1. Evaluation of the judicial systems (2016-2018 cycle)

Serbia

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Reference data 2016 (01/01/2016 - 31/12/2016)

Start/end date of the data collection campaign : 01/06/2017 - 31/12/2017

Objective :

The CEPEJ decided, at its 28th plenary meeting, to launch the seventh evaluation cycle 2016 – 2018, focused on 2016 data. The CEPEJ wishes to use the methodology developed in the previous cycles to get, with the support of its national correspondents' network, a general evaluation of the judicial systems in the 47 member states of the Council of Europe as well as two observer states (Israel and Morocco). This will enable policy makers and judicial practitioners to take account of such unique information when carrying out their activities.
The present questionnaire was adapted by the Working group on evaluation of judicial systems (CEPEJ-GT-EVAL) in view of the previous evaluation cycles and considering the comments submitted by CEPEJ members, observers, experts and national correspondents. The aim of this exercise is to increase awareness of judicial systems in the participating states, to compare the functioning of judicial systems in their various aspects, as well as to have a better knowledge of the trends of the judicial organisation in order to help improve the efficiency of justice. The evaluation questionnaire and the analysis of the results becomes a genuine tool in favour of public policies on justice, for the sake of the European citizens.

Instruction :

The ways to use the application and to answer the questions are guided by two main documents:
-User manual
-Explanatory note

While the explanatory note gives definitions and explanations on the CEPEJ evaluation questionnaire and the methodology needed for replying, the User manual is a tool to help you navigate through this application. You can download the Explanatory note as a whole on the CEPEJ website. The specific explanations are also accessible for each question within this application under the tab "Explanatory note". This will serve as immediate consultation tool when answering questions. The user manual is accessible in the "Documentation" tab of the application.
In case you have any questions related to these documents or on the use of the application, please do not hesitate to contact the Secretariat.

1.General information

1.1.Demographic and economic data

1.1.1.Inhabitants and economic general information

001. Number of inhabitants (if possible on 1 January of the reference year +1)

Comments :

General comments : The population data does not include data for Autonomous Province of Kosovo and Metohija.

002. Total of annual public expenditure at state level and where appropriate, public expenditure at regional or federal entity level (in €)

Comments :

General comments : The provided data does not include data for Autonomous Province of Kosovo and Metohija.

003. Per capita GDP (in €) in current prices for the reference year

Comments :

General comments : The provided data does not include data for the autonomous province of Kosovo and Metohija.

004. Average gross annual salary (in €) for the reference year

Comments :

General comments : The provided data does not include data for Autonomous Province of Kosovo and Metohija.

005. Exchange rate of national currency (non-Euro zone) in € on 1 January of the reference year +1

Comments :

General comments : The provided data does not include data for Autonomous Province of Kosovo and Metohija.

A1. Please indicate the sources for answering questions 1 to 5

Comments :

General comments :

1.1.2.Budgetary data concerning judicial system

006. Annual (approved and implemented) public budget allocated to the functioning of all courts, in € (without the budget of the public prosecution services and without the budget of legal aid). If you cannot separate the budget allocated to the courts from the budgets of public prosecution services and/or legal aid, please go to question 7. If you are able to answer this question 6, please answer NAP to the question 7.

Comments : The budget system of RS provides for unified collection of court taxes, which are all paid to one account. The collected court fees are a revenue of the Republic of Serbia, from which 40% is allocated to the High Judicial Council for current expenses of the courts, except for expenses for court staff and staff at the public prosecutor's office, and 20% is allocated to the Ministry of Justice to improve the financial situation of employees in the courts and the public prosecutors' offices who are court staff and the staff of the Public Prosecutor's Office, other expenditures as well as investments in accordance with the law. Therefore, the amounts which the High Judicial Council and the MoJ transfer to the courts for various items in Q6 also come from court taxes.
Data for 6.1 encompasses:
Approved budget:
Judges’ salaries: 45,791,219 EUR (HJC data)
Salaries of court employees (civil servants and administrative, technical and other non-judicial engaged individuals: 57,528,485 EUR (MoJ data)
Total: 103,319,705 EUR

Implemented budget:
Judges’ salaries: NA (HJC data);

Salaries of court employees (civil servants and administrative, technical and other non-judicial engaged individuals: 57,031,730 EUR (MoJ data);
Total: NA EUR.

Data for 6.2 covers: The funds spent by the administrative equipment, furniture that computerization of courts (MoJ data). This data cannot be separated from PPO data, which is why it is not stated: (566,929 EUR)

Data for 6.3 (implemented) is given for expenses of judicial experts and court interpreters in court proceedings (data provided by High Judicial Council - HJC). The approved budget is not available for this category as only the overall figures for the budget of the courts (the costs of criminal proceedings) are available: 42,163,290.99 euros (besides these two categories, includes expenses for lawyers (ex officio defence), lay judges (porotnici), proceedings in which the defendant has been acquitted.
Data for 6.4. Annual public budget allocated to court buildings (maintenance, operating costs) – The funds intended for investment, reconstruction and rental of existing courthouses from sources of budgetary funds, court fees, domestic and foreign loans.
Data for 6.6. Annual public budget allocated to training – Annual public budget allocated to training is given in the section addressing the Judicial Academy.
Data for 6.7. Approved budget cannot be differentiated because it is tied together with the PPO budget. MoJ Data for implemented budget: 9,502,961.09 - other funds related to compensation of expenses for civil servants and employees (ex. costs of travel), jubilee awards, improving the material position of employees (stimulation); Data of HJC not submitted.
The budget of the public prosecution services and the budget allocated to all courts cannot be entirely separated for items 6.2, 6.4, 6.7 (Annual public budget allocated to computerisation; Annual public budget allocated to court buildings; Annual public budget allocated to investments in buildings and buying of necessary equipment - 567 EUR and 2,753,654 Other - travelling costs, contributions and other expense for employees of courts and public prosecutors' offices, their social benefits and jubilee awards, penalties, etc.).

General comments : The budget system of Serbia provides for unified collection of court taxes, which are all paid to one account. The collected court fees are a revenue of the Republic of Serbia, from which 40% are allocated to the High Judicial Council for current expenses of the courts, except for expenses for court staff and staff at the public prosecutor's office, and 20% are allocated to the Ministry of Justice to improve the financial situation of employees in the courts and the public prosecutors' offices who are court staff and the staff of the Public Prosecutor's Office, other expenditures as well as investments in accordance with the law. Therefore, the amounts which the High Judicial Council and the Ministry of Justice transfer to the courts for various items in question 6 also come from court taxes.

007. (Modified question) If you cannot answer question 6 because you cannot isolate the budget allocated to courts from the budget allocated to public prosecution services and/or legal aid, please fill only the appropriate line in the table according to your system:

Comments : Data supplied by Ministry of Justice Sector for Material and Financial Affairs

General comments :

008. Are litigants in general required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:

Comments :

General comments : The Law on Court Fees prescribes that the state and state institutions are exempted of court taxes. An individual can be exempted from court taxes based on his/her indigence. According to the Civil Procedure Code, each party bears the costs incurred in relation to the acts undertaken by them. A party who loses a case completely is obliged to pay the costs of the opposing party. If a party is partially successful in his or her suit, the court may, in view of the success achieved order each party to bear their own costs or for one party to pay the other a proportional share of the costs. The court shall exempt a party from the liability of paying the costs of the proceedings where that party's material situation does not allow them to bear such costs. Prior to the decision on exemption on cost of proceeding, the court shall carefully consider all the circumstances, in particular the value of the subject of litigation, the number of

persons supported by a party as well as the earnings and property owned by the party and party's family members. According to the Criminal Procedure Code, when a court convicts a defendant, it will pronounce in the judgment that s/he is required to compensate the costs of the criminal proceedings. A person charged with several criminal offences is not required to compensate the costs in respect of the part of the charges of which s/he was acquitted, if it is possible to separate those costs from the overall costs. In a judgment convicting several defendants, the court will order what part of the costs will be borne by each of them, and if that is not possible, it will order all defendants to bear the costs jointly. The payment of the lump sum will be determined for each defendant separately. In the decision in which it decides on costs, the court may relieve a defendant of the duty to indemnify in full or in part the costs of criminal proceedings, as well as the fees of an expert witness and appointed professional consultant, if their payment would bring into question the support of the defendant or a person he is required to support. If these circumstances are established after the issuance of a decision on costs, the president of the panel or individual judge may issue a separate ruling relieving the defendant of the duty to indemnify the costs of criminal proceedings.

008-1. Please briefly present the methodology of calculation of court taxes or fees:

Comments :

General comments : Court fees are calculated in accordance with the Law on Court Fees. The employees at the court administrative office determine the amount of court fees by the rules and scales (formulas) established in the Tariff of Court Fees, which is an integral part of the Law on Court Fees, with calculations depending on the type of dispute/procedure, the value of the dispute and court actions, as well as court jurisdiction. Court fees in litigation and enforcement proceedings are determined in the context of the minimum and maximum amounts. For example, before a court of general jurisdiction specified in the minimum amount of 16 € (for value of the dispute up to 772 €), up to a maximum fee of 806 € for the claim and counterclaim, as well as for the trial verdict. In civil, enforcement, and some non-contentious proceedings, as well as in administrative disputes, taxes are paid according to the value of the dispute at the time of filing law suits, and as the value of the dispute is the main claim, except in clearly specified subjects of dispute, when the law provides for a lump amount (ex. in proceedings for the determination or denial of paternity). If the value of the disputed cannot be determined, or if its value is not determined by the law, as the value in a civil action is taken the amount of 124 €, while the amount for the enforcement procedure for example is 62 €, regardless of which court has jurisdiction to resolve the dispute. On the other hand, tariff no. for privately initiated criminal proceedings provide for a lump sum amounts (ex. 8 € per private criminal lawsuit and counterclaim). The charged fees are an income to the budget of the Republic of Serbia.

008-2. The amount of court fees to commence an action for 3000€ debt recovery:

Comments : According to the Law on Court Fees, the lawsuit filed before the court of general jurisdiction is charged according to the value of the dispute. For the value of dispute of 3000 €, the fee would be 141 € (lump sum of 81 € + 2% of the value of the dispute; lawsuit filed on 01.01.2017; middle exchange rate of NBS on 01.01.2017).

General comments : According to the Law on Court Fees, the lawsuit filed before the court of general jurisdiction is charged according to the value of the dispute. For the value of dispute of 3000 €, the fee would be 141 € (lump sum of 81 € + 2% of the value of the dispute; lawsuit filed on 01.01.2017; middle exchange rate of NBS on 01.01.2017).

009. Annual income of court taxes or fees received by the State (in €)

Comments : A gradual drop in the annual income from court taxes/fees received by the state is noted (data from 2012) due to the introduction of the notary system on 1 September 2014, upon which courts lost competence for certifying real estate conveyance contracts, etc. and parallel competences for verification of transcripts, signatures have been introduced. The given data does not include the public revenue paid on the basis of the costs of criminal proceedings and the lump sum court tax in criminal procedure (2.448.524,89 EUR in 2016 – Ministry of Finance Tresury Administration data; these funds go in the general state budget). Pursuant to the provisions of Article 29 Para. 2 and 3 of the Law on Verification of Signatures, Manuscripts and Transcripts ("Official Gazette of RS", Nos. 93/14 and 22/15), in the cities or municipalities for which notaries have not been appointed by the date of entry into force of this Law, signatures, manuscripts and transcripts may be verified, as entrusted tasks, by the basic courts i.e. municipal administrations, until 1 March 2017 at the latest. In the cities or municipalities for which notaries have not been appointed, until the appointment of the notaries, the signatures, manuscripts and transcripts shall be verified, as entrusted tasks, by the basic courts, court units, as well as the registration

offices of the basic courts and the municipal administration, in accordance with Article 13 Paragraphs 4 and 5 of the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutors Offices ("Official Gazette of RS", No. 101/13), until appointment of a notary. Therefore, from March 2nd onwards, most courts have been liberated from the duty to provide certification services, and may allocate employees who performed these tasks to new duties. By the end of 2016, there were only 12 courts left performing these tasks. Likewise, a gradual transfer of inheritance proceedings to notaries from courts was effected in 2016 (please see section on Notaries for more information), affecting the relevant fees paid to courts.

General comments : The collected court fees are a revenue of the Republic of Serbia. From collection of taxes, 40% is allocated to the High Judicial Council for current expenses of the courts, except for expenses for court staff and staff at the public prosecutor's office, and 20% is allocated to the Ministry of Justice to improve the financial situation of employees in the courts and the public prosecutors' offices who are court staff and the staff of the Public Prosecutor's Office, other expenditures as well as investments in accordance with the law. The rest (40%) goes into the general budget of the Republic of Serbia. The High Judicial Council has introduced a program budget in accordance with the Law on the Budgetary System that prescribes the transfer to a program budget starts from 2015. Program budget establishes a system that displays a clear connection between: government policies, i.e. programs implemented by the government, objectives and results of those programs, on one hand, and means necessary for their fulfilment, on the other hand. Costs of functioning of budgetary beneficiaries are displayed through concrete programs and activities. Introduction of the program budget have changed methodology of budgetary planning and reporting on implementation of budget whereas it did not influence independence of High Judicial Council in regards to management of courts' budgets. The Program budget in the State Prosecutorial Budget was introduced on January 1st 2015. Duties of State Prosecutorial Council are divided in two activities- activities of the Council (professional services of Council's members) and activities of Administrative Office. Those two activities are funded in program budget. Courts submit to the MoJ and HJC their budget proposals, the MoJ and HJC consolidate the proposed budgets and based on the instructions given by the MF and certain limits constitute final budget proposals for courts.
Courts submit reports on execution of budget to the MoJ and HJC on a quarterly basis, as well as statements of accounts at the end of the year. The MoJ and HJC consolidate and control the reports on court budget execution.

012. Annual approved public budget allocated to legal aid, in €.

Comments : Due to budget appropriation cumulative summing of expenses, within which legal aid costs are included, it`s not possible to provide precise data at the moment.
The approved budget for legal representation in criminal proceedings is not available as only the overall figures for the budget of the courts relating to the costs of criminal proceedings are available: for judicial experts, court interpreters, expenses for lawyers (ex officio defence), lay judges (porotnici), and proceedings in which the defendant has been acquitted.

General comments : The approved budget for legal representation in criminal proceedings is not available as only the overall figures for the budget of the courts relating to the costs of criminal proceedings are available: for judicial experts, court interpreters, expenses for lawyers (ex officio defence), lay judges (porotnici), and proceedings in which the defendant has been acquitted.

012-1. Annual implemented public budget allocated to legal aid, in €.

Comments : According to the State Prosecutorial Council (SPC) bookkeeping, as prescribed by the law, the costs of legal aid cannot be separated from other costs of investigation in the SPC annual report on budget of public prosecutor's offices, which are indirect budget users.
The figure supplied pertains to the paid costs for lawyers in criminal proceedings (not including costs of ex officio defence prior to initiating of court proceedings). Regarding the approved budget, as the Law on Free Legal Aid has not been enacted, we do not have data on the budget for legal aid, because that part of budget is not specifically accounted according to the Regulation on Standard Classified Framework and Plan of Accounts for Budgeting System.

General comments :

013. Total annual (approved and implemented) public budget allocated to the public prosecution services, in €.

Comments : State Prosecutorial Council (SPC): Basic budget for 2016 is composed of budget received at the beginning of 2016, plus

funds from budget reserve received during that year. Having in mind that in 2016 program budget process started, the amount indicated by the SPC (24,681,621 EUR approved budget, 23,299,621 EUR implemented) pertains only for the jurisdiction that SPC has on program activities regarding public prosecutor offices indirect budget users (all prosecutor's offices, except for Republic Public Prosecutor's Office, War Crimes Prosecutor's Office and Organised Crime Prosecutor's Office). These amounts are supplied directly by the Republic Public Prosecutor's Office (3,728,616 EUR approved budget, 3,448,710 EUR implemented). MoJ cannot differentiate two categories from court budget: buying of supplies, computers, investments in existing buildings, and other spending, which is why the total is NA. The entire budget for "Investments and equipment for courts and pp offices approved in the budget for 2016 and implemented is 3,896,476 EUR. For salaries in the PPO's, MoJ indicated budget is: 8,253,907.96 EUR approved, 8,189,639.72 EUR implemented; For other expenses: NA approved, 1,380,360.89 EUR implemented.

General comments :

014. Authorities formally responsible for the budgets allocated to the courts (multiple options possible):

Comments : Ministry of Finance – budget inspection; Other – State Audit Institution - https://www.dri.rs/.

General comments : Ministry of Finance – budget inspection; Other – State Audit Institution - https://www.dri.rs/.

A2. Please indicate the sources for answering questions 6 to 14:

Comments :

General comments : Ministry of Justice – Sector for Material and Financial Affairs; High Judicial Council; State Prosecutorial Council; Law on the Budget of the Republic of Serbia for 2016. Q9: Ministry of Finance – Treasury.

1.1.3.Budgetary data concerning the whole justice system

015-1. Annual (approved and implemented) public budget allocated to the whole justice system, in € (this global budget includes the court system as defined under question 6 and also the prison system, the judicial protection of juveniles, the operation of the Ministry of Justice, etc.).

Comments : The Administration for the Enforcement of Criminal Sanctions has an approved budget of EUR 59,658,466 and implemented of EUR 59,756,418. The Administration uses a credit of the Council of Europe Development Bank, for the development of new prison facilities. High Court Council approved budget: EUR 3,870,763 and implemented budget: EUR 3,760,844 State Prosecutorial Council approved budget: EUR 1,130,893 and implemented budget: EUR 1,053,891 Ministry of Justice approved budget: EUR 6,324,358 The budget for State Attorney's Office: approved budget: EUR 9,008,644 and implemented EUR: 7,085,886
Constitutional Court: EUR 2,451,335 and implemented: EUR 2,162,134
This year, the total does not include legal aid budget.

General comments :

015-2. (Modified question) Please indicate the budgetary elements that are included in the whole justice system by specifying on the one hand the elements of the judicial system budget (please check the consistency with questions 6, 12 and 13). (Note: NAP means that the element does not exist in your system):

Comments :

General comments :

015-3. (Modified question) On the other hand, please specify the other budgetary elements included in the whole justice system budget. (Note: NAP means that the element does not exist in

your system):

Comments :

General comments :

A3. Please indicate the sources for answering questions 15-1, 15-2 and 15-3:

Comments :

General comments :

2.Access to justice and all courts

2.1.Legal Aid

2.1.1.Scope of legal aid

016. Does legal aid apply to:

Comments :

General comments : Article 67 of the Constitution of RS provides that everyone shall be guaranteed the right to legal aid under conditions stipulated by the law. Legal aid shall be provided by lawyers, as an independent and autonomous service, and legal aid offices established in the units of local self-government in accordance with the law. Please see comments to Q's 17-19, 21-25, 149 for more elaborate explanations. Further, basic courts provide "legal assistance" to citizens in accordance with the Law on Courts and Judicial Rules of Procedure, which stipulates that each court is obliged to make available outside the judicial proceedings, in places specially designated and clearly marked in the court building, general legal information and initial legal advice (on the legal status of persons, on the possibilities of an amicable dispute resolution, information relating to the procedure before the court and the individual phases of the proceedings, the court's jurisdiction, certain procedural rules, litigation costs, manner and place of enforcement of a decision, possibility of exercising the right to free legal aid, as well as on the right to mandatory defence). Legal aid may be provided by judicial assistants and other court personnel, in accordance with the tasks performed. Certain information may be published, posted, or made available as pamphlets in the court building or in mass media (internet, or any other suitable means). In civil proceedings, the court may deliver a written notice containing: information about the right to exemption from payment of costs of the proceedings, the right to free legal assistance and free representation, the right to free interpreter, mediation, etc. In criminal proceedings, the court may deliver a written notice to the suspect or defendant, before the first hearing in which s/he is informed of his/her rights during the hearing (the right to defence, defence counsel or appointment of the mandatory defence counsel, the right to use a language which s/he understands, i.e. translators and interpreters, confidential conversation before the hearing), in accordance with the relevant provisions of the procedural law. Whenever a judgment/decision is delivered, it contains instructions on the possibility of filing of a legal remedy, in which time frame and to which institution (2). Information on filing of possible extraordinary legal remedies are not given in the instructions.

017. Does legal aid include the coverage of or the exemption from court fees?

Comments :

General comments : The court shall exempt a party from the liability of paying the costs of the proceedings where that party's material situation does not allow him/her to bear such costs. Exemption from the payment of the costs of proceedings includes exemption from the payment of fees and the deposit for the costs of witnesses, expert witnesses, on-site inspections and court notices. The court may also release a party from the liability of paying fees only, in accordance with a special law. Prior to the decision on exemption of costs of proceedings, the court shall carefully consider all the circumstances, in particular the value of the subject of litigation, the number of persons supported by a party as well as the earnings and property owned by the party and party's family members. The party does not need to pay courts fees. If the motion is approved, the party will be exempted from payment of costs, in accordance with special laws. The decision on the exemption from payment of litigation costs shall be rendered by the first instance court at the motion of the party. The party shall furnish a certificate with the motion from the competent administrative body on his/her financial means. When necessary,

the court itself may, ex officio, obtain the necessary data and information about the financial means of the party who is requesting exemption and may also hear the requesting party on the subject.

018. Can legal aid be granted for the fees that are related to the enforcement of judicial decisions (e.g. fees of an enforcement agent)?

Comments :

General comments : Exemption from the payment of court taxes in civil, non-contentious and criminal proceedings, as well as in administrative dispute proceedings, likewise in the procedure for the court tax on enforcement of judgments made in those proceedings, if enforcement is requested within three months after the termination of the proceedings.
Nonetheless, legal aid is only possible in a limited sense, for court taxes (court decision on enforcement). For utility cases, which are in the exclusive jurisdiction of enforcement agents and for the implementation of enforcement proceedings, which from 1 July 2016 is for the most part in the jurisdiction of enforcement agents (please see section on enforcement), i.e. for fees of enforcement agents, legal aid cannot be granted under the current legal framework.

019. Can legal aid be granted for other costs (different from those mentioned in questions 16 to 18, e.g. fees of technical advisors or experts, costs of other legal professionals (notaries), travel costs etc.)?

Comments : Pursuant to the provisions of Article 29 Para. 2 and 3 of the Law on Verification of Signatures, Manuscripts and Transcripts ("Official Gazette of RS", Nos. 93/14 and 22/15), in the cities or municipalities for which notaries have not been appointed by the date of entry into force of this Law, signatures, manuscripts and transcripts may be verified, as entrusted tasks, by the basic courts i.e. municipal administrations, until 1 March 2017 at the latest. In order not to burden citizens with additional fees having in mind the aforesaid transfer, the Minister of Justice enacted on March 2, 2017 amendments to the Notary Tariff („Official Gazette of RS”, 17/2017), as agreed with the Chamber of Notaries. The amendments provide exemptions from payment of rewards for the verification of signatures and photocopies and reduction of fees for the certification of transcripts and photocopies. Namely, the notary fee for the verification of signatures and photocopies fill from now on not be paid for the following acts:
a)used to receive state social insurance, social protection, protection of war veterans and civil war invalids, protection of the rights in accordance with the regulations governing financial support for families with children, as well as acts initiated in the process of exercising rights of victims of domestic violence;
b)relating to enrolling of children in preschools, institutions of primary and secondary education, and for the first enrolment in higher education institutions;
c)any act used by an unemployed person for employment and the exercise of rights on this basis.
Refugees and displaced persons from the territory of the former Yugoslavia and displaced persons from the territory APKM, on the basis of appropriate documents proving their status, within six months from the issuance, pay the amount of fee for the certification of photocopies, reduced by 70% of the fee.
The Minister of Justice has also enacted amendments to the Bylaw on Notary Office and Working Hours of Notaries (“Official Gazette of RS”, 31/2012, 87/2014, 15/2017), as agreed with the Chamber of Notaries, allowing for the possibility of the working hours of notaries to be extended to 19 h (7 pm) for verification of signatures, copies and fotocopies, without additional charges. The usual working hours of notaries are 9 am – 5 pm (bylaw is available in Serbian: http://beleznik.org/images/pdf/zakon/pravilnik-o-jb-kancelariji-i-radnom-vremenu-jb-2017.pdf).
Pursuant to the provisions of the Draft Law on Free Legal Aid, other costs will be covered as a form of free legal aid. The expenses of lawyers, notaries, mediators in a concrete case, are financed from the budget of the Republic of Serbia and the budget of local self-government unit.

General comments : Pursuant to the Civil Procedure Code, the court shall exempt a party from the liability of paying the costs of the proceedings where that party's material situation does not allow them to bear such costs. Exemption from payment of the costs of proceedings includes payment of fees and the deposit for the costs of witnesses, expert witnesses, on-site inspections and court notices. Prior to the decision on exemption on cost of proceeding, the court shall carefully consider all the circumstances, in particular the value of the subject of litigation, the number of persons supported by a party as well as the earnings and property owned by the party and

party's family members.
The decision on the exemption from payment of litigation costs shall be rendered by the first instance court at the motion of the party. The party shall furnish a certificate with the motion from the competent administrative body on his/her financial means. When necessary, the court itself may, ex officio, obtain the necessary data and information about the financial means of the party who is requesting exemption and may also hear the requesting party on the subject. When the party is completely exempted from paying litigation costs, a deposit shall be paid from the court funds for the expenses of witnesses, expert witnesses, inquiries and the publication of court announcements and the actual costs of the free representative appointed.

2.1.2.Quantitative information on legal aid

020. (Modified question) Please indicate the number of cases for which legal aid has been granted:

Comments : NA by SPC. The Public prosecutor's offices do not record this data in separate register. There is no available official database regarding legal aid provided by public prosecutor's offices.

General comments : Reliable data is not available, given that the Draft Law on Free Legal Aid is not adopted yet. Although individuals benefit from legal aid provided by municipal free legal aid services, as well as from court fee exemption and, in general, exemption from payment of litigation costs, no aggregate data is available to date.

021. In criminal cases, can individuals who do not have sufficient financial means be assisted by a free of charge (or financed by a public budget) lawyer?

Comments : In order to overcome the existing gap and identified problems, the Draft Law on Free Legal Aid stipulates that individuals are eligible for free legal aid in criminal proceedings including all the stages i.e. the law on FLA defines defence as representation of the suspect, defendant and the accused in the criminal proceedings. If free legal aid is approved in a particular case, the suspect/defendant will be referred to a lawyer (attorney at law) from the Registry of Free Legal Aid Providers. In case of particularly vulnerable groups (victims of human trafficking, victims of family violence) free legal aid shall be available upon the adoption of the Law, regardless of their financial status and without fulfilling additional conditions. In addition, Action Plan for Chapter 23 stipulates that Criminal Procedure Code will be amended to align with the new EU acquis on procedural safeguards, including:
•Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty
•Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings,
•Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings,
•Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, •Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

General comments : Provision of legal aid in criminal proceedings is stipulated by the Criminal Procedure Code (CPC), which provides that defence counsel shall be appointed at the defendant's request, for a defendant who, due to his/her financial status, cannot afford to pay the fees and costs of the defence counsel, even though the reasons for mandatory defence do not exist, if the criminal proceedings are conducted in connection with a criminal offence punishable by a term of imprisonment of over three years, or where reasons of fairness so demand ("Odbrana siromašnog", Art. 77). In this case, the costs of defence shall be borne by the budget of the court. According to Art. 49 of the Law on Juvenile Criminal Offenders and Protection of Juvenile, a juvenile shall have defence counsel during the first questioning and throughout the proceedings. If the juvenile, his/her legal representative or relatives fail to retain a counsel, such counsel shall be appointed ex officio by the Juvenile judge. Counsel for the juvenile may be only an attorney with special qualification in the field of the rights of the child and juvenile delinquency. According to Art. 154 of the Law on Juvenile Criminal Offenders and Protection of Juvenile, a juvenile who is a victim shall have a legal representative from the first questioning of the defendant. If the juvenile does not have a legal representative, such representative shall be appointed by the President of the Court from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles. The costs of

representation shall be borne by the Court budget.
When criminal proceedings are being conducted in connection with a criminal offence punishable by law with a term of imprisonment of over five years, at the request of the subsidiary prosecutor (victim) an attorney-at-law may be appointed for him/her, if this is in the best interest of the proceedings and if the financial standing of the subsidiary prosecutor (victim) makes it impossible for him/her to bear the costs of representation (Art. 59 CPC). Likewise, if a minor is an injured party involving certain criminal offences a lawyer (specialised for representing minors) will be appointed to represent him/her.
„Ex officio“ defence counsel will likewise be appointed by the public prosecutor or the president of the court before which the proceedings are being conducted, according to the order on the list of lawyers provided by the competent bar association, if in the cases involving mandatory defence (Article 74 CPC) no defence counsel is chosen, or the defendant is left without a defence counsel during the criminal proceedings, or in the case referred to the situation when the defence counsel of co-defendant charged in the same case with the same criminal offence, unless the authority conducting proceedings concludes that it would not be detrimental to the interests of the defence, or in case of mandatory defence, he fails to agree with co-defendants on a defence counsel or does not select another defence counsel.
Therefore, the CPC makes a distinction between mandatory defence for offenses which are punishable by more than 8 years in prison, for the crimes of 3 to 8 years, and crimes under 3 years (for the reason of fairness). However, in practice judges interpret these two conditions as cumulative – crimes between 3 and 8 and if fairness requires so, although they are clearly prescribed alternatively. The current practice shows that people who risk imprisonment ranging from 3 to 8 years are rarely informed of the right to plead for grant of counsel and therefore hardly use this possibility.

022. If yes, are individuals free to choose their lawyer within the framework of the legal aid system?

Comments : The defense counsel is appointed by a decision rendered by the president of the court before which the proceedings are being conducted, according to the order on the roster of attorneys provided by the competent bar association. The appointed defense counsel has the standing of a court appointed defense counsel (Art. 77 CPC). The lawyer is appointed by a decision of the president of the court from the ranks of lawyers according to the order on the roster of lawyers which is submitted to the court by a bar association competent for determining court appointed defense counsel (Art. 59 CPC).

