures on court complaints and disciplinary procedures. These two complaints procedures should be clearly linked with EO as complaints should be available for citizens facing the disregard of EO by the court, as well as disciplinary procedures against judges discriminating certain groups.
* The HJC should be motivated to eliminate unlawful discrimination, harassment and victimisation, to advance EO among different groups, and to foster good relations between those groups. This recommendation could be implemented through more extensive disciplinary procedures against judges.
* The HJC should coordinate all efforts of the courts to develop EO; it should require action, conduct research, suggest policies, promote good practice etc.
* The HJC should motivate the Judicial Academy to develop a curriculum and train judges on EO.
* The HJC should clarify the division between court complaint on the practice of court officials and appeals on court decisions. It is up to the HJC to develop clear divisions and to include EO as grounds for complaints.

**5. *General recommendations for all three components:***

* Promote wider concept of EO and fair treatment without discrimination in judicial system[[39]](#footnote-39).
* IMG should reshape and clearly broaden its priorities for courts, JJ and the HJC to provide full protection to marginalized groups such as women, national and sexual minorities (LGBT), persons with all types of disabilities, refugees, IDPs, returnees etc.
* By enumerating the marginalized groups that IMG sees as underrepresented in the judicial system it will send a clear signal that the priorities within all three components of the project have to be considered by beneficiaries of the program.
* Special attention should be given to discrimination on multiple grounds. As an example, a Roma person with disability using the court administration or being a party in the court proceedings will have a greater burden while accessing the court and its services.
* Capacity and sensitivity in relation to EO should be raised:
	+ Through structured trainings on discrimination, affirmative action and prejudice regarding minorities organised by the JA, members of the academia or CSOs;
	+ Through trainings organised for court personnel, judges, court guards, future service for witness/victim support etc. Certificates should be issued upon completion of these courses;
	+ Through specific trainings organised with personnel working on counters and having direct contact with citizens;
	+ By forming voluntary groups of judges and court staff dedicated to certain topics (support to the Roma, support to persons with disabilities etc.).
* Promote cross-sectorial cooperation related to EO in all areas between stakeholders (MoJ, JA, HJC, courts, national minority councils, independent institutions such as the Ombudsperson and the Commissioner for Equality, Unit for Gender Equality, Juvenile Justice Council, SIPRU, CSOs, the media, the general public, etc.).
* Complaint procedures, manuals and forms for cases of EO violation should be clearly defined and publicised to the general public and marginalised groups, also in minority languages. These should be also available online.
* Provide comprehensive research on EO – including best practice from the region and EU countries.
* Provide possible exchange – study visits for court personnel, judges, with clear goal to research EO and good practice in different judicial systems in the EU and the Western Balkans region. Consider linking and fostering cooperation between one specific court in Norway and one in Serbia.
* Facilitate coordination of EO policies between different courts (related regionally and in hierarchy – Basic Court, Higher Court etc). This recommendation goes along with the recommendation to the HJC to take over coordination of EO and anti-discrimination policies on all levels of the Serbian judiciary.
* Develop strategic documents and action plans that promote EO and anti-discrimination policies within the court. Raise the capacity of court personnel to draft such documents is seen as a need (in interviews conducted). Strategic documents and action plans specifying measures for advancement of equal opportunities do not exist and interviews show that there is no capacity to enact those documents.
* More specifically, practice of equal employment opportunity, affirmative action and anti-discrimination policies and procedures are not visible in the court and documents developing and enabling systematic changes in these areas could be helpful.
* Strive to make the EO component a part (special chapter) of the yearly reports issued by the courts. Advocacy action by CSOs dealing with the judiciary should be taken in order to require courts to publish relevant, proportionate information demonstrating compliance with the equality duty and to set specific, measurable equality objectives..
* Enhancing the EO aspect on web presentations of the courts.