General comments : Depending on a stage in criminal proceedings, an ex officio defence counsel is appointed either by a public prosecutor or by the court president who chooses her/him from a roster of ex officio defence counsel drawn up by the competent Bar Association (Art. 76, para. 1 of the CPC). However, the central problem lies in a lack of rules to govern a transparent and fair procedure for appointing ex officio defence counsel, criteria to be met by attorneys-at-law so that they could be deemed competent to provide an effective defence or mechanisms that would ensure the quality of defence services provided to citizens by ex officio defence counsel. Art. 76, para. 2 of the CPC provides that in compiling a roster of attorneys-at-law, the Bar Association shall take into account the fact that the practical or professional work of an attorney-at-law in the field of criminal law provides a basis for assuming that the defence will be effective. Therefore, a standard for an effective defence has been proclaimed by the new CPC.
The judge for preliminary proceedings, president of a trial panel or individual judge decides on the request for appointment of defence counsel for a defendant who is not in the financial situation to pay for the counsel (Art. 77 CPC). The defence counsel is appointed by a ruling issued by the president of the court before which the proceedings are being conducted, according to the order on the list of attorneys provided by the bar competent on the territory of the court. The appointed defence counsel as previously referred has the standing of a court appointed defence counsel. Practice has shown that it is very difficult to ensure that the order in which attorneys-at-law are listed on the roster is respected, while departures therefrom are most commonly justified by alleging that certain attorneys-at-law could not be located. It has been identified that it is necessary to establish a more transparent procedure for appointing defence counsel, which would entail setting up a record-keeping system. Such a project has been initiated in 2016 by the Bar Association of Serbia, in cooperation with OSCE.

023. (Modified question) Does your country have an income and assets evaluation for granting (full or partial) legal aid to the applicant? The answer NAP means that there is no income and/or assets evaluation system for granting legal aid.

Comments : Reliable data is not available, given that the Draft Law on Free Legal Aid is not adopted yet. Draft Law on FLA stipulates income and assets evaluation for granting free legal aid, on the basis of the available criteria for determining the level of poverty. Hence, the Draft Law provides for two groups of eligible individuals on the basis of income and assets evaluation:
1. individuals who are already beneficiaries of social benefits
2. individuals who do not fit the criteria for social benefits, but who would be eligible for social benefits if they would cover the cost of legal aid.

General comments :

024. In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action or no chance of success)?

Comments : The Civil Procedure Code provides that prior to the decision on exemption on cost of proceeding, the court shall "carefully consider all the circumstances", in particular the value of the subject of litigation, the number of persons supported by a party as well as the earnings and property owned by the party and party's family members. Under the Draft Law on Free Legal Aid, secondary free legal aid shall be rejected if it refers to:
1.commercial disputes;
2.the process of registration of legal entities;
3.the proceedings for compensation for violation of honour and reputation;
4.misdemeanour proceedings, unless a misdemeanour is punishable by imprisonment, or pre-investigative, investigative and criminal proceedings if mandatory defence is provided;
5.the proceedings in which the value of the dispute would obviously be significantly disproportionate to the costs of the proceedings;
6.the proceedings in which it is obvious that there would be no chance of success in the dispute, particularly if the expectations of the party are not based on the facts, collected evidence or are in contradiction with the applicable regulations, public order and good customs;
7.when the applicant clearly abuses the right to free legal aid or other right.

General comments :

025. In other than criminal cases, is the decision to grant or refuse legal aid taken by (one option only):

Comments : Currently it is the court. However, under the Draft Law on FLA, it is an authority external to the court.

General comments :

026. Is there a private system of legal expense insurance enabling individuals (this does not concern companies or other legal persons) to finance court proceedings?

Comments :

General comments : A legal basis for this exists, as the Insurance Act (Article 9) provides for legal expense insurance, which covers court costs, attorneys' fees and other litigation costs. However, the insurance companies on the market in the Republic of Serbia have not yet included such services in their offers.

027. Can judicial decisions direct how legal costs, paid by the parties during the procedure, will be shared:

Comments :

General comments : The ruling on legal costs is an integral part of every judgement, or ruling corresponding to a judgement, in which it is decided what are the costs of the proceedings, and who will bear the costs. The most important rules which the Law on Civil Procedure provides are the following: the losing party in litigation shall reimburse the costs of litigation to the other party. If a party is partially successful in litigation, the court may, in the view of the success achieved, order each party to bear its own costs, or that one party

reimburses the other party a proportional amount of the costs. The court shall, with regard to the result of the presentation of evidence, rule whether the costs, referred to in Article 152, paragraph 5 of this Law, shall be covered by one or both of the parties, or whether the court shall bear the costs.
A party is obliged, regardless of the outcome of the litigation, to reimburse the costs to the opposing party, which are incurred by its own fault or by the events this party sustained. The court may rule that the legal representative or an attorney of the party shall reimburse the costs incurred by their own fault to the opposing party. The plaintiff shall reimburse the costs of litigation to the respondent if the latter gave no rise to the law suit or if s/he admitted the claim at the preliminary hearing, and if no preliminary hearing is scheduled, at the trial hearing prior to the debate on the merits of the case.
Each party shall bear its own costs if the case is concluded with a court settlement, or settlement following mediation, unless the parties agree otherwise.

B1. Please indicate the sources for answering questions 20 and 23 :

Comments :

General comments : Ministry of Justice; Law on Court Fees, Civil Procedure Code, Criminal Procedure Code, Draft Law on Free Legal Aid.

2.2.Users of the courts and victims

2.2.1.Rights of the users and victims

028. Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for which the general public may have free of charge access to the following:

Comments : Different types of motions, applications, complaint and appeal forms.

General comments : With respect to case law publication, not all judgments at all levels are made available, however, a certain level of publicity is ensured. Exemplary case law is published on the website of the first instance court, the Commercial Court in Belgrade: http://www.bg.pr.sud.rs/index.php?prf=con&id=14. Likewise, in 2015, the Commercial Court of Belgrade published three issues of its Periodical, which contains papers/legal opinions submitted by judges and judge's associates of the Court, as well as a registry of most prominent judicial sentences/verdicts, with reasoning. The need for harmonization of court decisions was identified as one of the key findings in the Functional Review of the Serbian Judiciary, conducted by the MDTF-JSS/World Bank in 2014. Therefore, case law anonymisation and development of a database has been a priority activity for 2016-2017. A plan for implementation of the improved case law database of Appellate and Higher Courts has been developed in 2016 and was implemented in 2017, to be rolled out in 2018. A new electronic court database was developed in 2017 by the IPA 2012 Judicial Efficiency Project, in close cooperation with the Supreme Court of Cassation. The database was developed to enable court employees to effectively monitor the practice - both of their courts and other courts of the same or higher ranks, the practice of the Supreme Court of Cassation, the Constitutional Court, the European Court of Human Rights and all other courts whose decisions are binding on the Republic of Serbia. The database supports decisions, legal views, views and conclusions, as well as newsletters.

029. Is there an obligation to provide information to the parties concerning the foreseeable timeframes of proceedings?

Comments :

General comments : According to the Civil Procedure Code, the court is obliged to conduct proceedings without delay, in accordance with previously established timeframe for undertaking litigious actions.

030. Is there a public and free-of-charge specific information system to inform and to help victims of crime?

Comments : The High Court Council has passed an Instruction on the approach, work methods, and course of action of service for help and support of witnesses and victims of the crime. This document regulates internal organisation of such service, its goals, course of

action, jurisdiction, measures of protection, as well as electronic data base of every handled case.
In all 25 Higher Public Prosecutor`s Offices of the Republic of Serbia Victim and Witness Information Services were established and that way the network of the Services for support to the injured parties (victims) and witnesses in judicial institutions in the Republic of Serbia was established, having in mind already formed Services in high courts. Furthermore, these Sevices were also formed in Prosecution for Organized Crime and War Crime Prosecution. These Services undertake measures and activities with the goal to enable the victims and witnesses of crime efficient enforcement of right to receive information and right to access support services during the proceedings, in order to facilitate their participation in criminal proceedings, but also for purpose of greater efficiency of proceedings.
On 20 February 2015 the Republic Public Prosecution signed a Memorandum of Understanding and Cooperation with the Victimology Society of Serbia as the strongest and most influentual civil society organization with regards to the cooperation between prosecution offices and network of civil society organizations under the umbrella of VSS in the field of providing trained and specialized support to the victims and witnesses of the crime.

General comments :

031. Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

Comments :

General comments : Courts are required to conduct criminal proceedings involving juveniles urgently, according to a lex specialis - the Law on Juvenile Crime Offenders and Criminal Protection of Juveniles. A juvenile shall have defence counsel during the first questioning and throughout the proceedings with the presence of psychologist. Bodies involved in juvenile proceedings and any other body or institution requested to supply information, reports or opinions shall do so without delay in order to conclude the proceeding speedily. Likewise, an attorney will be appointed, and publicity will be excluded.
Other categories enjoy special arrangements if they are given the status of “especially vulnerable witness”. For example, victims of human trafficking are considered especially vulnerable witnesses. The Law on Civil Procedure provides that the court may exclude the public from the whole or part of the trial if it is required by reasons of national security, public security, moral, in the interest of public order, privacy of the parties involved or when instructed by law. The court may also exclude the public in case when measures for maintaining of order provided under this law would not secure undisturbed proceedings at the trial. Proceedings regarding family relations shall be urgent especially if they concern a child or parent exercising parental right, or domestic violence and the rights of the child. The court has to inform the minor about his/her rights, as well as to provide the presence of experts during the whole proceedings, i.e. psychologists, pedagogues, social workers, in order to protect the security and privacy of the minor. The public is excluded in this type of proceedings.
The authority conducting proceedings may ex officio, at the request of parties or the witness her/himself, designate as an especially vulnerable witness a “witness who is especially vulnerable” in view of her/his age, experience, lifestyle, gender, state of health, nature, the manner or the consequences of the criminal offence committed, or other circumstances (Art. 103 CPC).
An especially vulnerable witness may be examined only through the authority conducting the proceedings, which will treat the witness with particular care, endeavouring to avoid possible detrimental consequences of the criminal proceedings to the personality, physical and mental state of the witness. Examination may be conducted with the assistance of a psychologist, social worker or other professional, which will be decided by the authority conducting proceedings.
If the authority conducting proceedings decides to examine an especially vulnerable witness using technical devices for transmitting images and sound, the examination is conducted without the presence of the parties and other participants in the proceedings in the room where the witness is located. An especially vulnerable witness may also be examined in his/her place of living or other premises or in an authorized institution professionally qualified for examining especially vulnerable persons. In such case the authority conducting proceedings may order application of these measures.
An especially vulnerable witness may not be confronted with the defendant, unless the defendant her/himself requests this and the authority conducting proceedings grants the request, taking into account the level of the witness’s vulnerability and rights of defence (Art. 104 CPC).
If there exist circumstances which indicate that by giving testimony or answering certain questions a witness would expose him/herself or persons close to him/her to a danger to life, health, freedom or property of substantial size, the court may authorize one or more

measures of special protection by issuing a ruling determining a status of protected witness.
The measures of special protection include questioning the protected witness under conditions and in a manner ensuring that his identity is not revealed to the general public, and exceptionally also to the defendant and his defence counsel, in accordance with this Code (Art. 105 CPC). The measures of special protection ensuring that the identity of a protected witness is not revealed to the public are excluding the public from the trial and prohibition of publication of data about the identity of the witness. The measure of special protection whereby data about the identity of a protected witness is withheld from the defendant and his defence counsel may be ordered by the court exceptionally if after taking statements from witnesses and the public prosecutor it determines that the life, health or freedom of the witness or a person close to him is threatened to such an extent that it justifies restricting the right to defence and that the witness is credible (Art. 106 CPC).
The provisions related to protected witness apply accordingly to the protection of an undercover investigator, expert witness, professional consultant and professional.
The Law on Program of Protection of Participants in Criminal Proceedings envisages that the protection program is implemented if participants in the criminal proceedings and close people are due to giving evidence or notifications important for proving in criminal proceedings exposed to danger to life, health, physical integrity, freedom or property, and without that testimony or notification proving would be significantly difficult or impossible in criminal proceedings for criminal offenses: 1) against constitutional order and security; 2) against humanity and other goods protected by international law; 3) organized crime. Other special arrangements are provided in answer to question 21.

031-1. Is it possible for minors to be a party to a judicial proceeding:

Comments :

General comments : Courts are required to conduct criminal proceedings involving juveniles according to a lex specialis - the Law on Juvenile Crime Offenders and Criminal Protection of Juveniles regulates these proceedings (see answer to question 31). In accordance with the Civil Procedure Code the court may exclude the public from the whole trial or its part if it is required by reasons of national security, public security, moral, in the interest of public order, privacy of the parties involved or when directed by law. The court may also exclude the public in case when measures for maintaining of order provided under this law would not secure undisturbed proceedings at the trial. Proceedings regarding family relations shall be urgent especially if they concern a child or parent exercising parental right, the violence in the family and the rights of the child. The court has to inform the minor about his/her rights, and to provide the presence of experts during the whole proceedings for example psychologist, pedagogue, social worker, as to protect the security and privacy of the minor. The public is excluded in this type of proceedings.
According to Art. 49 of the Law on Juvenile Criminal Offenders and Protection of Juvenile, a juvenile shall have defence counsel during the first questioning and throughout the proceedings. If the juvenile, his/her legal representative or relatives fail to retain counsel, such counsel shall be appointed ex officio by the Juvenile judge. Counsel for the juvenile may be only an attorney with special qualification in the field of the rights of the child and juvenile delinquency. According to Art. 154 of the Law on Juvenile Criminal Offenders and Protection of Juvenile, a juvenile who is a victim shall have a legal representative from the first questioning of the defendant. If the juvenile does not have a legal representative, s/he shall be appointed by the President of the Court from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles. The costs of representation shall be borne by the Court budget.

032. Does your country allocate compensation for victims of crime?

Comments : A claim for compensation which arose as a result of criminal offence or of a wrongful act designated by law as a criminal offence will be considered on a motion by authorised persons in criminal proceedings if those proceedings would not be substantially prolonged thereby. A claim for compensation in proceedings may be submitted by a person authorised to pursue such a claim in civil litigation process. The person is required to designate his/her claim in a certain manner and to submit evidence. If due to the criminal offence or wrongful act designated by law as criminal offence, damage was inflicted to public property, the authority authorised by a law or other regulation to look after the protection of this property may participate in proceedings in accordance with the authorisation it possesses pursuant to that law, or other regulation. A claim for restitution may be submitted no later than the conclusion of the main hearing before the court of first instance. If an authorised person has not submitted a claim for restitution until the charges are filed, s/he will be notified that s/he can submit it by the end of the process. If due to a criminal offence or wrongful act designated by law as a

criminal offence damage was inflicted to public property, and no claim for restitution was submitted, court will notify thereof the authority.

General comments :

034. Are there studies that evaluate the recovery rate of the damages awarded by courts to victims?

Comments : The state/courts have not yet performed any such relevant study. It is possible that judicial expert bureaus monitor and examine the amount of damages awarded by courts to victims; however, this is not publically published data.

General comments :

035. Do public prosecutors have a specific role with respect to the victims (protection and assistance)?

Comments : In addition to the regular role of the prosecutor in respect of the protection of the rights of victims, there are additional possibilities for having a special role in respect to the victims, such as in the field of trafficking of human beings and in the field of domestic violence. In all basic public prosecutions, groups for cooperation and coordination in cases of domestic violence have been established. One of the tasks of these groups is development of individual plans for the protection and support of the victim. Pursuant to the Special protocol on the performance of judicial authorities in the protection of persons who are victims of human trafficking in the Republic of Serbia, public prosecutor should primarily build the trust relationship by providing the victim with full information about the procedure and not only about the rights and obligations, but also about all the challenges that the trial is carrying. If possible, victims should be provided with direct contact with the public prosecutor so that they can communicate with prosecutor if they remember some important information or if there are any questions about the criminal proceedings. Special attention has been exercised regarding the avoiding of the secondary victimisation. During conversation with the victim, it is necessary to evaluate whether he/she needs professional psychological, psychiatric or medical assistance. Also, it is necessary to inform the victim that there are organizations dealing with support to victims of trafficking in human beings. Victim and Witness Information and Support Services are already described in answer to question 30.

General comments : The proceeding authority, including the prosecutor, is obliged to protect the injured party from insult, threat and every other attack. In case of receiving information from the police or the court or from own sources of information about existence of violence or serious threat directed toward the injured party, the prosecutor shall undertake criminal prosecution. The prosecutor can demand from the police to undertake protective measures towards the injured party in line with the law (Article 102 of the CPC). If necessary, the prosecutor notifies the Centar for Social Labour about the victim. If the victim is a witness in criminal proceeding, and if stipulated preconditions are met, during the investigation the prosecutor can issue a decision on defining the status of especially vulnerable witness, i.e. during other phases of the proceeding s/he can file a motion to the court for defining the status (Article 103 of the CPC). Moreover, the prosecutor can file to the court the motion for defining the status of a protected witness (Article 107 of the CPC). Finally, the competent public prosecutor can file to the Commission, ex officio or upon motion of parties of the criminal proceeding, a request for including participants of the criminal proceeding and their close persons into the Witness protection program. (The Law on Protection Program of Participants of Criminal Proceedings, Art. 25).

036. Do victims of crime have the right to dispute a public prosecutor’s decision to discontinue a case? Please verify the consistency of your answer with that of question 105 regarding the possibility for a public prosecutor "to discontinue a case without needing a decision by a judge". (The answer NAP means that the public prosecutor cannot decide to discontinue a case on his/her own. A decision by a judge is needed.)

Comments :

General comments : If in connection with a criminal offence prosecutable ex officio the public prosecutor dismisses a criminal complaint, discontinues the investigation or abandons criminal prosecution until the indictment is confirmed, s/he is required to notify the injured party thereof within eight days and to inform him/her that he or she is entitled to submit an objection to the immediately higher public

prosecutor.
The injured party is entitled to submit an objection within eight days of receiving the notification and advice referred to in paragraph 1 of this Article. If the injured party has not been notified, s/he is entitled to submit an objection within three months of the date when the public prosecutor dismissed the complaint, discontinued the investigation or abandoned criminal prosecution.
An immediately higher public prosecutor will within 15 days of receiving the objection deny or adopt the objection by a ruling against which an appeal or objection is not allowed. By the decision on adoption of the objection, the public prosecutor issues a compulsory instruction to the competent public prosecutor to conduct or resume criminal prosecution.

2.2.2.Confidence of citizens in their justice system

037. (Modified question) Is there a system for compensating users in the following circumstances:

Comments : Excessive length of proceedings: Pursuant to the Law on Protection of Right to Trial within a Reasonable Time (2015) which entered into force on 1 January 2016, the State Attorney established the Commission to make decisions on settlement proposals for just satisfaction when a violation was determined for a trial within reasonable time. Two settlements were concluded in 2016, in cases where the Administrative Court violated the right, but the damages arising from these two settlements were collected in enforcement procedure. The SAO does not have reliable data for 2016 on the number of lawsuits filed for compensation of damages as a new case management system began to work in 2017. In most cases the violation of the right to a trial within reasonable time was determined in enforcement or bankruptcy proceedings.
Constitutional appeal and Constitutional Court (CC): For excessive length of proceedings, 1047 CC decisions were made, for which MoJ paid 685229 EUR. For non-execution of court decisions 643 CC decisions were enacted and 2.286.603 EUR was paid by MoJ.
Unfounded conviction and unfounded deprivation of liberty, pursuant to the Crimilan Procedure Code: In 2016, a total of 940 claims for compensation for non-pecuniary damage due to unfounded conviction and unfounded deprivation of liberty were submitted to the MoJ Commission. The Commission decided on a total of 233 filed claims and proposed the amount of 455,838 EUR for unfounded convictions and unfounded deprivations of liberty. The total amount accepted and paid for the unfounded convictions and unfounded deprivations of liberty is 94,438 EUR. A total of 55 decisions were made on the payment of the aforementioned amount.
The data on the number of claims for compensation of damages, number of decisions and total amount for unfounded deprivation of liberty and for unfounded conviction can only be given jointly and as the SAO started using a new case management system in 2017, there is a high likelihood that the data is not precise.
SAO Representative before the European Court for Human Rights reports that during the year 2016, the SAO enforced 27 decisions (17 judgments and 10 decisions on friendly settlement) of the ECtHR issued against RS. The said decisions concerned 154 applicants. During the said period, RS made payments in total of EUR 1.106.541,49. Also, 4 more judgments were issued against RS in the year 2016 in which the ECtHR did not award the applicants any just satisfaction, for which reason these judgments were not included in the table. Violation of the right to a trial within reasonable time: In all 27 decisions, violation of the right to a trial within reasonable time was established and consequently the applicants were awarded non-pecuniary damages. All 153 applicants received payments on account of non-pecuniary damages, which amounted to EUR 378.782,30, in total. Non-enforcement of domestic decisions: Despite the fact that all 27 decisions considered violation of the right to a trial within reasonable time, 11 of these decisions (7 judgments and 4 decisions on friendly settlement) established that Serbia failed to enforce subject domestic decisions. These 11 decisions concerned claims for pecuniary damages (in the amount specified in subject non-enforced domestic decision) of 51 applicants in total, which were all adopted by the ECtHR (or established in the form of friendly settlement). Consequently, all 51 applicants received payments on account of pecuniary damages specified in domestic decisions, concretely EUR 724.759,19, in total. Unlawful judgment: In one judgment issued in the year 2016, the ECtHR established that one applicant has been unlawfully convicted and consequently awarded the applicant EUR 3.000,00 on account of non-pecuniary damages. This amount was paid to the applicant.
In 2016, a total of 601 requests for rehabilitation compensation were submitted to the MoJ Commission. The Commission decided on a total of 762 requests for rehabilitation compensation and proposed an amount of 660,822 EUR in the name of rehabilitation compensation. The total amount accepted in the name of rehabilitation compensation is 395,945 EUR, while the total amount paid is 473,978 EUR. A total of 321 decisions were made on the payment of the aforementioned amount.

General comments : The Law on Protection of Right to Trial within a Reasonable Time (“RS Official Gazette”, No. 40/2015), entered into force on 1 January 2016 . The ratio legis for adoption of this law is to introduce into the Serbian legal system an improved legal

mechanism which will further strengthen the citizens' rights to trial within a reasonable time (including during the prosecutorial investigation in criminal proceedings), through judicial protection.
Under this law, the right to trial within a reasonable time is granted to every party in court proceedings, including enforcement proceedings, to every party in non-litigious proceedings and to the injured party in criminal proceedings, the private prosecutor and the injured party as the prosecutor only insofar as they have asserted a claim for damages. The public prosecutor as a party to criminal proceedings, however, is not entitled to a trial within a reasonable time. When deciding on legal mechanisms which seek to protect the right to trial within a reasonable time, the acting court (in the implementation of the Law) has to take into account all the circumstances of the case at trial, listing most relevant criteria. The Law providing for the following legal remedies: 1) complaint to speed up the procedure; 2) appeal; 3) request for just satisfaction. Most notably, the party may submit a motion for settlement to the Attorney's Office (SAO) or directly file a lawsuit for compensation of pecuniary and / or non-pecuniary damage against the Republic of Serbia (RS) (without first attempting to achieve settlement). If a party brings an action against the RS for monetary compensation within one year from the date it acquired the right to just satisfaction, monetary compensation is recognized in the amount ranging between 300 and 3,000 EUR per case.
The Constitution of the RS stipulates that a constitutional appeal may be filed against individual acts or actions of state bodies or organizations exercising delegated public powers, which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection are exhausted or not provided. The Law on Constitutional Court (CC) stipulates that in such cases, the CC may determine the way of just satisfaction of the complainant and decide on the request for material and non-material damage, which must be specified in the constitutional appeal in terms of the amount and basis of the material and non-material damage. CC decisions which accept constitutional appeals due to a violation of the right to trial within a reasonable time and determine damage, oblige the Ministry of Justice to pay the determined amount to the complainant. In these cases, until the adoption of the Law on Amendments to the Law on the CC (2011), which entered into force on 4 January 2012, the amount of pecuniary and non-pecuniary damages were set by the Commission of the Ministry of Justice, whose members were appointed by the Minister of Justice. With the entry into force of these amendments, determining of the amount of damages is now in the jurisdiction of the CC. The procedure for exercising the rights of a person unfoundedly deprived of liberty or an unfoundedly convicted person is regulated by the Criminal Procedure Code. The Code stipulates that prior to submitting a claim for compensation of damages to the court, the aggrieved party is obliged to file a claim for compensation of damage to the MoJ in order to reach an agreement. The Commission for determining the damage and the type and amount of compensation for persons unfoundedly convicted and unfoundedly deprived of liberty, established by the decision of the Minister of Justice, considers claims for compensation of damages and makes appropriate decisions. If the compensation claim is not adopted or the Commission does not decide on the request within three months from the date of its submission, the aggrieved party may bring an action for damages before the competent court.
Other: The Law on Rehabilitation (2011) regulates rehabilitation and legal consequences of rehabilitation of persons deprived of life, liberty, and other rights for political, religious, national, or ideological reasons, up to the day this law entered into force. Higher courts decide on requests for rehabilitation, which could be filed until December 15, 2016. Pursuant to the provisions of the Law on Rehabilitation and based on a court decision approving the request for rehabilitation, rehabilitated persons and other persons determined by this law may apply for rehabilitation compensation. The Rehabilitation and Compensation Commission, formed on 9 February 2012 by the decision of the MoJ, considers requests for rehabilitation compensation and makes appropriate decisions. If a request for rehabilitation compensation is not adopted and the Commission does not decide on it within 90 days from the date the request was filed, the claimant may bring an action for damages before the competent court.

038. (Modified question) Did your country implement surveys aimed at legal professionals and court users to measure their trust in justice and their satisfaction with the services delivered by the judicial system? If yes, how frequently and up to what level?

Comments :

General comments :

040. Is there a national or local procedure for making complaints about the functioning of the judicial system? (for example the handling of a case by a judge or the duration of a proceeding)

Comments :

General comments :

041. (Modified question) If yes, please specify certain aspects of this procedure:

Comments :

General comments :

041-1. (Modified question) Please specify further certain aspects of this procedure:

Comments : Currently, there is no centralized electronic database of submitted complaints in the judicial system of the Republic of Serbia. The reasons for filing a complaint can be classified into two major groups: the party's dissatisfaction with a decision and the length of the proceeding.

Article 8 of the Law on the Organization of Courts stipulates that the party and other participants in a court proceeding have the right to a complaint about the work of the court when they believe that the proceeding is being prolonged, that it is irregular, or that there is some unauthorized influence on its course and outcome. Article 55 prescribes that the president of the court must consider the complaint, forward it to the judge to whom it refers for opinion, and to inform the complainants, as well as the president of the immediately superior court, of its merits and measures taken, within 15 days from the date of receipt of the complaint. S/he may dismiss the complaint, in full or a certain part of it, if s/he finds that the complainant abused the right to a complaint (e.g. the complaint has an offensive content or if s/he files a complaint of the same or similar content that has been previously decided). If the complaint is filed through the ministry in charge of the judiciary, the immediate superior court, or the High Court Council, the president of the court will notify the body through which the complaint was filed about the merits of the complaint and the measures taken. The party or other participant in the procedure who has the right to file a complaint on the work of the court has not been denied the possibility to address the same complaint on the work of the same court regarding the same case to the court in which the complaint is in process, as well as to all higher courts, the ministry in charge of the judiciary, and the High Court Council. Accordingly, one complaint, as a statistical data, can occur several times. Therefore, the figure of 14,098 of the total number of complaints received by courts in 2016 and compiled by the Supreme Court of Cassation is not a realistic number of complaints. Of the total of 14,098 complaints received in all courts, 2,168 complaints referred specifically to the work of these courts, and 2,206 complaints referred to the work of lower-instance courts. In first-instance courts, a total of 9,310 complaints were received (basic courts, misdemeanor courts, commercial courts). The High Judicial Council and the MoJ, in accordance with their competencies prescribed by the Law on the High Judicial Council, act within the limits of its powers upon complaints. In 2016 the High Judicial Council received in total 1,222 new petitions i.e. complaints / submissions based on which new cases were established, and 1,114 supplements in total regarding the already established cases in the course of 2016, 2015 and 2014, so in 2016 there were 2,336 pending cases in total. In 2016 the High Judicial Council received in total 1,222 new petitions i.e. complaints / submissions based on which new cases were established, and 1,114 supplements in total regarding the already established cases in the course of 2016, 2015 and 2014, so in 2016 there were 2,336 pending cases in total.

The MFAK Norway initiated a programme titled “Improving the Delivery of Justice in Serbia” with the goal to improve access to justice, under which the „Complaint Procedure Working Group“ was established by the decision of the HJC. The terms of reference of the Group focused on the business process and legal framework improvements in order to enable more efficient handling of complaints and ensure better realisation and protection of citizens' rights in court proceedings. In the first phase of the working group activities, the focus was on exhaustive and critical assessment of existing legislation governing complaints and a detailed analysis of the problems and shortcomings encountered in current practice. In the second phase, attention was focused on future, improved complaints process, which should be automated by a software application and database repository – the Central Register of Complaints. The members of the working group proposed the establishment of a new, centralized complaints procedure, tailored for Serbian justice system, which should be significantly more efficient and cost effective. Finally, the Complaint process working group provided precise directions for amending the legal framework governing complaints process.

https://vss.sud.rs/sites/default/files/attachments/Radna%20grupa%20za%20prituzbe-Zavrsni%20izvestaj%20sa%20preporukama_1.pdf.

General comments :

3.Organisation of the court system

3.1.Courts

3.1.1.Number of courts

042. Number of courts considered as legal entities (administrative structures) and geographic locations

Comments :

General comments : From January 1st 2014 a new judicial network has entered into force with an increased number of courts and public prosecutors' offices, with the aim of reducing expenses and contributing to easier access to justice. The network of courts and their jurisdiction in the Republic of Serbia is regulated by the Law on Organization of Courts ("Official Gazette of the RS", No. 116/08, 104/09, 101/10, 31/11 – state law, 78/11 – state law, 101/11 and 101/13,106/15, 40/15,13/16,108/16) and the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutors' Offices ("Official Gazette of the RS", No. 101/13) which clearly stipulate the jurisdiction of every court (both have been amended since 2014). Courts of general jurisdiction are: basic, higher, appellate courts and the Supreme Court of Cassation. Courts of special jurisdiction are: commercial courts, the Commercial Appellate Court, misdemeanour courts, the Misdemeanour Appellate Court and the Administrative Court. Q 42.1 – The number given for first instance courts of general jurisdiction (legal entities) (93) is the sum of the number of basic courts (67)(with 29 court units) and higher courts (26). Although higher courts have jurisdiction in both first instance and second instance proceedings, the number and type of first instance proceedings is by prevalent jurisdiction. Q 42.2 – First instance specialised courts (legal entities): he number is same as in 2012 (62) and includes: 45 misdemeanour courts, 16 commercial courts, and an Administrative Court (with three departments).
Q 42.3 – All the courts (geographic locations) (this includes 1st instance courts of general jurisdiction, first instance specialised courts, all second instance courts and courts of appeal and all supreme courts): 162 = 93 basic and higher courts of general jurisdiction (see 41.1), 62 first instance specialised courts (see 42.2), 1 Commercial Court of Appeal, 4 appellate courts, 1 Misdemeanour Court of Appeal, and the Supreme Court of Cassation as the supreme court.
Important note: courts in Kosovska Mitrovica continue to cover the jurisdiction of the Autonomous Province of Kosovo and Metohija until a special law is adopted which will set up the courts in this area: Misdemeanor Court in Kosovska Mitrovica, Higher Court in Kosovska Mitrovica, Basic Court in Kosovska Mitrovica.
Court network map is available on the following links: http://www.vss.sud.rs/en/court-network-map; http://www.portal.sud.rs/code/navigate.aspx?Id=571.

043. Number (legal entities) of first instance specialised courts (or specific judicial order)

Comments :

General comments : The category "other" covers the 45 misdemeanour courts.

044. Is there a foreseen change in the structure of courts [for example a reduction of the number of courts (geographic locations) or a change in the powers of courts]?

Comments : The Commission for the Implementation of the National Judicial Reform Strategy for the Period 2013-2018 adopted on 23 October 2015 a conclusion on the initiative for the abolition of four appellate courts and the establishment of a Court of Appeals for the whole of Serbia. In accordance with the above conclusion, the Ministry of Justice will establish a working group, in order to analyse the needs for the formation of a Court of Appeal and one Appellate Prosecutor's Office and to draft amendments to the Law on Seats and Territories of Courts and Public Prosecutors' Offices and the Law on Organisation of Courts.
Likewise, a change in the administrative dispute proceedings is envisaged, with the introduction of the second instance court (currently, there is only one Administrative Court).

General comments :

045. Number of first instance courts (geographic locations) competent for a case concerning:

Comments :

General comments : Q 45.1: the given number of first instance courts (geographic locations) competent for a case concerning a debt collection for small claims constitutes 67 basic courts and 16 commercial courts (i.e. 83 in total). Small claims, in terms of the provisions of the Civil Procedure Code, shall mean monetary claims in civil law disputes before basic courts not exceeding the amount of 3.000 EUR in dinar counter-value according to the middle exchange rate of the National Bank of Serbia on the day the lawsuit was submitted. The amount set for commercial disputes is 30,000 EUR. Q 45.2: The provided number of first instance courts competent for a case concerning a dismissal concerns all the basic courts on the territory of RS (Law on Organisation of Courts proscribes that a basic court in the first instance is competent for disputes on starting, duration and termination of employment);
Q 45.3: The provided number of first instance courts competent for a case concerning a robbery: The number includes both basic (67) and higher courts (26). Namely, basic courts are competent in the first instance for criminal offenses for which the main punishment is a fine or imprisonment up to ten and ten years. Depending on the qualification of the criminal offence (for example, the value of the seized goods exceeds 12,500 EUR, or the robbery is committed by a group) a higher punishment may be provided, in which case the higher court may be competent (Art. 206, Art. 204 Para. 1 Point 6. Criminal Code).

045-1. Is your definition for small claims the same as the one in the Explanatory note?

Comments :

General comments : Small claims, in terms of the provisions of the Civil Procedure Code, shall mean monetary claims in civil law disputes before basic courts not exceeding the amount of 3.000 EUR in dinar counter-value according to the middle exchange rate of the National Bank of Serbia on the day the lawsuit was submitted. The amount set for commercial disputes is 30,000 EUR. Small claims shall also include complaints where the main claim is not a monetary claim, but the plaintiff stated in the lawsuit s/he that he would accept to be paid an amount of money not exceeding 3000 EUR instead of the fulfilment of a request, or where the main claim is not money claim and value of dispute stated by the plaintiff in lawsuit is not exceeding 3000 EUR. Disputes related to real estate, labor relations and trespassing are not considered small claims.

045-2. Please indicate the value in € of a small claim:

Comments :

General comments : Small claims, in terms of the provisions of the Civil Procedure Code, shall mean monetary claims in civil law disputes before basic courts not exceeding the amount of 3.000 EUR in dinar counter-value according to the middle exchange rate of the National Bank of Serbia on the day the lawsuit was submitted. The amount set for commercial disputes is 30,000 EUR. Small claims shall also include complaints where the main claim is not a monetary claim, but the plaintiff stated in the lawsuit s/he that he would accept to be paid an amount of money not exceeding 3000 EUR instead of the fulfilment of a request, or where the main claim is not money claim and value of dispute stated by the plaintiff in lawsuit is not exceeding 3000 EUR. Disputes related to real estate, labor relations and trespassing are not considered small claims.

C. Please indicate the sources for answering questions 42, 43 and 45:

Comments :

General comments : Ministry of Justice – Sector for Judiciary; High Court Council; Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices (“Official Gazette RS” no. 101/2013) and Law on Organisation of Courts (2008-2015).

3.2. Court staff

3.2.1.Judges and non-judge staff

046. Number of professional judges sitting in courts (if possible on 31 December of the reference year). (Please give the information in full-time equivalent and for permanent posts actually filled for all types of courts - general jurisdiction and specialised courts)

Comments : Judges of the Administrative Court are considered as first instance judges, bearing in mind that the Administrative Court is a

republic court of special jurisdiction, which at first instance resolves administrative disputes (currently, single instance procedure) and performs other duties determined by law.

General comments :

047. Number of court presidents (professional judges).

Comments :

General comments :

048. Number of professional judges sitting in courts on an occasional basis and who are paid as such (if possible on 31 December of the reference year):

Comments :

General comments :

048-1. (New question) Do these professional judges sitting in courts on an occasional basis deal with a significant part of cases?

Comments :

General comments :

049. (Modified question) Number of non-professional judges who are not remunerated but who can possibly receive a simple defrayal of costs (if possible on 31 December of the reference year) (e.g. lay judges and “juges consulaires”, but not arbitrators and persons sitting in a jury):

Comments : The High Court Council enacted a decision on 23 December 2014 on the appointment of lay judges (sudije porotnici) for a mandate period of the following 5 years, https://vss.sud.rs/sr-lat/saop%C5%A1tenja/odluka-o-imenovanju-sudija-porotnika. The number of lay judges appointed by the decision was 2564. However, due to various reasons, in 2016 the effective number was 2478.

General comments :

049-1. If such non-professional judges exist in first instance in your country, please specify for which types of cases:

Comments :

General comments : In first instance, in certain criminal and civil proceedings trial is carried by panel consisting of a professional judge and lay judges, i.e. 2-3 citizens who are not professionals.

050. Does your judicial system include trial by jury with the participation of citizens?

Comments :

General comments : There is no trial by jury in the Republic of Serbia. However, in certain cases, the panel of judges is composed of both a professional judge(s) and lay judges. Namely, in first instance, in certain criminal and civil proceedings, the trial is carried by a professional judge and lay judges (2-3 citizens who are not professionals).

051. Number of citizens who were involved in such juries for the year of reference:

Comments :

General comments :

052. Number of non-judge staff who are working in courts (on 31 December of the reference year)

(this data should not include the staff working for public prosecutors; see question 60) (please give the information in full-time equivalent and for permanent posts actually filled)

Comments :

General comments :

053. (Modified question) If there are Rechtspfleger (or similar bodies) in your judicial system, please specify in which fields do they have a role:

Comments :

General comments :

054. Have the courts outsourced certain services, which fall within their powers, to private providers?

Comments :

General comments :

C1. Please indicate the sources for answering questions 46, 47, 48, 49 and 52

Comments :

General comments :

3.3. Public prosecution

3.3.1.Public prosecutors and staff

055. Number of public prosecutors (on 31 December of the reference year). Please give the information in full-time equivalent and for permanent posts actually filled for all types of courts - general jurisdiction and specialised courts.

Comments : 1.1 Number of prosecutors at first instance level consists of: 382 Basic PPOs + 163 Higher PPOs + 16 PPOs of special jurisdiction. 1.2 Number of MALE public prosecutors at first instance level: 160 Basic PPO’s + 76 Higher PPO’s +13 PPOs of special jurisdiction
1.3 Number of FEMALE public prosecutors at first instance level: 222 Basic PPO’s + 87 Higher PPO’s + 3 PPOs of special jurisdiction
2.1 Number of prosecutors at second instance (court of appeal) level consists of: 44 Appellate PP's 2.2 Number of MALE public prosecutors at second instance (court of appeal) level: 23 Appellate PP's 2.3 Number of FEMALE public prosecutors at second instance (court of appeal) level: 21 Appellate PP's
The reason for the smaller number of Deputy Public Prosecutors in the Appellate Public Prosecutor's Offices is - a natural outflow - that is, retirement. Vacancies were not filled because, due to the change of procedural laws, part of the jurisdiction of the Appellate Public Prosecutor's Offices was transferred to the Higher Public Prosecutor's Offices.
As concerns the number of public prosecutors at Supreme Court level, the variations are due to a different composition in the Republic Public Prosecutor's Office - the retirement of a colleague and the election to the Constitutional Court of the other colleague, after which three colleagues were selected, two of them male colleagues and one female colleague.

General comments : The data represents the total number of deputy public prosecutors working in the position of public prosecutor.

056. Number of heads of prosecution offices (on 31 December of the reference year).

Comments : 1.1 Number of heads of prosecution offices at first instance level consists of: 58 Basic PPOs +25 Higher PPOs+ 2 PPOs of special jurisdiction;
1.2 Number of MALE heads of prosecution offices at first instance level consists of: 34 Basic PPOs + 17 Higher + 1 in special

jurisdiction

1.3 Number of FEMALE heads of prosecution offices at first instance level consists of: 24 Basic PPO’s + 8 Higher + 1 in special jurisdiction

2.1 Number of heads of prosecution offices at second instance (court of appeal) level consists of: 4 Appellate PPOs

2.2 Number of MALE of heads of prosecution offices at second instance (court of appeal) level consists of: 3 in Appellate

2.3 Number of FEMALE public prosecutors at second instance (court of appeal) level consists of: 1 in Appellate

General comments : The data represents total number of public prosecutors. Serbian Prosecutors and Deputies are not serving at the same time on different levels. They are serving either as first instance or second instance Prosecutors or Deputies, since Serbian Prosecution has dedicated Appellate Public Prosecution Offices which are dealing only with appeals.

The number given for heads of prosecution offices at first instance level is the sum of the basic public prosecutors /acting; higher public prosecutors /acting; special public prosecutor for organised crime and special public prosecutor for war crimes.

057. Do other persons have similar duties to public prosecutors?

Comments : Public prosecutor assistants, employed for an indefinite period of time. In line with the Criminal Procedure Code, prosecutorial assistants can undertake specific procedural activities, authorized by a public prosecutor, i.e. deputy public prosecutor.

General comments :

059. If yes, is their number included in the number of public prosecutors that you have indicated under question 55?

Comments :

General comments :

059-1. Do prosecution offices have specially trained prosecutors in domestic violence and sexual violence etc.?

Comments : Pursuant to the Mandatory Instruction of the Republic Public Prosecutor from May 20, 2015 rendered in order to strenghten the combating of the criminal acts against sexual freedom and crimes against marriage and family, in all higher and basic public prosecutions in the Republic of Serbia a contact person was appointed who is in charge for work, monitoring and cooperation with other competent institutions and authorities regarding aforementioned criminal acts.

On the basis of the said Instruction, specialized departments for domestic violence and sexual freedom were established in First, Second and Third Basic Prosecutor`s Offices in Belgrade as the largest basic public prosecution offices in Serbia covering over a 60% of all criminal acts on that level across the country. All Deputy Public Prosecutors working in these departments are specialised for these criminal acts.

Also, in accordance with the Law on the Prevention of Domestic Violence ("Official Gazette of the Republic of Serbia", no. 94/2016), which came into force on June 1, 2017, liaison officers were appointed in all basic and higher public prosecutions – specialized prosecutors in domestic and sexual violence.

General comments :

060. Number of staff (non-public prosecutors) attached to the public prosecution service (on 31 December of the reference year) (without the number of non-judge staff, see question 52) (in full-time equivalent and for permanent posts actually filled).

Comments :

General comments :

C2. Please indicate the sources for answering questions 55, 56 and 60

Comments :

General comments : Q 55, 56: Public prosecutors human resources database of the State Prosecutorial Council (SPC); Q60: Ministry of Justice;
Law on Public Prosecution Services ("Official Gazette of the Republic of Serbia", nos 116/2008, 104/2009, 101/2010, 78/2011 – state law, 101/2011, 38/2012 – Constitutional Court's decisions, 121/2012 and 101/2013, 111/2014 – Constitutional Court's decision, 117/2014 and 106/2015; Law on the Organization and Competence of State Authorities in War Crimes Proceedings (Official Gazette of the Republic of Serbia, nos 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011-State Act 6/2015)

3.4. Management of the court budget

3.4.1.Court budget

061. Who is entrusted with responsibilities related to the budget within the court?

Comments :

General comments : The Head of the Financial Service of the Court and High Judicial Council is competent for the evaluation and control of the use of the budget. Also, the Ministry of Justice performs evaluation and control of the use of the budget by courts and the HJC.

3.6.Performance and evaluation

3.6.1.National policies applied in courts and public prosecution services

066. Are quality standards determined for the judicial system (are there quality systems for the judiciary and/or judicial quality policies)?

Comments : The Rulebook on the criteria, standards, procedure and bodies for evaluation of performance of judges and court presidents ("Official Gazette of RS", Nos. 81/2014, 142/2014, 41/2015, 7/2016), provides that the purpose of evaluation of judges and court presidents' performance is to enhance efficiency of the judicial system, preserve and improve expertise, capacities and accountability of judges and court presidents, encourage judges and court presidents to achieve best possible work performance, maintain, strengthen public trust in the work of judges and courts, and career advancement.

General comments : Percent of the confirmed judgements, abolished judgements, altered first instance judgements.

067. Do you have specialised court staff that is entrusted with these quality standards?

Comments :

General comments :

068. Is there a national system to evaluate the overall (smooth) functioning of courts on the basis of an evaluation plan agreed beforehand?

Comments :

General comments : According to the Courts Rules of Procedure, the president of the higher court can arrange the inspections of the lower courts under its territorial jurisdiction. During the inspections of the lower courts, s/he may request information regarding the implementation of law and information about some problems which could come up during the courts proceedings.
According to Article 12 of the Court Rules of Procedure, if it is established during the review of the annual activity report that there is a large number of unresolved cases, the president shall adopt the Backlog Resolution Program (hereinafter referred to as the Program) by January 31 at the latest for the current year. The Program may impose measures for a timely execution of activities at the court, such as the modification of the internal organization of the court, imposition of additional working hours for judges and court staff, temporary redistribution of working hours and other measures in accordance with the law and the present Rules. According to the Article 13 of the Court Rules of Procedure, the president of the superior court may organize visits to lower courts in his territory. During a visit to a lower court, he may ask for information about the implementation of regulations and problems at trials. The president of the superior court may use information and communication technology in order to obtain the information referred to in paragraph 1 of this Article.

069. Is there a system for monitoring and evaluating the performance of the public prosecution service?

Comments : State Prosecutorial Council (SPC): Pursuant to the Law on SPC, the SPC adopted the Rulebook on criteria and measures for evaluation of work of public prosecutors and deputy public prosecutors. According to this Rulebook, the evaluation of work of deputy public prosecutors is being conducting by the heads of public prosecutor's offices, while the work of head of public prosecutors offices is being evaluated by the head of immediately superior public prosecutor office. The SPC decides on the appeals upon first instance decisions of work evaluation. According to the Law, the first three-year period regular evaluation for deputy prosecutors elected to a permanent function and for public prosecutors/heads of public prosecutors offices, will be conducted in January 2018, while the work of deputies prosecutors elected for first time to three-year period is conducted every year.

General comments :

3.6.2.Performance and evaluation of courts

070. Do you have, within the courts, a regular monitoring system of court activities concerning:

Comments :

General comments :

071. Do you monitor backlogs and cases that are not processed within a reasonable timeframe for:

Comments :

General comments :

072. Do you have an evaluation process to monitor waiting time during court procedures?

Comments :

General comments : No general comment

073. Do you have a system to evaluate regularly the activity (in terms of performance and output) of each court?

Comments : According to the Court Rules of Procedure, courts quarterly, semi-annually, annually and in three-year period prepare reports on the work of the court. Those reports are done under prescribed, uniform methodology and are submitted directly to the Minister, to the higher court, the Supreme Court of Cassation and the High Judicial Council. Reports on the work are being made according to special forms and instructions prescribed by the Courts Rules of Procedure and are an integral part of it. The President is authorized in addition to these reports to draft independently and some other reports.
The Supreme Court of Cassation evaluates the work of courts also through the Uniform Backlog Reduction Program, its IT (CMS) system and its statisticians – monthly, quarterly, semi-annual and annual reports

General comments :

073-1. Is this evaluation of the court activity used for the later allocation of means to this court?

Comments :

General comments : According to the Court Rules of Procedure, courts quarterly, semi-annually, annually and in three-year period prepare reports on the work of the court. Those reports are done under prescribed, uniform methodology and are submitted directly to the Minister, to the higher court, the Supreme Court of Cassation and the High Judicial Council. Reports on the work are being made according to special forms and instructions prescribed by the Courts Rules of Procedure and are an integral part of it. The President is authorized in addition to these reports to draft independently and some other reports.
The Supreme Court of Cassation evaluates the work of courts also through the Uniform Backlog Reduction Program, its IT (CMS) system and its statisticians – monthly, quarterly, semi-annual and annual reports.

074. Are there performance targets defined at the level of the court?

Comments :

General comments :

075. (Modified question) Please specify the main targets applied to the courts:

Comments :

General comments :

076. Who is responsible for setting the targets for the courts?

Comments :

General comments :

077. Concerning court activities, have you defined performance and quality indicators (if no, please skip to question 79)

Comments :

General comments :

078. If yes, please select the main performance and quality indicators that have been defined:

Comments :

General comments :

079. Who is responsible for evaluating the performance of the courts (multiple options possible) :

Comments :

General comments :

3.6.3. Court activity and administration

080. Is there a centralised institution that is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

Comments :

General comments :

080-1. Does this institution publish statistics on the functioning of each court:

Comments : http://www.vk.sud.rs/sr/%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98-%D0%BE-%D1%80%D0%B0%D0%B4%D1%83-%D1%81%D1%83%D0%B4%D0%BE%D0%B2%D0%B0-%D0%B7%D0%B0-2017-%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D1%83

General comments :

081. Are individual courts required to prepare an activity report (that includes, for example, data on the number of cases processed or pending cases, the number of judges and administrative staff, targets and assessment of the activity)?

Comments :

General comments : Backlog Reduction Program with its action plan, court visit plan (in all, except the first instance courts) annual

schedule of work of judges and judicial assistants, etc.

082. (Modified question) Is there a process or structure of dialogue between the public prosecutor service and courts as regards the way cases are presented before courts (for example the organisation, number and planning of hearings, on-call service for urgent cases, selection of simplified procedures of prosecution…)?

Comments : At the initial, preparatory hearing, pursuant to the CPC.

General comments : At the initial, preparatory hearing, pursuant to the CPC.

082-1. (Modified question) Is there a process or structure of dialogue between lawyers and courts as regards the way cases are presented before courts in other than criminal matter (e.g. organisation, number and planning of hearings, on-call service for urgent cases)?

Comments :

General comments : Under the Law on Civil Procedure, the party (including its lawyer) is in obligation, no later than the preliminary hearing or at the first hearing for the main hearing, if the preliminary hearing is not mandatory, to present all facts required for explanation of its proposals, to propose evidence that confirm the presented facts, to give statement about the allegations and offered evidences of the opposing party, as well as to propose the timeframe for conducting of the proceeding. The court decides, at the hearing, on the time frame, especially on the number of hearings, time of hearings, schedule for taking of evidence at the hearings and taking of other procedural actions, court time frames, and total time of the main hearing.

3.6.4.Performance and evaluation of judges

083. Are there quantitative performance targets (for instance a number of cases to be addressed in a month) defined for each judge?

Comments : Performance of judges with a standing tenure of office and court presidents' shall regularly be conducted once every three years, and in judges elected for the first time- once a year. Exceptionally, based on the Decision of the High Judicial Council performance of judges and court presidents may be evaluated extraordinarily (Rulebook on the criteria, standards, procedure and bodies for evaluation of performance of judges and court presidents ("Official Gazette of RS", Nos. 81/2014, 142/2014, 41/2015, 7/2016). Criteria for evaluation of judges' performance are quality and quantity. Standards for evaluating quality of judges' performance shall be the percentage of repealed decisions and time for drafting decisions. Quality evaluation is performed by determining individual grade for each standard, and based on determined individual grades, final evaluation grade of judges' performance quality is determined. Individual grades for quality standards are as follows: "outstandingly successful", "successful" and "unsatisfactory". Standard for quantity evaluation of judges' performance is monthly caseload quota, and for judges not having sufficient number of pending cases, standard for quantity evaluation shall be the total number of closed cases against the total number of pending cases. Evaluation of judges' quantity performance shall be conducted by evaluating the judges' quantity standard by an individual p
Articles 17-26 of the Rules provide more detailed ruled on how quantity (efficiency) of judicial performance is evaluated. This is done based on the number of cases disposed by a judge over a period one month against the number of cases they should dispose- monthly caseload quota. The monthly caseload quota referred to in paragraph 1 hereof shall pertain to the cases adjudicated on merits, whereas three cases disposed of in some other manner shall be regarded as one case adjudicated on the merits. Derogating from paragraph 2 of this Article, in higher and appellate courts five closed cases in Kž and Kž2 subject matter shall be regarded as one case adjudicated on merits. In appellate court, five closed cases in Kžm2 subject matter shall be regarded as one case adjudicated on the merits. Three pending cases protecting the right to a trial within a reasonable time period decided on based on the objection to accelerate the procedure and appeals, shall be regarded as one case adjudicated on merits. Two cases closed by entering into mediation agreement shall be regarded as one case adjudicated on merits. If a judge is unable to achieve the monthly caseload quota due to insufficient number of pending cases, the Commission shall take into account the total number of closed cases against the total number of pending cases. If a judge has handled cases of different types, the quantity of his performance shall be established by adding together percentages for each

case type and by comparing it against the monthly caseload quota for that matter, provided that Commissions shall assess all the types of disposed cases specified by the Rules of Court Procedure and the law, but not mentioned herein.

General comments :

083-1. Who is responsible for setting the targets for each judge?

Comments : Rulebook on the Criteria, Standards, Procedure and Bodies for evaluation of judges and court presidents' performance (“Official Gazette of RS”, No. 81/14, 142/14, 41/15, and 7/16), provides for the Commission for evaluation of judges and court presidents’ performance which has three members appointed by the High Judicial Council from the ranks of Council members- judges. The Commission shall pass a decision on initiating procedure for judges and court presidents’ performance evaluation, which for each court sets forth the date when the Commission is to launch the evaluation procedure and the date of the evaluation procedure end, seat of the court where evaluation is being conducted, and appoints the Commission secretary. The Commission shall coordinate the work of commissions, discuss disputable issues in relation to the evaluation procedure of judges and court presidents’ performance, issue guidelines to commissions implementing the evaluation procedure and make proposals for improvement of the evaluation procedure and commissions’ operation. The Commission shall submit to the Council a report on actions undertaken in scope of the judges and court presidents’ performance evaluation procedure. Further, HJC appoints Commissions implementing the evaluation procedure and determining performance grades and a Commission deciding on objections of judges and court presidents to the performance evaluation and appraisal procedure.
The amendments to the rulebook from 27 January 2016 relate to weighting of cases in higher and appellate courts and lay down the manner of weighting cases in the proceeding protecting the right to a trial in reasonable time and cases concluded by the mediation agreement. Implementing the criteria and standards laid down in the Rulebook on Evaluation of Judges and Court Presidents’ Performance, performance of judges elected for the first time to judicial office (27 judges) was conducted in 2016 and all of them were elected to permanent tenure of office.
Please see: Rulebook on the criteria, standards, procedure and bodies for evaluation of performance of judges and court presidents (“Official Gazette of RS", Nos. 81/2014, 142/2014, 41/2015, 7/2016), https://vss.sud.rs/sites/default/files/attachments/ENG_PRAVILNIK%20O%20VREDNOVANJU%20RADA%20SUDIJA%20VSS.pdf

General comments :

New node

4.Fair trial

4.1.Principles

4.1.1.Principles of fair trial

084. Percentage of first instance criminal in absentia judgments (cases in which the suspect is not attending the hearing in person nor represented by a lawyer)?

Comments :

General comments :

085. Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?

Comments :

General comments :

086. Is there in your country a monitoring system for the violations related to Article 6 of the European Convention on Human Rights?

Comments : A specific procedure exists for monitoring and reaction/compensation in for the purpose of protection of Right to Trial within a Reasonable Time, applicable from 1 January 2016 (Please see comment to answer 41). For all other infringements of Article 6, the right to a Constitutional Appeal exists before the Constitutional Court. According to Article 46 of the European Convention on Human Rights, Committee of Ministers of the Council of Europe monitors enforcement of judgments and decisions of the Court issued against the Republic of Serbia.
Therefore, The Public Attorney's Office is obliged to submit reports on payments to the Committee of Ministers of the Council of Europe, whereas it should be noted that during the year 2016 regular submission of reports was conducted.
Also, the Committee of Ministers of the Council of Europe prescribed a form for submission of these reports.

General comments : A specific procedure exists in Serbia for monitoring and reaction/compensation for the purpose of protection of Right to Trial within a Reasonable Time. For all other infringements of Article 6, the right to a Constitutional Appeal exists before the Constitutional Court.

D1. Please indicate the sources for answering questions in this chapter.

Comments :

General comments :

4.2.Timeframe of proceedings

4.2.1. General information

087. Are there specific procedures for urgent matters as regards:

Comments : In accordance with the Law on Civil Procedure, the court shall always pay special attention to the need for urgent solving of labour disputes. In actions related to trespassing, the court shall always pay special attention to the need for urgent solving of disputes, taking into account the circumstances of each case. The proceedings in family relations are also urgent in accordance with the Family Code, and all cases where it is necessary to issue a temporary measure, as well as other cases with increased social danger. The Law on Enforcement and Security also contains provisions on urgent procedure. The Court Rules of Procedure determine which procedures are to be considered urgent as well as handling of such cases - shorter deadlines and order of resolving.
In accordance with the Criminal Procedure Code, courts are required to conduct criminal proceedings without delays and to prevent all abuses of law aimed at delaying proceedings. Criminal proceedings against a defendant who is in detention are urgent. The following are also urgent: custodial cases, domestic violence and cases with special attention with juvenile victims, international cooperation cases, organized crime and serious crime cases, as well as cases with increased social danger. With respect to administrative cases specific procedures for urgent matters exist, based on various governing laws (ex. Law on Administrative Disputes („Official Gazette RS", No. 111/09) – decision-making within 5 days upon request for postponement of execution; Law on Protection of Whistleblowers („Official Gazette RS" No. 128/14) – decision-making within 8 days upon proposal for an interim measure and urgent procedure upon lawsuit; Law on Protection of Competition („Official Gazette RS" Nos. 51/09 and 59/13) – decision-making upon lawsuit within 3 months; Law on Property Restitution and Compensation („Official Gazette RS" Nos. 72/11 .. 142/14) – urgent procedure upon lawsuit; Law on High Judicial Council („Official Gazette RS ", Nos. 116/08...106/15) – urgent procedure upon lawsuit on the election of electoral members of the High Judicial Council; Law on Prevention of Harassment at Work („Official Gazette RS", No. 36/10) – urgent procedure upon lawsuit; Law on Local Elections („Official Gazette RS", No. 129/07...54/11) – deadline for deciding on appeal is 48 hours; etc.

General comments :

088. Are there simplified procedures for:

Comments : According to the Law on Civil Procedure, in the process of low-value disputes, a complaint is not submitted to the defendant to answer. With the summons to the defendant a lawsuit will be sent to him/her. In these cases, preliminary hearing is not scheduled to be held. Also, a judgement does not have to have reasoning if the parties have waived their right to a legal remedy, unless specified otherwise by law.
According to the Criminal Proceedings Code, summary proceedings will be applied in proceedings for criminal offences for which a fine or a term of imprisonment of up to eight years or fine is prescribed as the principal penalty, in the actions taken with a private lawsuit,

and in proceedings of hearing for the imposition of a criminal sanction in accordance with article 512-518 of the Criminal Proceedings Code, the plea agreement, deferring criminal prosecution.
Simplified procedures for administrative cases exist:
The Law on Administrative Disputes prescribes simplified procedures when the Court decides in the preliminary procedure, as follows:
1. The rejection of a lawsuit due to its irregularities (if a lawsuit is incomplete or incomprehensible).
2. The rejection of a lawsuit due to other legal reasons (when the lawsuit has not been filed on time or it was filed prematurely; when the act which is challenged in the lawsuit is not an administrative act; if there are no evidence submitted with a lawsuit lodged due to silence of administration; when it is clear that the administrative act disputed in the lawsuit does not affect the rights of plaintiff or his direct personal interests based on the law; when after filing a lawsuit, challenged act is annuled upon lawsuit of other party; when an appeal could have been filed against the administrative act challenged in the lawsuit, but it was not filed at all or on time, or an appelant gave up from the appeal in the second-instance procedure; when there is already a legally effective decison rendered in an administrative dispute on the same matter).
3. Annulment of the administrative act in the preliminary procedure (if the Court finds that the challenged act contains such essential failings that prevent assessment of the legality of the act, it may for this reason annual the act by the judgement even without sending the lawsuit for an answer, requesting from an accused party preliminary comment).
4. Compliance with the lawsuit by an accused party (if an accused party during the court proceedings passes another act by which it amends or abolishes the administrative act against which the administrative dispute was instituted, and if in case from Article 19 of this Law it subsequently passes first-instance administrative act, or second-instance administrative act, and the plaintiff at the same time informs the court by written statement that he/she is satissfied with subsequently passed act or if he/she failed to submit a statemnet within the deadline prescribed in paragraph 2 of this Article, the Court shall render a ruling to terminate the proceedings.)
5. Withdrawal of the lawsuit by plaintiff.