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* Annual report of HJC for 2010: <http://www.vss.sud.rs/doc/godisnji-izvestaj-2010.pdf>
* Annual report on HJC for 2011: <http://www.vss.sud.rs/doc/godisnji-izvestaj-2011.pdf>
* Venice Commission report adopted in March 2010, On the Independence of the Judicial System. Part 1: The Independence of Judges, paragraph 24. French version: [http://www.venice.coe.int/docs/2010/CDL-AD(2010)004-f.pdf](http://www.venice.coe.int/docs/2010/CDL-AD%282010%29004-f.pdf)
* Prof. Jeffrey Lowell et alia: Judicial Appointments, Balancing Independence, Accountability and Legitimacy, 2010. <http://jac.judiciary.gov.uk/static/documents/JA_web.pdf>
* <http://www.judiciary.state.nj.us/eeo/Policy_Stmnt_scan_7_11.pdf>
* <http://jac.judiciary.gov.uk/about-jac/351.htm>
* Law on the Court System, 2011
* Constitution of Serbia, 2006
* <http://diversityintheworkplace.ca/wordpress/?s=justice&x=0&y=0>
1. Definition of ["equal opportunity"](http://www.blackwellreference.com/public/tocnode?id=g9780631233176_chunk_g97814051001378_ss1-15), Oxford Dictionary of Law, *Blackwell Reference*. [↑](#footnote-ref-1)
2. Some of the court buildings in Serbia are under certain level of protection as national heritage. [↑](#footnote-ref-2)
3. As an example we could point out the Higher court in Niš where person with disability working in the court, had the office on a higher floor of the court building and had to be carried every day to his place of work. Only small changes such as providing office on the ground floor would solve this problem. [↑](#footnote-ref-3)
4. The HJC has asked Serbian courts in 2012 to collect data on national minorities working in the courts, but we have not received from HJC the results of the research. However, the collection of the data is problematic due to the constitutional standard that no one has the right to force anyone to declare his or her nationality. [↑](#footnote-ref-4)
5. The Law on the Official Use of Language and Letters (*Official Gazette of the RS* No 45/91, 53/93, 67/93, 48/94, 101/2005, and 30/2010)prescribes in Article 11 that in municipalities where national minorities traditionally live their language *may* be equally used in official communication. The same article prescribes that municipalities *must* put a provision in their statutes that the minority language shall be in official use if the percentage of members of the minority in the overall population of the municipality is larger than 15%, according to the last census. [↑](#footnote-ref-5)
6. 7 courts subject of interest to IMG [↑](#footnote-ref-6)
7. Since the current government has announced that the new judicial strategy would be developed in the course of 2013, the measures enhancing EO must be introduced in it. [↑](#footnote-ref-7)
8. Researcher received data from the courts which confirm this balance. Out of 181 candidates for the positions of the presidents of 81 courts (basic, higher, appellate, administrative, commercial) in Serbia in 2012, 85 were women. See: <http://www.vss.sud.rs/doc/izbor-predsednika-sudova/Spisak-kandidata-koji-su-podneli-prijave-na-oglas-za-izbor-predsednika-sudova.pdf>

Also, according to the data from 2010, out of 2,400 judges, 1,700 are women. Data shows that men are in the majority only in courts in Novi Pazar, Higher Courts in Niš and Prokuplje, Commercial Court in Leskovac and in Misdemeanor Courts in Kikinda, Leskovac and Prijepolje. See: http://www.politika.rs/rubrike/Hronika/Pravda-je-zenski-posao.lt.html [↑](#footnote-ref-8)
9. Exception could be made in the case that basic and higher court are sharing the same building. [↑](#footnote-ref-9)
10. In Serbian: M E R I L A za ocenu minimuma uspešnosti vršenja sudijske dužnosti koja će se privremeno primenjivati do dana početka primene odredaba čl. 21. do 28. Zakona o uređenju sudova. [↑](#footnote-ref-10)
11. Compare with: <http://www.judiciary.state.nj.us/eeo/index.htm>

<http://www.judiciary.state.nj.us/policies/eeomastr.pdf> [↑](#footnote-ref-11)
12. Interviews were conducted from September to November 2012, with predefined set of questions with representatives (list of representatives and contacts was provided by IMG) from the following courts: Higher Court in Vranje, Basic Court in Užice, Basic Court in Pirot, Higher Court in Pirot, Basic Court in Leskovac and Basic Court in Niš. In some cases, contacts provided were presidents of the courts. [↑](#footnote-ref-12)
13. By the time of conclusion of the report, the deadline according to the Law on Free Access to Information had already expired and the material asked for had still not been provided to the researcher. [↑](#footnote-ref-13)
14. Humanitarian Law Center, Youth Initiative for Human Rights, CHRIS network, Gay Straight Alliance. [↑](#footnote-ref-14)
15. Chapter 5 of the report. [↑](#footnote-ref-15)
16. According to the interviews with IMG staff the Model Court Guideline will be developed during the renovation of the courts. Currently the search for adequate person that could develop such a guideline is ongoing. [↑](#footnote-ref-16)
17. The standard set by IMG as shown in the interview is at least one courtroom per court accessible for persons using wheelchair. In Užice all courtrooms are accessible, in Leskovac the room where services are provided is accessible, toilet etc. [↑](#footnote-ref-17)
18. IMG provided the information that tactile path will be made in the Court of Leskovac [↑](#footnote-ref-18)
19. Good practice in Pirot, where the organization of persons with disabilities (PWD) Fenix was involved in suggesting adjustments in the court for PWD and testing them after the works have been completed. [↑](#footnote-ref-19)
20. According to information provided by IMG, there are three persons with different disabilities employed in the Basic Court in Leskovac and one person employed in Basic Court of Pirot has a certain level of disability.. [↑](#footnote-ref-20)
21. Article 65 of the Law on Court System / Prijem sudijskog pripravnika: (Serbian) Pri prijemu sudijskih pripravnika naročito se vodi računa o nacionalnom sastavu stanovništva, odgovarajućoj zastupljenosti pripadnika nacionalnih manjina i poznavanju stručne pravne terminologije na jeziku nacionalne manjine, koji je u službenoj upotrebi u sudu. [↑](#footnote-ref-21)
22. Affirmative measures are an obligation deriving from the Constitution of Serbia, the Law on the Prohibition of Discrimination and other binding documents. [↑](#footnote-ref-22)
23. Although not correlated with equal opportunities, in interview with IMG staff even small details, such as quality of the picture on surveillance cameras were emphasized as needed in MCG. [↑](#footnote-ref-23)
24. On the entranceof the building make one general information board on Braille letters, as well as plates on the entrance to relevant courtrooms and facilities. [↑](#footnote-ref-24)
25. The HJC has asked for data on national minorities working within the courts, but we did not receive confirmation on the research conducted, nor any explanation on the reasons for such data collection. [↑](#footnote-ref-25)
26. Article 65 of the Law on the Court System / Prijem sudijskog pripravnika: (Serbian) Pri prijemu sudijskih pripravnika naročito se vodi računa o nacionalnom sastavu stanovništva, odgovarajućoj zastupljenosti pripadnika nacionalnih manjina i poznavanju stručne pravne terminologije na jeziku nacionalne manjine, koji je u službenoj upotrebi u sudu. [↑](#footnote-ref-26)
27. As explained above. [↑](#footnote-ref-27)
28. Although Bosnian is not a language that could be in use in any of the 7 courts, YUCOM has noted problems with the misusage of language rights in the Sandžak region. [↑](#footnote-ref-28)
29. Especially keeping in mind that Bulgaria in September 2012 raised the issue of minority rights for Bulgarian minority in the light of EU accession of Serbia. [↑](#footnote-ref-29)
30. See more specific data above. [↑](#footnote-ref-30)
31. See report on the conference organized by UNICEF and IMG. [↑](#footnote-ref-31)
32. According to the interview with IMG staff, the Guideline/instruction for the design of these premises is developed. [↑](#footnote-ref-32)
33. Independent body that chooses judges, similar to HJC. [↑](#footnote-ref-33)
34. Prof. Jeffrey Lowell et alia: Judicial Appointments, Balancing Independence, Accountability and Legitimacy, 2010. <http://jac.judiciary.gov.uk/static/documents/JA_web.pdf> [↑](#footnote-ref-34)
35. <http://www.vss.sud.rs/doc/godisnji-izvestaj-2010.pdf> [↑](#footnote-ref-35)
36. Not provided to the researcher. [↑](#footnote-ref-36)
37. Venice Commission report adopted in March 2010, On the Independence of the Judicial System. Part 1: The Independence of Judges, paragraph 24. French version: [http://www.venice.coe.int/docs/2010/CDL-AD(2010)004-f.pdf](http://www.venice.coe.int/docs/2010/CDL-AD%282010%29004-f.pdf) [↑](#footnote-ref-37)
38. Draft strategy has been provided to the researcher by IMG. [↑](#footnote-ref-38)
39. This general recommendation goes along with goals set in the IMG application stating that “the program will work to uphold a policy of *Equal Opportunity* throughout its entire scope and also where it has *de facto* influence. Numerous national legal instruments will govern the Programs Policy for Equal Opportunity.” [↑](#footnote-ref-39)