General comments :

088-1. (Modified question) For these simplified procedures, may judges deliver an oral judgement with a written order and dispense with a full reasoned judgement?

Comments : Article 429 of the Criminal Procedure Code stipulates that a judgement made written does not have to contain reasoning: 1. If the parties, the defence attorney, the injured party and the person whose assents have been confiscated immediately upon publishing of the judgement stated to waiver the right the appeal; or
2. If the defendant has been sentenced to imprisonment in duration of up to three years, to a fine, to community service work, suspended drivers licence, conditional sentence or reprimand from the bench, and the sentence is grounded upon the full confession of the defendant, in which cases the parties, the defence attorney, the injured party and the person whose assents have been confiscated can demand upon point 2 paragraph 1 of the Article submitting of the judgement made in written containing reasoning, immediately after publishing of the judgement, while the judgement made in written shall be partially reasoned:
1. If the defendant had confessed to the crime – the reasoning shall be limited to specific facts and reasons, or
2. If a plea bargaining agreement has been accepted – the reasoning shall be limited to reasons governing the court when accepting the plea bargaining, or
3. If immediately after publishing of the judgement the parties and the defence attorney have stated to waiver the right to appeal, and the injured party and the person whose assents have been confiscated have not waiver the right – the reasoning of the judgement shall state the reasons for the decided property legal claim and for expenses of the criminal procedure, i.e. reasons for decision on confiscation of assets or property acquired by the crime or proceeds of crime.
In civil proceedings, only in the case of a decision due to absence of the claimant.

General comments :

089. Do courts and lawyers have the possibility to conclude agreements on arrangements for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?

Comments : Yes, in civil and criminal proceedings. Not in administrative disputes - the proceedings are conducted through strict

application of the timeframes set by law.

General comments :

4.2.2. Case flow management – first instance

091. (Modified question) First instance courts: number of other than criminal law cases.

Comments : The answer to question 91. 1. includes litigious cases in higher courts (P, P1, P2, P3, P4, P-uz and R), basic courts (P, P1, P2, P1-uz, Prr and Prr1), commercial courts (P, P2). For commercial courts, bankruptcy cases (St) as well as reorganization in bankruptcy cases (Reo) which were previously displayed in 2.3. are now included in 2.1, since a judge decides in these cases. Newly added cases in this item are those pursuant to the Law on Protection of Whistle-blowers (applicable from 04.06.2015) and litigious proceedings pursuant to lawsuits for compensation of pecuniary and non-pecuniary damage due to infringement of the right to trial within a reasonable time from higher courts (P-uz, Ppr-uz, Prr1), basic courts (P1-uz, Prr, Prr1) and misdemeanour courts (Pr-uz).
A major change in the number of other non-litigious cases and, consequently, the total number of cases, is a result of the implementation of the new Law on Enforcement and Security from 1 July 2016 and the systemic measures defined in the special program for reduction of enforcement case backlog. Serbia has enabled a comprehensive disposition of enforcement case backlog (for more details please see Chapter 8: Enforcement of Court Decisions, especially Q. 184). The Supreme Court of Cassation, the Ministry of Justice and the High Court Council have jointly drafted and adopted the Instructions for the implementation of the new Law on Enforcement and Security, which, supported by the European Union through the IPA funded project “Judicial Efficiency” resulted in a drastic reduction of the number of enforcement cases, by 811.322 cases only in 2016 reducing the backlog from 1.855.129 to 981.865. Such an action results in extreme and unusual clearance rate for these cases but also for totals. In 2.3 the cases of trial within reasonable time in higher courts (R4 i, R4 k, R4 p) were transferred from category 4 where they were in previous cycle.

General comments : Administrative cases areall cases before the Administrative Court (“U”-administrative disputes; “Ur“ - various administrative cases; “Ui“ - execution of Administrative Court judgement; “Uo”- postponement of enforcement before lodging a lawsuit; “Uv“ - objection to the decision of a single judge; “Up“ - repetition of administrative-judicial procedure; “Uvp I”, “Uvp II” – request for extraordinary review of court decision) “Uip” - judicial protection in the election procedure for members of national councils of national minorities; “Už“ – appeals, "U-uz" - whistleblowers (new, in comparison to last cycle).

092. If courts deal with “civil (and commercial) non-litigious cases”, please indicate the case categories included:

Comments :

General comments : Non-contentious proceedings are prescribed by the Law on Non-Contentious proceedings and include regulation of personal status (deprivation of legal capacity), regulation of family matters (extension of parental rights), proceedings regulating property relations (inheritance proceedings, division of common assets or property). Further, according to the Law on Companies, the court in non-contentious proceedings decides in methods of determining the value of non-monetary contribution of company's stakeholders, the proceedings at the request of the stakeholders of the Company in terms of the agenda and the proceedings at the request of the authorized nominators for holding regular company sessions.
The Law on Rehabilitation ("Official Gazette of RS", no. 92/2011) regulates rehabilitation and legal consequences of rehabilitation of persons deprived of life, liberty, and other rights for political, religious, national, or ideological reasons, up to the day this law entered into force. A higher court decides on a request for rehabilitation, based on the right to file a request for rehabilitation due to violation of the abovementioned rights, which expired on December 15, 2016.
All enforcement cases are stated in the category 91.2.1.
2.2.1. Non litigious land registry cases – NAP as this competence has been transferred from the courts to the Real Estate Cadastre and Republic Geodetic Authority, a special administrative organisation.
2.2.2 Non-litigious business registry cases – NAP as this competence has been transferred to the Serbian Business Registers Agency (“SBRA” / Serbian: “APR”), which in accordance with the Law on Business Entities Registration (operative as of 1/1/2005): Register of Companies (in effect as of 1 January 2005), Register of Entrepreneurs (in effect as of 1 January 2006), Register of Foreign Representative Offices (in effect as of 1 January 2006). Running centralized registers in a single institution such as the SBRA, which has

jurisdiction over the entire territory of the Republic of Serbia, provides standardized registration practices.

093. Please indicate the case categories included in the category "other cases":

Comments :

General comments : NOT INCLUDED: The Law on Bankruptcy (“Official Gazette of RS“, no. 104/09) prescribes that the Government shall regulate the content and procedure for registration and management of the Bankruptcy Estate Register, etc. by the authority competent for managing this register – the Business Registers Agency (SBRA – APR). The Bankruptcy Estate Register began to operate on 23 January 2010. The Bankruptcy Estate Register is a single, centralized, electronic database on bankruptcy estates, on which the competent courts have reached a decision after 23 January 2010.

094. (Modified question) First instance courts: number of criminal law cases.

Comments : The field 94.1 encompasses registries of high courts: (K, KIM, KM, K1, KI, Ki-Po1, Ki-Po2, KiPo3, K-Po1, K-Po2, Kpo3, SPK, SPK Po1, SPK Po2), Basic courts: (K, K1, Ki, Spk). The category under 94.1 includes all criminal cases because the Criminal Code of the Republic of Serbia does not make the distinction between crimes – i.e. “severe/minor offences” (their qualifications may also be changed until enacting of the decision and determining the sentence). Therefore, all first instance criminal cases of basic and higher courts are included (in higher courts - organized crime, war crimes, and high-tech crimes, according to urgency, etc.); investigations and investigative actions before basic and higher courts; preparatory proceedings and proceedings against minors; confession of criminal offenses and criminal cases without a main hearing.
Field 94. 2 encompasses the following cases: Commercial courts: Pk, Pki, Pkr, Misdemeanor courts:PR, PRM. In Commercial Courts, these cases relate to initiation of proceedings due to commercial offenses against natural and legal persons; preliminary procedure for commercial offenses; cases before misdemeanor courts: misdemeanors and misdemeanors perpetrated by minors.
Unlike previous cycles, the following cases are not included: Enforcement and complaints as regards enforcement decisions misdemeanor cases: 409,926 cases pending on 1 Jan 2016, 585,153 incoming cases, 592,783 resolved cases and 402,296 pending at the end of the year. 1,007,231 incoming and 994,580 resolved cases related to criminal and misdemeanor proceedings, handled by judges in courts but related to "cases as such" - ex. conditional release, pardons, cases of extradition of defendants and transfer of convicted persons, agreement on the testimony of a defendant and convicted person, legal aid cases between domestic courts in criminal matters, for assistance and support to victims and witnesses, enforcement of criminal sanctions up to one year, enforcement of criminal sanctions, enforcement of alternative sanctions, outgoing and incoming letters rogatory in the criminal matter.

General comments : Serbia started to report misdemeanour cases only in the 2014 cycle. Previously, misdemeanour cases were not considered as criminal because under the Serbian law they are prosecuted in specialised misdemeanour courts. In fact, the Criminal Code does not make the distinction between crimes based on their gravity (their qualifications may also be changed until enacting of the decision and determining the sentence). Moreover, in the AVP case management system it is not possible to automatically record and separate cases for which imprisonment is not proscribed and sentenced, which is why in Questions 94.1, 98.1, 100.1 under “severe criminal cases” the total number of criminal cases is expressed. The new Criminal Procedure Code (2011) entered into force in October 2013 introducing an adversarial instead of inquisitorial system of public prosecution and criminal proceedings. The role of the investigative judge has been abolished and public prosecutors and deputy public prosecutors are now in charge of the criminal investigation. Also, the Ministry of Interior police officers are more strictly obliged to conduct pre-trial investigations in accordance with the public prosecution lead.
Therefore, "The total number of criminal cases" presents a sum of all criminal cases (in the first instance) before basic and higher courts (94.1) as well as misdemeanour cases and commercial offenses in the first instance- from the jurisdiction of commercial courts as penal offenses (94.2). The category under 94.1 includes all criminal cases because the Criminal Code of the Republic of Serbia does not make the distinction between crimes – i.e. “severe/minor offences” (their qualifications may also be changed until enacting of the decision and determining the sentence).

4.2.3. Case flow management – second instance

097. (Modified question) Second instance courts (appeal): Number of “other than criminal law” cases.

Comments : The answer to question 97.1. includes the following categories: for courts of appeal (Gž, Gž1, Gž2, Gž3, Gž-uz, Gž1-uz, Gž3, Gž4, Gž rr, R, R1), higher courts (GŽ, GŽ1, GŽ2, Gž rr), the Commercial Court of Appeal (Pž, R), and the Misdemeanor Court of Appeal (Pž-uz). These are: cases before Appellate Courts in which decisions are made on appeals against decisions of first instance courts in civil disputes, in particular in labor, family, media, and copyright disputes, in connection with whistleblowing;
Before higher courts: litigious proceedings involving appeals (small appellation);
Before the Commercial Court of Appeal: second instance commercial proceedings involving appeals, conflict and delegation of jurisdiction between commercial courts;
Before the Misdemeanor Court of Appeal: proceedings involving appeals against first instance decisions of misdemeanor courts in cases related to whistleblowers and conflict and delegation of jurisdiction between misdemeanor courts (cases not misdemeanour as such).
Under 2.2, the following categories were included: for courts of appeal (Reh-ž, R3, R4), the Commercial Court of Appeal (Pvž). Proceedings involving appeals (where allowed) pertaining to cases from question 91.2.1, second instance enforcement proceedings,
Under 2.3, the following categories were included - "Cases pertaining to making decisions within a reasonable time in civil and criminal matters": for courts of appeal (R4 g, R4 k, R4 r, Rž k, Rž g, Rž r, Ržk Po1, Ržk Po2), higher courts (Rž k, Rž g, Rž r), the Commercial Court of Appeal (R4 p, R4 st, R4 i, R4 pp, R4 fi, R4 vr, Pž p, Pž st, Pž i, Pž pp, Pž fi, Pž vr), and the Misdemeanor Court of Appeal (R4 p (01, 02, 03), R4 op, Rž p (01, 02, 03), Rž op). Also included in this category are the cases of appeals to the first instance court decisions on complaints against the work of notaries (Gž-jb)(52 cases incoming in 2016). The column "Pending cases older than 2 years from the date the case came to the second instance court " shows only NA as it is possible to extract these cases for higher and commercial appellate court, while for appeals courts cases older than 9 months are calculated, in accordance with the Civil Procedure Code. The Misdemeanor Court of Appeal has no cases older than two years, in accordance with the Law on Misdemeanors. As we have excluded many cases from the "other cases" category in 91., for the included categories, for the second instance cases the answer is 0. As concerns the category "civil and commercial litigious cases", the increase in the number of incoming and pending on 31 December 2016 cases is explained by the fact that comparative data on incoming cases in all courts in the Republic of Serbia indicates a significant increase in influx in 2015 and 2016.
In respect of "civil and commercial litigious cases", comparative data on incoming cases in all courts in the Republic of Serbia (influx of new cases) indicates a significant increase in influx in 2015 and 2016.
With regard to "non-litigious cases", and more particularly "other non-litigious cases", it should be pointed out that amendments to the Law on the Court Organization and the new Law on Protection of the Right to a Trial within a Reasonable Time have shifted responsibility for protection of this right from the Constitutional Court to the courts of general and special jurisdiction. This has led to the filing of a large number of motions to that effect with all Serbian courts, including objections requesting acceleration of proceedings and claims for compensation for both tangible and intangible damage. The upward trend in new cases, first seen in 2015, continued into 2016, with a total of 35.815 such cases heard by all Serbian courts.
Concerning the category "other", cases in the proceedings for protection of right to a trial within a reasonable time have been transferred to 2.3.

General comments : Courts deciding in the second instance (on appeal) in the "non-criminal" cases, as courts of general jurisdiction are: higher: upon the decisions in civil disputes and the judgment in small claims and the non-contentious proceedings, and appellate courts: upon the decisions of higher courts and judgements of the basic courts in civil disputes unless deciding on appeals is not under the competence of higher court.
The court of special jurisdiction, which decides in the second instance (on appeal) in the "non-criminal" cases is the Commercial Appellate Court (appeals on decisions of commercial courts and other bodies). Excluded from the total number of cases in response to this question are cases on appeals in cases of commercial offences. This answer will be given in the answer number 98.6, and also for the Misdemeanour Appellate Court, which shall decide on appeals against decisions of misdemeanour courts and the appeals against decisions in misdemeanour proceedings by the bodies of administration (number of cases of that court will be presented in the answer to the question 98.6 as the number of misdemeanour cases in the courts the second instance).
No. 3 - There is no second instance in administrative disputes.

098. (Modified question) Second instance courts (appeal): number of criminal law cases.

Comments : The number of cases presented is the number of cases from the Report of the SCC for 2016. The analysis of the work of the courts determined that in 2016 the number of criminal cases was reduced due to the application of the principle of opportunity, in

accordance with the new Code of Criminal Procedure.
The answer to question 98 in field 1 includes the following categories: Before courts of appeal: criminal proceedings involving appeals on first instance and second instance verdicts and decisions (separated registers in second instance by special departments); criminal proceedings against minors involving appeals; Before higher courts: criminal proceedings involving appeals (small appeal).
98.2 includes the following categories: for the Commercial Court of Appeal (Pkž), and the Misdemeanor Court of Appeal (PRŽ, PRŽM, PRŽI, PRŽU). These are the second instance proceedings before the Commercial and the Misdemeanor Court of Appeal regarding cases of commercial and misdemeanor courts as defined in question 94.2.
Column "Pending cases older than 2 years from the date the case came to the second instance court" is marked as NA since the requested data is not in gathered (Criminal Procedure Code methodology differs).
In relation to the previous reporting period, the following changes have been made: Field 1 also shows new categories of cases in courts of appeal (ex. Kž2-Po3-Spk).
Q94.2: in 2014, 9,879 additional cases were handled by the Misdemeanor Appellate Court in addition to ordinary work, due to transfer of jurisdiction on appeals to decisions of administrative bodies, from 1 March 2014. By 2016, these cases have been absorbed and handled by the system, but a backlog remains. Besides, unlike the previous cycle, "other cases" which relate to criminal (94.1)/misdemeanour (94.2) cases and which are not "cases per se" even if a judge is intervening, have not been taken into account (5 pending cases, 1,371 incoming cases, 1,366 resolved, 10 pending at the end of the year (ex. related to decisions on detaining accused, competence issues, etc.)).

General comments :

4.2.4. Case flow management – Supreme Court

099. (Modified question) Highest instance courts (Supreme Court): number of “other than criminal law” cases.

Comments : The answer to question 99 in field 1 shows cases of the Civil Department without registers (SPP, SPP1, R1, R).
Field 2.3. shows registers (SPP, SPP1, R1, R) and cases of the Department for Trial within a reasonable period.
Field 3 shows cases of the Administrative Department.
Note:
In relation to the previous reporting period, the following changes have been made:
Field 2.3 shows a new register (SPP1) and cases of the Department for Trial within a Reasonable Time, which were previously shown in field 4.
In the period from 2012 to 2016, the Supreme Court of Cassation received twice as many cases than expected, not counting the cases delegated by the Higher Courts in Belgrade and Novi Sad in 2013 and 2015 (5. 000 + 7.000), as a consequence of changes in regulation on the jurisdiction of the Supreme Court of Cassation, reduction of the review threshold to 40.000 € in RSD equivalent, introduction of a special revision as a new extraordinary legal remedy, as well as the expansion of the jurisdiction of the highest court to decide on the revision, i.e. to decide on the new extraordinary legal remedies. The number of disposed cases was, in general, followed by an increased inflow, but the clearance rate was below 100%, so the Supreme Court of Cassation couldn't absorb the increased inflow and reduce its backlog, which is why the number of pending cases continued to grow every year, and the increase in the number of pending cases was especially pronounced in the period from 2014 to 2016. The busiest departments of the Supreme Court of Cassation were the Civil Department and the Department for protection of the right to trial within reasonable time. The largest increase in inflow occurred in the Civil Department, while a slight increase of inflow was also noticed in the Criminal Department. The Civil Deprtment, with the existing number of judges (18) and judicial assistants that are assigned to this department, were not able to absorb the inflow of cases recorded in 2015 and 2016. The increased inflow of cases in the Civil Department is the result of the reduction of the revision threshold, new basis for revision and new legal remedies that the Supreme Court of Cassation decides on in this matter.
Amendments to the Law on the Court Organization and the new Law on Protection of the Right to a Trial within a Reasonable Time have shifted responsibility for protection of this right from the Constitutional Court to the courts of general and special jurisdiction. This has led to the filing of a large number of motions to that effect with all Serbian courts, including objections requesting acceleration of proceedings and claims for compensation for both tangible and intangible damage. The upward trend in new cases, first seen in 2015, continued into 2016, with a total of 35.815 such cases heard by all Serbian courts. Of these, 30.966 were disposed, whereas the number

of pending cases fell from 9.961 at the beginning of the reporting period to 4.849 at year-end.
In respect of administrative law cases, it should be noticed that there were more incoming cases in 2015.

General comments :

099-1. At the level of the Highest court (Supreme Court), is there a procedure of manifest inadmissibility?

Comments :

General comments :

100. (Modified question) Highest instance courts (Supreme Court): number of criminal law cases.

Comments : Note:
The answer to question 100 in field 1 includes cases of the Criminal Department without registers (KZZP, KZZPR, KRRZ).
Field 2 shows cases listed in the registers (KZZP) and in the new register (KZZPR).
In the period from 2012 to 2016, the Supreme Court of Cassation received twice as many cases than expected, not counting the cases delegated by the Higher Courts in Belgrade and Novi Sad in 2013 and 2015 (5. 000 + 7.000), as a consequence of changes in regulation on the jurisdiction of the Supreme Court of Cassation, reduction of the review threshold to 40.000 € in RSD equivalent, introduction of a special revision as a new extraordinary legal remedy, as well as the expansion of the jurisdiction of the highest court to decide on the revision, i.e. to decide on the new extraordinary legal remedies. The number of disposed cases was, in general, followed by an increased inflow, but the clearance rate was below 100%, so the Supreme Court of Cassation couldn't absorb the increased inflow and reduce its backlog, which is why the number of pending cases continued to grow every year, and the increase in the number of pending cases was especially pronounced in the period from 2014 to 2016. The busiest departments of the Supreme Court of Cassation were the Civil Department and the Department for protection of the right to trial within reasonable time. The largest increase in inflow occurred in the Civil Department, while a slight increase of inflow was also noticed in the Criminal Department.

General comments : Same comment as given for Question 94 applies – the category under 100.5 “Severe criminal cases” includes all criminal cases because it is impossible to differentiate between “severe” and “minor” criminal cases as per definition given in the Explanatory Note, which is why in under “severe criminal cases” the total number of criminal cases is expressed. Moreover, the Criminal Code of the Republic of Serbia does not make the distinction between crimes – i.e. “severe/minor offences” (their qualifications may also be changed until enacting of the decision and determining the sentence) and in the AVP case management system it is not possible to automatically record and separate the cases for which imprisonment it is not proscribed and sentenced.

4.2.5. Case flow management – specific cases

101. (Modified question) Number of litigious divorce cases, employment dismissal cases, insolvency, robbery cases, intentional homicide cases, cases relating to asylum seekers and cases relating to the right of entry and stay for aliens received and processed by first instance courts.

Comments : The answer to question 101 in criterion "Cases of labor disputes " shows register (P1) of basic and higher courts. Bankruptcy proceeding - register (St) of commercial courts.

General comments :

101-1. (New question) Could you briefly describe the system in your country dealing with judicial remedies relating to asylum seekers (refugee status under the 1951 Geneva Convention) and the right of entry and stay for aliens:

Comments :

General comments :

102. Average length of proceedings, in days (from the date the application for judicial review is lodged). The average length of proceedings has to be calculated from the date the application for judicial review is lodged to the date the judgment is made, without taking into account the enforcement procedure.

Comments :

General comments :

103. Where appropriate, please indicate the specific procedure as regards divorce cases (litigious and non-litigious):

Comments :

General comments : Specific procedures relate to determining the marital property, child support and custody of children, domestic violence, determination and contesting paternity and maternity, maintenance of spouses, partial and complete deprivation of parental rights, arranging personal relations of the child with the parent who does not live and close relatives.
There is a conciliation procedure (it must be terminated within 2 months) and agreement procedure (it must also be terminated within 2 months). Conciliation as an alternative dispute resolution mechanism is highly present in regulating domestic relations, pursuant to the Family Law (“Official Gazette of RS”, no. 18/2005, 72/2011 - Other Law and 6/2015), which apart from providing for situations of referral to family counselling and institutions specialized in mediation in family relations provides for a procedure which, pursuant to Article 229 of the Family Law, includes the procedure for attempt at reconciliation (hereinafter: conciliation) and the procedure for attempt at consensual dispute resolution (hereinafter: settlement). The procedure is regularly carried out with the proceedings related to a matrimonial dispute which is initiated by a lawsuit of one of the spouses except in situations in which one of the spouses does not agree to conduct the procedure, one of the spouses is incapable of reasoning, the domicile of one spouse is unknown or is in a foreign country. Pursuant to Article 231, it is, as a rule, carried out by court whereby the sole-judge who conducts the procedure may not participate in the passing of a decision in a subsequent phase of procedure, unless the conciliation/settlement was successful. Upon being served the action for annulment or divorce of marriage, the court shall schedule a hearing for conciliation/settlement, which is held only before a sole judge. The judge is under the obligation to recommend the spouses to undergo psychosocial counselling and will at the proposal of the spouses or with their consent entrust mediation to the competent guardianship authority, marriage or family counselling service, or other institution specialised in mediation in family relations (Article 232). Article 233 provides that conciliation shall be carried out in matrimonial dispute initiated by action for divorce with the purpose to resolve the disturbed relation between spouses without conflict and without divorce. Both spouses are invited to the conciliation hearing, without attorneys. If spouses reconcile in the conciliation hearing, it shall be considered that the lawsuit for divorce has been withdrawn. The court and/or institution entrusted with the proceedings shall be under the obligation to carry out conciliation within 2 months. If the institution entrusted with the proceedings fails to inform the court on results of reconciliation within 3 months from the day of being served the lawsuit for divorce, conciliation proceedings shall be carried out by the court, when it is obliged to schedule the conciliation hearing within 15 days. On the other hand, Article 240 provides that settlement shall be carried out in matrimonial dispute initiated by a lawsuit for annulment of marriage or action for divorce, where conciliation was unsuccessful, with the purpose of resolving the disturbed relation between spouses without conflict after the annulment of marriage or divorce. The court and/or institution entrusted with mediation proceedings shall endeavour for the spouses to reach agreement on the exercise of parental right and agreement on the division of joint property. The time limit of two months is also provided for such a procedure. The Law on Mediation in Dispute Resolution (“Official Gazette of RS” no. 55/2014) explicitly provides that mediation is possible especially in family disputes (provided that the dispute is one in which the parties are free to dispose of their claims, unless another law prescribes exclusive jurisdiction of a court or another authority, regardless of whether mediation is carried out before or after the initiation of judicial or other proceedings). Article 34 of the Law provides that the mediator is obliged act in accordance with the principle of the best interest of the child in family disputes. Furthermore, the Law on Social Protection ("Official Gazette of the Republic of Serbia" No.24/2011) also provides mediation as a community based social service falling in the counselling-therapeutic and social-educational group of services, also irrespective of court proceedings (in Centers for Social Work of local municipalities).

104. How is the length of proceedings calculated for the five case categories of question 102? Please give a description of the calculation method.

Comments :

General comments :

4.2.6. Case flow management – public prosecution

105. Role and powers of the public prosecutor in the criminal procedure (multiple options possible):

Comments : Category: "To end the case by imposing or negotiating a penalty or measure without requiring a judicial decision" refers to deferring criminal prosecution (opportunity principle).
"Other": a plea agreement may be concluded by the public prosecutor and the defendant from the moment of issuance of an order to conduct an investigation until the defendant states his position in relation to the charges at trial.

General comments : Category: "To end the case by imposing or negotiating a penalty or measure without requiring a judicial decision" refers to deferring criminal prosecution (opportunity principle).

106. (Modified question) Does the public prosecutor also have a role in:

Comments :

General comments : According to existing legal framework, a public prosecutor can be a procedural party in civil, misdemeanour and administrative cases. Under the conditions specified by the law, a public prosecutor can initiate misdemeanour procedure in front of the misdemeanour court, initiate procedure in front of commercial court for commercial delicts, file a lawsuit in front of a civil court, file an administrative claim in front of an administrative court, file an appeal in administrative proceedings (not in front of court), etc.

107. Cases processed by the public prosecutor - Total number of first instance criminal cases:

Comments : In the 2014 cycle we supplied data for both cases received in the reference year and the ones received in the previous years but handled by the public prosecutors during the ref. year, as this number gives a realistic picture of the amount of cases handled in the year. We have given in this cycle data on only new cases, as the question requires. For information, in 2014, there were 113194 newly received cases by the public prosecutor. As concerns cases concluded by a penalty or a measure imposed or negociated by the public prosecutor: greater use of opportunity and other simplified procedural forms pursuant to the National Judicial Reform Strategy, Strategic guideline no. 5.3.1.: wider implementation of the simplified procedural forms and institutes such as plea bargaining, implementation of the principle of opportunity in criminal prosecution and directing parties towards alternative dispute resolution methods (such as mediation) whenever allowed by legislative framework (activity: Broader application of actions based on the opportunity of criminal prosecution)

General comments :

107-1. (Modified question) If the guilty plea procedures exist, how many cases were brought to court by the prosecutor through this procedure?

Comments : During 2016, proposals of the Public Prosecutor or the defendant and his defense attorney to conclude the guilty plea agreement were made regarding 3447 defendants before the indictment was filed, and regarding 1548 defendants after the filing of the indictment. Out of the total number of proposals (4995), plea agreements were signed with 4934 defendants (not all proposals were accepted). (Republic Public Prosecution Office data). The RPPO does not differentiate between the filed proposals before the court procedure/during the court procedure.
The SCC supplied the number of cases during the court cases by calculating the total received cases in “SPC- sporazum o priznanju krivice – plea bargaining” registries for Basic and Higher Courts.
Variations between 2014 and 2016: the new Criminal Procedure Code, whose implementation started on 1.10.2013 for prosecutors’

offices of general jurisdiction, provides the possibility of signing the plea agreement for any criminal offense, regardless of stipulated sentence, which enabled signing of plea agreements in more cases. Furthermore, a plea agreement according to the new Code may be concluded by the public prosecutor and the defendant from the moment of issuance of an order to conduct an investigation until the end of trial, which also provides more opportunity for conclusion of plea agreements. During 2014, proposal of the Public Prosecutor or the defendant and his defence attorney to conclude this agreement was made regarding 1559 defendants before the indictment was filed, and regarding 955 defendants after the filing of the indictment. Out of that number of proposals (regarding 2514 defendants), plea agreements were concluded with 2054 defendants.

General comments : The Criminal Procedure Code, whose implementation started on 1.10.2013 for prosecutors' offices of general jurisdiction, provides the possibility of signing the plea agreement for any criminal offense, regardless of stipulated sentence, which enabled signing of plea agreements in more cases. Furthermore, a plea agreement according to the new Code may be concluded by the public prosecutor and the defendant from the moment of issuance of an order to conduct an investigation until the end of trial, which also provides more opportunity for conclusion of plea agreements. National Judicial Reform Strategy, Strategic guideline no. 5.3.1.: wider implementation of the simplified procedural forms and institutes such as plea bargaining, implementation of the principle of opportunity in criminal prosecution and directing parties towards alternative dispute resolution methods (such as mediation) whenever allowed by legislative framework (activity: Broader application of actions based on the opportunity of criminal prosecution)

108. Total cases which were discontinued by the public prosecutor:

Comments : Discontinuation by the public prosecutor is not possible because the offender could not be identified (not a basis for discontinuation)

General comments :

109. Do the figures include traffic offence cases?

Comments :

General comments : Criminal offences related to traffic are included, but not misdemeanour cases.

D2. Please indicate the sources for answering questions 91, 94, 97, 98, 99, 100, 101, 102, 107, 107-1 and 108.

Comments :

General comments : 107 and 107.1 – Republic Public Prosecutor`s Office

5.Career of judges and public prosecutors

5.1.Recruitment and promotion

5.1.1.Recruitment and promotion of judges

110. (Modified question) How are judges recruited?

Comments : Judges and deputy-prosecutors in Serbia are elected for the first time for a three-year term of office by the National Assembly among one or more candidates nominated respectively by the High Judicial Council (further HJC) or the State Prosecutorial Council (further SPC). After three years of service and upon high evaluation the judges and deputy-prosecutors are appointed to a permanent office respectively by the HJC and SPC.

According to the initial text of the Law (Article 40, paragraphs 8, 9 and 11) the HJC and SPC were obliged to select with priority the graduates of the Judicial Academy when proposing candidates for election. They could propose other candidates only if there were no JA graduates applying. By decision of the Constitutional Court as of 6 February 2014 (case No 497/2011) those provisions were declared unconstitutional.

Currently there exist two parallel ways of access to the career of a judge or a prosecutor:

-As a judicial or prosecutorial assistant
-As a graduate of the Judicial Academy Most of the candidates for appointment to the office of a judge or a prosecutor are judicial or prosecutorial assistants, which is the traditional (and still the principal in term of number of appointments) way of access to the judicial career.
The legal status and the functions of judicial and prosecutorial assistants are regulated by the Law on Organisation of Courts (Articles 57-64), respectively by the Law on Public Prosecution (Articles 117-121) and are generally identical.
Their number is determined by each court president or head of Public Prosecution Office (further PPO) for his/her court6, respectively PPO.
Selection and appointment is made by the court president, respectively the head of the PPO, usually among the judicial and prosecutorial interns. The law gives the latter the privilege of being permanently employed as judicial or prosecutorial assistants in case they pass the bar exam “with distinction”.
On the other hand, the HJC and SPC approve the number of “beneficiaries of initial training” to be admitted every year for initial training at the Academy (Article 26). The entrance exams and the graduation criteria are vaguely regulated by the Law. The Academy establishes its own procedures and criteria for admission of candidates (Article 31, paragraph 3) as well as for the final examination (Article 37, paragraph 4). The Selection Committee is appointed by the Program Council of the Academy (Article 32). During the initial training the trainees are assessed by the trainers and the mentors (Article 36) who are also appointed by the Academy.
The trainees are employed by the Academy for a period of 30 months during which they receive a salary amounting to 70 % of the basic salary of a basic court judge.
Recruitment and promotion reform remains one of the main reform areas within the Action Plan for Chapter 23: judicial independence, which calls upon adoption of a legal and institutional framework in acccordance with European standards (ex. See activities 1.1.3.1, 1.1.3.2), and that the Councils make decisions on election, promotion and dismissal of holders of judicial offices, according to the new criteria. Please see: https://www.mpravde.gov.rs/files/Report%20no.%204-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf .
The National Assembly passed the Law on Amendments to the Law on Judges, which was published in the Official Gazette of RS, No. 40 on 7 May 2015. By means of modifications and amendments to the Law on Judges rules have been prescribed on the basis of which the High Judicial Council would particularly evaluate the completed initial training at the Judicial Academy and determine the candidates’ competence and training for the first appointment to the judicial post in basic court and misdemeanor court verified in an exam organized by the High Judicial Council. The candidates who completed initial training with the Judicial Academy are exempted from the obligatory exam and the criteria for competence and qualification evaluation for judicial position is the final exam grade achieved in the basic training at the Academy. The rules also prescribe the time frame for the High Judicial Council approval of the programme and the method of passing of the exam provided by the law.

General comments : According to the Law on Judges, a citizen of the Republic of Serbia who meets the requirements for employment in State bodies, who is a law school graduate, who has passed the State judicial exam may be elected a judge. Other requirements for the election of a judge are qualification, competence and worthiness, as well as duration of work experience in the legal profession upon passing of the State judicial exam. Recruitment and promotion reform remains one of the main reform areas within the Action Plan for Chapter 23: judicial independence, which calls upon adoption of a legal and institutional framework in accordance with European standards (ex. See activities 1.1.3.1, 1.1.3.2), and that the Councils make decisions on election, promotion and dismissal of holders of judicial offices, according to the new criteria. Please see: https://www.mpravde.gov.rs/files/Report%20no.%204-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf.

110-1. Are there specific provisions for facilitating gender equality within the framework of the procedure for recruiting judges?

Comments : Article 46 of the Law on Judges stipulates that when electing a judge and proposing the election of a judge, discrimination on any grounds is prohibited. Also, the Rulebook on Criteria and Standards for the Evaluation of Expertise, Competence and Worthiness of Candidates for Judges who are Being Elected for the First Time (enacted by the HJC on 15th November 2016) prescribes that in the process of proposing a candidate for a judge who are being elected for the first time, discrimination on any grounds is prohibited.

General comments : Discrimination on any ground is prohibited in election and nominating for election of a judge.

111. Authority(ies) responsible for recruitment. Are judges initially/at the beginning of their career recruited and nominated by:

Comments : The Rulebook on Criteria and Standards for Evaluation of Expertise, Competence and Worthiness of Candidates for Judges who are being Elected for the First Time, enacted by the HJC on 15th November 2016, additionally establishes the program and manner of taking the exam which assesses the expertise and competence of candidates for judges, the authorities responsible for organizing and conducting the examination, manner of scoring and evaluation of the candidate, the manner of determining the final ranking of candidates, as well as other issues of importance for the proposal of candidates for judges who are being elected for the first time. The purpose of the Rulebook is to establish objective criteria and standards for assessing the expertise and competence of the candidates that are used in the procedure of proposing candidates for the judges who are being elected for the first time.
The High Judicial Council announces the open call for election for judges in the "Official Gazette of the RS" and the daily magazine "Politika", in order to fill vacant judicial positions in courts in the Republic of Serbia. The authorities competent for carrying out the examination based on which the expertise and competence of candidates for judges who are being elected for the first time are assessed are the Examination Committee and the Committee in charge of the complaints, appointed by the Council for each announced election. It should be noted, however, that at a session held on December 27, 2017, High Judicial Council decided to withdraw the proposal from October 24th and December 20th, 2017, of a decision to elect judges who were elected for the first time in Commercial Court in Belgrade, the Commercial Court in Zrenjanin, the Commercial Court in Leskovac, the Commercial Court in Kragujevac and in Administrative Court, bearing in mind the Decision of the Constitutional Court number: I Uo-215/2017. from December 26th 2017 - initation the procedure for establishing the illegality of the the Rulebook on criteria and standards for the evaluation of expertise, competence and worthiness of candidates for judges who are being elected for the first time, and ordered to suspend the execution of the individual acts and actions taken according this Rulebook.
Following the Decision of the Constitutional Court, a new HCC Rulebook on the Program and the Exam Procedure on Asssessment of the Competence and Capabilities of Candidates for Judges for the First-time Judges was enacted in order to harmonise the procedure according to the legal reasoning of the decision ("Official Gazette of RS” no. 7/2018 from 26 January 2018).

General comments : The National Assembly of the Republic of Serbia elects judges upon the proposal of the High Judicial Council. After the initial three-year term of office expires, the High Judicial Council elects the judge for a permanent tenure of office. Article 50 of the Law on Judges prescribes that in case of candidates for judges to be elected for the first time, in addition to qualification, competence and moral character, the High Judicial Council shall particularly take into consideration the type of jobs that the candidate performed after passing the State Judicial Exam. With regard to candidates coming from among judge's assistants, it is mandatory to obtain their performance evaluation. Before presenting its nominations, the High Judicial Council may conduct interviews with the candidates. The High Judicial Council shall propose to the National Assembly one or more candidates for each judge's position. The National Assembly shall elect a first-time elected judge from among the candidates nominated by the High Judicial Council. The latter elects judges to be appointed to permanent office. A first-time elected judge whose work during the first three-year term of office is assessed with 'performs the judicial duty with exceptional success' rating shall be elected to permanent office as mandatory. A first-time elected judge whose work during the first three-year term of office is assessed as 'not satisfactory' may not be appointed to permanent office. Every decision on the election must be reasoned and published in the 'Official Gazette of the Republic of Serbia'.

112. Is the same authority (Q111) competent for the promotion of judges?

Comments : The High Court Council

General comments : The High Judicial Council elects judges for permanent tenure of judicial office; decides on the termination of judicial office; proposes to the National Assembly candidates for first election of judges for a three-year term of office; proposes to the National Assembly election and dismissal of the president of the Supreme Court of Cassation and courts presidents; jointly with the State Prosecutorial Council proposes candidates for the Constitutional Court judges; decides in the procedure of the judges and court presidents performance evaluation; determines composition, duration and termination of the term of office of disciplinary bodies' members; appoints members of such bodies and regulates the manner of work and decision-making in these bodies; decides on legal remedies in a disciplinary proceeding; decides on the transfer, appointment and objection to the suspension of judges; determines the number of judges and lay-judges for each court; passes the Code of Ethics; performs tasks in relation to implementation of the National Judiciary Reform Strategy; cooperates with judicial councils of other states and international organisations and performs other tasks

pursuant to the law. The Council performs the tasks of judiciary administration, as follows: passing instructions for compilation of reports on the work of courts; setting general guidelines for internal organisation of courts; maintaining personal sheets of judges, lay-judges and court staff; proposing part of the budget for courts' operating expenditures, save for the expenditures for court staff and maintenance of equipment and buildings, same as allocation of such funds; performing oversight of the intended spending of budgetary funds and of the financial and material operation of courts. At its session held on 13 January 2016 the Council passed the Decision amending the Rules of Procedure of the High Judicial Council ("Official Gazette of RS", No. 4/16). The amendments primarily refer to improved transparency of the Council's work. Thereby Council sessions are envisaged to be public and minutes of the session to be published on the Council website. Ethical Board was also established as a working body of the Council. At its session held on 8 March 2016 Code of Ethics of the members of the High Judicial Council was passed ("Official Gazette of RS, No. 26/16). The Council has, at its session held on 25 October 2016 passed the Decision on supplements to the High Judicial Council Rules of Procedure published in the "Official Gazette of RS", No. 91/16. This Decision laid down the procedure of public response of the High Judicial Council in cases of political influence on the work of the judiciary. In the period September 2015 - September 2017 the EU Twinning project "Strengthening Capacities of the High Judicial Council and the State Prosecutorial Council" aims to contribute to the improvements in the area of the HJC and SPC organisational structure and working procedures relevant for the execution of duties of these bodies, as well as to strengthening of their capacities for better performance of specific administrative functions/tasks, such as strategic and budget planning, human resource management, project management and internal audit. The project will also focus on strengthening the council's capacity in evaluation and promotion of judges, prosecutors and deputy prosecutors, strengthening councils' disciplinary accountability, Code of Ethics related activities, as well as improving the relationships with civil society. https://vss.sud.rs/en/twinning-project-eu

112-1. Are there specific provisions for facilitating gender equality within the framework of the procedure for promoting judges?

Comments : Article 3 of the Rulebook on Criteria and Standards for Evaluation of Expertise, Competence and Worthiness for the Election of Judges with Permanent Tenure to Another or Higher Court and on Criteria for Proposing Candidates for Court Presidents ("Official Gazette of RS", No 94/2016) prescribes that in the election of judges with permanent tenure in another or higher court, as well as in the process of proposing candidates for court presidents, discrimination on any grounds is prohibited.

General comments :

113. What is the procedure for judges to be promoted? (multiple answers possible)

Comments : The Rulebook on Criteria and Standards for Evaluation of Expertise, Competence and Worthiness for the Election of Judges with Permanent Tenure to Another or Higher Court and on Criteria for Proposing Candidates for Court Presidents, enacted by the HJC on 15th November 2016, provides that the High Judicial Council shall announce the election for judges in the "Official Gazette of the RS" and the daily magazine "Politika", in order to fill vacant judicial positions in courts in the Republic of Serbia. The Council shall then decide on the establishment of one or more committees consisting of three members from the ranks of judges - elected members of the Council.
Work of all judges and presidents of the courts is subject to regular evaluation. Performance evaluation involves all aspects of a judge's work and/or work of a president of the court, and represents the basis for the election, mandatory training of judges, and dismissal. Evaluation is conducted based on publicised, objective and uniform criteria and standards, in a single procedure ensuring the participation of the judge and/or president of the court whose performance is being evaluated. The criteria, standards, and procedure for the performance evaluation of judges and/or president of the courts are pursuant to the Law on Judges and Law on HJC set by the High Judicial Council through a bylaw enacted in July 2014, applicable as of 1 July 2015.

General comments :

113-1. Please indicate the criteria used for the promotion of a judge? (multiple answers possible)

Comments : In accordance with the Law on Judges, after passing of the bar exam, work experience in legal profession is required:
- two years for a judge of a misdemeanor court;
- three years for a judge of a basic court;

- six years for a judge of a higher court, a commercial court, and the Misdemeanor Court of Appeal;
- ten years for a judge of a court of appeal, the Commercial Court of Appeal, and the Administrative Court;
- twelve years for a judge of the Supreme Court of Cassation.

The High Judicial Council on a session held on 02.07.2009 passed the Decision on criteria and standards for assessing the qualifications, competence and worthiness of judges and court presidents. Considering that High Judicial Council on a session held on 08.05.2015 adopted amendments on Rulebook on the criteria, standards and procedure for the performance evaluation of judges and/or court presidents, it formed a working group to establish new criteria and standards for judges' election, having in mind provisions adopted in the Rulebook. The Rulebook on Criteria and Standards for Evaluation of Expertise, Competence and Worthiness for the Election of Judges with Permanent Tenure to Another or Higher Court and on Criteria for Proposing Candidates for Court Presidents was enacted on 15th November 2016 by the High Court Council. The provision of Article 4 of the Rulebook envisages the following criteria and standards: expertise, which implies possession of theoretical and practical knowledge necessary to perform the judicial function, competence which includes skills that enable the efficient application of specific juridical knowledge in solving cases, whereas the standard for assessing the expertise and the competence for the election of judges with permanent tenure to another or higher court is performance evaluation grade (results of work), in the last three years. Worthiness shall mean ethical qualities a judge should possess and behavior in accordance with those qualities, and it shall be assumed.

General comments :

114. (Modified question) Is there a system of qualitative individual assessment of the judges' work?

Comments : According to the Law on Judges, performance evaluation of judges and court presidents is evaluated by commissions of the High Judicial Council. The commissions are composed of three members, whereby judges of higher instance evaluate the work of judges and court presidents at lower instance. Objections to evaluation are decided on by the commission composed of three members appointed by the Council from among judges of the Supreme Court of Cassation (article 33). Performance of judges with tenure of office and court presidents is regularly evaluated once in three years and of judges elected for the first time once a year. The Council adopted a Rulebook for the evaluation of the work of judges and court presidents, which is being applied as of 1st July 2015.

General comments :

5.1.2.Status, recruitment and promotion of prosecutors

115. What is the status of prosecution services?

Comments : Constitutional and Law definition is "autonomous". It's rightfully stated that on some occasion's legal framework is using word "independence". Yet, framework is using "autonomous" in the first place. Difference lays in the meaning of the subject matter. Namely, Public Prosecutors and Deputies are independent towards everyone outside of Prosecution service, while they are autonomous inside of it, since higher ranked Prosecutor, in accordance with the Law, can issue mandatory instruction for case management. This kind of instructions is not possible in the Court system, thus the difference.

General comments : In accordance with the Constitution, the Public Prosecutor's Office shall be an independent State body which shall prosecute the perpetrators of criminal offences and other punishable actions, and take measures in order to protect constitutionality and legality. In accordance with the Law on Public Prosecution, public prosecutors and deputy public prosecutors are independent in the performance of their competences. All forms of influence by the executive and the legislative authorities on the work of the public prosecution and its activity in cases, attempted by using public office, the public information media and any other means, which may threaten the independence of the work of a public prosecution, is prohibited. Namely, public prosecutors and deputies are independent towards everyone outside of the prosecution service, while they are autonomous inside of it, since higher ranked prosecutors, in accordance with the Law, can issue mandatory instructions for case management. This kind of instructions is not possible in the Court system.

115-1. Does the law or another regulation prevent specific instructions to prosecute or not, addressed to a prosecutor in a court.

Comments :

General comments : According to the Law on Public Prosecution, public prosecutors and deputy public prosecutors are independent in the performance of their competences. All forms of influence by the executive and the legislative authorities on the work of the public prosecution and its activity in cases, attempted by using public office, the public information media and any other means, which may threaten the independence of the work of a public prosecution, are prohibited. Namely, public prosecutors and deputies are independent towards everyone outside of the prosecution service, while they are autonomous inside of it, since higher ranked prosecutors, in accordance with the Law, can issue mandatory instructions for case management.

116. How are public prosecutors recruited?

Comments : In accordance with the Law on Public Prosecution, a citizen of the Republic of Serbia may be elected as a public prosecutor and deputy public prosecutor if he/she fulfils the general requirements for employment in government authorities, is a law school graduate with a passed Bar Exam, and is worthy of the office of a public prosecutor. In addition to general requirements, the person must have experience in the legal profession after passing the Bar Exam, as follows: - four years for a basic public prosecutor, and three years for a deputy basic public prosecutor; - seven years for a higher public prosecutor, and six years for a deputy higher public prosecutor; - ten years for an appellate public prosecutor and a public prosecutor with special jurisdiction, and eight years for a deputy appellate public prosecutors and deputy public prosecutor with special jurisdiction; - twelve years for the Republic Prosecutor and eleven years for Deputy of Republic Prosecutor. In the process of proposing candidates for the election of deputy public prosecutors for the first time, the SPC applied the Rulebook on criteria and standards for evaluation of qualification, competence and worthiness of candidates when proposing deputy public prosecutors elected for the first time (“Official Gazette of the Republic of Serbia”, No. 80/16. Furthermore, at the session of the State Prosecutorial Council held on 7th of September 2017 the new Rulebook on the program and rules for taking the exam for the assessment of qualifications and competencies of candidates for the first election to the position of a deputy public prosecutor was adopted (“Official Gazette of the Republic of Serbia”, No. 82/2017, from 8th of September 2017). Provisions of the new Rulebook define program and rules for taking the anonimous exam, as well as criteria for assessment of qualification and competencies of a candidate. The Rulebook is in line with Article 77a of the Law on Public Prosecution Office, and it stipulates that candidates who passed initial education at the Judicial Academy do not need to take the exam, conducted by the examination commission of the State Prosecutorial Council. The Rulebook foresees transparency of the election procedure also by setting the obligation to post the exam results at the Council web page. According to Law on Public Prosecution Office, SPC has a competence to elect first-time deputy prosecutors to a permanent function, after a three-years period.
Regarding election of deputy public prosecutors to a higher position (promotion) and election of public prosecutors/heads of public prosecutor’s offices, according to the Law on Public Prosecution Office, SPC is obliged to conduct election process in accordance with the Rulebook on criteria and measures for evaluation of professionalism, competence and worthiness of the candidates in proceedings of proposing and election of holders of public prosecutorial function (adopted on 14th May 2015.)

General comments : In accordance with the Law on Public Prosecution, a citizen of the Republic of Serbia may be elected by the Parliament public prosecutor and deputy public prosecutor if he/she fulfils the general requirements for employment in government authorities, is a law school graduate with a passed Juridical Examination, and is worthy of the office of a public prosecutor. In addition to the general requirements, the person must have experience in the legal profession after passing the Juridical Examination, as follows: - four years for a basic public prosecutor, and three years for a deputy basic public prosecutor; - seven years for a higher public prosecutor, and six years for a deputy higher public prosecutor; - ten years for an appellate public prosecutor and a public prosecutor with special jurisdiction, and eight years for a deputy appellate public prosecutors and deputy public prosecutor with special jurisdiction; - twelve years for the Public Prosecutor and eleven years for the Deputy Public Prosecutor. Evaluation of the previous work is performed, and programs aimed at improving the work of public prosecutors' offices are presented. For candidates who are not from the public prosecutor services or the court services, a written exam must be passed.

117. Authority(ies) responsible for recruitment. Are public prosecutors initially/at the beginning of their career recruited by:

Comments : According to the Constitution, the Law on Public Prosecution Office and the Law on State Prosecutorial Council, the SPC elects the first-time deputy prosecutors to a permanent function and deputy prosecutors to a higher position (promotion), whereas it

proposes to the National Assembly for final decision the candidates for the first-time deputy prosecutors and submits to the Government the (rank) list of candidates for public prosecutors (heads of the public prosecution offices) for their proposal to the National Assembly for final decision. According to Law on Public Prosecution Office, SPC has a competence to elect first-time deputy prosecutors to a permanent function, after a three-years period.
Upon proposal of the State Prosecutorial Council, the National Assembly elects for a deputy public prosecutor a person elected for the first time to the position for a period of three years.
After conducting procedure described in q.116, State Prosecutorial Council submits to the Government the list containing one or more candidates for election to a public prosecutor position. The Government proposes to the National Assembly one or more candidates for election to a public prosecutor position from the list of candidates determined by the State Prosecutorial Council. Upon the Government proposal, the National Assembly elects a public prosecutor to the tenure of 6 years and he/she can be re-elected. If a public prosecutor does not get re-elected to the same position after expiration of its tenure or the position of a public prosecutor has expired upon a personal request, he/she is elected as a deputy public prosecutor.

General comments : The election of public prosecutors and deputy public prosecutors is announced by the State Prosecutorial Council. The applications have to be submitted to the State Prosecutorial Council within 15 days from the day of publishing of the announcement in the “Official Gazette of the Republic of Serbia”.
The State Prosecutorial Council submits to the Government the list containing one or more candidates for election to a public prosecutor position. The Government proposes to the National Assembly one or more candidates for election to a public prosecutor position from the list of candidates determined by the State Prosecutorial Council. Upon the Government proposal, the National Assembly elects a public prosecutor to the tenure of 6 years and he/she can be re-elected. If a public prosecutor does not get re-elected to the same position after expiration of its tenure or the position of a public prosecutor has expired upon a personal request, he/she is elected as a deputy public prosecutor. Upon proposal of the State Prosecutorial Council, the National Assembly elects for a deputy public prosecutor a person elected for the first time to the position for a period of three years. The State Prosecutorial Council elects deputy public prosecutors for permanent position, within the same or different prosecution office. The State Prosecutorial Council also decides on election of deputy public prosecutors, who are at permanent position, into other or higher public prosecution office, i.e. decides on their promotion.

117-1. Are there specific provisions for facilitating gender equality within the framework of the procedure for recruiting prosecutors?

Comments :

General comments :

118. Is the same authority (Q.117) formally responsible for the promotion of public prosecutors?

Comments :

General comments :

119. What is the procedure for prosecutors to be promoted? (multiple answers possible)

Comments : Evaluation of previous work, and for candidates for public prosecutors/heads of offices also the presentation of the program to improve the work of the Public Prosecutor’s Office.

General comments :

119-1. Are there specific provisions for facilitating gender equality within the framework of the procedure for promoting prosecutors?

Comments :

General comments :

119-2. Please indicate the criteria used for the promotion of a prosecutor:

Comments : The Program aimed at improving the work of public prosecutors' offices for the heads of offices.

General comments :

120. Is there a system of qualitative individual assessment of the public prosecutors' work?

Comments :

General comments :

5.1.3.Mandate and retirement of judges and prosecutors

121. Are judges appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?

Comments : 65 years of age / 67 for judges of the Supreme Court of Cassation

General comments : In accordance with the Law on Judges, a judge is appointed to office for an undetermined period, with the function lasting continuously from the first election to judge's office until retirement – until s/he turns 65 years of age, ex. lege, i.e. 67 for judges of the Supreme Court of Cassation. Exceptionally, an individual elected to a judge's office for the first time is elected for a period of three years. Following the election, a judge's function may terminate under conditions provided under the Law on Judges - a judge's office ends at the request of the judge, with retirement age, due to a permanent loss of working ability, if not elected to permanent office, or in case of dismissal. A judge is dismissed if convicted for an offence carrying imprisonment sentence of at least six months or for a punishable act that demonstrates that he/she is unfit for the judicial function, in case of incompetence or due to a serious disciplinary offence.

121-1. Can a judge be transferred (to another court) without his/her consent:

Comments : The High Judicial Council, in 2016 passed 14 decisions on the transfer of judges, as follows: 12 decisions on the transfer of basic court judges, one decision on the transfer of misdemeanor court judge, and one decision on the transfer of commercial court judge. The High Judicial Council passed six decisions on the assignment of a judge to another court. Pursuant to Article 13 paragraph 5 of the Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime, Corruption and Other Severe Criminal Offences, the High Judicial Council assigned one judge to the Special Department of the Higher Court in Belgrade to a period of one year.

General comments : Irremovability of judges is one of the basic principles proclaimed by the Law on Judges. Article 19 Paragraph 1 of the Law on Judges provides that a judge may be transferred or assigned from one court to another, or to another state authority, institution, or international judicial organisation only with his/her consent. The transfer may be done with consent of the judge, to another court of the same type and instance, should there be a need for an urgent filling up of a judge vacancy, which cannot be resolved by election or referral of a judge, with the obtained consent of presidents of both courts. Such consent shall be given in writing and must precede the decision on transfer or assignment. Exceptionally, a judge may be transferred without his/her consent to another court in case of the abolishing of a court, abolishing of the prevalent part of the jurisdiction of the court to which he/she is elected, leading to a reduction of the number of cases, on the basis of the decision of the High Judicial Council.

122. Is there a probation period for judges (e.g. before being appointed "for life")? If yes, how long is this period?

Comments :

General comments :

123. Are public prosecutors appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?

Comments :

General comments : The tenure of public prosecutors (heads of offices) is limited to 6 years and is re-electable. The tenure of deputy public prosecutors (who are also holders of public prosecutorial function) is permanent, until meeting conditions for retirement at the age of 65 (or on completing 40 years of pensionable years of service), but the tenure could expire earlier by dismissal, upon personal request, when labour capability is permanently lost or, on the contrary, it can be extended for two another years, i.e. until 67 years, only with the consent of the deputy and with regard to cases already initiated.

124. Is there a probation period for public prosecutors? If yes, how long is this period?

Comments :

General comments : The trial period is related only to deputy public prosecutors.

125. If the mandate for judges is not for an undetermined period (see question 121), what is the length of the mandate (in years)? Is it renewable?

Comments :

General comments :

126. If the mandate for public prosecutors is not for an undetermined period (see question 123), what is the length of the mandate (in years)? Is it renewable?

Comments : Public prosecutors have a mandate of 6 years, renewable. Deputy public prosecutors are elected for an unlimited period of time, after the probationary period.

General comments :

5.2.Training

5.2.1.Training of judges

127. Types of different trainings offered to judges

Comments : Please see comment to Q110 for more information on initial training.

General comments : A Constitutional Court decision was passed regarding the Act on Judicial Academy provision related to election of the Academy candidates. Therefore, initial training is no longer compulsory prerequisite for election.

128. Frequency of the in-service training of judges:

Comments :

General comments : General training of judges and public prosecutors is offered regularly according to the annual training program adopted by the Programme Council of the Judicial Academy. Different fields of training are chosen based on needs (familiarisation with newly adopted legislation, amendments) and the perceived problems in practice. Specialized training is required by law in two areas, upon which judges, public prosecutors and lawyers are issued special certificates - training in handling criminal cases with minors and in family law cases. It is compulsory for judges who are to be assigned such cases, i.e. not for all judges. In addition, the Judicial Academy has developed programs for specific positions in courts for court presidents, court managers and court spokespersons. Due to the fact that the training has been organised in a large number, it is now organised on a needs basis, also depending on whether project support exists in certain areas.

5.2.2.Training of prosecutors

129. Types of different trainings offered to public prosecutors

Comments : In-service training for management functions of the court - Previously this training was designed and offered while there was support by the SPP USAID project, and subsequently was not proposed for heads of prosecution offices.

General comments :

130. Frequency of the in-service training of public prosecutors :

Comments : Training is organised on a needs basis, also depending on whether project support exists in certain areas (ex. for management functions, IT).
In-service training for specialised functions - When new competences are introduced by new legislation or when requested by the RPPO or the specialized prosecution office itself, the Academy is providing training.
In-service training for management functions of the court (Previously this training was designed and offered while there was support by the SPP USAID project, and after that was not proposed for heads of prosecution offices.

General comments :

131. Do you have public training institutions for judges and / or prosecutors?

Comments :

General comments : The Judicial Academy of the Republic of Serbia is established in 2010 by the Law on Judicial Academy (amended in 2015), with a broad legislative mandate including organizing admission exams, conducting initial and continuing (in-service) training for judges and prosecutors, judicial and prosecutorial staff and other legal professions such as enforcement agents and notaries.

131-0. (Modified question) If yes, what is the budget of such institution(s)?

Comments : The stated budget includes state budgetary resources (RSD 246,736,000) and foreign donations (RSD 33,879,000).

General comments :

131-1. If judges and/or prosecutors have no compulsory initial training in such institutions, please indicate briefly how these judges and/or prosecutors are trained?

Comments :

General comments : The candidates who successfully pass the admission exam to the JA become the users of the initial training which lasts for 30 months. The initial training is composed of practical (internship at the courts and prosecution office) and theoretical education (seminars, lectures and workshops devoted to various legal topics), with knowledge and skill testing. The idea of the initial training is to prepare candidates for performing judicial function after their appointment (election). In the past three years (2014-2016), 196 judges and deputy-prosecutors were appointed (elected) at first instance level (the basic courts, the misdemeanor courts and deputies of basic prosecutors), out of which only 21 (10.7 %) have graduated the Judicial Academy. The remaining 175 (89.3 %) were selected among the judicial and prosecutorial assistants. Those 175 appointments represent 9.7 % of the total number of judicial and prosecutorial assistants. On the other hand, 76% of the JA graduates from the past three years have not been appointed (elected) yet. (as stated in the Assessment Report on Judicial Training, drafted as part of the TAIEX Peer Review Mission conducted in the period 7-9 June 2017).
On the other hand, the continuous training is prepared and conducted for judges and prosecutors, judicial and prosecutorial staff and other legal professionals. Therefore, even though the initial training is not obligatory, judges and prosecutors who are already in the functions are trained through the continuous training organized by Judicial Academy. The training is voluntary in principle although training on some topics may become mandatory if requested by law or by decision of the HJC or SPC. There is neither a required nor a guaranteed minimum of training per year. Participation in continuing training is neither considered by the law as a criterion for the evaluation of judges and prosecutors by the HJC or SPC nor does the JA have a role in it.
The Rulebook on the Criteria, Standards and Procedure for Evaluation of Judicial Assistants' Performance, has been enacted by the High Judicial Council on 29 March 2016 and effective as of 1 June 2016 with the aim to objectively and impartially determine the work performance of judicial assistants, advancement, maintenance and enhancement of expertise and capabilities of judicial assistants, stimulate judicial assistants in achieving best possible work results, and enhance efficiency of courts. Performance of a judicial assistant shall be evaluated once a year. Judicial assistant shall be evaluated for the period from 1 January to 31 December, whereas the results achieved in executing tasks and work objectives shall be evaluated on a semiannual basis. Opinion on the judicial assistant performance together with the proposed grade shall be issued by the session of the department which the judicial assistant has been assigned to, or

judge or council judicial assistant has been working with, unless they have been assigned to the court department- grade proponent. Judicial assistant's performance shall be evaluated by the court president, after obtaining the opinion of the grade proponent. Court president shall pass the decision determining the judicial assistant's performance grade by the end of February of the current year.

5.3.Practice of the profession

5.3.1.Salaries and benefits of judges and prosecutors

132. Salaries of judges and public prosecutors on 31 December of the reference year:

Comments : Judges' salary is determined by the Law on Judges, the net salary is the product of the grade level (dependent on the type of court) and the base determined by the Law on the Budget of the Republic of Serbia. The data provided relates to: Gross amount, pertaining to the taxes and contributions falling on both the employee and the employer. For judges, instead of giving only the basic salary, the actual salary received by judge in the first instance basic court (5 years' experience) is given and in the Supreme Court of Cassation experienced judge with 25 year's work experience and increase of the basic salary by 30%, is provided.
For prosecutors the average salary for a basic public prosecutor was given and the average salary for the deputy State Prosecutors, who also receive an increase of the basic salary of 30%.
Remuneration of the Republic Public Prosecutor (Supreme Court level): the indicated amounts had a 10% reduction compared to 2014.
Gross annual salary of public prosecutors at the beginning of career: the discrepancy between 2014 and 2016 is due to the reduction of salaries in the public sector by 10%, as well as the limit on the additional pay for preparedness and overtime work, which was introduced in 2015 due to budget constraints.

General comments :

133. Do judges and public prosecutors have additional benefits?

Comments :

General comments :

134. If "other financial benefit", please specify:

Comments :

General comments :

135. Can judges combine their work with any of the following other functions/activities?

Comments : Under the Law on Mediation in Dispute Resolution ("Official Gazette of RS" No. 55/2014), which has become applicable on 1 January 2015, Serbian judges may mediate outside of working hours of the court but may not be paid for their services as mediators. Instead, pursuant to the amendments and supplements to the Rulebook on the Criteria, Standards, Procedures and Authorities for Evaluating the Work of Judges and Court Presidents ("Official Gazette of RS", no. 81/2014, 142/2014, 41/2015 and 7/2016) which are applicable from 15 July 2015, new criteria in evaluating judges' quantity of work have been introduced: two cases which are concluded with an agreement on resolving the dispute through mediation are counted as one case solved on the merits. As a limited number of judges (10) have by 2016 showed initiative to register as mediators, the provisions of this rulebook are being reconsidered to allow for greater incentives to perform mediation by judges.

General comments : A judge may not hold office in authorities which enact regulations, in executive public authorities, public services, and bodies of autonomous provinces and local self-management units; may not be members of political parties, engage in public or private paid work, provide legal services or provide legal advice for compensation. By exception, a judge may be a member of the governing body of the institution responsible for judicial training, in accordance with a decision of the High Judicial Council, pursuant to another law. The High Judicial Council shall determine the offices and engagements that are contrary to the dignity, violate the autonomy, or damage the reputation of a court in accordance with the Ethical code. A judge may outside office hours engage without explicit permission in paid educational and scientific activities. In cases determined by the law, a judge may perform educational and scientific work during working hours. A judge shall notify in writing the High Judicial Council of each service or engagement that may

possibly be incompatible with the judicial function. The High Judicial Council shall inform the president of the court and the judge of the incompatibility of service or work with the judicial function. The President of the Court shall file a disciplinary complaint as soon as he/she learns that the judge performs a service or business or makes procedures that could be incompatible with his function.

137. Can public prosecutors combine their work with any of the following other functions/activities?

Comments : The activities specified as that they could be performed must be in line with the Constitution, Article 65 of the Law on Public Prosecution Office and the Code of Ethics of Public Prosecution Office. Article 65 of the Law on Public Prosecution Office stipulates that public prosecutors and deputy public prosecutors cannot hold a position in legislative authorities and executive authorities, public services and authorities of provincial autonomy and units of local self-government, cannot be members of political parties, to engage in publicly or privately paid businesses, and provide legal services or advices for a fee. Exceptionally from paragraph 1 of the Article, a public prosecutor, i.e. a deputy public prosecutor, can be member of an authority managing an institution competent for education in judiciary, based on a decision of the State Prosecutorial Council, in line with a special law. Other positions, affairs or private interests contradicting dignity and independence of public prosecution office or harming his/her reputation are also incompatible with prosecutorial position. The State Prosecutorial Council is determining other positions and affairs contradicting dignity, i.e. harming independence or damaging reputation of public prosecution office. After working hours, a public prosecutor and a deputy public prosecutor can engage in educational and scientific activities for fee, without special approval. In situations defined by the law, within his/her working hours, a public prosecutor and a deputy public prosecutor may perform educational and scientific activities. They can take part in activities with civil, religious or humanitarian character if those activities do not interfere with performing of the position or if it could negatively reflect to their impartiality. Public prosecutors and deputy public prosecutors are obliged to restrain themselves from participation at political activities and campaigns. Public prosecutors and deputy public prosecutors may be members and may participate at work of professional or other organizations dealing with protection of their professional interests and undertaking of measures for preservation of independence in work, in line with the law. Public prosecutors and deputy public prosecutors are obliged to restrain themselves from giving statements in public or privately that could cause doubt into their impartiality, and especially they cannot give comments on cases where they are proceeding or where they could proceed.

General comments :

139. Productivity bonuses: do judges receive bonuses based on the fulfilment of quantitative objectives in relation to the delivery of judgments (e.g. number of judgments delivered over a given period of time)or cases examination?

Comments :

General comments :

5.4.Disciplinary procedures

5.4.1.Authorities responsible for disciplinary procedures and sanctions

140. Who is authorised to initiate disciplinary proceedings against judges (multiple options possible)?

Comments : Anyone may file a complaint based on which disciplinary proceedings are formally initiated by the HJC disciplinary prosecutor.
A judge is dismissed when s/he is convicted of a criminal offense for which s/he is sentenced to unconditional imprisonment of at least six months or of a punishable offense rendering him/her unworthy of judicial office, in the case of unprofessional performance of judicial function, or for committing a serious disciplinary offense.

General comments :

141. Who is authorised to initiate disciplinary proceedings against public prosecutors: (multiple

options possible):

Comments : Anyone may file a complaint/disciplinary charges based on which disciplinary proceedings can be formally initiated by the SPC Disciplinary Prosecutor before the Disciplinary Commission.

General comments :

142. Which authority has disciplinary power over judges? (multiple options possible)

Comments :

General comments :

143. Which authority has disciplinary power over public prosecutors? (multiple options possible):

Comments : A Disciplinary Prosecutor initiates the proceedings before the Disciplinary Commission

General comments :

5.4.2.Number of disciplinary procedures and sanctions

144. Number of disciplinary proceedings initiated during the reference year against judges and public prosecutors. (If a disciplinary proceeding is undertaken because of several reasons, please count the proceedings only once and for the main reason.)

Comments : Judges -"Other": Disciplinary offenses in accordance with Article 90 of the Law on Judges: Paragraph 3 - undue delay in drafting decisions, Paragraph 7 - undue delay of proceedings, Paragraph 10 - disregard of working hours.

General comments : The legal framework for the establishment of disciplinary responsibility of judges in Serbia consists of: the Law on Judges (Official Gazette of RS, No. 116/08, 58/09 - Decision of the CCS, 104/09, 101/10, 8/12 - Decision of the CCS, 121/12, 124/12 - Decision of the CCS, 101/13, 111/14 - Decision of the CCS 117/14, 40/15, 63/15 – Decision of the CCS, and 106/15) and the Law on the Judicial Council (Official Gazette of RS, No. 116/08, 101/10, 88/11 and 106/15), the by-law of the High Judicial Council (hereinafter HJC) – the Rulebook governing the proceedings for determination of disciplinary accountability of judges and courts presidents (hereinafter referred to as the: Disciplinary Rulebook) (“Official Gazette of RS”, No. 116/08, 101/10, 88/11 and 106/15). They regulate disciplinary bodies, proceedings, offences and sanctions. It is noteworthy that the Disciplinary Rulebook from 2015 regulates disciplinary accountability of court presidents, which is a novelty in relation to the Rulebook from 2010.
In addition, there are other laws that are important for disciplinary accountability of judges, both in substantive and procedural sense. First of all, the HJC has adopted the Code of Ethics, which is relevant in the substantive sense, since it lays down the principles and rules of conduct of judges the Law on Judges relies upon in prescribing disciplinary offences under Article 90 (1). In procedural terms, the Criminal Procedure Code (hereinafter referred to as the: CPC) is relevant, as the Disciplinary Rulebook stipulates its subsidiary application in determining disciplinary accountability of judges, , in case of any issues which are not regulated under the Rulebook or under the Law on Judges (Article 2). Finally, the Criminal Code may be relevant in disciplinary proceedings as well, with the institutes that may be significant because of the close relation between the disciplinary proceedings and the criminal matter. Therefore, rightfully, some experts believe that the Disciplinary Rulebook should be amended by introducing a subsidiary application of the Criminal Code. However, the aforementioned was not introduced upon the amendment of the Rulebook.
The Law on Judges determines disciplinary bodies - the Disciplinary Prosecutor and the Disciplinary Commission (Art. 93 (1)). These bodies shall be established by the HJC, appointing members from among judges (Art. 93 (1) and (2)). In addition, the HJC determines the requirements for appointment, terms of office and the manner of termination of the office of disciplinary bodies (Art. 93 (3) of the Law on Judges and Art. 13 of the Law on HJC). Their modus operandi and the manner of decision-making are governed by the HJC Disciplinary Rulebook, in accordance with the Law on Judges and the Law on HJC (corresponding Article 93 (3) and Article 13). The term of office envisaged for disciplinary bodies is four years (Art. 5 (2) and 9 (4) of the Disciplinary Rulebook). The HJC has a role in the second-instance disciplinary proceedings (Art. 97 (2) of the Law on Judges, Art. 13 of Law on HJC and Art. 36 of the Disciplinary Rulebook). Disciplinary Prosecutor decides on the initiation of a disciplinary proceeding, acting on the basis of a disciplinary report (Art. 5 (1) of the Disciplinary Rulebook). S/he performs the duties directly or through on of the three deputies (Art. 6 (1) and 7 (1) of the

Disciplinary Rulebook). The Disciplinary Commission conducts disciplinary proceedings and decides on the proposal of the Disciplinary Prosecutor to initiate the proceedings (Art. 9 (3) of the Disciplinary Rulebook). The Commission is composed of a Chairman and two members, who have deputies (Art. 9 (1) of the Disciplinary Rulebook). Judges who have been in office for at least fifteen years and have a clear disciplinary record may be appointed as members of disciplinary bodies (Art. 11 (2) and (4) of the Disciplinary Rulebook). The same requirements are set forth by the Rulebook for deputy members of the Disciplinary Commission (Art. 11 (4)), except that for the Deputy Disciplinary Prosecutor a shorter period in office is required (ten-year term) (Art. 11 (3)). Members of disciplinary bodies cannot be appointed from among court presidents (Art. 11 (5) of the Disciplinary Rulebook). Disciplinary Rulebook contains provisions governing recusal (Art. 13), suspension (Art. 14), discharge from duty (Art. 15) and dismissal (Art. 16-20) thereof.
In May 2016 OSCE Mission to Serbia published an analysis of the case law and practice in actions of disciplinary bodies of the High Judicial Council. The analysis was conducted in cooperation with the High Judicial Council and represents an overview of legislative framework and international standards, analysis of practical application of different provisions and overview of recommendations for improvement of the system of disciplinary responsibility of judges in the Republic of Serbia. The analysis “The Case Law and Practice in Disciplinary Responsibility of Judges in Serbia” may be found on the following link: https://www.osce.org/mission-to-serbia/263891.
The OSCE Mission to Serbia also published an analysis of the case law and practice in actions of disciplinary bodies of the State Prosecutorial Council.

145. Number of sanctions pronounced during the reference year against judges and public prosecutors:

Comments : Public prosecutors - "Other": public warning

General comments :

E3. Please indicate the sources for answering questions 144 and 145:

Comments :

General comments : Annual Report of Disciplinary Prosecutor

6.Lawyers

6.1.Profession of lawyer

6.1.1.Status of the profession of lawyers

146. Total number of lawyers practising in your country:

Comments : The total number of lawyers in the Republic of Serbia on 30 January 2017 pursuant to Registry of Lawyers of the Bar Association of Serbia (Serbian lawyers are members of their local/regional bar and the national bar association).

General comments :

147. Does this figure include “legal advisors” who cannot represent their clients in court (for example, some solicitors or in-house counsellors)?

Comments :

General comments :

148. Number of legal advisors who cannot represent their clients in court:

Comments :

General comments :

149. (Modified question) Do lawyers have a monopoly on legal representation in (multiple options

are possible):

Comments :

General comments : In accordance with the Law on Civil Procedure, a party may be represented in extraordinary legal remedy procedure – Review (in Serbian: Revizija) exclusively by a lawyer, except when a party him/herself is a lawyer (Arts. 85, 410). A temporary legal representative may be appointed, under certain conditions, exclusively from a list of lawyers supplied by the relevant bar association (Art. 81).
The Criminal Procedure Code provides that lawyers have monopoly to be a detained suspect's/defendant's attorney (defence council – Arts. 69, 73, 77, 294 CPC). In proceedings for criminal offenses for which a punishment of imprisonment of up to five years is prescribed, the lawyer may be replaced by his/her trainee. The CPC prescribes cases of mandatory defence and defence ex officio, when a lawyer is appointed respecting the order from the list of lawyers supplied by the relevant bar association. A defendant may have in the process simultaneously up to five defense counsels, and it is considered that the defence is provided when one of the lawyers participates in the proceedings. The CPC also provides for the right of the victim to engage an attorney, exclusively from the ranks of lawyers (Arts. 50, 58, 59 CPC). A lawyer may also be appointed as an attorney of particularly vulnerable witnesses in criminal proceedings, if the public prosecutor or presiding judge deems it necessary for protection of the interests of the witness. In accordance with the Administrative Disputes Law a party who is not a legal person may be represented by an attorney who has full disposing capacity, except in the case of one of the extraordinary legal remedies – Request for review of the court decision (In Serbian: Zahtev za preispitivanje sudske odluke), when a party must be represented by a lawyer (Art. 50).
Certain specific sectorial legislation also provides for lawyer monopoly on legal representation. For example, the Tax Administration shall appoint an ex officio representative from among tax advisers and lawyers in certain cases provided by the law; representation of foreign natural or legal persons before the Republic of Serbia Intellectual Property Office is allowed only by lawyers or registered IP Agents; etc.

149-0. (New question) If there is no monopoly, please specify the organisations or persons that may represent a client before a court:

Comments :

General comments : In accordance with the Law on Civil Procedure, parties may undertake actions in the proceedings in person or through an attorney/representative, who must have full legal capacity. The attorney of a natural person may be a lawyer, a blood relative in a direct line, sibling or spouse, as well as a representative of the legal aid service of the local self-government who obtained a law degree and passed the bar exam. The attorney of an employee in a dispute arising from its employment may be a trade union representative of the trade union of which the employee is a member, provided that the person holds a law degree and passed the judicial state exam. The attorney of a legal entity may be a lawyer, as well as a person employed by such legal entity who holds a law degree and passed the judicial state exam. The party has to nonetheless be represented by an attorney in law (lawyer) in proceedings on extraordinary legal remedy – Review (in Serbian: Revizija), unless the party is a lawyer (Art. 85).
The Law on General Administrative Procedure provides that any person with full legal capacity may represent a party in administrative procedures, except for persons that are unauthorized to practice law (Art. 48).

149-1. In addition to the functions of legal representation and legal advice, can a lawyer exercise other activities?

Comments :

General comments : Generally, in accordance with the Legal Profession Act and the corresponding bylaws, a lawyer shall not engage in professions/business activities that are incompatible with the honor and independence of a legal profession and cannot have another registered independent activity. More specifically, a lawyer has no right to enter into an employment contract except in a law partnership, to be a statutory agent, director or chairman of the managing board in a legal person, member or chairman of the executive board of the bank, the representative of the state capital, bankruptcy administrator, procurator or person to whom the prohibition of competition is established. Consequently, a lawyer could be a proxy, if definition of proxy matches the stated exception and some other exceptions stated in relevant bylaws (ex. may not be an intermediary in transactions involving goods and services, public attorney,

notary, enforcement agent, or activities which may result in conflict of interest).

149-2. What are the statuses for exercising the legal profession in court?

Comments :

General comments : A lawyer may be a staff lawyer only within a law partnership. Lawyers may be engaged by a company/legal entity through a power of attorney and as such be in-house lawyers. A company may not employ them, and such engagement must respect the principles of lawyer autonomy and independence. An attorney-at-law may provide legal services only in his/her law office, except in the cases when he/she is representing clients in hearings, during on-site investigations, in reconstructions of events, negotiations or legal transactions, or in other places if it is required by the nature of case. Exceptionally, an attorney-at-law may provide legal services in his/her apartment or in his/her client's business premises due to specific circumstances of the case and the nature of the legal services. The design and arrangement of a law office must correspond to the importance and reputation of the legal profession and provide conditions necessary for keeping professional secrets. The terms in question could be used in a colloquial language; they are not the official terms recognized by laws.

150. Is the lawyer profession organised through:

Comments :

General comments : There are eight bar associations within the Bar Association of Serbia (excluding the Bar Association of KiM). The Bar Association of Serbia (BAS) is an association of all the bars, and covers the whole territory of the country. Lawyers are members both of their local/regional bars and BAS. Some bar chambers within BAS are local (ex. Belgrade bar), while others are regional – ex. Vojvodina Bar Chamber, covering the territory of the Autonomous Province of Vojvodina.

151. Is there a specific initial training and/or exam to enter the profession of lawyer?

Comments :

General comments : Initial training to enter the profession of lawyer lasts from at least two to four years, depending on whether the trainee (law school graduate) performed the traineeship in a law office, courts or prosecutors' office, on one hand, when two years of training is required, or, on the other hand, in banks, other public companies or legal entities, when a longer period is prescribed. After gaining the prescribed necessary work experience, the trainee must pass the judicial state exam (organized by the Ministry of Justice) and the attorney exam (organized by the bar) in order to become a lawyer.

152. Is there a mandatory general system for lawyers requiring in-service professional training?

Comments :

General comments : Pursuant to the Legal Profession Act, a lawyer is obliged to continuously acquire and improve knowledge and skills necessary for professional, independent, autonomous, effective and ethical practice of law, in accordance with a program of professional development adopted by the Bar Association of Serbia. Even though currently there is no mandatory in-service professional training for lawyers, as the program has not yet been enacted and there is no implemented mechanism for overseeing its implementation, the law provides the establishment of the Lawyer Academy, as a special body responsible for the continuous voluntarily professional training of lawyer, lawyer trainees, graduate lawyers and persons employed in law offices and law partnerships, for the improvement of theoretical and practical knowledge and skills of lawyers, necessary for professional, independent, autonomous, effective and ethical legal profession, the specialization of lawyers and the issuance of certificates of specialization in a particular area of law and the legal profession. The Lawyer Academy was established in 2012 by the Serbian Bar Association, but has de facto started performing some of its activities in the last quarter of 2015.

153. Is the specialisation in some legal fields linked to specific training, levels of qualification, specific diploma or specific authorisations?

Comments :

General comments : In accordance with the Law on Juvenile Offenders and Criminal Protection of Juveniles, when a minor is a defendant

or injured party in criminal proceedings it shall be represented only by a lawyer with a special qualification in the field of the rights of the child and juvenile delinquency (Arts. 49, 154). The Judicial Academy issues certificates on the performed tests and professional training that proves special qualification of the lawyer (Art. 165).

F1. Please indicate the sources for answering questions 146 and 148:

Comments :

General comments :

6.1.2.Practicing the profession

154. Can court users establish easily what the lawyers' fees will be (i.e. a prior information on the foreseeable amount of fees)?

Comments :

General comments : The Serbia Judicial Functional Review" ("Serbia Judicial Functional Review", Multi-Donor Trust Fund for Justice Sector Support in Serbia, October 2014, p. 309, http://www.mdtfjss.org.rs/archive/file/Serbia%20Judicial%20Functional%20Review-Full%20Report.pdf , accessed on 15 January 2018), published in 2014 concludes that "attorneys play an important role in helping court users to navigate the system, but their fee structure is inconsistent with European practice and creates perverse incentives which undermine access to justice and efficiency and quality and service delivery. Self-represented litigants struggle to proceed alone without lay formats, checklists or practical guides, and unsurprisingly therefore, they are less likely to succeed. Attorneys are paid per hearing or motion, which encourages protracted litigation. Fees are awarded based on a prescribed Attorney Fee Schedule, which prohibits from charging less than 50 percent of the rates prescribed. This arrangement is out of step with European practice. Serbia's prescribed fees are also highly inflated and unrealistic, and in practice many attorneys charge less than the mandatory minimum because rates are beyond user willingness to pay. State-appointed attorneys (known as ex-officio attorneys) may be appointed for indigent clients but there are concerns regarding the mechanism for their selection and a lack of quality control" (pg. 176). Likewise, the Review states that "Lawyers may play a hand in driving up appeal rates. In the Multi-Stakeholder Justice Survey, unrepresented litigants were far less likely to appeal their cases. Attorneys have a financial incentive to draw out their clients' case, and can also advise on the likelihood of success on appeal and the tactical advantages of appeals, including delays in enforcement."
A new Judicial Functional Review is to be conducted in 2018. Amendments to the tariff system are necessary within the EU accession and negotiation process, i.e. harmonization with Chapter 3 acquis (Services Directive).

155. Are lawyers' fees freely negotiated?

Comments :

General comments :

156. Do laws or bar association standards provide any rules on lawyers' fees (including those freely negotiated)?

Comments :

General comments : Qs no. 154-156: Even though the Tariff for Fees and Reimbursement of Expenses for Lawyers' Work provides the amount of lawyers' fees and clearly determine fees for separate activities that a lawyer may perform, one cannot predict how many hearings/submissions could be in each proceedings. Hence, at the beginning of the proceedings the court users have the clear picture of the amounts that shall be paid for each separate activity performed, but cannot be aware of the final amount of fees at the end of proceedings (the Tariff explicitly prescribes that agreeing on a lump sum fee cannot include representation before courts or other state authorities).
The lawyers' fees cannot be freely negotiated but the Tariff provides for a possibility of certain deviations from the prescribed amounts, i.e. certain flexibility exists. For example, the lawyer may agree in writing with the party that the amount of the fee for his/her work is lower than the prescribed amount, but not less than 50% of the prescribed amount, or that it is higher, up to the five times more than the

prescribed amount. Also, the Code of Professional Ethics provides that a lawyer could, in the case of extreme poverty of the client, release the client from the fee payment obligation.
General: The Legal Profession Act regulates rights, duties and responsibilities of lawyers and lawyer trainees and the organization and operation of bar associations as obligatory professional associations of the attorneys-at-law. The Bar Association of Serbia as the bar association at national level has the following public authorities: adoption of the Code of Professional Ethics, adoption of the Tariff for Fees and Reimbursement of Expenses for Lawyers' Work, statute and other general enactments, determining the cost of entry to the directory of attorneys, and make decisions in second instance during disciplinary and administrative proceedings, etc. The regional/local bar associations, which are all part the Bar Association Serbia decide in the first instance on applications for entry, deletion and revocation of registration in the directory of law partnerships, on applications for temporary cessation of work, on temporary prohibition to practice law, on initiating and conducting disciplinary proceedings against attorney-at-law or law trainee, on their disciplinary responsibility and the imposition of disciplinary measures, and about monthly affiliation fee.

6.1.3.Quality standards and disciplinary procedures

157. Have quality standards been determined for lawyers?

Comments :

General comments : The quality criteria are the criteria prescribed as necessary qualifications for becoming a lawyer. The Code of Professional Ethics was enacted in 2012, in accordance with the European Code of Professional Ethics. A bylaw on professional standards does not exist.

158. If yes, who is responsible for formulating these quality standards:

Comments :

General comments :

159. Is it possible to file a complaint about:

Comments :

General comments : According to the Legal Profession Act, disciplinary proceedings may be initiated on the basis of a complaint/report submitted by the person concerned or state institution, or on the basis of a proposal of the Bars or ex officio.
Lawyers and lawyer trainees are responsible for disciplinary minor and major violations of duty and honour of legal profession, regulated by the Statute of the Bar Association of Serbia. A serious breach of duty by attorney-at-law and the reputation of legal profession is any violation of duty and honour of legal profession under law, statute of the Bar Association of Serbia and the Code, and particularly evident bad faith in the work within legal profession, providing legal aid in cases where attorney-at-law is obliged to refuse to provide legal aid, business activities that are contrary to the honour and independence of attorneys-at-law, injury of duty to keep a secret, asking for compensation greater than the fees prescribed and refusing to issue a bill to the client for the amount received. Minor violations of duties and good practice of legal profession are violations of the duty and honour of the legal profession, of less importance.

160. Which authority is responsible for disciplinary procedures?

Comments :

General comments : Disciplinary proceedings are initiated and led by disciplinary bodies of the authorized bar association, and in certain cases, the Bar Association of Serbia. The disciplinary bodies are: the disciplinary prosecutor and the disciplinary court. The disciplinary bodies of the Bar Association of Serbia act as second-instance bodies in the disciplinary proceedings, unless otherwise provided in the Statute of BAS.

161. Disciplinary proceedings initiated against lawyers. (If a disciplinary proceeding is undertaken because of several reasons, please count the proceedings only once and for the main reason.)

Comments : Disciplinary Prosecutor's Office of the Bar Association of Serbia:
- from the 342 filed disciplinary complaints, only 36 disciplinary indictments were filed (the rest were manifestly unfounded);

- 79 disciplinary applications were rejected and the decision on rejection was final by the expiration of the deadline for the objection, since objections were not filed;
- In 2 cases, the applicants withdrew their applications.
During 2014 and 2015, there was a lawyers' protest which lasted for almost 6 months. During this period, lawyers did not work, in accordance with the decision of the Bar Association. Thus, there was no possibility of filing disciplinary proceedings at this time, which is why the number of submitted applications in 2014 is lower. On the other hand, during the protest, the Bar Associations informed citizens, through media, of basic professional principles, including disciplinary accountability. Citizens use this right, despite the fact that their applications are manifestly unfounded, which is why there is a big difference between the number of filed complaints, initiated procedures and imposed sanctions.

General comments :

162. Sanctions pronounced against lawyers.

Comments : Under the term “other” the sanction of disbarment is considered. Disciplinary Court of the Bar Association of Serbia:
- in 11 cases, disciplinary convictions were issued;
- in 10 cases, lawyers were released of disciplinary liability;
- in 2 cases - the registered lawyer was deleted from the directory of lawyers upon a personal request and the disciplinary procedure was suspended.

General comments :

7.Alternative dispute resolutions

7.1.Mediation

7.1.1.Details on mediation procedures and other ADR

163. Does the judicial system provide for judicial mediation procedures? If this is not the case you will go directly to question 168.

Comments : Having in mind the existing legal framework as well as the applicable best practice for the development of court-annexed / court-connected mediation, the Supreme Court of Cassation, the High Judicial Council and the Ministry of Justice jointly issued the Guidelines for the Improvement of Mediation in the Republic of Serbia on 28 June 2017, https://www.mpravde.gov.rs/tekst/16729/uputstvo-za-unapredjenje-medijacije-u-republici-srbiji-po-zakonu-o-posredovanju-u-resavanju-sporova.php. The Guidelines provide that the courts should, in the early phases of proceedings, resolve disputes by referring the parties to mediation or by encouraging them to reach a court settlement, to alleviate the burden on the court and allow for more efficient procedure in other cases where amicable resolution is not possible. They provide that Info-Services should be established for the Support of Alternative Dispute Resolution Methods within all basic, higher and commercial courts as well as mediation Info-Desks and active cooperation with external partners of the court, i.e. providers of mediation services should be encouraged based on signed protocols of cooperation. Likewise, in order to promote judicial mediation, the Ministry of Justice, together with two basic courts and the IPA 2015 Judicial Efficiency Project organised a pilot activity, the Mediation Week, whereby free mediation services were provided to willing parties with cases before the two basic courts (pilot courts). The Mediation Week was organised around the 25 October 2017, i.e. marking the European Day of Justice, and will be done so continuously in the following years, with a wider reach, pursuant to the Guidelines.

General comments :

168. Does the legal system provide for the following alternative dispute resolutions (ADR):

Comments : The Law on Arbitration (“Official Gazette of RS”, no. 46/2006) regulates arbitral resolution of disputes without a foreign element (“domestic arbitration”) and disputes with a foreign element (“international arbitration”). The new Law on Chambers of Commerce ("Official Gazette of RS" no. 112/2015), in its Article 31, provides for a formation of a single arbitration institution within

the Chamber of Commerce and Industry of Serbia, which shall be competent to decide, reconcile and mediate in commercial disputes between domestic and/or foreign business entities, if its jurisdiction has been agreed on by the parties. As of 30 June 2016, in lieu of two independent arbitration institutions that existed at the Chamber of Commerce and Industry of Serbia: the Foreign Trade Court of Arbitration and the Permanent Court of Arbitration, the Permanent Arbitration at the Chamber of Commerce and Industry of Serbia became a single institution. It is an open arbitration institution of general type, competent to resolve all types of disputes arising out of both international and purely “domestic” business relations, provided that the parties have agreed upon its jurisdiction. Its jurisdiction may be agreed by all business entities, irrespective of their nationality or membership in the Chamber of Commerce of and Industry. Rules of the Foreign Trade Court of Arbitration ("Official Gazette of the RS" No. 2 / 2014) served as a foundation of the first Rules of Permanent Arbitration ("Official Gazette of RS" No. 58/2016). Since these Rules have been recently enacted, many solutions of modern arbitration practice have been incorporated within. These Rules also encompass certain new solutions arising out of a slightly different character of permanent arbitration, as well as solutions aimed at improvement of its efficiency.

The Belgrade Arbitration Center was established in 2013 by the Arbitration Association as a permanent arbitral institution that administers domestic and foreign disputes in accordance with the BAC Rules, assists in technical and administrative aspects of ad hoc arbitral proceedings under UNCITRAL or other rules, organizes and conducts mediation sessions and provides for other services closely related to dispute settlement. The Law on Peaceful Settlement of Labour Disputes (“Official Gazette of RS”, no. 125/04, 104/09), established the Republic Agency for Peaceful Settlement of Labour Disputes as the first institutionalised service dealing with peaceful settlement of individual and collective labour disputes through arbitration and conciliation, respectively. The Agency is the only specialized institution that deals with labour law (http://www.ramrrs.gov.rs/en/).

The competences of the Agency in individual disputes (arbitration) are: termination of employment contract, bargaining and payment of minimum wages, workplace discrimination and harassment, allowances for meal, transportation, holiday cash grants and jubilee awards. In collective disputes (conciliation) the competences are: conclusion, amendments or implementation of collective agreement and general act that regulates rights, obligations and responsibilities of employees, employers, and trade union; right to form and to join trade union, right to strike and right to be informed; consulting and participation of employees in management.

On 26 October 2017, the Government of the Republic of Serbia, based on the proposal of the Republic Agency for Peaceful Settlement of Labour Disputes, adopted Conclusion recommending the possibility of participation of conciliators in collective negotiation when concluding collective agreements in accordance with the law regulating the field of peaceful settlement of labour disputes (“Official Gazette of the Republic of Serbia” No. 96/2017, 27 October 2017). The Recommendation refers to statutory authorities, the autonomous province and local self-government units, other authorities and organizations established by the Republic of Serbia, the autonomous province or a local self-government unit, public agencies and organizations subject to the regulations on public agencies, public services financed from the budget of the Republic of Serbia, the autonomous province and the local self-government units, i.e. from contributions for compulsory social insurance, as well as public enterprises and for-profit corporations founded by the Republic of Serbia, the autonomous province or the local self-government unit and the for-profit corporations whose founder is a public company.

Also, the Government recommended that the authorized representatives of the aforementioned institutions inform their representatives in collective negotiation about the possibility of entering a clause into collective agreements to resolve labour disputes in accordance with the law regulating the field of peaceful settlement of labour disputes.

The main reason for drawing this conclusion is the need to refer the recommendation to state authorities, to use the possibility of the participation of conciliators in collective negotiation when concluding collective agreements in accordance with the Law on Peaceful Settlement of Labour Disputes, which would result in savings of budget funds by preventing collective labour disputes and reducing the number of these disputes before the courts.

A large number of collective agreements were concluded for three years in the period from July 2014 to January 2015. The agreement period is currently expiring, and collective negotiations are and will be conducted with the aim of concluding collective agreements with a new period of validity.

The Republic Agency for Peaceful Settlement of Labour Disputes pursuant to Article 16 of the Law on the Peaceful Settlement of Labour Disputes may provide participation of a conciliator in collective negotiating, which participates in the process of negotiating, indicates to participants proposals that are not in accordance with the law and other regulations and provides participants with professional and other assistance, which contributes to the quality of the text of collective agreements. Also, collective agreements contain provisions on ways of resolving labour disputes, where it often happens that the possibility of settling labour disputes in accordance with the law regulating the field of peaceful settlement of disputes is not recognized and consequently arranged, which often

results in expensive court procedures, and most often burdens the budget of the Republic of Serbia. With this recommendation, the courts will be relieved, and the budgetary resources of the Republic of Serbia will be saved.
Conciliation as an alternative dispute resolution mechanism is highly present in regulating domestic relations, pursuant to the Family Law Family Law (“Official Gazette of RS”, no. 18/2005, 72/2011 - Other Law and 6/2015), which apart from providing for situations of referral to family counselling and institutions specialized in mediation in family relations provides for a procedure which, pursuant to Article 229 of the Family Law, includes the procedure for attempt at reconciliation (hereinafter: conciliation) and the procedure for attempt at consensual dispute resolution (hereinafter: settlement). For more information, please see answers to Q 103.

General comments :

G1. Please indicate the source for answering question 166:

Comments :

General comments :

8.Enforcement of court decisions

8.1.Execution of decisions in civil matters

8.1.1.Functioning

169. Do you have enforcement agents in your judicial system?

Comments : oint instructions were issued on 5 April 2016 by MoJ, HJC and SCC for the purpose of preparation for implementation of the new LoES and addressing contentious questions relating to transitional and final provisions of the LoES, which are accessible online, on the website of the MoJ, HJC and the SCC.

General comments :

174. Are enforcement fees easily established and transparent for the court users?

Comments : They are prescribed by law and bylaw, and are subject to supervision by the Chamber and Ministry of Justice.

General comments :

175. Are enforcement fees freely negotiated?

Comments :

General comments :

176. Do laws provide any rules on enforcement fees (including those freely negotiated)?

Comments : The new Enforcement Agent Tariff, a bylaw of the Minister of Justice ("Official Gazette of RS", No. 59 of 28 June 2016, https://www.mpravde.gov.rs/tekst/13174/javnoizvrsiteljska-tarifa-.php), has been enacted and has become applicable on 1 July 2016, concurrently with the new law. The new tariff introduces a new method of calculating fees, which is more transparent, precise and allows the creditor and the enforcement debtor to more easily identify the costs of enforcement proceedings. This completes the reform with respect to the costs of enforcement proceedings, which began in 2015 with the enacting of the Law on Amendments to the Law on Court Taxes (“Official Gazette of RS”, no. 106/2015) in order to harmonise the system of collection of court taxes with the Law on Enforcement and Security, reduce the amount of court fees charged by the court in cases where enforcement is implemented by the enforcement agent and abolish the payment of court fees for the enforcement ruling of the court regarding the motion to enforce on the basis of an enforceable or authentic document. Thereby, a significant regulatory improvement with respect to costs of these proceedings has been made, which has put an end to the “duplication” of fees charged by the court and enforcement agent, which existed since the introduction of this new legal profession in the judicial system in 2012. Additionally, in order to gain benefits from the system of enforcement agents, the competences for enforcing of taxes has been transferred to this legal profession, while parties are exempted from

payment in the cases of entrusting of certain court proceedings or actions to notaries.

General comments :

H0. Please indicate the sources for answering question 170

Comments :

General comments :

8.1.2.Efficiency of enforcement services

177. Is there a body entrusted with supervising and monitoring the enforcement agents' activity?

Comments : Both the Chamber of Enforcement Agents and the Ministry of Justice Department for Judicial Professions supervise and monitor the enforcement agents' activity. Likewise, the courts supervise the enforcement agents' work within the enforcement proceedings. A novelty of the Law on Enforcement and Security from 2015 is the introduction of the Disciplinary Prosecutors of both the Chamber and the Ministry, who initiate disciplinary proceedings. On 24 March 2016, the Minister of Justice adopted the Rulebook on Monitoring over the Work of Enforcement Agents and the Rulebook on Disciplinary Proceedings Against Enforcement Agents ("Official Gazette of RS" No. 32/2016). These Rulebooks are applicable from 1 July 2016. The Rulebook on the Recordkeeping of Enforcement and Security Proceedings and Financial Operations of Enforcement Agents, the Manner of Reporting, the Content of the Report on the Work of the Enforcement Agents and on Archiving has also been adopted ("Official Gazette of RS" No. 37/2016).

General comments :

178. Which authority is responsible for supervising and monitoring enforcement agents?

Comments : The Chamber of Enforcement Agents has a special Supervision Commission, as a permanent body of the Chamber for supervision, for the territory of each organizational unit of the Chamber. The Ministry of Justice Department for Judicial Professions also supervises and is developing a system for electronic case management oversight, complementary to the on-site oversight. The Rulebook on the Disciplinary Proceedings against Enforcement Agents was adopted ("Official Gazette of RS", No. 32 of 30 March 2016) and is applicable from 1 July 2016. On the basis of the Rulebook, the Commission of the MoJ that conducts the disciplinary proceedings against enforcement agents has five members, three of which are appointed by the Minister of Justice from among judges with experience in the enforcement field and the process of securing; two members are appointed by the Chamber of Enforcement Agents among enforcement agents.

General comments :

179. Have quality standards been determined for enforcement agents?

Comments : The quality standards which are set by the Law on Enforcement and Security (2015) for self-employed enforcement agents are reflected through their qualifications i.e. requirements for appointment – the individual has to be a law school graduate with a passed (state) enforcement agent exam, and successfully passed Judicial Examination, with at least two years of working experience in legal professions (after passing Judicial Examination), with the full legal capacity and moral credibility to perform duties of an enforcement agent, including not being subject of related criminal proceedings. Additionally, LoES introduces obligatory initial training as a condition for entering the profession, and more stringent rules on continuous training as well as passed state judicial (bar) exam. Quality criteria are also provided in the Code of Ethics of Enforcement Agents, which is adopted by the Chamber of Enforcement Agents and in the Standards of Professional Conduct of Enforcement Agents, a novelty of the new LoES, which will be adopted by the Minister of Justice.

General comments :

180. If yes, who is responsible for establishing these quality standards?

Comments :

General comments :

181. Is there a specific mechanism for executing court decisions rendered against public authorities, including supervising such execution?

Comments : Enforcement of judgments and decisions of the European Court for Human Rights:
The Law on Public Attorney's Office („Official Gazette of RS", no. 55/14) in its article 13 para. 1-4 regulates representation of the Republic of Serbia before the European Court of Human Rights. Paragraph 5 of the same article provides that payment of the sum specified by the friendly settlement or in the Court's judgment is conducted from the accounts of the public authorities which caused the violation. The procedure for enforcement of judgments and decisions is not further regulated by the above-mentioned Law. Consequently, domestic authorities adopted the following practise: non-pecuniary damages are being paid from the accounts of High Court's Council; pecuniary damages (which represent sums awarded by non-enforced domestic judgments) are being paid from the accounts of Public Attorney's Office. Therefore, according to the Law on Budget of the Republic of Serbia for the year 2016 („Official Gazette", no. 103/15), awarded non-pecuniary damages were to be paid from the accounts of the High Court's Council and awarded pecuniary damages were to be paid from the accounts of Public Attorney's Office.

General comments :

182. Is there a system for monitoring how the enforcement procedure is conducted by the enforcement agent?

Comments : The court (i.e. judges) performs oversight over the work of enforcement agents within the judicial proceedings, i.e. upon a filed objection or request for elimination of irregularities.
On the other hand, forms of supervision outside of the enforcement or security proceedings exist if they are of non-procedural nature and are performed by the Ministry of Justice and the Chamber of Enforcement Agents. The principle is that the Ministry of Justice is authorised to primarily supervise the legality of the work of enforcement agents in the enforcement or security proceedings - the procedural aspect of the activities of enforcement agents and the Chamber is authorized to supervise these as well as other aspects of the activities of enforcement agents. The LoES 2015 stipulates that a civil servant who performed supervision is obliged to forward the record of supervision and evidence to the disciplinary prosecutor of the Ministry, as well as the disciplinary prosecutor of the Chamber, so that they might review the record and evidence, and possibly initiate disciplinary proceedings against the enforcement agent. The same applies mutatis mutandis when the supervision is conducted by the Chamber.

General comments :

183. What are the main complaints made by users concerning the enforcement procedure? Please indicate a maximum of 3.

Comments : Under "unlawful practices" or "other" may be classified as the frequent complaint regarding the service of documents, and the mistaken identity of enforcement debtor.

General comments :

184. Has your country prepared or established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?

Comments : In the period from 2014-2016, Serbia implemented a comprehensive reform of the legal framework for enforcement. The new Law on Enforcement and Security ("Official Gazette of the RS", no.: 106/2015, 106/2016 - authentic interpretation and 113/2017 - authentic interpretation) was adopted on 18 December 2015, and has fully entered into force on 1 July 2016. The main novelties of the new LoES are: broadening of the competence of enforcement agents; transferal of backlogged utility cases into the competence of enforcement officers, by which the expenses and fees in those proceedings are also regulated; more stringent requirements for enforcement agents and candidates, such as mandatory initial training and a basis for a more efficient monitoring and control and disciplinary system; precise procedural provisions that should eliminate present ambiguities causing excessive delay in proceedings; detailed and unambiguous provisions on enforcement of pecuniary claims against real property as most valuable assets; reaching a

compromise between the speed of the enforcement proceedings (primarily embodied in the acting of enforcement agents) and the harmonisation of case law (by way of reintroduction of the right of appeal - jurisdiction of higher courts).
Most notably, the new LoES has given a basis is given for transferal of backlogged utility cases into the competence of enforcement officers, by which the expenses and fees in those proceedings are also regulated. Namely, enforcement creditors in whose favour an enforcement ruling based on an enforceable or authentic document, or a security ruling, was rendered before enforcement agents began operating in the Republic of Serbia, related to which enforcement or security proceedings were still being conducted on 1 May 2016, had to declare, during the period lasting from 1 May 2016 to 1 July 2016, whether they wanted the court or an enforcement agent to implement enforcement. If the enforcement creditor failed to provide said declaration within the specified period of time, enforcement proceedings were discontinued.
The application of the Law has steadily resulted in a decrease of enforcement cases in courts, i.e. the reduction of the backlog of enforcement cases in Serbia.
Through the implementation of systemic measures defined in the special program for reduction of backlog enforcement cases, with the adoption of the new Law on Enforcement and Security, the Republic of Serbia has enabled a comprehensive disposition of backlog cases in the enforcement matter, since previously, the cases in this matter prevented the normal functioning of the judiciary. The Supreme Court of Cassation, the Ministry of Justice and the High Court Council have jointly drafted and adopted the Instructions for the implementation of the new Law on Enforcement and Security which contain measures that determine the jurisdiction of courts and public bailiffs in enforcement and security proceedings and stipulate the obligations of enforcement creditors, courts, the Chamber of Enforcement Agents (EA's) and EA's in enforcement cases where there is a change of jurisdiction pursuant to this new Law, sanction the failure of mandatory action of enforcement creditors and action in individual enforcement cases pursuant to the new Law, as well as in ongoing cases. Implementation of the Instructions in basic courts was supported by the European Union through the IPA funded project "Judicial Efficiency". The implementation of these measures and with this support, great results have been achieved and the number of enforcement cases was reduced by 811.322 cases only in 2016. Pending at the beginning of 2015: 1.939.807; Total incoming in 2015: 234.008; Total disposed in 2015: 380.628; Pending at the end of 2015: 1.793.787. Pending at the beginning of 2016: 1.855.129; Total incoming in 2016: 352.207; Total disposed in 2016: 1.225.471; Pending at the end of 2016: 981.865. (SCC data, annual report for 2016). By the end of 2017, most of the backlogged cases have been resolved or transferred to enforcement agents. oint instructions were issued on 5 April 2016 by MoJ, HJC and SCC for the purpose of preparation for implementation of the new LoES and addressing contentious questions relating to transitional and final provisions of the LoES, which are accessible online, on the website of the MoJ, HJC and the SCC. Apart from the comprehensive and systemic regulatory reforms of the enforcement system in Serbia (enacting of LoES in 2015 and continuous reforms thereto related), it should be noted the Supreme Court of Cassation adopted the Uniform Backlog Reduction Program in the Republic of Serbia, and accompanying Action Plan for the Improvement of the Judicial System of Enforcement. In 2016, the Ministry of Justice has enacted the necessary by-laws and regulations necessary for the implementation of the LoES, in particular for establishing clearly defined professional standards and reporting criteria, professional ethics, disciplinary proceedings, and an efficient system of monitoring and control of enforcement agents, for a functional and transparent system of accountability of enforcement officers, as well as for conducting initial and continuous training programs.
Promotion of mediation is also aimed at decreasing the number of court decisions which require enforcement. The Supreme Court of Cassation, the High Judicial Council and the Ministry of Justice jointly enacted on 28 June 2017 the Joint Guidelines for the Improvement of Mediation in the Republic of Serbia, intended to reduce the number of old cases and to prevent their occurrence (https://www.mpravde.gov.rs/tekst/16729/uputstvo-za-unapredjenje-medijacije-u-republici-srbiji-po-zakonu-o-posredovanju-u-resavanju-sporova.php).
In the following period, the Public Attorney's Office will be supported in improving capacities and way of dealing with enforcement of court decisions as regards decisions against public authorities.
Enforcement of judgments and decisions of the European Court of Human Rights:
The largest number of judgments issued by the European Court of Human Rights related to Serbia refers to violation of the right to a fair trial due to the length of the procedure and to the non-enforcement of domestic judgments. Enforcement cases are the prevalent culprit of Serbia's judicial system backlog problem, with cases related to unpaid utility bills making up the majority of the enforcement caseload. The largest number of friendly/amicable settlements are also concluded because of inefficient enforcement procedure. This has contributed to the fact that the Court submitted a large number of applications in which the applicants complained about the non-enforcement of judgments rendered against companies with a majority of social capital. As the ECtHR declared these cases its well-

established case-law (WECL), in 2013 and 2014 the state was delivered 2000 petitions with the proposal of the Court to conclude an amicable settlement. This was reflected in the number of concluded amicable settlements in this field as well as on the increase of number of judgments relating to ineffective enforcement.

General comments : The 2015 Law on Enforcement and Security introduces important novelties such as more stringent requirements for enforcement agent candidates, such as mandatory initial training and a basis for a more efficient monitoring and control and disciplinary system. Moreover, a basis is given for transferal of backlogged utility cases into the competence of enforcement officers, by which the expenses and fees in those proceedings are also regulated. Namely, enforcement creditors in whose favour an enforcement ruling based on an enforceable or authentic document, or a security ruling, was rendered before enforcement agents began operating in the Republic of Serbia, related to which enforcement or security proceedings are still being conducted on 1 May 2016, shall declare, during the period lasting from 1 May 2016 to 1 July 2016, whether they want the court or an enforcement agent to implement enforcement. If the enforcement creditor fails to provide said declaration within the specified period of time, enforcement proceedings shall be discontinued. In the following period, the MoJ and Chamber will enact by-laws and regulations necessary for the implementation of the LoES, in particular for establishing clearly defined professional standards and reporting criteria, professional ethics, disciplinary proceedings, and a system of monitoring and control by the MoJ and the Chamber, for a functional and transparent system of accountability of enforcement officers, as well as for conducting initial and continuous training programs. In 2015, the Ministry of Justice and Chamber of Enforcement Agents have significantly intensified monitoring of the work of enforcement agents, while the Disciplinary Commission has enacted several decisions against enforcement agents. Further administrative capacity building for employees of Ministry of Justice and the Chamber charged with oversight of work of enforcement agents is planned. Likewise, training of judges on enforcement proceedings will be conducted.

185. Is there a system measuring the length of enforcement procedures:

Comments : The CMS used by basic and commercial courts (AVP) currently does not provide the possibility to generate the required information automatically. For the purpose of reporting on the implementation of the new Law on Enforcement and Security, both the Chamber of Enforcement Agents and the Supreme Court of Cassation have devised formulas for calculating the average length before courts and enforcement agent, respectively. However, a comprehensive system for measuring the length of enforcement procedures is yet to be implemented.

General comments :

186. As regards a decision on debt collection, please estimate the average timeframe to notify the decision to the parties who live in the city where the court sits (one option only):

Comments : Enforcement agents serve documents pursuant to the provisions of the Law on Enforcement and Security. After receipt of the document, the enforcement agent makes an attempt to deliver the document to the debtor on the following day. It is possible that the debtor receives the court document on the same day as the service/delivery was made. If, however, the debtor is not found at the address, the enforcement agent leaves them a notice to come and receive the court document at the competent court within the following five days. In these cases, the delivery shall be completed in 6 days maximum.
If it is necessary to undertake service/delivery through the court bulletin board, a longer period of time is required for delivery. This is because the practice is to first check the address of debtors through the Office of Population Register of the Ministry of the Interior, and after that placing the document on the notice board of the court. The Report of the Ministry of the Interior, in larger cities, can be expected upon an average up to three months. After submitting data of debtor address, data is placed on the notice board of the competent court. This is also the phase that further slows down the process of delivery, because of the refusal of the courts to place documents on the notice board of the court in proceedings which enforcement agents conduct.
In short: when the service is not done through the court bulletin board, it may be carried out within 6-10 days; if the service is done through the court notice board, it often requires a period longer than 30 days.

General comments :

187. Number of disciplinary proceedings initiated against enforcement agents. (If a disciplinary proceeding is undertaken because of several reasons, please count the proceedings only once and

for the main reason.)

Comments :

General comments :

188. Number of sanctions pronounced against enforcement agents:

Comments : During 2016, the previous Enforcement Agent Disciplinary Commission, established by the Minister of Justice on 14 October 2014 and which started to work in March 2015, acted in 10 cases. One procedure was initiated by the Ministry of Justice, five by the Chamber of Enforcement Agents and four were initiated both by Ministry of Justice and Chamber of Enforcement Agents.
The Commission brought the following disciplinary measures: - 3 disciplinary measures - permanent ban on performing activity; - 5 disciplinary measures- a fine (money penalty); - 2 disciplinary measures- warnings. The Rulebook on the Disciplinary Proceedings against Enforcement Agents was adopted (“Official Gazette of RS”, No. 32 of 30 March 2016) and was applicable from 1 July 2016. On the basis of the Rulebook, the Commission of the MoJ that conducts the disciplinary proceedings against enforcement agents has five members, three of which are appointed by the Minister of Justice from among judges with experience in the enforcement field and the process of securing; two members are appointed by the Chamber of Enforcement Agents among enforcement agents. The newly formed disciplinary commission was established at the inaugural session at 10.11.2016. Between 10th of November 2016 and 31th of December 2016 there were no initiated disciplinary proceedings by Disciplinary Prosecutor of Ministry of Justice or Disciplinary Prosecutor of Chamber of Public Enforcement Agents.

General comments :

H1. Please indicate the sources for answering questions 186, 187 and 188:

Comments :

General comments : For more detailed information on the activities related to enforcement system and enforcement agent reform, please see Report on Implementation of Chapter 23 Action Plan, activities no. 1.3.6.3. , 1.3.7.1.-1.3.7.5.: https://www.mpravde.gov.rs/files/Report%20no.%204-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf.

8.2.Execution of decisions in criminal matters

8.2.1.Functioning of execution in criminal matters

189. Which authority is in charge of the enforcement of judgments in criminal matters? (multiple options possible)

Comments : - The Administration for the Enforcement of Penal Sanctions organises, implements and monitors the enforcement of a prison sentence, juvenile imprisonment, community service sanctions, probation with protective supervision, security measures of compulsory psychiatric treatment and confinement in a medical institution, compulsory treatment of drug addicts and mandatory treatment of alcoholics and educational measures of committal to a correctional home and supervises individuals on probation if the court decision orders the convict to fulfill an obligation;
- The court (judge) which rendered the first instance sentence is responsible for enforcement of fines and the security measures of confiscation of items and has supervisory powers over the execution of security measures of compulsory psychiatric treatment and confinement in a medical institution, compulsory psychiatric treatment without confinement, compulsory treatment of drug addicts and of alcoholics, educational measures, probation with protective supervision and community service sanctions;
- The court which rendered the decision on probation shall supervise the fulfilment of the obligations that are specified by the decision on conditional release (probation);
- A public prosecutor for juveniles has supervisory powers over the implementation of corrective measures;
- The police enforce the penalty of seizure of driving license and safety measures of ban on driving a motor vehicle and expulsion of foreigners from the country;
- The measure of compulsory psychiatric treatment without confiscation shall be executed in a health care institution designated by the

court that imposed the measure;
- When performing a profession, activity or duty is tied with approval of competent authority, the security measure of prohibition of performing a profession, activity or duty shall be enforced by the competent inspection;
- The security measure of publication of the judgment is implemented by the media determined by the court of first instance; - Safeguard measures imposed for misdemeanour offenses and economic offenses are enforced in the manner provided for security measures imposed for a criminal offense; - The guardianship/custodial authority is authorised to carry out the corrective measures, except of prison sentences; - Educational measures of referral to an educational institution and referral to a special institution for treatment and training are carried out in the appropriate institutions.

General comments : The Administration for the Enforcement of Penal Sanctions organises, implements and monitors the enforcement of a prison sentence, juvenile imprisonment, community service sanctions, probation with protective supervision, security measures of compulsory psychiatric treatment and confinement in a medical institution, compulsory treatment of drug addicts and mandatory treatment of alcoholics and educational measures of committal to a correctional home and supervises individuals on probation if the court decision orders the convict to fulfill an obligation. By implementing the measures envisaged by the Strategy for Reducing Overcrowding of Accommodation Facilities in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia in the period from 2010 to 2015, the situation in the Republic of Serbia has improved significantly, considering that the number of persons deprived of liberty was reduced from 11,211, as on 31 December 2010, to 10,600.
It is important to emphasize that, in addition to the construction of new accommodation capacities, solving the problem of overcrowding was also influenced by an increase in the number of decisions made on conditional release of convicted persons, pronouncement of a greater number of alternative sanctions, and reduction in the number of detained persons.
In the period from 2012 to 2016, there has been a steady increase in the number of prisoners conditionally released from the sanction of imprisonment. According to the data of the Administration for the Enforcement of Penal Sanctions, in 2012, 600 persons were granted suspended prison sentences, which makes up 8.14% of the total percentage of persons granted suspended prison sentences, while in 2016, 1539 convicted persons were conditionally released from the sanction of imprisonment, which makes up 26.9% of the total number of such persons.
In addition, the number of alternative sanctions and measures increased in 2016. In 2015, the Directorate received 3252 judgements for enforcement, while in 2016, the Administration received 4010 judgements on alternative measures and sanctions.
The share of detained persons in the total number of persons deprived of liberty has been significantly reduced. In 2010, the number of detained persons reached 30% of the total number of persons deprived of liberty (on 31 December 2010 there were 3,332 detainees in Serbian prisons), while 1552 detainees are currently in institutions, or 14.6%.
In May 2017, the Government of the Republic of Serbia adopted a new Strategy for Reducing Overcrowding of Accommodation Facilities in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia until 2020, along with the Action Plan.
According to the experience from previous years, monitoring of movement of the number of persons deprived of liberty and timely response to the prevention of overpopulation in institutions must be a permanent task of the Ministry of Justice and the Directorate for the Enforcement of Criminal Sanctions.
The new Strategy foresees measures and activities which will enable the problem of overpopulation to be solved completely and to improve the conditions of accommodation in institutions: by passing a greater number of decisions on the determination of other measures to ensure the presence of the defendant in addition to the detention measure (primarily the prohibition of leaving the apartment and securities); more efficient implementation of treatment programs aimed at the promotion of prisoners in treatment; further development of the system of alternative sanctions and trust service; through the wider use of conditional release; by building new accommodation capacities and reconstructing the existing ones.
The Ministry of Justice continuously works to improve the accommodation conditions and to increase the capacities in institutions.
We will highlight the most significant investments at this time - the construction of two new prisons, which was funded through the Council of Europe Development Bank loan. The works on the construction of a new prison in Panevo, for accommodation of 500 people deprived of liberty, began in May 2016, and the planned deadline for the completion of the works is 2018. The beginning of the construction of a new prison in Kragujevac, for accommodation of 400 persons deprived of liberty, is planned for 2018.
In the second quarter of 2017, the works also began on the complete reconstruction of accommodation capacities and the construction of a new facility at the Women's Correctional Facility in Požarevac.
In order to improve the training for employees in the Administration, we are implementing the Twinning project "Strengthening the

Capacities of the Prison System", which is supported through the approved funds from the EU project - IPA fund 2013. This project foresees conduct of trainings for trainers in all departments in institutions, and we particularly emphasize training for employees in the treatment service for the implementation of specialized treatment programs for convicted persons, as well as for especially vulnerable categories of convicts, for employees in the health care service for the implementation of the Instabul Protocol, as well as for employees in the security service.
The implementation of the project "Strengthening the Protection of the Rights of Persons Deprived of Liberty" is under way, supported by the Council of Europe. Within this project, we will be working on the improvement of treatment programs and risk assessment tools for convicts, as well as programs for persons with psychiatric disorders.
The cooperation agreement between the Administration for the Enforcement of Penal Sanctionsand the „Help“ Organization was signed in order to increase the employment of convicted persons, based on which production equipment for the correctional institutions in Sremska Mitrovica, Niš, and the JCF in Kruševac is being procured. Within the project, training of convicted persons for work will be carried out and equipment will be procured to be used by the persons for performing work following their release from serving sentences of imprisonment.
Cooperation with the Ministry of education, science and technological development has been established, which enables effective implementation of the program of Functional elementary education of adult convicts who are serving prison sentences.
In order to introduce a greater number of activities for convicts in institutions, the percentage of employed persons has been increased, as well as the number of persons attending training sessions for certain occupations or receiving education.
In order to improve health care in institutions in 2016, all necessary medical equipment was purchased for health services in institutions and for the Special Prison Hospital. Trainings for medical staff were also conducted in cooperation with the Ombudsman.
The Administration implements activities aimed at developing the system of post-penal acceptance of convicted persons, establishes cooperation with local self-governments, as well as cooperation at the level of offices for alternative sanctions and treatment services in institutions. Together with non-governmental organizations, with whom the Administration has signed a cooperation agreement, continuous efforts are being made to sensitize local self-governments and the public with the view to strengthening cooperation and providing conditions for the reintegration of convicted persons after serving prison sentences. All these activities will be continuously developed and implemented.

190. Are the effective recovery rates of fines decided by a criminal court evaluated by studies?

Comments :

General comments :

9.Notaries

9.1.Profession of notary

9.1.1.Number and status of notaries

192. Number and type of notaries in your country. If you do not have notaries skip to question 197.

Comments : Action Plan for Ch23 (EU Integrations) provides for activity no. 1.3.6.22. "Conducting of notary state exam and appointment of additional number of notaries, in accordance with the Law on the Notariat and rulebook on the number of notaries' positions and the official seats of notaries". Therefore, one of the strategic activities of RS in the period were the gradual increase of the number of notaries.

General comments : The Law on the Notarial System was enacted in 2011, providing for the introduction of a new judicial profession - the latin-type notary into the legal system of the Republic of Serbia, with the aim to liberate the judiciary from non-judicial tasks, thereby improving both the efficiency of the judiciary and the quality and efficiency of delivering these tasks, as well as to increase legal security. The law became applicable on 1 September 2014, when the first notaries started working. On 19 October 2016, the Notary Chamber of Serbia was admitted as a full (87th) member of the International Union of Notaries. According to the Law on Notary

System, a notary is an independent and autonomous legal expert, appointed by the Minister of Justice, who performs a service of public trust, as an exclusive and permanent occupation. The notary is not a representative of a party but, instead, is autonomous and independent in the performance of his/her activity – on the basis of public authority s/he accepts from parties statements of intent, grants them the necessary written form and issues documents thereto related which are public (authentic) documents, stores the originals of these documents and other entrusted documents, issues copies of documents, publicly confirms facts, provides the parties with advice on the issues that are the subject of his/her practice and undertakes other activities and tasks prescribed in the law.
For more detailed information on the activities related to notariat please see Report on Implementation of Chapter 23 Action Plan, activities no. 1.3.6.20.-1.3.6.25.: https://www.mpravde.gov.rs/files/Report%20no.%204-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf.

192-1. What are the access conditions to the profession of notary:

Comments : For the purpose of the registration into the register of Notaries of the Chamber the fee has been determined in the amount of 1.000,00 euros (in Serbian dinars counter value).

General comments : A person may be appointed notary if s/he meets the following requirements: 1) Is a citizen of the Republic of Serbia; 2) Has full legal capacity and is generally healthy; 3) Has acquired a law degree in the Republic of Serbia or has a nostrified law degree acquired outside the Republic of Serbia; 4) Has passed the bar examination and the notary examination; 5) Has at least five years of work experience in the legal profession, after having passed the bar examination; 6) Is worthy of public trust in performing the notary service tasks; 7) Can speak, write and read in the Serbian language and, in the territories of a local self-government unit in which a minority language is also in official use, knows the language of the relevant minority or has submitted a cooperation agreement with a court interpreter for the language of said minority; 8) Has, or can prove that s/he will provide, appropriate facilities and equipment for carrying out the activities of a notary.
Additionally, for the purpose of the registration into the register of Notaries of the Chamber the notary pays 1.000,00 euros (in Serbian dinars counter value) to the Chamber.

192-2. (Modified question) What is the duration of appointment of a notary?

Comments : Since the introduction of the profession (1 September 2014- April 2017), the engagement of a total of 10 notaries was terminated (2 died, 7 were dismissed at their own request, 1 was dismissed after disciplinary proceedings).

General comments : Notaries are appointed for an unlimited period of time. A notary’s engagement is terminated: as a result of death; upon turning 67 years of age; upon submission of the letter of resignation; by dismissal. The decision to terminate a notary’s engagement is made by the Minister of Justice.

194. Do notaries have duties (multiple options possible):

Comments : The most important legal services which are performed by the notary may be classified into three main groups: 1. The drafting, certifying and issuing of authentic documents on legal transactions, statements and facts on which certain rights are based and certify private documents; 2. Deposit operations for documents, money, securities, and other objects; 3. Conducting legal proceedings and undertaking actions as a trustee of the court. Notaries, as a new legal profession, have been introduced with the aim of reducing the courts’ workload made up of non-adjudicatory cases, with the aim of improving judicial efficiency and ensuring legal certainty. The delegation of non-contentious proceedings to notaries represents one important instrument for the reduction of courts’ workload and for ensuring trials within a reasonable time.
For the purpose of implementation of provisions of the competences of notaries to act as a trustee of the court, the Ministry of Justice, Supreme Court of Cassation and High Judicial Council enacted on 13 May 2016 “Instructions for the Implementation of Provisions of Arts. 30a and 110a of the Law on Non-Contentious Procedure and Art. 98 of the Law on Notary System”, enabling the extension of notary competences to inheritance proceedings, thereby alleviating courts of this non-contentious judicial workload. The Minister of Justice enacted the tariff on 12 February 2016. Based on an analysis of the application of the Notarial Tariff, conducted by the Notary Chamber of Serbia, amendments to the Notary Tariff have been enacted by the Minister of Justice (“Official Gazette of RS”, 12/2016) on 12 February 2016 and have entered into force on 20 February 2016. Many of the changes follow the amendments of the law, rationalising the costs of proceedings before notaries, for the purpose of increasing legal certainty (e.g., it is now provided that a

solemnisation of a preliminary contract costs 50% of the price of the main contract, and, if concluded before the same notary, this price paid is calculated into the price of the main contract). Upon obtaining the opinion of the Notary Chamber, the Minister of Justice has also established the Tariff for Notaries as Court Commissioners in Inheritance Proceedings (“Official Gazette of RS”, no. 12/2016), also effective as of 20 February 2016. These legislative amendments enable the smooth transition of competences in conducting inheritance proceedings from courts to notaries, respecting that no additional burden is thereby created for parties involved. The statistical data regarding the number of probate proceedings entrusted to notaries in 2016 is: No. of cases entrusted for the purpose of making death certificates: 20,713; Inventory and appraisal of the estate: 501; No. of cases entrusted for the purpose of conducting proceedings: 13,900. What the notaries have demonstrated so far, considering that they have been handling probate proceedings since May 2016, is that proceedings are sometimes completed within a month, with their average duration being two months, which is significantly less than it used to be when they were handled by the courts. "Other": Deposit operations such as depositing money by the parties for keeping, depositing securities, documents, works of art and other valuables, for which the parties receive a Notary Confirmation of Deposit; Conducting legal proceedings and undertaking actions as a trustee of the court (ex. inheritance proceedings); certification of signatures; The statement on recognition of paternity may be given before a notary; notarial last will and testament, etc.

General comments : A notary is authorised to issue five types of notary documents. A notary has duty to keep records. A notary is not allowed to refuse to take actions which s/he is authorized to perform, unless otherwise prescribed by the Law. The five types of notary documents are: 1) Notary Records - document on a legal transaction or statement drafted by a notary. As one of the major novelties, the Law provides a mandatory form of a notary record for certain legal matters and statements, whereby the form has the same probative value as if they are concluded in the court or before a different state authority; if they are not concluded in the form of the notary record from 1 September 2014 they shall be null and void; 2) Notary Minutes - a document related to legal and other actions that are performed or attended by notaries (e.g. examination of witnesses whose testimony is needed or will be needed in non-adversarial or administrative proceedings; drafting the minutes on inventory and evaluation of inheritance estate, based on prior approval of the inheritance court; conclusion of settlement before initiation of litigation, non-adversarial or administrative proceedings, in accordance with the law governing civil, non-adversarial, enforcement and general administrative procedure, with the legal effect as a court settlement or settlement concluded before the administrative authority; 3) Notary Certificates - certificates on the facts that were witnessed by notaries; 4) Notary Solemnisations - non-public documents that were certified by notaries; 5) Notary Verifications - non-public documents in which a notary has verified the authenticity of the signature, translation or copy.
A notary document has the power of an authentic act if in its drafting and issuing the conditions of form and legality provided in the Law are fulfilled. Moreover, the notary document is an enforceable document in the cases provided by law. A notary record is an enforceable act, if it contains a certain obligation on a party, and if it contains an explicit statement of the obliged party that enforcement may be carried out on the basis of that document after the due date. Private documents solemnised by a notary may also represent an enforceable act, under the same conditions. The courts may entrust a notary with certain procedures, such as, inheritance proceedings.

194-1. Do notaries have the monopoly when exercising their profession:

Comments : Civil-law notaries have been introduced in 2014 in the real estate conveyance procedure, as guarantors of legality and mechanism for increasing legal security. Important legislative amendments were enacted on 21 January 2015, amending provisions of the Law on Notarial System, as well as the set of accompanying laws – Law on Non-Contentious Procedure, Law on Real Estate Transfer, Family Law and Inheritance Law. The Law on Amendments and Supplements to the Law on Notary System was adopted on 18 December 2015 (“Official Gazette of RS” no. 106/2015), applicable from 29 December 2015, ensure uniform and efficient application of notarial real estate conveyance, achieving greater legal security but simplifying procedures and improving their efficiency. Since the amendments of the Law on Notariat in January 2015, the valid form for transfer of immovable property is a private written form (drafted by an attorney or the party/parties) which has to be solemnized by a notary. The compulsory form of the notarial authentic deed is limited to only few exceptions (persons who lack legal capability, minors). The Law on Verification of Signatures, Manuscripts and Transcripts, which came into force in 2014, regulates the issue of notarial verification. At the time when the notarial profession was introduced, this Law envisioned that the subject-matter competence for the verification of signatures, transcripts and manuscripts in the territory of the Republic of Serbia belongs to notaries. Due to gradual introduction of notarial profession, the basic courts and local municipalities have retained these competences until 1 March 2017, when the verification of signatures, manuscripts and transcripts will become an exclusive competence of notaries, with only two exceptions: - In the cities or municipalities for which notaries have not been appointed, until the appointment of the notaries, the signatures, manuscripts and transcripts shall be verified, as entrusted tasks, by the

basic courts, court units, as well as the registration offices of the basic courts and the municipal administration, until appointment of a notary (in 2016 only 12 such territories of courts remain). The transcript of an official document may also be verified by its issuer.

General comments : Amendments to the Law on Notariat, the Law on Real Estate Conveyance, the Law of Succession, Family Law and the Law on Non-Contentious Proceedings were adopted on 21 January 2015 (“Official Gazette of RS”, No. 6/2015) reducing the field of exclusivity of notaries to drafting three types of legal documents through the notary record:Contracts on the transfer (conveyance) of real estate of individuals who lack contractual capacity; Agreements on legal support and alimentation, in accordance with the law; Mortgage Agreements and pledge statements, provided that they contain an explicit statement of the obliged person that direct enforcement of the due obligation may be conducted on the basis of the mortgage agreement or pledge statement, whether through judicial or extra-judicial proceedings, once it is due.
Many legal acts have thereby been transferred from the exclusive competence of the notary to the category of solemnisation, which is now explicitly defined in the Law on Notarial System as “verification of a private act by the notary”. Parties now have the right to choose between drafting these legal documents themselves and entrusting the drafting to a lawyer or a notary. The procedure for solemnisation has also been improved and made more precise and a new procedure of judicial review of cases in which the notary denies a party solemnisation of a document has been introduced.
The accompanying laws which have also been amended likewise contain lists of documents which are to be concluded in the form of notary solemnisation: Law on Real Estate Transfer: Statement on waving of right to real estate property in favour of the Republic of Serbia, autonomous region, or local municipality; Family Law: Agreements on the division of the joint property of spouses or non-marital partners; Contracts on property relations between spouses; Inheritance Law: Contracts on the transfer and distribution of property during life; Contracts on lifetime support; Contracts on the transfer of an inheritance. The Law on Verification of Signatures, Manuscripts and Transcripts provides for parallel competence in this matter of notaries, basic courts and local municipalities, the latter two which shall retain these competences until 1 March 2017, while, exceptionally, in the cities and municipalities which do not have appointed notaries, until the appointment of the notaries, the signatures, manuscripts and transcripts shall be verified, as entrusted tasks, by the basic courts, court units, as well as the registration offices of the basic courts.

194-2. As well as these activities, what are the other ones that can be carried out by notaries?

Comments :

General comments : Performance of tasks in the capacity of estate administrator, guardian of a legally incapacitated person, or any other similar work based on a decision of the competent authority; Occasional or supplementary performance of scientific, educational, artistic and similar activity; Mediation, arbitration or court interpretation; Holding an office and performing the duties in the Chamber of Notaries and international associations of notaries.
A notary is authorised to verify a translation if s/he also has the status of court interpreter for the language from which the document is translated and, if the document is translated to a foreign language, then also for the language into which the document is translated. Prior to verifying a translation, a notary shall establish its accuracy. The original and the translation must be attached to each other in a manner prescribed by this Law for the attachment of documents consisting of multiple pages (Art. 95 LoN). A notary shall create notarial documents in Serbian as the official language, using the Cyrillic alphabet, while in the territories of local self-government units where the language and script of a national minority is also in official use the notarial documents shall be drawn up either in the Serbian language and using Cyrillic alphabet or in the language and using the alphabet of the national minority, or in both languages and using both alphabets, in accordance with the request of the party. At the request of a party, a notary may also draw up a document in a foreign language, if s/he has the capacity of court interpreter for the language in which the document is being created and if the document is intended for use abroad. By providing verification, a notary confirms that the translation of the document faithfully reflects the content of the original text of the document (Art. 18 LoN).

195. Is there an authority entrusted with supervising and monitoring the notaries’ work?

Comments :

General comments : Supervision and control of the work of notaries is performed by the Chamber of Notaries, Ministry of Justice and the courts.
The Law on Notaries stipulates that the Chamber should at least once in two years (regular oversight) engage in the professional

oversight of the notarial practice. The Chamber may also conduct extraordinary oversight upon the complaint of a party or a participant in proceedings. The same Law also sets provisions on disciplinary violations, suspension, disciplinary bodies, initiation of proceedings, and proceedings at the proposal of the disciplinary prosecutor.
The Ministry of Justice regularly performs supervision with the aim of verification of compliance with the conditions in terms of premises and equipment of notaries and for the purpose of technical reception of newly appointed notarial offices and addresses complaints, petitions and letters from government agencies and organizations and citizens were addressed in thirty-six cases.
The Notary Chamber Disciplinary Committee is the first instance disciplinary body while the Commission of the Ministry of Justice decides on appeals.

196-1. Is there a system of general continuous training mandatory for all notaries?

Comments : The Chamber administers the professional training of notaries, notarial assistants, associates and interns. To that end, with the support and exchange of experiences with colleagues from the chambers of France, Germany, Austria, Macedonia, Republic of Srpska, Montenegro, and Croatia, workshops for newly appointed notaries have been organized since the very beginning, with the aim of sharing experiences necessary for the notarial profession. Newly appointed notaries always go through initial training at notary offices, where they learn about the main principles of operation of a notary office through a series of practical examples. In addition to organizing initial trainings for new notaries and special trainings for Non-Contentious proceedings, for two years in a row the Chamber has been organizing regular lectures in cooperation with the High Council of French Notariat, where French guests have been sharing their long-term experience with their Serbian colleagues. The Expert Council of the Serbian Chamber of Notaries, composed of judges, university professors, notaries and other leading experts in the relevant fields of law, was established in order to harmonize the notarial practice, and to create a strong basis for future generations of notaries. The first symposium of notaries, organized by the Chamber, was held in Niš on November 26-27, 2016, and it was dedicated to the harmonization of the notarial practice, particularly in delegated activities.

General comments :

I1. Please indicate the sources for answering question 192:

Comments :

General comments :

10.Court interpreters

10.1.Details on profession of court interpreter

10.1.1.Status of court interpreters

197. Is the title of court interpreters protected?

Comments : Bylaw on Court Interpreters (‘Official Gazette of the RS’, no.: 35/2010, 80/2016 and 7/2017) proscribes rules on selection and work of court interpreters and translators. Based on the bylaws, appointed court interpreters and translators have the right to call themselves by this name and to make a court interpreter/translator seal, a sample of which they deposit with the court president, and with which they certify written translations and interpretations. Please see:
https://www.mpravde.gov.rs/files/%D0%BF%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA%20%D0%BE%20%D1%81%D1%82%D0%B0%D0%BB%D0%BD%D0%B8%D0%BC%20%20%D1%81%D1%83%D0%B4%D1%81%D0%BA%D0%B8%D0%BC%20%D1%82%D1%83%D0%BC%D0%B0%D1%87%D0%B8%D0%BC%D0%B0.pdf.

General comments :

198. Is the function of court interpreters regulated by legal norms?

Comments : The Law on Organisation of Courts (‘Official Gazette of the RS’, no.: 116/2008, 104/2009, 101/2010, 31/2011 – other law, 78/2011 – other law, 101/2011, 101/2013, 106/2015, 40/2015 – other law, 13/2016, 108/2016 and 113/2017), Bylaw on Court

Interpreters (‘Official Gazette of the RS’, no.: 35/2010, 80/2016 and 7/2017) and Rulebook on Remuneration for Expenses in Judicial Proceedings ("Official Gazette of RS No. 9 of 5 February 2016 and no. 62 of 13 July 2016) regulate the function of court interpreters. Criminal Procedure Code likewise proscribes relevant provisions (ex. regarding professional secrecy) as well as the Law on Notarial System, which regulates the role of court translators and interpreters within notarial procedure.

General comments : As part of its obligations under the EU integration process (Chapter 3 – Right of Establishment and Freedom to Provide Services), the Ministry of Justice of the Republic of Serbia must harmonise specific sectoral legislation under its purview with EU acquis related to the free movement of court interpreters and translators, i.e. with the Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Text with EEA relevance), including relevant Court of the EU judgments concerning court interpreters and translators’ profession, as well as the General Services Directive. Likewise, Serbia needs to fully harmonise with the Directive 2010/64/EU on the right to translation and interpretation in criminal proceedings. Therefore, activity no. 4.5.3. of the Chapter 3 “Programme for harmonization of the Republic of Serbia legislation with the EU acquis in the field of mutual recognition of professional qualifications with the Action Plan” envisages enactment of the Law on Court Interpreters and Court Translators and drafting of subordinate legislation for implementing of the law for 1st quarter of 2019. The Working Group for the Draft Law on Court Interpreters and Court Translators will need to find solutions on issues such as system of training, testing, certification and monitoring of legal translators and interpreters, duration and revocation of certification and other sanctions, advertising, tariff of fees, etc.

199. Number of accredited or registered court interpreters:

Comments : According to the Bylaw on Court Interpreters (enacted on the basis of the Law on Organisation of Courts), the Ministry of Justice keeps records on court interpreters. Electronic records of permanent court translators and interpreters can be found on the following link: https://www.mpravde.gov.rs/tekst/13857/elektronska-evidencija-stalnih-sudskih-prevodilaca-i-tumaca.php. However, the electronic records are not fully updated and the number of court translators and interpreters is not fully accurate. Relevant data will be available when the new law and an improved electronic registry becomes applicable. In order to update the electronic records of permanent court interpreters and translators, all in accordance with Article 9 of the Rulebook on Permanent interpreters ("Official Gazette of RS" no. 35/10 and 80/16) the Ministry of Justice has on 08 October 2016 published a public call for the submission of data necessary for the update of the electronic records of permanent court interpreters and translators.
On 17 December 2016, the total number of permanent court translators and interpreters in the Records of Ministry of Justice is 714. In addition to this, the total number of court interpreters and translators in the Registry of the Secretariat of AP Vojvodina (which has transferred jurisdiction in this matter on the territory of the autonomous province) is 706 while 619 of them are active.
It is important to note that the Ministry of Justice appointed 17 permanent court interpreters for sign language for deaf people, which is the first appointment of these court interpreters after almost a decade. Decisions on the appointment of permanent court interpreters were published in the "Official Gazette of the Republic of Serbia" No. 24 of March 17, 2017. An interpreter for sign language for deaf, blind and silent people can be a person who has completed at least a secondary education of four years - the fourth degree (changes from 2017).

General comments :

200. Are there binding provisions regarding the quality of court interpretation within judicial proceedings?

Comments :

General comments : The Commission, which is established by the Minister of Justice, checks the general and legal terminology knowledge of the language. The candidate must have a university degree for the foreign language or a university degree with thorough knowledge of the language to and from which the translation is being performed. The candidate also must possess knowledge of the legal terminology which is used in the relevant language to and from which the translation is being performed as well as a minimum of 5 years’ experience in work as a translator.
The president of the higher court supervises the work of the court interpreters and informs the Ministry of Justice on inoperative or negligent performance of tasks of the interpreter. The Ministry of Justice, on the other hand, performs oversight on the implementation of the Bylaw on Court Interpreters (ex. whether they properly keep a log of completed translations and certifications, which includes all

the information provided in the bylaw). An interpreter shall be dismissed if it is determined that they performed their work unprofessionally.

201. Are the courts responsible for selecting court interpreters?

Comments :

General comments : The Minister of Justice appoints court interpreters on the basis of needs stated by courts. The decision on appointment is published in the Official Gazette of RS. Upon appointment, the court interpreter takes an oath (is sworn in) before the president of the higher court on whose territory s/he resides. The High Court publishes a list of court interpreters for the territory under its jurisdiction, from which interpreters are selected in cases before courts on that territory.
According to Art. 79 of the Law on Autonomy of the Autonomous Province of Vojvodina the competent Secretariat of AP Vojvodina has jurisdiction to appoint and to fire permanent court interpreters and translators for courts in the territory of AP Vojvodina, to establish the registry of permanent court interpreters and translators.

J1. Please indicate the sources for answering question 199

Comments :

General comments :

11.Judicial experts

11.1.Profession of judicial expert

11.1.1.Status of judicial experts

202. In your system, what type of experts can be requested to participate in judicial procedures (multiple choice possible):

Comments :

General comments :

202-1. Are there lists or databases of technical experts registered?

Comments :

General comments : The Law on Expert Witnesses (“Official Gazette of RS”, no. 44/2010) provides that expertise is performed and expert opinions are given by natural and legal persons who meet the requirements provided for in this Law, governmental bodies which are competent for performing the expertise, as well as scientific and professional institutions. A natural person may perform expertise only if they are listed in the Register of Expert Witnesses of the Ministry of Justice, upon appointment by a decision of the Minister of Justice. Likewise, a legal persons may perform expertise if they are listed in the register of the Ministry for legal persons and if they have employees who are appointed expert witnesses. Notwithstanding, if no expert of the relevant profession exists in the Republic of Serbia or there are other legal or factual reasons why experts from the Republic of Serbia cannot provide expertise in a particular case, the expertise may be performed by an expert or legal entity from another state, which under the law of that state fulfils conditions for providing expertise. Procedural laws, such as the Criminal Procedure Code (Article 114) and the Law on Civil Procedure (Article 259-264) provide more specific rules on the appointment of expert witnesses in certain cases.
Therefore, a core certification system exists, in which the Ministry of Justice inspects the fulfilment of conditions for appointment, such as possession of appropriate higher education degree, at least five years of professional experience, possession of professional knowledge and practical experience in a particular field of expertise, worthiness of performing expertise, etc. The registration is not limited in time. The Law provides that judicial experts are appointed for a particular area of expertise and specialisation (In Serbian: uža specijalnost). The Register of judicial experts is divided into 41 areas of expertise (lists). The current Law on Expert Witnesses entered into force on 8 July 2010 and provided for general re-appointment of expert witnesses within one year from the date of entry into force

of the law. The need for additional expert witnesses for certain areas of expertise is communicated by presidents of first instance courts to the Ministry of Justice. Therefore, when an inadequate number of expert witnesses for a particular expertise is determined, the Minister of Justice announces a public call for applications (a specified time period does not exist).

203. Is the title of judicial experts protected?

Comments :

General comments : The Law on Judicial Experts specifies the appearance of the judicial experts' seal as well as the need for depositing of his/her signature with the Ministry of Justice.

203-1. Does the expert have an obligation of training?

Comments :

General comments :

203-2. If yes, does this training concern:

Comments :

General comments :

204. Is the function of judicial experts regulated by legal norms?

Comments : The Law on Expert Witnesses ("Official Gazette of RS", no. 44/2010), Criminal Procedure Code, Civil Procedure Code, Court Rules of Procedure, Rulebook on Remuneration for Expenses in Judicial Proceedings ("Official Gazette of RS No. 9 of 5 February 2016 and no. 62 of 13 July 2016)

General comments :

204-1. On the occasion of a mission entrusted to him/her, does the expert have to report any potential conflicts of interest?

Comments :

General comments :

205. Number of accredited or registered judicial / technical experts:

Comments : Governmental bodies which are competent for performing expertise, as well as scientific and professional institutes are not included in the register and do not undergo a system of certification. On 20 November 2016, the profession numbers 6,882 in total natural persons while 92 limited liability companies and joint-stock companies are registered, enlisted on a rolling basis, without a public call.

General comments :

205-1. Who sets the expert remuneration?

Comments :

General comments :

206. Are there binding provisions regarding the exercise of the function of judicial expert within judicial proceedings?

Comments :

General comments : There are obligatory provisions in the Criminal Procedure Code and in the Civil Procedure Code. The Criminal Procedure code stipulates that a person who is being summoned as an expert witness is required to respond to the summons and to

provide his/her findings and opinion within a certain time limit. The Law on Civil Procedure stipulates that the deadline for submission of court findings and opinions cannot be longer than 60 days.
Pursuant to the Law on Judicial Experts, the expert is required to abide by the deadlines specified by the court decision and to perform the expertise conscientiously, professionally and impartially. The expert is obliged to preserve the confidentiality of information that is learned by performing the expertise.
It is considered that the expert performs expertise carelessly/negligently if s/he unreasonably refuses to perform the expertise, does not respond to the calls of the court or other authority conducting the proceedings, fails to perform the expertise within the time specified and in other cases provided by law. This is a basis for removal of the judicial expert from the register.

207. Are the courts responsible for selecting judicial experts?

Comments : For appointment - Ministry of Justice; for selection in a particular case - parties /court or the authority that conducts the procedure

General comments : The Law on Civil Procedure provides that the party which proposes the production of evidence by judicial expert must specify in the motion the objective i.e. the subject of judicial expert evidence, and may also give a proposal of the name of the expert. The Court will submit the proposal to the opposing party for opinion. Alternatively, the law also provides for the possibility for the party to submit to the court a written report and opinion of a judicial expert, which shall be served by the court to the opposing party for opinion.
The court shall select the particular expert in case, if parties do not agree on the name or if expertise is not performed in advance on the basis of expert opinion.
Pursuant to the Law on Judicial Experts, the court or the authority that conducts the procedure is obliged to monitor the work of experts and to appoint in a particular case an expert who is resident in the territory of that court, taking into account that judicial experts in the same field are equally engaged. Court presidents may determine the need for increasing the number of judicial experts to a certain area and submit it to the Ministry of Justice. Alternatively, they may submit a reasoned proposal for the dismissal of an expert in case of improper, untimely or negligent expert evidence may be submitted by the court, the authority conducting the proceeding or the party or other participants in judicial or other proceedings. The court or the authority conducting the procedure monitors the work of experts and informs the Ministry of Justice of their remarks and fines imposed on the judicial expert.

207-1. Does the judge control the progress of investigations?

Comments :

General comments : The court will impose a fine of between 10,000 and 150,000 RSD on an expert who is a physical person, or from 30,000 to 1,000,000 RSD on a legal entity that performs an expert examination, if the expert does not come to the hearing, although she/he is duly called and the absence is not justified or if they fait to submit their findings and opinions within the deadline.
The court may impose a fine of between 10,000 and 150,000 RSD (expert physical person), or from 30,000 to 1,000,000 RSD (legal entity that performs the expert examination) if the expert refuses to perform an expert report without justified reasons. A responsible person in the legal entity conducting the expert examination in the aforementioned cases may also be fined from 10,000 to 150,000 RSD.
If an expert delivers an opinion and it is vague, incomplete or contradicted, the court will order the expert to supplement or correct the findings and opinions and determine the deadline for remedying the deficiencies, or ask the expert to make a statement at the hearing.
If the expert does not submit his/her findings and opinion within a specified time limit, the court may, at the request of the party, order the appointment of another expert, after the expiration of the deadline that the parties have decided to declare.
In the preceding two cases, the court expert will impose a fine in the amount mentioned above and will notify the Ministry of justice in order to initiate the procedure for the removal of experts from the register of court experts.

K1. Please indicate the sources for answering question 205

Comments :

General comments : Ministry of Justice Department for Judicial Professions. The register of expert witnesses is available on the website of the Ministry of Justice, http://www.mpravde.gov.rs/tekst/740/sudski-vestaci.php. A register of legal entities is also kept by the Ministry of Justice and publicly available on the website of the Ministry: http://www.mpravde.gov.rs/registar.php?id=3998.

12.Reforms in judiciary

12.1.Foreseen reforms

12.1.1.Reforms

208. Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? Please inform whether these reforms are under preparation or have only been envisaged at this stage. Have innovative projects been implemented? If possible, please observe the following categories:

Comments :

General comments : Information on planned activities and their implementation regarding the Action Plan for Chapter 23 may be accessed through the following link: https://www.mpravde.gov.rs/files/Report%20no.%204-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf.