Strasbourg, 30/06/2022

CEPEJ(2022)4
PART 2

**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)**

# HFII: Towards a better evaluation of the results of judicial reform efforts in the Western Balkans "DASHBOARD Western Balkans"

## Data collection: 2021

30/06/2022 15:19

Report prepared by the CEPEJ for the attention of the European Commission

# Part 2 (A) - Beneficiary fiche - Serbia

# Executive Summary - Serbia in 2021

## Population in 2021


## GDP per capita in 2021


## Average annual salary in 2021

**9 156 €**

**WB Average: 8 479 €**

### Budget

In 2021, Serbia spent 297 570 744 € as implemented Judicial System Budget. Thus, it spent **43,3 € per inhabitant, which was higher than the Western Balkans (WB) average** of 36 €. Compared to 2020, the JS budget increased by 7,7%.

At the moment in Serbia, it is not possible to separate the legal aid budget from the justice expenses, therefore the most part legal aid budget (related with mandatory representation in courts) is included in the courts' budget, while a small part is reported under the "legal aid budget".
For this reason, 33,8% of the courts budget is composed by justice expenses. In 2021 Serbia spent 158 224 963 € for gross salaries (22,8% more compared to 2020), and it increased the budget allocated for computerisation (72,6% more than in 2020).

### Legal aid

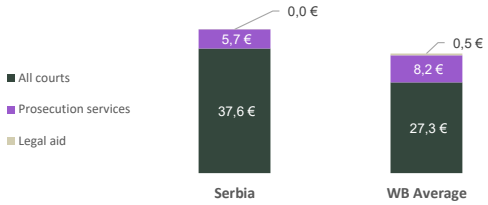
In Serbia, **the Law on Free Legal Aid (2018) came into force on 1st October 2019 and it was implemented in 2020**.

The Law distinguishes free legal aid (legal advice, representation before court, defence, drafting of motions), which corresponds to "cases brought to court" and free legal support (general legal information, mediation, services of public notaries), which corresponds to "cases not brought to court".

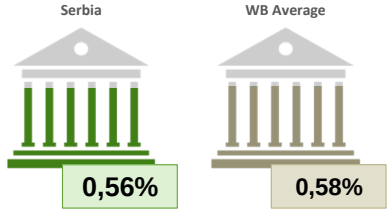
The Law prescribes that citizens shall address to the local self-government units (hereinafter: LSG) to apply for free legal aid. Staff in LSG decide on the eligibility of applications. Legal aid is provided by lawyers, as an independent and autonomous service, and legal aid offices established in the units of local self-government in accordance with the law.

## Budget of the Judiciary

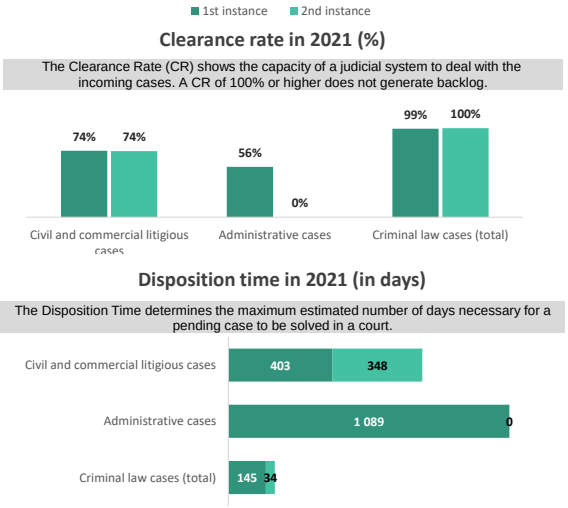
### Implemented Judical System Budget per inhabitant in 2021




### Implemented Judicial System Budget as % of GDP in 2021




## Efficiency




### Efficiency**

**Serbia regularly has the highest number of first instance incoming civil and commercial litigious and criminal cases per 100 inhabitants in the region, well above the WB average.** In 2021, the incoming first instance civil and commercial litigious cases were 9,13 per 100 inhabitants, vs the WB average of 2,48, while first instance severe criminal misdemeanour cases were 5,23 per 100 inhabitants (WB average was 3,21).
In particular, as regards civil and commercial litigious cases, the incoming cases had been constantly increasing between 2018 and 2021. In addition, in 2020, courts worked with reduced capacities because of the Covid-19 pandemic. This caused the decrease of the number of resolved cases. In 2021, the number of resolved case rose again, but not enough to solve all the incoming cases, that increased as well. As a result, the clearance rate (CR) in first instance decreased (from 110% in 2018 to 74% in 2021), while the number of pending cases increased (+45% between 2020 and 2021). Consequently, **the disposition time (DT) almost doubled in four years** (from 225 days in 2018 to 403 in 2021). However, **it decreased by 14% between 2020 and 2021**.
Administrative cases in first instance are well above the WB average (492 vs 1 089 days), while civil and commercial litigious cases, severe criminal cases and misdemeanour cases in first instance are longer than the WB average. Civil and commercial litigious cases in second instance (348 days) are solved faster than the WB average (503 days).
In Serbia, there are quantitative standards both for judges and prosecutors. In particular, judges' performance evaluation is based on monthly caseload quota. **Productivity is evaluated based on the number of cases actually disposed by a judge over a month against the number of cases they should dispose (monthly caseload quota).**

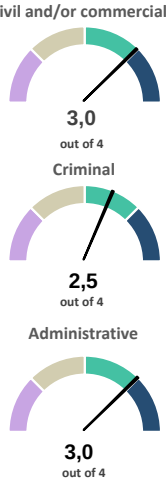
**The CEPEJ has developed two indicators to measure court's performance: clearance rate and disposition time.
**Clearance Rate**, obtained by dividing the number of resolved cases by the number of incoming cases, is used to assess the ability of a judicial system to handle the inflow of court cases. Its key value is 100%. A value below 100% means that the courts weren't able to solve all the cases they received and, as a consequence, the number of pending cases will increase, while CR above 100% means that the courts have resolved more cases than they received (they have resolved all the incoming cases and part of the pending cases) and, as a consequence, the number of pending cases will decrease.
**Disposition Time** is a proxy to estimate the lengths of proceedings in days. It is calculated as the ratio between the pending cases at the end of the period and the resolved cases (multiplied by 365). It estimates the time to resolve all pending cases based on the actual pace of work. This indicator is highly influenced by the number of pending cases: categories of cases with high backlog will have higher DT than categories of cases that do not have backlog. At the same time, it is affected by the number of resolved cases, and this is especially evident in 2020, when this number dropped.

### Electronic case management system and court activity statistics

As regards the Caseload Management System (CMS), the current CMS was developed more than 10 years ago. An IT strategy was adopted by ICT Sectorial Council on February 4th 2022. The project of implementation of new modern centralized case management system started in September 2021, and in March 2022 it was in inception phase. The CMS index for Serbia is slightly higher than the WB average for civil and commercial and administrative cases (3,0 vs 2,9) and slightly lower (2,5 vs 2,8) for criminal cases.

## CMS index (scale 0-4)

The Case Management System (CMS) Index is an index from 0 to 4 points calculated based on five questions on the features and deployment rate of the CMS of the courts of the respective beneficiary. The methodology for calculation provides one index point for each of the five questions for each case matter. The points regarding the four questions on the features of the CMS (status of cases online; centralised or interoperable database; early warning signals; status of integration with a statistical tool) are summarized while the deployment rate is multiplied as a weight. In this way if the system is not fully deployed the value is decreased even if all features are included to provide an adequate evaluation.




### Training

**In 2021, the total number of available in-person training courses was 150; whereas the number of available online training courses was 94. Both figures were the slightly higher than the (WB) average**.
The number of participants was 5 911, among which 1 145 were judges. As regards online courses, there were 1 880 participants including 963 judges. Between 2020 and 2021, the number of participants to in-person courses has more than doubled, while the number of participants in online courses has more than tripled. In 2021, 3 in-person and 3 online trainings on EU law, and 11 in-person and 7 online trainings on EU charter were available, all co-organised or co-financed with international partners.

### ADR

Generally speaking, ADR and mediation in particular are not well developed in the Western Balkans region.
In Serbia, court-related mediation procedures are available and legal aid could be granted. The judicial system does not provide for mandatory mediation with a mediator before or instead of going to court or mandatory informative sessions with a mediator. However, the court is obliged to provide all necessary information to the parties in the dispute about the possibilities of mediation, which can also be done by referring the parties to the mediator. In the early phase of the proceeding, the court shall direct the parties to mediation or to an informative hearing for mediation, or to instruct the parties of the option of pre-trial settlement of dispute by mediation or through another amicable manner. In 2021, there were in total 642 cases for which the parties agreed to start mediation. Mediation was most used for Civil and commercial cases and Family cases (319 and 151 cases, respectively, in which parties agreed to start mediation).
However, **the number of mediators in Serbia is significantly large (21,1 mediators per 100 000 inhabitants, whereas WB median is 5,4 mediators per 100 000 inhabitants).**

### ECHR

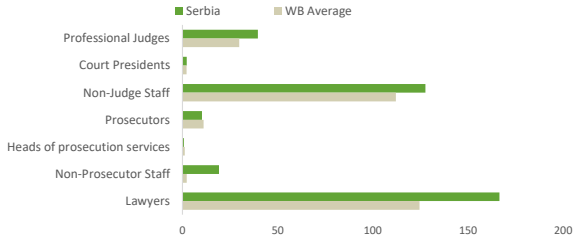
In 2021, the applications allocated to a judicial formation of the European Court on Human Rights decision body for Serbia were 1 993, 9% more than the previous year but 8% less than in 2019. The judgements by the ECHR finding at least one violation for Serbia were 5; whereas they were 22 in 2019.

### Professionals and gender

Eastern European countries traditionally have a very high number of professionals per inhabitants. Serbia confirms this tendency, having more judges (39,6 per 100 000 inhabitants) than the WB median (30,4 and 10,5 respectively). This difference was particularly notable in the first instance: **34,3 judges per 100 000 inhabitants, whereas the WB average was 23 judges per 100 000 inhabitants**.

## Professionals of Justice

Total number of professionals per 100 000 inhabitants in 2021

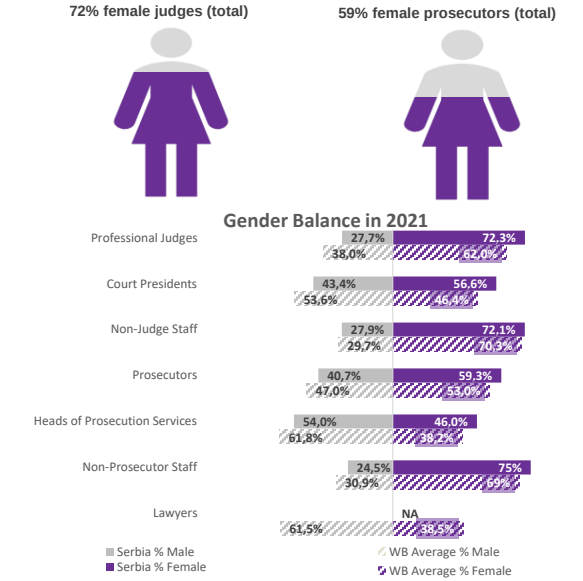



Gross annual salaries of professional judges and prosecutors in 2021


*Kosovo* is not included in the calculation of summary statistics*

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

## Gender Balance




The high number of judges and prosecutor is accompanied by the high number of incoming cases: Serbia had indeed the highest number of incoming first instance civil/commercial litigious and criminal cases per 100 inhabitants in the region.

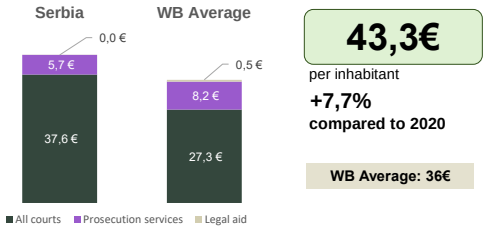
In proportion, there are less judges in second and third instance: 4,6 judges per 100 000 inhabitants in second instance (WB average is 5,6) and 0,6 judges in third instance (WB median is 1,3). The number of non-judge staff is higher than the WB average in first instance (114 per 100 000 inhabitants vs 91) and lower in second and third (10,2 and 2,9 vs 16 ad 4,9). The majority of non-judge staff was assisting judges and represented 53% of the total.

As regards gender balance, **the percentage of female judges, prosecutors and staff was higher than the WB average in 2021** for all categories of personnel, **including court presidents and heads of prosecution services**. It was particularly high for professional judges (72% of female judges (total) vs the WB average of 62%) and for non-prosecutor staff (75% of female staff vs WB median of 70%). For judges and prosecutors, **a diminution of the percentage of female can be observed from first to third instance**. On 1 June 2018, the Commissioner for Protection of Equality in Serbia has addressed gender inequality issues with respect to the promotion of non-judge staff in courts, with publishing and sending a General Recommendation on Equality Measures to all courts in Serbia, with respect to the promotion of non-judge staff.

In Serbia, the average salary for judges increased between 2018 and 2021 by 22% at the beginning of career and by 21% at the end of career, while the average salary for prosecutors increased by 13% bot at the beginning and at the end of career. Compared to the national average salary, in 2021 judges and prosecutors received a lower salary than the WB average at

# Budget of the judiciary in Serbia in 2021 (Indicator 1)

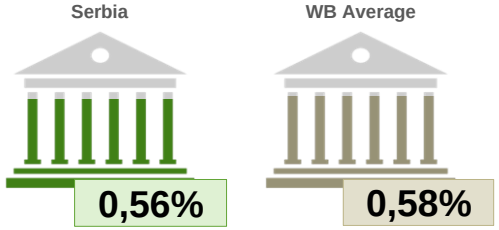
### Implemented Judicial System Budget per inhabitant



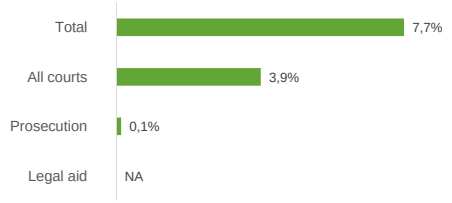

**43,3€**
per inhabitant
**+7,7%**
**compared to 2020**

**WB Average: 36€**

### Implemented Judicial System Budget as % of GDP




### % Variation of Implemented JSB per inhabitant between 2020 and 2021




JSB = Judicial System Budget

The Judicial System Budget (JSB) is composed by the budget for all courts, public prosecution services and legal aid. In 2021, the implemented JBS for Serbia was 43,3 € per inhabitant. This was higher than the Western Balkans (WB) average (36€) and it increased by 7,7% since 2020. It represented 0,56% of the GDP of Serbia (the WB average was 0,58%).

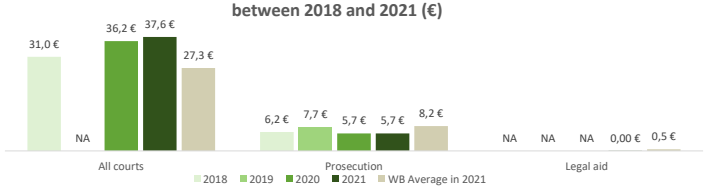
## • Budget allocated to the judicial system (courts, prosecution services and legal aid)

In 2021, Serbia spent 297 570 744€ on the implemented judcial system budget. This means that Serbia spent 43,3€ per inhabitant, is more than the Western Balkans median of 36€. 86,8% was spent for all courts, 13,2% for prosecution services, 0% for legal aid. Compared to 2020, Serbia has spent 3,9% more for courts and 0,1% more for prosecution services per inhabitant.

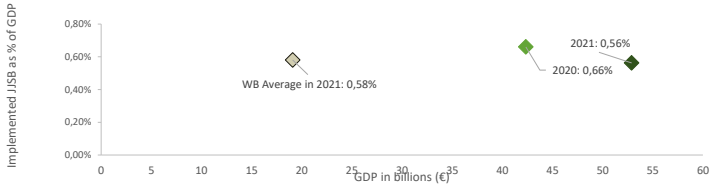
| Judicial System Budget | Judicial System Budget in 2021 | | Implemented Judicial System Budget per inhabitant | | | | Implemented Judicial System Budget as % of GDP | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Approved | Implemented | Per inhabitant in 2021 | WB Average in 2021 | % Variation of values per inhabitant 2019 - 2021 | % Variation of values per inhabitant 2020 - 2021 | As % of GDP | WB Average | Variation (in ppt) 2019 - 2021 | Variation (in ppt) 2020 - 2021 |
| Total | 304 460 689 € | 297 570 744 € | 43,3 € | 36,0 € | NA | 7,7% | 0,56% | 0,58% | NA | -0,10 |
| All courts | 264 175 485 € | 258 143 077 € | 37,6 € | 27,3 € | NA | 3,9% | 0,49% | 0,44% | NA | -0,11 |
| Prosecution | 40 243 744 € | 39 424 459 € | 5,7 € | 8,2 € | -25,9% | 0,1% | 0,07% | 0,14% | -0,04 | -0,02 |
| Legal aid | 41 460 € | 3 208 € | 0,0 € | 0,5 € | NA | NA | 0,000% | 0,010% | NA | NA |

PPT = Percentage points

### Implemented judicial system budget per inhabitant between 2018 and 2021 (€)




### Implemented Judicial System Budget as % of GDP in 2020 and 2021




This scatterplot shows the relation between the GDP in billions and the Implemented Judicial System Budget as % of GDP. A figure on the right (left) of the WB average means that the Beneficiary has a higher (lower GDP than the WB average. A figure above (below) the WB average shows that the Beneficiary has a higher (lower) ratio of Implemented Judicial System Budget as % of GDP than the WB average.

In 2021, the methodology of collecting budgetary data has been changed with cooperation with CEPEJ. However, it is still not possible to separate the expenses for the mandatory representation in courts (counted in justice expenses) from the courts budget, therefore the main part of the legal aid budget is included in the court budget.

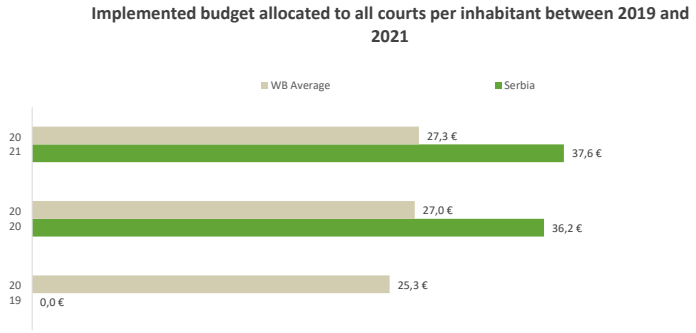
The budget for the Legal Aid is executed based on the requests from the municipalities (local governments) and can cover only up to 50% of the total budget spent annually by municipalities (local governments), based on the Law on Legal Aid.
The Legal Aid budget does not include "mandatory representation in criminal cases" by lawyers, before the Serbian courts, which is the cost covered by the High Judicial Council.

## • Budget allocated to the functioning of all courts

In 2021, Serbia spent 258 143 077 € on the implemented budget for courts. 61,3% was spent for gross salaries, 2,4% for computerisation, 33,8% for justice expenses, 0% for court buildings, 0% for investment in new buildings, 0,1% for other.

Compared to 2020, the implemented budget for courts in absolute value has increased by 2,7%.

| | 2021 | | % Variation between 2019 and 2021 | | % Variation between 2020 and 2021 | |
|---|---|---|---|---|---|---|
| | Approved budget | Implemented budget | Approved budget | Implemented budget | Approved budget | Implemented budget |
| Total (1 + 2 + 3 + 4 + 5 + 6 + 7) | 264 175 485 € | 258 143 077 € | NA | NA | 2,4% | 2,7% |
| 1. Gross salaries | 159 710 735 € | 158 224 963 € | 13,9% | 14,1% | 22,2% | 22,8% |
| 2. Computerisation (2.1 + 2.2) | 6 910 518 € | 6 190 938 € | -5,6% | 0,9% | 2,0% | 72,6% |
| 2.1 Investiment in computerisation | 1 942 927 € | 1 875 204 € | | | | |
| 2.2 Maintenance of the IT equipment of courts | 4 967 591 € | 4 315 734 € | | | | |
| 3. Justice expenses | 90 404 259 € | 87 333 978 € | NA | NA | -24,1% | -25,6% |
| 4. Court buildings | 21 290 € | 19 986 € | -97,6% | -97,4% | -56,1% | -52,2% |
| 5. Investment in new buildings | 42 980 € | 42 947 € | -99,7% | -99,7% | -96,5% | -96,4% |
| 6. Training | NAP | NAP | NAP | NAP | NAP | NAP |
| 7. Other | 175 185 € | 139 927 € | NA | NA | -35,5% | -48,0% |




The budget system of RS provides for unified collection of court fees, 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 fees.

Part of the legal aid budget is included in "justice expenses" and cannot be calculated separately

## • Budget allocated to the whole justice system

Serbia did not provide data on the budget allocated to the whole justice system.

## • Budget received from external donors

Serbia did not provide data on the budget allocated to the whole justice system.

*Kosovo is not included in the calculation of summary statistics*

## Professionals and Gender Balance in judiciary in Serbia in 2021 (Indicators 2 and 12)

### Judges

**39,6**

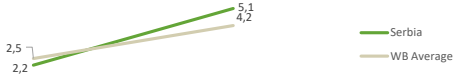
**per 100 000 inhabitants**

**+2%**
**compared to 2019**

**WB Average: 29,8**

**72% female judges (total)**

**Judges - Ratio with the annual gross salary at the beginning and the end of career in 2021**




### Prosecutors

**10,2**

**per 100 000 inhabitants**

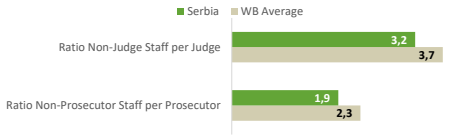
**-9,1%**
**compared to 2019**

**WB Average: 11,1**

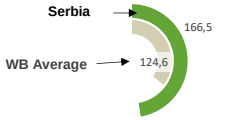
**59% female prosecutors (total)**

**Prosecutors - Ratio with the annual gross salary at the beginning and the end of career in 2021**


### Non-Judge and Non-Prosecutor staff




### Lawyers per 100 000 inhabitants




**+10,3%**
**compared to 2019**

In 2021, Serbia had 39,6 professional judges per 100 000 inhabitants and 10,2 prosecutors per 100 000 inhabitants. Both figures were below the Western Balkans (WB) average of 29,8 and 11,1, respectively. More than half of professional judges were women (WB Average was 62%), as well as the percentage of female prosecutors (the WB average was 53%).

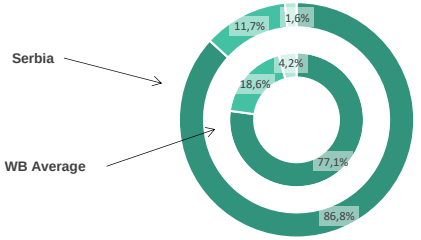
## • Professional Judges

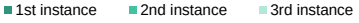
| | Professional judges | | | |
|---|---|---|---|---|
| | Absolute number | % of the total | Per 100 000 inhabitants | WB Average per 100 000 inhabitants |
| Total | 2720 | 100,0% | 39,6 | 29,8 |
| 1st instance courts | 2360 | 86,8% | 34,3 | 23,0 |
| 2nd instance courts | 317 | 11,7% | 4,6 | 5,6 |
| Supreme Court | 43 | 1,6% | 0,6 | 1,3 |

*For reference only: the 2020 EU median is 21,8 judges per 100 000 inhabitants.*

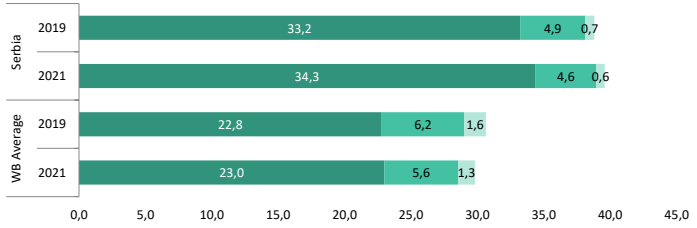
**% Variation of no. of professional judges per 100 000 inh. 2019 - 2021**


**Distribution of professional judges by instance in 2021 (%)**




**Distribution of professional judges per 100 000 inhabitants by instance in 2019 and 2021**




In 2021, the absolute number of professional judges in Serbia was 2 720, which was 39,6 per 100 000 inhabitants (higher than the WB average of 29,8).

Compared to 2019, the total number of professional judges per 100 000 inhabitants increased by 2%.

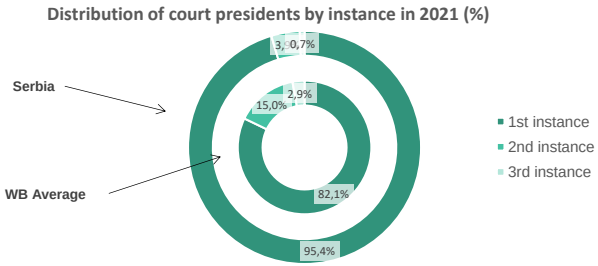
The figures show a difference of -9,6 percentage points between the percentage of judges in the first instance (86,8%) and the WB average (77,1%)

The number of first instance professional judges includes indeed judges of “basic” courts, “higher” courts, misdemeanor courts, commercial courts, Administrative Court;
The number of second instance professional judges include judges of Commercial Court of Appeal, appellate courts, Misdemeanor Court of Appeal;
The number of supreme court professional judges includes judges of the Supreme Court of Cassation.
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.

## • Court presidents

| | Court presidents | | | |
|---|---|---|---|---|
| | Absolute number | % of the total | Per 100 000 inhabitants | WB Average per 100 000 inhabitants |
| Total | 152 | 100,0% | 2,2 | 2,2 |
| 1st instance courts | 145 | 95,4% | 2,1 | 1,8 |
| 2nd instance courts | 6 | 3,9% | 0,1 | 0,3 |
| Supreme Court | 1 | 0,7% | 0,0 | 0,1 |

The absolute number of court presidents in Serbia in 2021 was 152, which was 2,2 per 100 000 inhabitants (the WB average of 2,2).



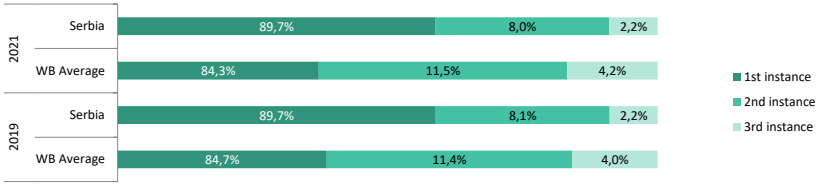
## • Non-judge staff

The absolute total number of non-judge staff in Serbia was 8 771, which increased by 0,6% between 2019 and 2021. The number of non-judge staff per 100 000 inhabitants was 127,6, which was above the WB average of 112,1.
Compared to 2019, there was no significant variation in the distribution of non-judge staff among instances in 2020.
The highest number of non-judge staff were assisting judges and represented 41,5% of the total.

| | Number of non-judge staff by instance | | | |
|---|---|---|---|---|
| | Absolute number | % of the total | Per 100 000 inhabitants | WB Average per 100 000 inhabitants |
| Total | 8 771 | 100,0% | 127,6 | 112,1 |
| 1st instance courts | 7 869 | 90% | 114,5 | 91,2 |
| 2nd instance courts | 705 | 8% | 10,3 | 16,0 |
| Supreme Court | 197 | 2% | 2,87 | 4,87 |

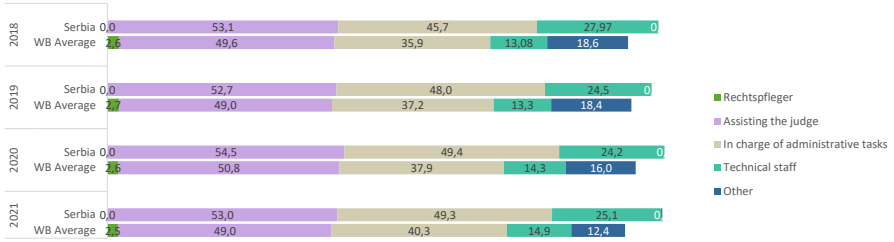
*For reference only: the 2020 EU median is 69 non-judge staff per 100 000 inhabitants.*

**Distribution of non-judge staff by instance in 2019 and 2021**




| | Number of non-judge staff by category | | | |
|---|---|---|---|---|
| | Absolute number | % of the total | Per 100 000 inhabitants | WB Average per 100 000 inhabitants |
| Total | 8 771 | 100,0% | 127,6 | 112,1 |
| Rechtspfleger | NAP | NAP | NAP | 2,5 |
| Assisting the judge | 3 639 | 41,5% | 53,0 | 49,0 |
| In charge of administrative tasks | 3 390 | 38,7% | 49,3 | 40,3 |
| Technical staff | 1 724 | 19,7% | 25,1 | 14,9 |
| Other | 18 | 0,2% | 0,3 | 12,4 |

**Number of non-judge staff per 100 000 inhabitants by category between 2018 and 2021**



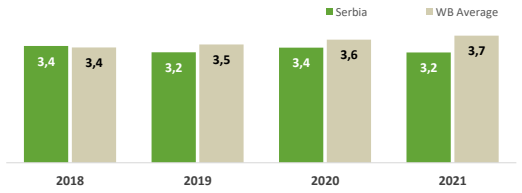

## • Ratio between non-judge staff and professional judges

In Serbia, the ratio of non-judge staff per professional judge was 3,2 in 2021, whereas the WB Average was 3,7. This ratio decreased since 2018.

| | Ratio in 2021 | | % Variation between 2019 and 2021 |
|---|---|---|---|
| | Serbia | WB Average | Serbia |
| Total | 3,2 | 3,7 | -0,1% |
| 1st instance courts | 3,3 | 3,9 | -1,4% |
| 2nd instance courts | 2,2 | 2,8 | 8,0% |
| Supreme Court | 4,6 | 5,1 | 13,4% |

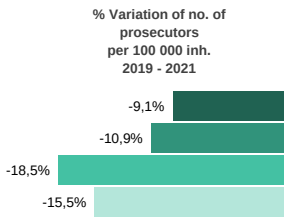
*For reference only: the 2020 EU median ratio of non-judge staff per judge is 3,7 .*

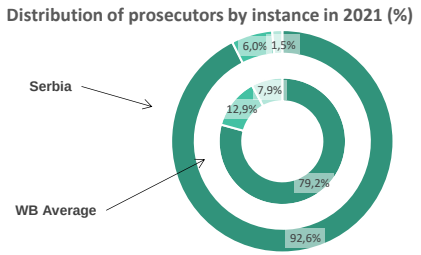
**Ratio between non-judge staff and judges between 2018 and 2021**



## • Prosecutors

| | Number of prosecutors by instance | | | |
|---|---|---|---|---|
| | Absolute number | % of the total | Per 100 000 inhabitants | WB Average per 100 000 inhabitants |
| Total | 703 | 100,0% | 10,2 | 11,1 |
| 1st instance courts | 634 | 90,2% | 9,2 | 8,9 |
| 2nd instance courts | 41 | 5,8% | 0,6 | 1,5 |
| Supreme Court | 10 | 1,4% | 0,1 | 0,9 |



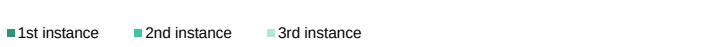



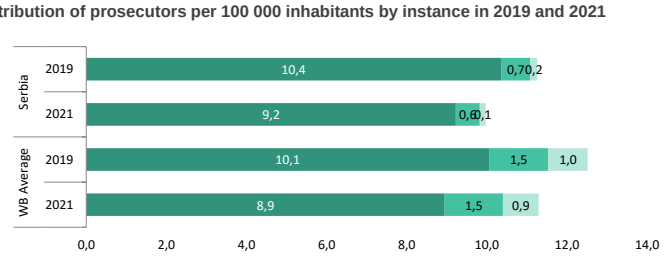

In 2021, the absolute number of prosecutors in Serbia was 703, which was 10,2 per 100 000 inhabitants (lower than the WB Average of 11,1).

The total number of prosecutors per 100 000 inhabitants decreased by -9,1% between 2019 and 2021.

The figures show a difference of 13,3 percentage points between the percentage of prosecutors in the first instance (92,6%) and the WB average (79,2%)

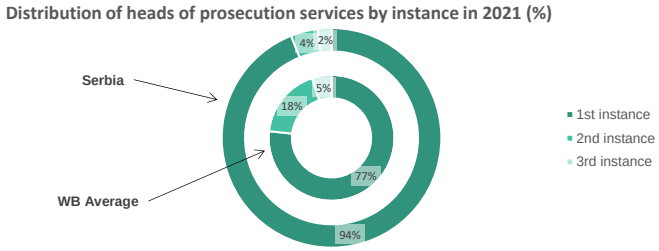
In the Prosecutor's Office for War Crimes and Organized Crime, the function of the Deputy Prosecutor is performed by 18 persons (8 are female and 10 are male).




## • Heads of prosecution services

| | Heads of prosecution services | | | |
|---|---|---|---|---|
| | Absolute number | % of the total | Per 100 000 inhabitants | WB Average per 100 000 inhabitants |
| Total | 50 | 100,0% | 0,7 | 1,2 |
| 1st instance courts | 47 | 94,0% | 0,7 | 1,0 |
| 2nd instance courts | 2 | 4,0% | 0,0 | 0,2 |
| Supreme Court | 1 | 2,0% | 0,0 | 0,1 |




The absolute number of Heads of prosecution services in Serbia in 2021 was 50, which was 0,7 per 100 000 inhabitants ( the WB average of 1,2).

There are special jurisdictions of the Prosecutor's Office for War Crimes and the Prosecutor's Office for Organized Crime, in which one person performs the function of a prosecutor.

## • Non-prosecutor staff and Ratio between non-prosecutor staff and prosecutors

| | Non-prosecutor staff in 2021 | | | Ratio between non-prosecutor staff and prosecutors in 2021 | | % Variation 2019 - 2021 |
|---|---|---|---|---|---|---|
| | Absolute number | Per 100 000 inhabitants | WB Average per 100 000 inhab. | Serbia | WB Average | Serbia |
| Total | 1 317 | 19,2 | 24,7 | 1,9 | 2,3 | 31,5% |

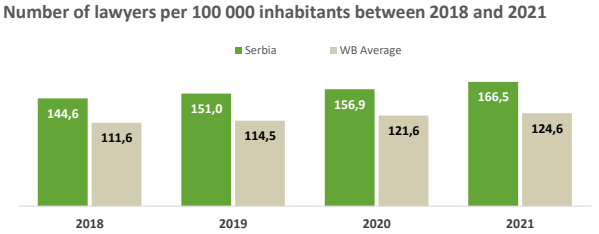
In 2021, the total number of non-prosecutor staff in Serbia was 1317, which increased by 17,9% compared to 2019.
The number of non-prosecutor staff per 100 000 inhabitants was 19,2, below the WB Average of 24,7
The ratio of non-prosecutor staff per prosecutor was 1,87, which was significantly lower than the WB Average of 2,3.


## • Lawyers

| | Number of lawyers in 2021 | | | % Variation 2019 - 2021 |
|---|---|---|---|---|
| | Absolute number | Per 100 000 inhabitants | WB Average per 100 000 inhabitants | Serbia |
| Total | 11 444 | 166,5 | 124,6 | 10,3% |

*For reference only: the 2020 EU median is 192,6 lawyers per 100 000 inhabitants.*

In 2021, the number of lawyers was 166,5 per 100 000 inhabitants, which was higher than the WB Average (124,6). The number of lawyers per 100 000 inhabitants increased by 10,3% between 2019 and 2021.

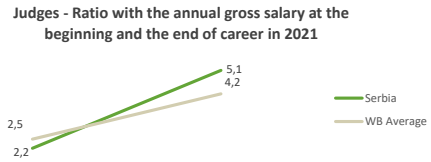


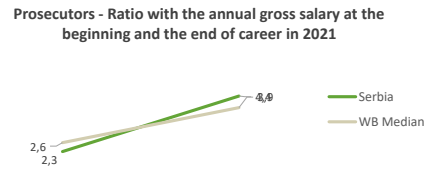
## • Salaries of professional judges and prosecutors

In 2021, the ratio of the salary of professional judges at the beginning of career with the annual gross average salary in Serbia was 2,2, which was less than the WB average (2,5).
At the end of career, judges were paid more than at the beginning of career by 132,7%, which was more than the variation of WB average (+66,9%).
In 2021, the ratio of the salary of prosecutors at the beginning of career with the annual gross average salary in Serbia was 2,3, which was less than the WB average (2,6).
At the end of career, prosecutors were paid more than at the beginning of career by 91,6%, which was more than the variation of WB average (50,4%).

| | | Salaries in 2021 | | | | % Variation 2019 - 2021 |
|---|---|---|---|---|---|---|
| | | Gross annual salary in € | Net annual salary in € | Ratio with the annual gross salary | WB Average Ratio with the annual gross salary | Serbia |
| Professional judge | At the beginning of his/her career | 20 015 | 12 028 | 2,2 | 2,5 | 23,0% |
| | Of the Supreme Court or the Highest Appellate Court | 46 584 | 27 995 | 5,1 | 4,2 | 56,4% |
| Public prosecutor | At the beginning of his/her career | 20 916 | 14 688 | 2,3 | 2,6 | 10,3% |
| | Of the Supreme Court or the Highest Appellate Court | 40 084 | 28 100 | 4,4 | 3,9 | 39,2% |


*For reference only: the 2020 EU median for the ratio of judges and prosecutors' salaries with average gross annual national salary is:*
*- professional judges' salary at the beginning of career: 2,3*
*- professional judges' salary at the end of career: 4,3*
*- prosecutors' salary at the beginning of career: 1,9*
*- prosecutors' salary at the end of career: 3,8*




### Additional benefits and bonuses for professional judges and prosecutors

| | Reduced taxation | Special pension | Housing | Other financial benefit | Productivity bonuses for judges |
|---|---|---|---|---|---|
| Judges | ✗ | ✗ | ✓ | ✗ | ✗ |
| Prosecutors | ✗ | ✗ | ✓ | ✗ | |

High ranking pp's and judges (ex. SCC, appellate) have the possibility to receive partial reimbursement of housing costs if they have been appointed to a court which is not in their place of domicile (ex. an appellate court judge from Novi Sad appointed to the Supreme Court of Cassation in Belgrade will receive additional compensation for the additional housing expense). Likewise, members of the HJC and SPC, judges and pp's who are not from Belgrade receive the compensation.

## Gender Balance

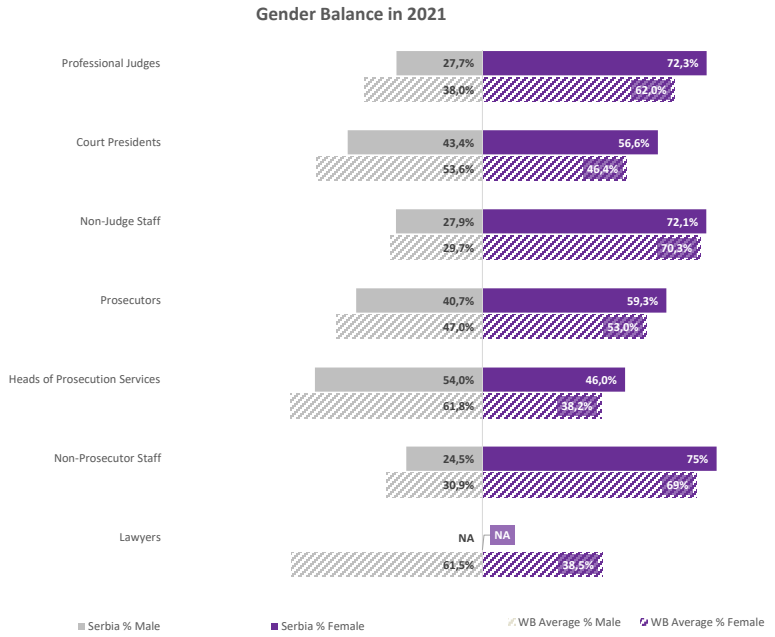
| | Total number per 100 000 inh. | % Female | WB Average | % Variation 2019 - 2021 Serbia |
|---|---|---|---|---|
| Professional Judges | 39,6 | 72,3% | 62,0% | 0,4 |
| Court Presidents | 2,2 | 56,6% | 46,4% | |
| Non-Judge Staff | 127,6 | 72,1% | 70,3% | 0,8 |
| Prosecutors | 10,2 | 59,3% | 53,0% | 2,9 |
| Heads of Prosecution Services | 0,7 | 46,0% | 38,2% | |
| Non-Prosecutor Staff | 19,2 | 75,5% | 69,1% | -1,0 |
| Lawyers | 166,5 | NA | 38,5% | NA |

*For reference only. 2020 EU medians on gender are among professionals are:*

*62% women judges.* *76% women non-judge staff.*

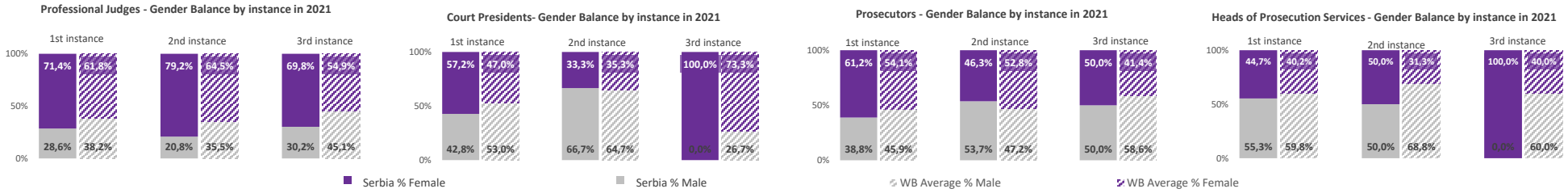
*58% women prosecutors.* *73% women non-prosecutor staff.*

*47% women lawyers.*




In 2021, the percentage of female judges was 72,3%, which was higher than WB average (62%). Moreover, the percentage of female non-judge staff was 72,1%.
Also, in 2021, the percentage of female prosecutors was 59,3%, which was higher than WB average (53%). Moreover, the percentage of female non-prosecutor staff was 75,5%.
The percentage of females is higher than the median as regards court presidents (56,6% vs 46,4%) and heads of prosecution services as well (46% vs 38,2%)

| | % Female Professional Judges | | % Female Court presidents | | % Female Prosecutors | | % Female Heads of Prosecution Services | |
|---|---|---|---|---|---|---|---|---|
| | Serbia | WB Average | Serbia | WB Average | Serbia | WB Average | Serbia | WB Average |
| 1st instance courts | 71,4% | 61,8% | 57,2% | 47,0% | 61,2% | 54,1% | 44,7% | 40,2% |
| 2nd instance courts | 79,2% | 64,5% | 33,3% | 35,3% | 46,3% | 52,8% | 50,0% | 31,3% |
| Supreme Court | 69,8% | 54,9% | 100,0% | 73,3% | 50,0% | 41,4% | 100,0% | 40,0% |




For judges and prosecutors, a diminution of the percentage of female can be observed from first to third instance, whereas it is an increase for non-judge staff.

## Gender Equality Policies

| | Recruitment | | Appointment | Promotion | | Person / institution specifically dedicated to ensure the respect of gender equality on institution level |
|---|---|---|---|---|---|---|
| | Specific provisions for facilitating gender equality | Person / institution dealing with gender issues on national level | Specific provisions for facilitating gender equality | Specific provisions for facilitating gender equality | Person / institution dealing with gender issues on national level | |
| Court Presidents | | | ✗ | | | |
| Heads of Prosecution Services | | | ✗ | | | |
| Judges | ✗ | ✗ | | ✗ | ✗ | ✗ |
| Prosecutors | ✗ | ✗ | | ✗ | ✗ | ✗ |
| Non-judge staff | ✗ | ✗ | | ✗ | ✓ | ✗ |
| Lawyers | ✗ | | | ✗ | | |
| Notaries | ✗ | | | ✗ | | |
| Enforcement agents | ✗ | | | ✗ | | |

In Serbia there is no overarching document (e.g. policy/strategy/action plan/program) on gender equality that applies specifically to the judiciary.
The Constitution and relevant legislation guarantee equality before law, equal protection of rights before the courts and other state bodies and bodies of AP Vojvodina and LSGs. The Constitutional provisions on the equality before law include equal protection before courts and other bodies and equal access to legal remedies (Art. 36) and legal assistance (Art. 67), right to rehabilitation and compensation of material or non-material damage inflicted by unlawful or irregular work of state bodies or other entities (Art. 35). The equal right to legal capacity is also guaranteed (Art. 37.1). The Law on Prohibition of Discrimination and the Law on the Equality Between Sexes ("Official Gazette of the Republic of Serbia", No. 104/2009), please see unofficial English translation: http://www.legislationline.org/documents/action/popup/id/16015 and in Serbian: https://www.paragraf.rs/propisi/zakon_o_ravnopravnosti_polova.html) additionally stress equality before law of both women and men; that all people are equal and enjoy the same status and equal legal protection regardless of their personal properties. Everyone has equal access and equal protection of rights before courts and public authorities. Discriminatory treatment by an official, namely by a responsible person of public authority is considered severe violation of work duty pursuant to law. (for more information please see: http://europa.rs/files//Gender_Equality/Gender-Analysis-Serbia-dec-2016.pdf, IPA – PRE-ACCESION INSTRUMENT (NEAR) GENDER ANALYSIS FOR SERBIA Letter of Contract N°2016/377481, FINAL REPORT, Prepared by Mirjana Dokmanovic December 2016, IBF International Consulting).

Gender inequality in terms of representation of gender has not been indicated as an issue which needs active facilitation. This is why no specific positive discrimination provisions currently address this matter. The relevant bylaws of the High Court Council and State Prosecutorial Council provide for the need for non-discrimination on all bases, for both selection and promotion.
For example, Article 46 of the Law on Judges (Official Gazette of the RS, No. 116/2008, 58/2009 – decision of the CC, 104/2009, 101/2010, 8/2012 – decision of the CC, 121/2012, 124/2012 – decision of the CC, 101/2013, 111/2014 – decision of the CC, 117/2014, 40/2015, 63/2015 – decision of the CC, 106/2015, 63/2016 – decision of the CC and 47/2017) stipulates that when electing a judge and proposing the election of a judge, discrimination on any grounds is prohibited. According to Amendments to Rules of Procedure of the High Judicial Council ("Official Gazette of RS", No.7/18) Article 46-g prescribes that in the process of proposing a candidate and election of judge, discrimination on any grounds is prohibited.

On 1 June 2018, the Commissioner for Protection of Equality in Serbia has addressed gender inequality issues with respect to the promotion of non-judge staff in courts, with publishing and sending of a General Recommendation on Equality Measures to all courts in Serbia, with respect to the promotion of non-judge staff (http://ravnopravnost.gov.rs/preporuka-mera-za-ostvarivanje-ravnopravnosti-sudovima-cir/). Likewise, a Coordination Body for Gender Equality exists on the national level dealing with gender equality issues in general (not specific to the judiciary), established on 30 October 2014. The Minister of Justice is a member.

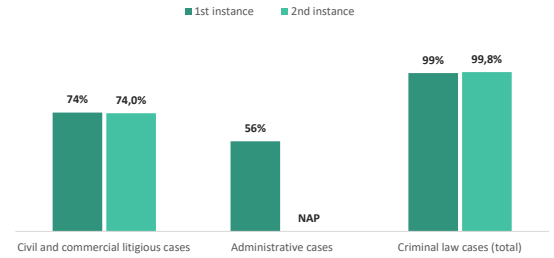
Statistics on the distribution males/females within the judicial system are gathered yearly. It would be useful to note that the statistics of gender equity in employment in Serbian judiciary is considered generally appropriate, as the „Serbia Judicial Functional Review" (Multi-Donor Trust Fund for Justice 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, states.. Figures submitted to the CEPEJ by Serbia throughout the evaluation cycles show more female than male professional judges in courts at all levels. Also, generally, among Court Presidents at first instance courts, the proportion of women is greater than men. This is reflected in the proportion of candidates for presidency of courts that are women. However, among Court Presidents at the second instance, men far outnumber women.

*Kosovo is not included in the calculation of summary statistics*

# Efficiency in Serbia in 2021 (Indicators 3.1 and 3.2)

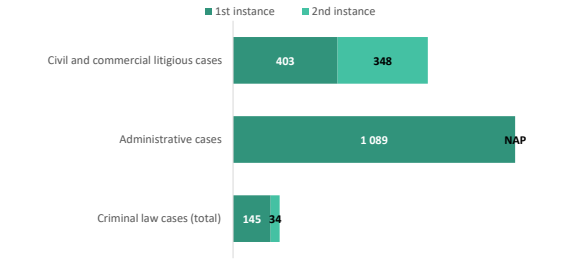
### Clearance rate in 2021 (%)

The Clearance Rate (CR) shows the capacity of a judicial system to deal with the incoming cases. A CR of 100% or higher does not generate backlog.

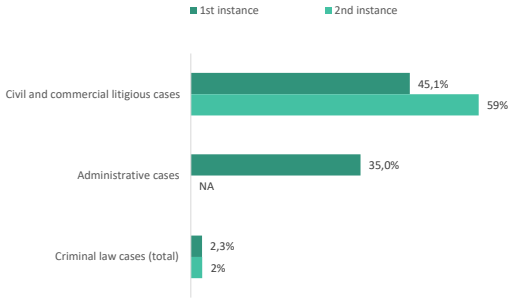



### Disposition time in 2021 (in days)

The Disposition Time determines the maximum estimated number of days necessary for a pending case to be solved in a court.




### Pending cases at the end of year - Variation between 2020 and 2021 (%)




In 2021, the highest Clearance rate (CR) for Serbia is for the second instance total Criminal law cases, with a CR of 99,8%. However, it seems that Serbia was not able to deal as efficiently with the first instance Administrative cases (CR of 56,4%). With a Disposition Time of approximately 34 days, the second instance total Criminal law cases were resolved faster than the other type of cases.

Compared to 2020, the pending cases at the end of year increased for the second instance Civil and commercial litigious cases (59,3%), whereas they increased for the first instance total Criminal law cases only by 2,3%.

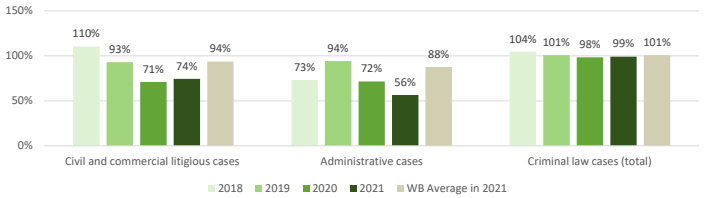
In 2021, the Clearance Rate has been below 100% (meaning that the courts were not able to solve all the incoming cases) for all categories of cases in the two instances, except total criminal law cases in second instance.

In particular, as regards civil and commercial litigious cases, the incoming cases had been constantly increasing between 2018 and 2021. In addition, in 2020, courts worked with reduced capacities because of the Covid-19 pandemic. This caused the decrease of the number of resolved cases. In 2021, the number of resolved case rose again, but not enough to solve all the incoming cases, that increased as well. As a result, the clearance rate (CR) in first instance decreased (from 110% in 2018 to 74% in 2021), while the number of pending cases increased (+45% between 2020 and 2021). Consequently, the disposition time (DT) almost doubled in four years (from 225 days in 2018 to 403 in 2021). However, it decreased by 14% between 2020 and 2021.

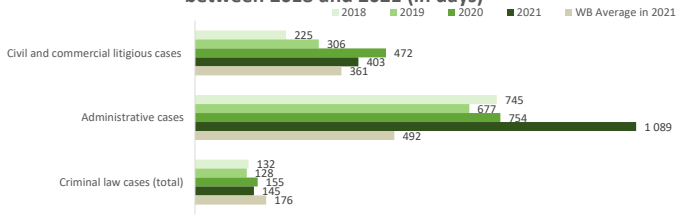
Administrative cases in first instance are well above the WB average (492 vs 1 089 days), while civil and commercial litigious cases and severe criminal cases and misdemeanour cases in first instance are longer than the WB average. Civil and commercial litigious cases in second instance (348 days) are solved faster than the WB average (503 days).

## First instance cases

### Clearance rate for first instance cases between 2018 and 2021 (%)

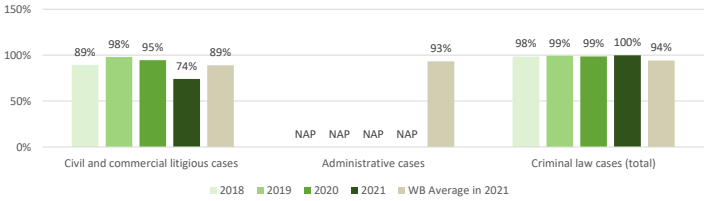



### Disposition time for first instance cases between 2018 and 2021 (in days)

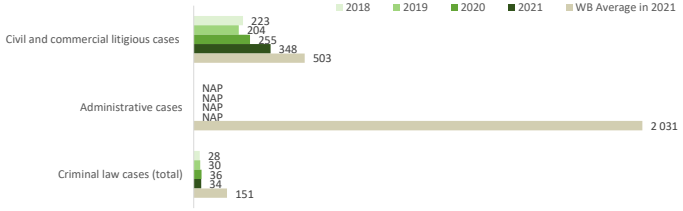



## Second instance cases

### Clearance rate for second instance cases between 2018 and 2021 (%)




### Disposition time for second instance cases between 2018 and 2021 (in days)



## • First instance cases - Other than criminal law cases

| 1st instance | | 2021 Incoming cases | Resolved cases | Pending cases 31 Dec | Pending cases over 2 years | CR (%) | WB Average CR (%) | DT (days) | WB Average DT (days) | Per 100 inhabitants in 2021 Incoming cases | Resolved cases | Pending cases 31 Dec | Pending cases over 2 years | % Variation between 2020 and 2021 Incoming cases | Resolved cases | Pending cases 31 Dec | Pending cases over 2 years | CR (PPT) | DT (%) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total of other than criminal law cases (1+2+3+4) | | 1 325 588 | 1 400 565 | 709 513 | 130 407 | 106% | 100% | 185 | 335 | 19,29 | 20,38 | 10,33 | 1,90 | 36,7% | 21,5% | -9,5% | -65,0% | -13,2 | 25,5% |
| 1 | Civil and commercial litigious cases | 627 599 | 467 106 | 516 326 | 68 934 | 74% | 94% | 403 | 361 | 9,13 | 6,80 | 7,51 | 1,00 | 61,6% | 69,6% | 45,1% | 19,0% | 3,5 | -14,4% |
| 2 | Non-litigious cases** | 528 290 | 780 436 | 126 587 | 47 466 | 148% | 106% | 59 | 196 | 7,69 | 11,36 | 1,84 | 0,69 | 20,8% | 5,3% | -66,5% | -84,4% | -21,7 | -68,2% |
| 3 | Administrative cases | 38 478 | 21 703 | 64 762 | 13 634 | 56% | 88% | 1 089 | 492 | 0,56 | 0,32 | 0,94 | 0,20 | 18,5% | -6,6% | 35,0% | 38,9% | -15,1 | 44,5% |
| 4 | Other cases | 131 221 | 131 320 | 1 838 | 373 | 100% | 101% | 5 | 94 | 1,91 | 1,91 | 0,03 | 0,01 | 18,0% | 16,3% | -5,1% | -6,5% | -1,4 | -18,4% |

PPT = Percentage points

** Non-litigious cases include: General civil (and commercial) non-litigious cases, Registry cases and Other non-litigious cases.

*For reference only: for the first instance Civil and Commercial litigious cases, the 2020 EU Median was as follows:*

*- Incoming cases per 100 inhabitants: 1,6;*

*- Clearance rate: 98,5% ;*

*- Disposition time: 221 days.*

*For reference only: for the first instance Administrative cases, the 2020 EU Median as follows:*

*- incoming cases per 100 inhabitants: 0,3;*

*- Clearance rate: 100,1%;*

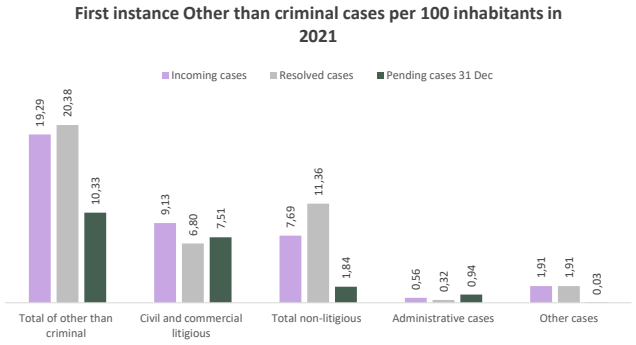
*- Disposition time: 388 days.*

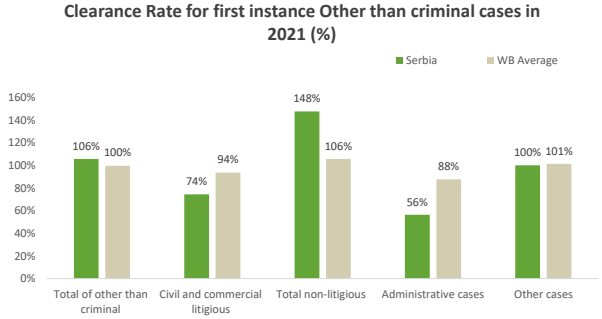
In 2021, the incoming civil and commercial litigious cases were 627 599, which was 9,1 per 100 inhabitants and 61,6% more than in 2020. The resolved cases were 467 106, which was 6,8 per 100 inhabitants and 69,6% more than in 2020. Hence, the number of resolved cases was lower than the incoming cases. As a consequence, the civil and commercial litigious pending cases at the end of 2021 were more than in 2020 and the Clearance rate for this type of cases was 74%. This increased by 3,5 percentage points compared to 2020 and was below the WB average (94%).

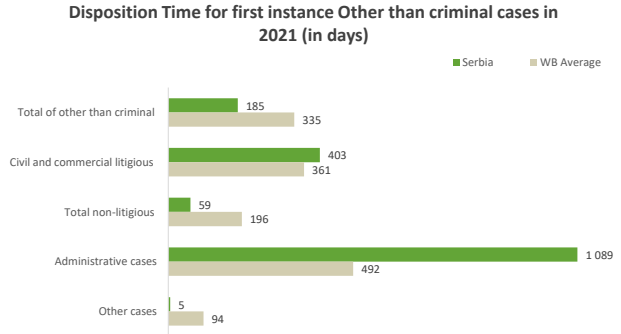
Finally, the Disposition Time for civil and commercial litigious cases was approximately 403 days in 2021. This has decreased by -14,4% compared to 2020 and it was above the WB average (361 days).

In 2021, the incoming administrative cases were 38 478, which was 0,6 per 100 inhabitants and 18,5% more than in 2020. The resolved cases were 21 703, which was 0,3 per 100 inhabitants and -6,6% less than in 2020. Hence, the number of resolved cases was lower than the incoming cases. As a consequence, the administrative pending cases at the end of 2021 were more than in 2020 and the Clearance rate for this type of cases was 56%. This decreased by -15,1 percentage points compared to 2020 and was well below the WB average (88%).

Finally, the Disposition Time for administrative cases was approximately 1089 days in 2021. This has increased by 44,5% compared to 2020 and it was above the WB average (492 days).



Administrative cases are all cases before the Administrative Court (administrative disputes; “various administrative cases; execution of Administrative Court judgement; postponement of enforcement before lodging a lawsuit; objection to the decision of a single judge; repetition of administrative-judicial procedure; request for extraordinary review of court decision); judicial protection in the election procedure for members of national councils of national minorities; appeals; whistleblowers (new, in comparison to the 2016-2018 cycle).

As regards non-litigious cases, the lower Disposition Time was the result of the reduction in the number of backlog enforcement cases before the courts, bearing in mind the legislative changes and the transfer of these cases to the jurisdiction of public enforcement agents. It can also be linked to measures implemented on the basis of the Unified Backlog Reduction Programme. More detailed explanation is available further in relation to enforcement cases.
As regards civil and commercial litigious cases, there is a general increasing trend of incoming civil cases. During 2020, a slightly smaller number of these cases were received due to circumstances caused by the Covid-19. The trend of increasing the inflow of the number of civil cases was influenced inter alia by repetitive cases in certain areas. For example, during 2021, the basic courts received 187,491 cases related to contracting costs of bank loans.
A large number of cases pending before courts in the Republic of Serbia, a large number of pending backlog cases, and in particular pending backlog enforcement cases - required systematic, comprehensive and long-term measures at the national level to increase efficiency, reduce amount of pending old cases and cut the length of court proceedings. In order to reduce the huge number of pending enforcement cases, particularly pending backlog enforcement cases, which have burdened the judicial system for a longer period, the Republic of Serbia adopted the Law on Enforcement and Security (hereinafter: LoES), in 2015 (published in Official Gazette of RS", No. 106/2015).
Some provisions of the LoES contained systemic measures that led to a shift in jurisdiction and to its partial transfer to the enforcement agents.
In the period of 2016 to 2019, the Supreme Court of Cassation, aiming to expedite implementation of the Law on Enforcement and Security, adopted several key strategic documents:
1. Amended Unified Backlog Reduction Program 2016-2020, which in its special part provided measures for resolving backlog enforcement cases;
2. Special Backlog Enforcement Reduction Program;
The Supreme Court of Cassation, jointly with the High Judicial Council and the Ministry of Justice, adopted the Guidelines for the Implementation of the Law on Enforcement and Security.
Amendments to the Law on Enforcement and Security ("Official Gazette of RS", No. 54/2019), which came into force 1st of January 2020, have drawn the lines between competencies of courts and enforcement agents in the enforcement and security proceedings, as well as boundaries between the courts themselves, disabling overlap or conduct of double enforcement proceedings. In enforcement cases involving shift in jurisdiction, amendments to the law provided in details duties of the creditors, enforcement agents, the courts, as well as the presidents of courts. The lack of exercising jurisdiction by the enforcement agents has been provided with sanctions, as well as with appropriate measures being prescribed for particular types of enforcement cases.
Following the adoption of the Amendments to the LoES, the Supreme Court of Cassation, jointly with the High Judicial Council and the Ministry of Justice, adopted new strategic document - Guidelines for the Implementation of Amendments to the Law on Enforcement and Security.
Regarding the question at issue, it is correct that the number of incoming cases is higher in comparison to 2020. One reason for that could be found in decrease on the number of cases because of circumstances caused by Covid-19. On the other hand it should be born in mind that the courts kept their jurisdiction regarding certain categories of enforcement cases.
According to the Law on the Organization of Courts, commercial courts conduct the procedure for entry in the court register of legal entities and other entities, if another body is not competent for that (Article 25, paragraph 2). The Agency for Business Registers is mainly responsible for the register of business entities and entrepreneurs, so the number of these cases has been decreasing.

## • First instance cases - Criminal law cases

| 1st instance | | 2021 Incoming cases | 2021 Resolved cases | 2021 Pending cases 31 Dec | 2021 Pending cases over 2 years | 2021 CR (%) | 2021 WB Average CR (%) | 2021 DT (days) | 2021 WB Average DT (days) | Per 100 inhabitants in 2021 Incoming cases | Per 100 inhabitants in 2021 Resolved cases | Per 100 inhabitants in 2021 Pending cases 31 Dec | Per 100 inhabitants in 2021 Pending cases over 2 years | % Variation between 2020 and 2021 Incoming cases | % Variation between 2020 and 2021 Resolved cases | % Variation between 2020 and 2021 Pending cases 31 Dec | % Variation between 2020 and 2021 Pending cases over 2 years | % Variation between 2020 and 2021 CR (PPT) | % Variation between 2020 and 2021 DT (%) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total of criminal law cases (1+2+3) | | 1 950 213 | 1 932 577 | 769 758 | 150 612 | 99% | 101% | 145 | 176 | 28,38 | 28,12 | 11,20 | 2,19 | 8,0% | 8,8% | 2,3% | 21,2% | 0,7 | -6,0% |
| 1 | Severe criminal cases | 46 392 | 47 189 | 28 560 | 5 950 | 102% | 102% | 221 | 199 | 0,68 | 0,69 | 0,42 | 0,09 | 2,6% | 7,5% | -2,7% | 10,3% | 4,7 | -9,5% |
| 2 | Misdemeanour and / or minor criminal cases | 359 047 | 349 921 | 231 043 | 12 189 | 97% | 99% | 241 | 216 | 5,23 | 5,09 | 3,36 | 0,18 | 22,2% | 18,8% | 4,1% | 3,6% | -2,8 | -12,4% |
| 3 | Other cases | 1 544 774 | 1 535 467 | 510 155 | 132 473 | 99% | 100% | 121 | 199 | 22,48 | 22,35 | 7,42 | 1,93 | 5,4% | 6,8% | 1,8% | 183,9% | 1,3 | -4,7% |

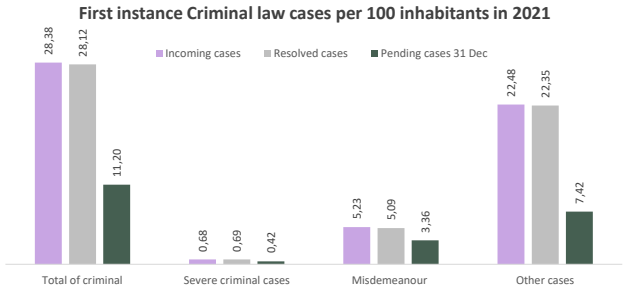
PPT = Percentage points

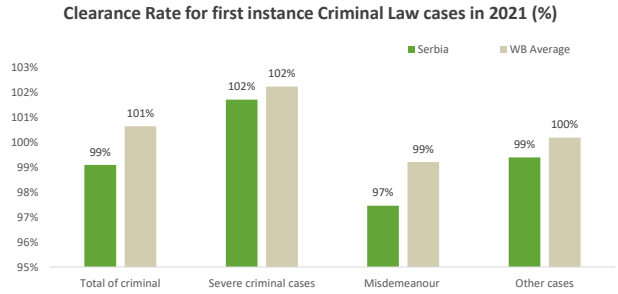
*For reference only: for the first instance Total Criminal law cases, the 2020 EU Median was as follows:*

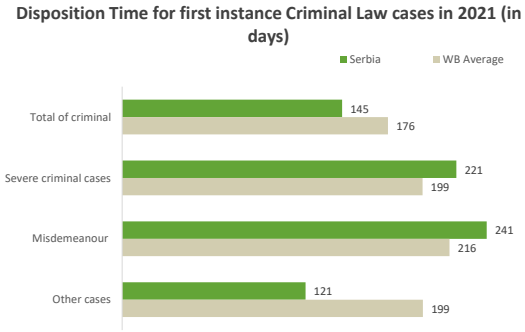
*- Incoming cases per 100 inhabitants: 1,6; - Clearance rate: 95,2%; - Disposition time: 139 days.*

In 2021, the incoming total criminal cases were 1 950 213, which was 28,4 per 100 inhabitants and 8% more than in 2020. The resolved cases were 1 932 577, which was 28,1 per 100 inhabitants and 8,8% more than in 2020. Hence, the number of resolved cases was lower than the incoming cases. As a consequence, the total criminal pending cases at the end of 2021 were more than in 2020 and the Clearance rate for this type of cases was 99%. This increased by 0,7 percentage points compared to 2020 but it was below the WB average (101%).

Finally, the Disposition Time for total criminal cases was approximately 145 days in 2021. This has decreased by -6% compared to 2020 and it was below the WB average (176 days).




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 in all questions where “severe criminal cases” are stated, the total number of criminal cases is expressed. The 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 (38.1) as well as misdemeanour cases and commercial offenses in the first instance- from the jurisdiction of commercial courts as penal offenses (38.2). The category under 38.1 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).

In 2021, the transition to a new case management system is the cause of uneven numbers.
"Other cases" are:
Higher courts:
-International letters rogatory ;-Educational (supervision) orders, educational measures and security measures);-Execution of imprisonment in the Department for Organized Crime and the Department for War Crimes; -Register of Criminal ; Extrajudicial Chambers
-Records on juvenile perpetrators of criminal offenses who were sentenced to an educational measure, educational order, security measure, accommodation in a correctional facility, imprisonment (criminal records for juveniles are kept by the court)
-Requests for amnesty ;-Register of decisions of pre-trial judges regarding the proposals of the prosecutor's office for ordering detention or other measures ;-Register of pre-trial judges for various actions during the prosecutorial investigation
-Requests for recognition of a foreign court decision, requests for extradition; -Requests for parole
- Register of the judge for execution of criminal sanctions: complaint, appeal, request for judicial protection, report of the judge for execution of criminal sanctions, notification, request, etc. submitted by convict, detainee, institute for execution of criminal sanctions, attorney and others.; -Requests for temporary confiscation of property ;-Requests for permanent confiscation of property ;-Incoming international letters rogatory in criminal matters ;-Domestic letters rogatory in criminal cases
-Register of the Witness Assistance and Support Service: the requests of the judge with the list of witnesses etc. ;-External international letters rogatory in criminal cases sent directly to the competent court or other authority of a foreign state
- Register in which the agreements concluded between the competent prosecutor's office and the accused are entered;- Certificates - whether or not a natural or legal person is being prosecuted;- Proposals of the prosecution and decisions of the pre-trial judge in relation to special measures for producing evidence
Basic courts:
-outgoing and incoming international letters rogatory, execution of criminal sentences
- Register of Criminal Extrajudicial Chambers, register of pre-trial judges for various actions during the investigation, different cases during investigation, requests for permanent or temporary confiscation of property, requests for parole, Register of the Witness Assistance and Support Service, register in which the agreements concluded between the competent prosecutor's office and the accused namely the convicted person, Certificates, Register in which the proposals of the competent prosecutor's office for the extension of the emergency measure prescribed by the Law on Prevention of Domestic Violence are introduced (Article 19 of the said Law)
Misdemeanor courts:
-cases for which legal assistance is sought from another misdemeanour court are cases in which misdemeanour proceedings are conducted against juveniles.
-Execution according to the decisions of the misdemeanour court, according to the decisions of the administrative bodies, and the execution of the misdemeanour order.

## • Second instance cases - Other than criminal law cases

| 2nd instance | | 2021 Incoming cases | 2021 Resolved cases | 2021 Pending cases 31 Dec | 2021 Pending cases over 2 years | 2021 CR (%) | 2021 WB Average CR (%) | 2021 DT (days) | 2021 WB Average DT (days) | Per 100 inhabitants in 2021 Incoming cases | Per 100 inhabitants in 2021 Resolved cases | Per 100 inhabitants in 2021 Pending cases 31 Dec | Per 100 inhabitants in 2021 Pending cases over 2 years | % Variation between 2020 and 2021 Incoming cases | % Variation between 2020 and 2021 Resolved cases | % Variation between 2020 and 2021 Pending cases 31 Dec | % Variation between 2020 and 2021 Pending cases over 2 years | % Variation between 2020 and 2021 CR (PPT) | % Variation between 2020 and 2021 DT (%) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total of other than criminal law cases (1+2+3+4) | | 217 754 | 164 253 | 145 756 | 70 137 | 75% | 98% | 324 | 228 | 3,17 | 2,39 | 2,12 | 1,02 | 48,1% | 17,9% | 59,1% | 108,4% | -19,3 | 34,9% |
| 1 | Civil and commercial litigious cases | 203 460 | 150 578 | 143 705 | 70 050 | 74% | 89% | 348 | 503 | 2,96 | 2,19 | 2,09 | 1,02 | 49,1% | 16,8% | 59,3% | 107,9% | -20,5 | 36,4% |
| 2 | Non-litigious cases** | 14 282 | 13 663 | 2 051 | 87 | 96% | 86% | 55 | 352 | 0,21 | 0,20 | 0,03 | 0,00 | 35,1% | 32,5% | 43,2% | NA | -1,9 | 8,1% |
| 3 | Administrative cases | NAP | NAP | NAP | NAP | NAP | 93% | NAP | 2 031 | NAP | NAP | NAP | NAP | NA | NA | NA | NA | NAP | NAP |
| 4 | Other cases | 12 | 12 | 0 | 0 | 100% | 98% | 0 | 13 | 0,00 | 0,00 | 0,00 | 0,00 | -60,0% | -60,0% | NA | NA | 0,0 | #DIV/0! |

PPT = Percentage points

** Non-litigious cases include: General civil (and commercial) non-litigious cases, Registry cases and Other non-litigious cases.

*For reference only: for the first instance Civil and Commercial litigious cases, the 2020 EU Median was as follows:*

*- Clearance rate: 105,2% ;*

*- Disposition time: 177 days.*

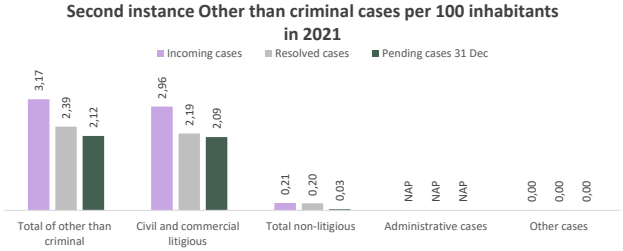
*For reference only: for the first instance Administrative cases, the 2020 EU Median as follows:*

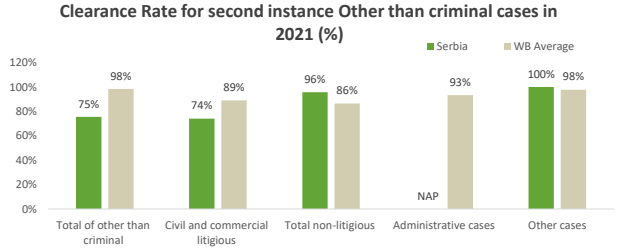
*- Clearance rate: 99,2%;*

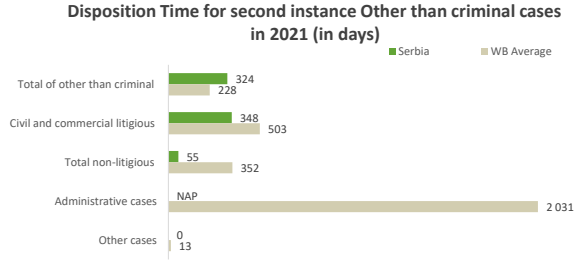
*- Disposition time: 362 days.*

In 2021, the incoming civil and commercial litigious cases were 203 460, which was 3 per 100 inhabitants and 49,1% more than in 2020. The resolved cases were 150 578, which was 2,2 per 100 inhabitants and 16,8% more than in 2020. Hence, the number of resolved cases was lower than the incoming cases. As a consequence, the civil and commercial litigious pending cases at the end of 2021 were more than in 2020 and the Clearance rate for this type of cases was 74%. This decreased by -20,5 percentage points compared to 2020 and was below the WB average (89%).

Finally, the Disposition Time for civil and commercial litigious cases was approximately 348 days in 2021. This has increased by 36,4% compared to 2020 and it was below the WB average (503 days).



Courts deciding in the second instance (on appeal) in the "non-criminal" cases, as courts of general jurisdiction are:
•"higher courts": upon the decisions in civil disputes and the judgment in small claims and the non-contentious proceedings;
•"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 on appeal in the "non-criminal" cases is the Commercial Appellate Court (appeals on decisions of commercial courts and other bodies).
Cases on appeals in cases of commercial offences are excluded from the total number of cases in response to this question. There is no second instance in administrative disputes.
"Civil and commercial litigious cases" include
•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.
•Cases before higher courts: litigious proceedings involving appeals (small appellation);
•Cases before the Commercial Court of Appeal: second instance commercial proceedings involving appeals, conflict and delegation of jurisdiction between commercial courts;
•Cases before the Misdemeanor Court of Appeal: proceedings involving appeals against first instance decisions of misdemeanor courts in cases related to whistle-blowers and conflict and delegation of jurisdiction between misdemeanor courts (cases not misdemeanour as such).
Other non-litigious cases are cases pertaining to making decisions within a reasonable time in civil and criminal matters, and the cases of appeals to the first instance court decisions on complaints against the work of notaries.

The discrepancy from the previous year in the number on pending "civil and commercial litigious cases" older than two years is a result of the burden higher courts (acting as second instance courts), and in particular the Higher court in Belgrade.
With regard to this question for more insight please see the analysis provided within the Annual Report on Work of Courts for 2021:
The number of pending cases – except enforcement – increased when compared to 2017, as a result of the increased number of cases received in the last five years (more than two and half million cases above the expected inflow) that the judicial system couldn't absorb completely. Since there was no timely systemic reaction to the enormously increased number of incoming cases, while at the same time, the number of court staff decreased and new employment was banned, or was limited, courts did not manage to stop the trend of increase of the number of pending cases, since 2018. In 2019, the number of pending cases slightly increased, however, in 2020 there was a significant increase of pending cases in trial matters due to extraordinary circumstances and implementation of measures for protection of population from the pandemic, which is why the courts in the Republic worked with significantly reduced capacities.
The trend of increasing the number of pending cases continued in 2021, caused by the additional burden on the court system with so far the largest inflow of cases, which was mostly reflected in the number of pending cases in basic and misdemeanour courts.
The ratio of incoming, disposed and pending cases at the end of 2021 comparing to the previous reporting periods, shows a decreased number of pending cases and increase of the number of disposed cases resulting from the increased engagement of judges and judicial staff, although in circumstances of the enormous increase of inflow.
The ratio of incoming, disposed and pending cases in the period from 2017 to 2021 shows a continuously decreasing number of pending cases, a slight decrease in the number of disposed cases in 2020, and a sharp increase in 2021, by 401 843 more cases than in the previous year, as well as a variation in the number of incoming cases, with the largest escalation recorded in 2021, by 534 575 more cases compared to the previous year.
The increase in the number of incoming and disposed cases indicates excessive workload of judges and court staff, despite the systematic measures taken to reduce the number of backlog cases in courts.

## • Second instance cases - Criminal law cases

| 2nd instance | | 2021 Incoming cases | Resolved cases | Pending cases 31 Dec | Pending cases over 2 years | CR (%) | WB Average CR (%) | DT (days) | WB Average DT (days) | Per 100 inhabitants in 2021 Incoming cases | Resolved cases | Pending cases 31 Dec | Pending cases over 2 years | % Variation between 2020 and 2021 Incoming cases | Resolved cases | Pending cases 31 Dec | Pending cases over 2 years | CR (PPT) | DT (%) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total of criminal law cases (1+2+3) | | 59 465 | 59 320 | 5 602 | 954 | 100% | 94% | 34 | 151 | 0,87 | 0,86 | 0,08 | 0,01 | 4,9% | 6,1% | 2,4% | NA | 1,1 | -3,6% |
| 1 | Severe criminal cases | 25 641 | 25 701 | 1 642 | 648 | 100% | 88% | 23 | 366 | 0,37 | 0,37 | 0,02 | 0,01 | 1,8% | 2,8% | -3,6% | NA | 1,0 | -6,2% |
| 2 | Misdemeanour and / or minor criminal cases | 30 549 | 30 343 | 3 922 | 302 | 99% | 89% | 47 | 403 | 0,44 | 0,44 | 0,06 | 0,00 | 8,6% | 10,2% | 5,2% | NA | 1,4 | -4,5% |
| 3 | Other cases | 3 275 | 3 276 | 38 | 4 | 100% | 98% | 4 | 58 | 0,05 | 0,05 | 0,00 | 0,00 | -2,6% | -2,4% | -7,3% | NA | 0,2 | -5,0% |

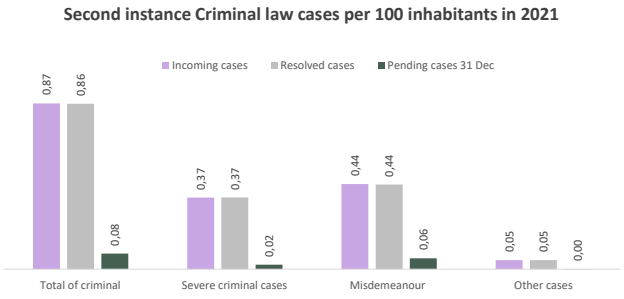
PPT = Percentage points

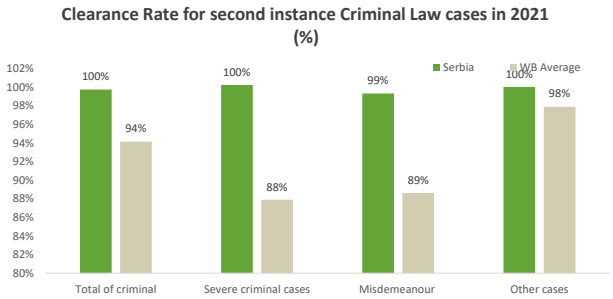
*For reference only: for the second instance Total Criminal law cases, the 2020 EU Median was as follows:*

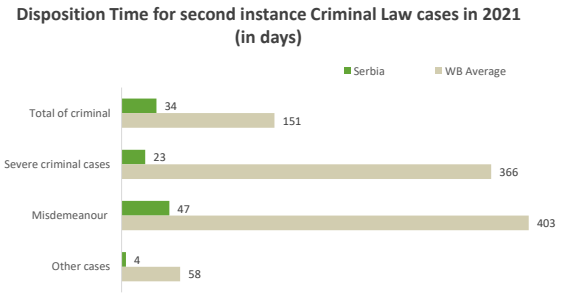
*- Incoming cases per 100 inhabitants: 1,6; - Clearance rate: 95,2%; - Disposition time: 139 days.*

In 2021, the incoming total criminal cases were 59 465, which was 0,9 per 100 inhabitants and 4,9% more than in 2020. The resolved cases were 59 320, which was 0,9 per 100 inhabitants and 6,1% more than in 2020. Hence, the number of resolved cases was lower than the incoming cases. As a consequence, the total criminal pending cases at the end of 2021 were more than in 2020 and the Clearance rate for this type of cases was 100%. This increased by 1,1 percentage points compared to 2020 and was above the WB average (94%).

Finally, the Disposition Time for total criminal cases was approximately 34 days in 2021. This has decreased by -3,6% compared to 2020 and it was well below the WB average (151 days).




Register of appeal cases with regard to confiscation of property (including cases of organized crime), cases regarding requests for release on parole, different criminal cases regarding minors, cases regarding extradition and transfer of convicted persons in ordinary criminal cases, (also in cases of organized crime and war crimes), extension of detention in cases of cyber crime, different decision of the extrajudicial chamber, cases regarding transfer of cases to other courts.

## • Average length of proceedings for specific category cases ( in days - from the date the application for judicial review is lodged)

Average length of proceedings for specific category cases is not available

## • Quality standards and performance indicators in the judicial system

In Serbia there are not quality standards determined for the judicial system at national level.

Although quality standards for the judiciary as such do not yet exist, the Rulebook on criteria, indicators and procedure for evaluating the work of judges and presidents of courts ("Official Gazette of RS", Nos. 81/2014, 142/2014, 41/2015, 7/2016) of the HJC provides for the evaluating the work of judges for the purpose of improving the efficiency of the judicial system, to preserve and improve the expertise, qualifications and responsibilities of judicial office holders, to encourage them to achieve the best results of their work, and to increase public confidence in the work of judges and courts.
The Rulebook stipulates that the evaluation of the work of judges and presidents of courts is expressed by a mark. The work of full-time judges and court presidents is regularly evaluated once every three years, and for judges who are first time elected evaluation is done once a year. Exceptionally, based on the decision of the HJC, the work of judges and presidents of courts may be extraordinary evaluated.
The criteria for evaluating judges' performance are quality and quantity. The quality of work shows the ability and knowledge of the judge in the application of substantive and procedural law, while the quantity of work shows the efficiency in solving cases.
The benchmarks for evaluating the quality of work of judges are the percentage of decisions revoked and the time necessary to bring decisions. Quality evaluation is done by establishing for each benchmark an individual grade, and on the basis of established individual grades, the evaluation of the quality of work of judges is determined. Individual marks for the quality of work benchmarks are: "extremely successful", "successful" and "not satisfactory".
The criterion for evaluating the quantity of judges' work is a monthly standard, and for judges who do not have a sufficient number of cases in the work, the number of cases solved from the total number of cases in the work.
The benchmark of the judges' work is evaluated by the individual grade "extremely successful", "successful" and "not satisfactory". The judgments related to the evaluation of the judge's work are "extremely successful in performing the judicial function", "successfully performing the judicial function" and "not satisfactory".

## • Performance and quality indicators and regular assessment in courts and prosecution offices

In Serbia performance and quality indicators are defined for both courts and prosecution offices as follows:

| | Courts | | Prosecution offices | |
|---|---|---|---|---|
| | Performance and quality indicators | Regular assessment | Performance and quality indicators | Regular assessment |
| Number of incoming cases | ✓ | ✓ | ✓ | ✓ |
| Length of proceedings (timeframes) | ✓ | ✗ | ✗ | ✗ |
| Number of resolved cases | ✓ | ✓ | ✓ | ✓ |
| Number of pending cases | ✓ | ✓ | ✓ | ✓ |
| Backlogs | ✓ | ✓ | ✓ | ✓ |
| Productivity of judges and court staff / prosecutors and prosecution staff | ✓ | ✓ | ✓ | ✓ |
| Satisfaction of court / prosecution staff | ✗ | ✗ | ✗ | ✗ |
| Satisfaction of users (regarding the services delivered by the courts / the public prosecutors) | ✗ | ✗ | ✗ | ✗ |
| Costs of the judicial procedures | ✗ | ✗ | ✗ | ✗ |
| Number of appeals | ✓ | ✗ | | |
| Appeal ratio | ✗ | ✗ | | |
| Clearance rate | ✓ | ✓ | ✓ | ✓ |
| Disposition time | ✓ | ✓ | ✗ | ✗ |
| Percentage of convictions and acquittals | | | ✓ | ✓ |
| Other | ✗ | ✗ | ✗ | ✗ |

| Monitoring of the number of pending cases and backlogs | |
|---|---|
| Civil law cases | Yes |
| Criminal law cases | Yes |
| Administrative law cases | Yes |

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.

| Monitoring of the waiting time during judicial proceedings | |
|---|---|
| Within the courts | Yes |
| Within the public prosecution services | Yes |

The Law on the Protection of the Right to Trial within a Reasonable Time ("Official Gazette of the Republic of Serbia", No. 40/2015) provides judicial protection of the right to trial within a reasonable time and that way prevents violation of the right to a trial within a reasonable time. Judicial protection of the right to a trial within a reasonable time includes an investigation conducted by a public prosecutor in criminal proceedings. The duration of judicial proceedings is monitored and it is reflected within the court reports. Also, there are mechanisms for acceleration of the proceedings.

The number of appeals as such is not monitored. However, it is monitored how many cases were decided by higher instance and how it was decided (whether the judgment had been dismissed or amended, or case remitted to lower court). This indicates the quality of judicial decisions of lower courts.

## • Quantitative targets for each judge and prosecutor

In Serbia there are quantitative targets for both judges and prosecutors

| Responsible for setting up quantitative targets for judges | |
|---|---|
| Executive power (for example the Ministry of Justice) | ✗ |
| Legislative power | ✗ |
| Judicial power (for example the High Judicial Council, Supreme Court) | ✓ |
| President of the court | ✗ |
| Other: | ✗ |

| Responsible for setting up quantitative targets for public prosecutors | |
|---|---|
| Executive power (for example the Ministry of Justice) | ✗ |
| Prosecutor General /State public prosecutor | ✗ |
| Public prosecutorial Council | ✓ |
| Head of the organisational unit or hierarchical superior public prosecutor | ✗ |
| Other | ✗ |

| Consequences for not meeting the targets | Judges | Public prosecutors |
|---|---|---|
| Warning by court's president/ head of prosecution | ✗ | ✓ |
| Disciplinary procedure | ✗ | ✗ |
| Temporary salary reduction | ✗ | ✗ |
| Other | ✓ | ✗ |
| No consequences | ✗ | ✗ |

Performance of judges with a standing tenure of office and court presidents shall regularly be conducted once every three years, while for judges elected for the first time it is conducted once a year. Exceptionally, based on the Decision of the High Judicial Council, performance of judges and court presidents may be evaluated extraordinarily. Performance of judges is evaluated based on 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. Efficiency is evaluated based on the number of cases disposed by a judge over an one-month period against the number of cases they should dispose- monthly caseload quota. The monthly caseload quota pertains 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.

Rulebook on the criteria, standards, procedure and bodies for evaluation of performance of judges and court presidents which is being applied as of 1st July 2015 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.

Law on Judges in Art 52 prescribe that 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.

*Kosovo is not included in the calculation of summary statistics*

# Electronic case management system and court activity statistics in Serbia in 2021 (Indicator 3.3)

The Case Management System (CMS) Index is an index ranging from 0 to 4 points. It is calculated based on five questions on the features and deployment rate of the CMS of the courts of the respective beneficiary.
The methodology for calculation provides one index point for each of the five questions for each case matter. The points regarding the four questions on the features of the CMS (status of cases online; centralised or interoperable database; early warning signals; status of integration with a statistical tool) are summarized while the deployment rate is multiplied as a weight. In this way, if the system is not fully deployed, the value is decreased even if all features are included. This methodology provides an adequate evaluation.

CMS index in Civil and/or commercial

3,0
out of 4

CMS index for Criminal

2,5
out of 4

CMS index for Administrative

3,0
out of 4

## • Electronic case management system

In Serbia, in 2021 there was no IT Strategy for the judiciary. However, IT strategy was adopted by ICT Sectorial Council on February 4th 2022.

The project of implementation of new modern centralized case management system started in September 2021, currently (March 2022) it is in inception phase.

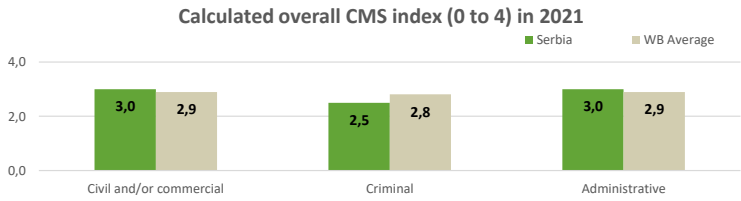
There is a case management system (CMS), eg software used for registering judicial proceedings and their management. This has been developed more than 10 years.

The CMS is developped in all courts (100% deployment rate) and the data for administrative cases are stored on a database consolidated at national level. The CMS index for Serbia is slightly higher than the WB average for civil and commercial and administrative cases (3,0 vs 2,9) and slightly lower (2,5 vs 2,8) for criminal cases.

AVP System was implemented in commercial courts in 2010.

| | Case management system and its modalities | | | | |
|---|---|---|---|---|---|
| | CMS deployment rate | Status of case online | Centralised or interoperable database | Early warning signals (for active case management) | Status of integration/ connection of a CMS with a statistical tool |
| Civil and/or commercial | 100% | Both | ✗ | ✓ | Fully integrated including BI |
| Criminal | 100% | Accessible to parties | ✗ | ✓ | Fully integrated including BI |
| Administrative | 100% | Both | ✓ | ✓ | Not connected at all |

| | Overall CMS Index in 2021 | |
|---|---|---|
| | Serbia | WB Average |
| Civil and/or commercial | 3,0 | 2,9 |
| Criminal | 2,5 | 2,8 |
| Administrative | 3,0 | 2,9 |



## • Centralised national database of court decisions

In Serbia, there is a centralised national database of court decisions in which some judgments for all instances are collected, with anonymised data. This case-law database is available for free online. There is no links with ECHR case law (hyperlinks which reference to the ECHR judgments in HUDOC database) in this database.

| | For 1st instance decisions | For 2nd instance decisions | For 3rd instance decisions | Link with ECHR case law | Data anonymised | Case-law database available free online | Case-law database available in open data |
|---|---|---|---|---|---|---|---|
| **Civil and/or commercial** | Yes some judgements | Yes some judgements | Yes all judgements | ✗ | ✓ | ✓ | ✗ |
| **Criminal** | Yes some judgements | Yes some judgements | Yes all judgements | ✗ | ✓ | ✓ | ✗ |
| **Administrative** | Yes some judgements | Yes all judgements | | ✗ | ✓ | ✓ | ✗ |

*Kosovo is not included in the calculation of summary statistics*

# Legal Aid in Serbia in 2021 (Indicator 4)

**Number of LA cases**

**0,06**

**per 100 inhabitants**

**WB Average: 0,28**

## • Organisation of the legal aid system

The Law on Free Legal Aid ("Official Gazette of RS", No. 87 of November 13, 2018, in force from October 1st 2019): The purpose of this law is to provide every person with effective and equal access to justice. Free legal aid consists of providing legal advice, drafting submissions, representation and defending in courts. When person applies for free legal aid, he/she must address to local self-government unit, which is entitled to approve/reject the request for granting free legal aid. If the request is granted, the person will be provided free legal aid by the benefactor who must be registrated on a list of benefactors kept by the Minister of Justice. Benefactor are lawyers, mediators, notaries, employees of the self-government unit, Faculties of Law and association which are registrated to provide legal aid in matters of asylum and discrimination. The request for granting free legal aid can be submitted personally or legal representative or attorney, can submit it on their behalf. The Criminal Procedure Code, Article 59:
When criminal proceedings are conducted for a criminal offense for which a sentence of imprisonment of more than five years may be imposed by law, court may, at the request of injured party, appoint a proxy (from the list of lawyers submitted to the court by the competent bar association) if it is in the interest of the proceedings and if the injured party financial situation, cannot bear the costs of representation.
Article 77: Defendant who, due to his financial situation, cannot pay the defense attorney's fee and expenses, will be assigned attorney at his request, if criminal proceedings are conducted for a criminal offense punishable by imprisonment for more than three years. In that case, the defense costs are borne by the court's budget.

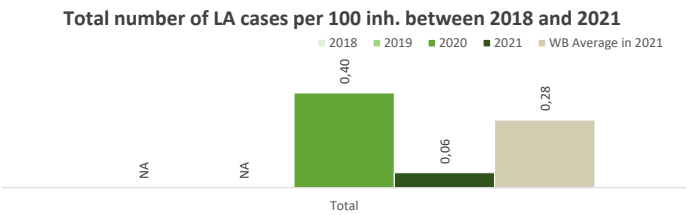
## • Implemented budget for legal aid and number of cases for which legal aid has been granted

| | Implemented budget for legal aid in € | | | | Total implemented budget for legal aid Per inhabitant | | Total implemented budget for legal aid as % of GDP | |
|---|---|---|---|---|---|---|---|---|
| | Total | % Variation (2019 - 2021) | Cases brought to court | Cases not brought to court | Serbia | WB Average | Serbia | WB Average |
| Total | 3 208 € | NA | 3 208 € | NAP | 0,00 € | 0,52 € | 0,000% | 0,010% |
| In criminal cases | NAP | NAP | NAP | NAP | | | | |
| In other than criminal cases | NAP | NAP | NAP | NAP | | | | |

In Serbia it is not possible at the moment to separate the legal aid budget spent for mandatory representation in court from justice expenses, therefore the main part of the legal aid budget is counted in the court budget.

The budget for the Legal Aid is executed based on the requests from the municipalities (local governments) and can cover only up to 50% of the total budget spent annually by municipalities (local governments), based on the Law on Legal Aid.
The Legal Aid does not include "mandatory representation in criminal cases" by lawyers, before the Serbian courts, which is the cost covered by the High Judicial Council.

| | Number of cases for which legal aid has been granted | | | | | Amount of LA granted per case (€) | | |
|---|---|---|---|---|---|---|---|---|
| | Total | | | Cases brought to court | Cases not brought to court | Total | Cases brought to court | Cases not brought to court |
| | Absolute number | Per 100 inh. | % Variation (2019 - 2021) | | | | | |
| Total | 4 345 | 0,06 | NA | 602 | 3 743 | 0,7 € | 5,3 € | NA |
| In criminal cases | NA | NA | NA | NA | NA | NA | NA | NA |
| In other than criminal cases | NA | NA | NA | NA | NA | NA | NA | NA |




In Serbia it is not possible at the moment to separate the legal aid budget spent for mandatory representation in court from justice expenses, and the main part of the legal aid budget is counted in the court budget, therefore the amount of LA per case cannot be compared with the WB average.
The Law distinguishes free legal aid (legal advice, representation before court, defense, drafting of motions) and free legal support (general legal information, mediation, services of public notaries). Legal advice and general legal information are available to everyone and are not subject to approval. The Law prescribes that citizens shall address local self-government units (hereinafter: LSG) to apply for free legal aid. Staff in LSG decide on the applications pursuant to Articles 4 and 7 of the Law (eligibility). 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 is 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. 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.

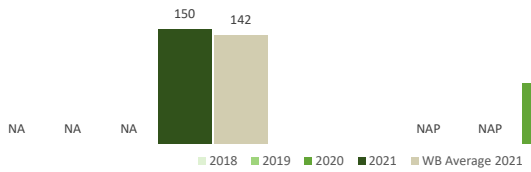
Please note that total data only refers to cases where legal aid is granted according to Law on Free Legal Aid, due statistic data for cases in which legal aid was granted according to Criminal Procedure Code, are not available.
This year, data from some Local Self-government units indicate that there were fewer requests than in previous ones reporting periods, which may be related to the changed functioning of the local governments due to the situation caused by COVID19. It is necessary for to enable citizens submitting requests for free legal aid even when entry to the premises of local self-government unit is not allowed for epidemiological reasons. Requests must be available to all citizens in a clearly defined and visible place. At the same time, there are local self-government units that did not submit a report to the Ministry of Justice so it can be concluded that there were no requests in those LSU.

*Kosovo is not included in the calculation of summary statistics*

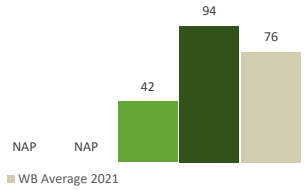
# Training of judges and prosecutors in Serbia in 2021 (Indicator 7)

### Total budget for Training per inhabitant


### Delivered in-person training courses between 2018 and 2021 (in days)

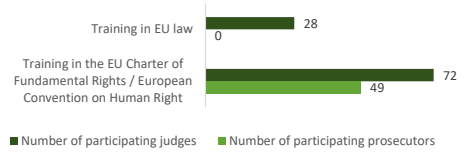



### Number of online training courses (e-learning) available between 2018 and 2021




### Training in EU law (participants in 2021)

Organised/finance by the training institution for judges and prosecutors




The total budget for training of judges and prosecutors in Serbia was 0,75€ per inhabitant, lower than the Western Balkans (WB) average of 0,57€ per inhabitant. The number of delivered in-person training courses in 2021 was 150 days).Moreover, the online available courses increased to 94 in 2021 (from 42 in 2020).

## • Budget for Trainings

| | Budget of the training institution(s) (1) | Budget of the courts/prosecution allocated to training (2) | Total (1)+(2) | | | |
|---|---|---|---|---|---|---|
| | | | Absolute Number | Per inhabitant | % Variation 2019 - 2021 | WB Average per inhabitant |
| Total | 3 766 707 € | NA | 2 101 845 € | 0,75 € | 48,2% | 0,56 € |
| Judges | NAP | NAP | | | | |
| Prosecutors | NAP | NAP | | | | |
| One single institution for both judges and prosecutors | 3 766 707 € | | | | | |

Serbia spent in total 3 766 707€ for training for judges and prosecutors in 2021, which is 0,75€ per inhabitant (below the WB average of 0,57€ per inhabitant).

## • Type and frequency of trainings

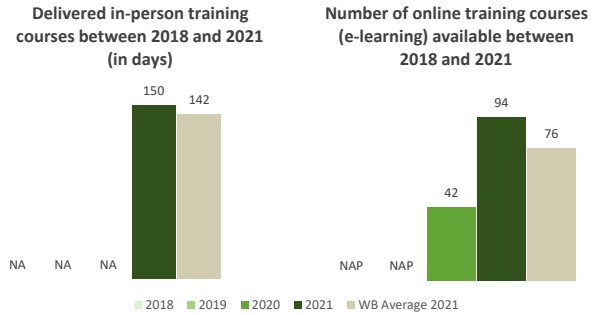
| | | Judges | | Prosecutors | |
|---|---|---|---|---|---|
| | | Compulsory/ Optional or No training | Frequency | Compulsory/ Optional or No training | Frequency |
| | Initial training | Optional | | Optional | |
| In-service training | General | Optional | Regularly | Optional | Regularly |
| | Specialised judicial functions | Compulsory | Regularly | Compulsory | Regularly |
| | Management functions of the court | Optional | Occasional | Optional | Occasional |
| | Use of computer facilities in courts | Optional | Occasional | Optional | Occasional |
| | On ethics | Optional | Regularly | Optional | Regularly |
| | On child-friendly justice | Compulsory | Regularly | Compulsory | Regularly |

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. The candidates who successfully pass the admission exam to the JA become the users of the initial training. Beneficiaries of initial training, in accordance to the article 40 of the Law on Judicial Academy are employed for a fixed time of 30 months, in the Academy. The beneficiaries of initial training are paid 70% of elementary earnings of a basic court judge, during the fixed time employment in the Academy. Attendance to initial training is being considered as working experience in legal profession. The initial training is composed of practical and theoretical education, with knowledge and skill testing. Since 2012, when the first generation finished the Judicial Academy and until February 2019 (ending with VII generation that took exit test), 99 candidates were proposed for the first time election to a judicial or prosecutorial function. Judges and prosecutors appointed for the first time who have not attended initial training (i.e. from the rank of judicial assistants, lawyers, and other jurists) must attend a mandatory special continuous training programme. According to the Law on Judges, Article 9, there is a possibility that the HJC assigns a judge to mandatory training as a result of the evaluation procedure; until present date, it never happened that someone came to training on this basis (the first regular 3-year evaluation took place only in 2018).

In article 43 of the Law on Judicial Academy Continuous training is mandatory when required by the law or by the decision of the High Judicial Council and the State Prosecutorial Council in the event of a change in specialization, significant changes in regulations, the introduction of new methods of work and the elimination of shortcomings in the work of judges and deputy public prosecutor noted in evaluating their work. The continuous training of judges is performed based on the Continuous Training Programme adopted by Managing Board of the Academy every year for the next year. In 2020 training programme covered the following areas: criminal, civil, labor, commercial, and administrative and misdemeanor law, human rights and European Union law. The training aimed at acquiring and improving special knowledge and skills (such as integrity and ethics, computer literacy) was singled out as a separate area.

## • Number of in-service trainings and participants

| | In-person training courses | | | | Online training courses (e-learning) | | |
|---|---|---|---|---|---|---|---|
| | Available (number) | Delivered (in days) | | Number of participants | Available (number) | | Number of participants |
| | | In 2021 | % Variation 2019 - 2021 | | In 2021 | % Variation 2019 - 2021 | |
| Total | 122 | 150 | NA | 5911 | 94 | NAP | 1880 |
| Judges | 80 | 108 | NA | 1145 | 69 | NAP | 963 |
| Prosecutors | 43 | 48 | NA | 250 | 37 | NAP | 306 |
| Non-judge staff | 27 | 31 | NA | 205 | 12 | NAP | 104 |
| Non-prosecutor staff | 23 | 24 | NA | 95 | 21 | NAP | 85 |
| Other professionals | 66 | 71 | | 4216 | 27 | | 422 |




The fact that in Serbia still exist two parallel ways of access to the career of a judge or a prosecutor - as a judicial or prosecutorial assistant (or any other candidate who fulfils the condition prescribed by Law) or as a Judicial Academy (JA) graduate - is relevant also to the question of the number and type of in-service training courses. Judges and prosecutors appointed for the first time who have not attended initial training (i.e. appointed from the rank of judicial assistants, lawyers, and other jurists) must attend a mandatory special continuous programme. According to the Law on Judges, Article 9, there is a possibility that the HJC assign a judge to mandatory training as a result of the evaluation procedure; until present date, it never happened that someone came to training on this basis.
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 the Judicial Academy.
The Judicial Academy has initial training, for candidates who can apply to calls for election of judges and public prosecutors. In addition to the Academy, candidates who successfully concluded initial training, judicial assistants who successfully pass tests organized by the State Prosecutorial Council and the High Court Council is also eligible for the elections.

During 2020, many trainings were delayed or canceled, both online and in person, given the pandemic and measures prescribed by the state due to Covid 19.

In Serbia, sanctions are foreseen if judges and prosecutors do not attend the compulsory training sessions.

If a specialization course is compulsory, those judges who do not receive certificate on that specialization will not be able to take cases on the relevant subject, e.g. juvenile law cases.

In the same way, if a specialization course is compulsory, those prosecutors who do not receive certificate on that specialization will not be able to take cases on the relevant subject, e.g. juvenile law cases.

In Serbia, judges and prosecutors have to undergo compulsory in-service training solely dedicated to ethics, the prevention of corruption and conflicts of interest. This training lasts 2-3 days and they need to participate to it more than once on a regular basis.

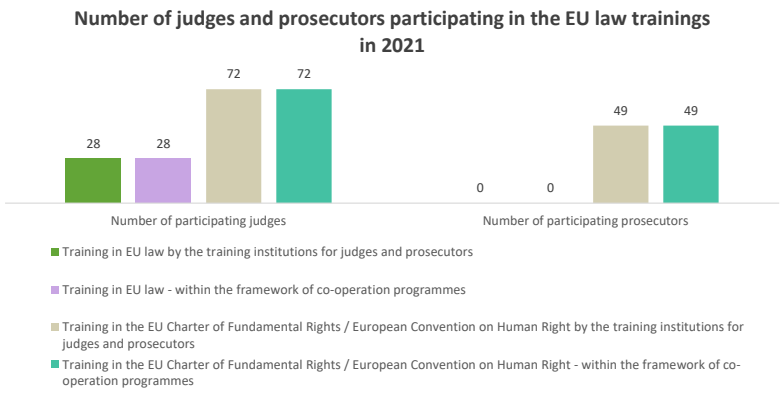
Prosecution offices have prosecutors specially trained in domestic violence. Moreover, they have prosecutors specially trained in sexual violence involving minor victims.

Prosecution offices have appointed, specialized prosecutors for cases of domestic violence. In addition, prosecutors and judges, in order to process cases involving juveniles (both as victims and criminal offenders) need to have a certificate, i.e. to pass a specialized training.

For domestic violence, according to Article 9 of the Law on the Prevention of Domestic Violence in each public prosecutor's office, except for those with special competencies, the public prosecutor appoints deputy public prosecutors who have completed specialized training in order to exercise the competencies of the public prosecutor's office in preventing domestic violence and prosecuting perpetrators of crimes defined by this law. According to Article 28, specialized training is conducted by the Judicial Academy for Public Prosecutors, Deputy Public Prosecutors and Judges, in cooperation with other professional institutions and organizations. According to Article 3 of the same Law, domestic violence, in the sense of this law, is an act of physical, sexual, psychological or economic violence.

## • Number of EU law training courses and participants

| | Training in EU law organised/financed: | | Training in the EU Charter of Fundamental Rights / European Convention on Human Rights organised/financed: | |
|---|---|---|---|---|
| | By the training institutions for judges and prosecutors | Within the framework of co-operation programmes | By the training institutions for judges and prosecutors | Within the framework of co-operation programmes |
| Number of in-person training courses available | 3 | 3 | 11 | 11 |
| Number of delivered in-person training courses in days | 6 | 6 | 13 | 13 |
| Number of online training courses (e-learning) available | 3 | 3 | 7 | 7 |
| Number of judges participating | 28 | 28 | 72 | 72 |
| Number of prosecutors participating | 0 | 0 | 49 | 49 |




In 2021, alll trainings on EU Law and all trainings on the EU Charter of Fundamental Rights and the European Convention on Human Rights available or delivered in Serbia were co-organised or co-financed with International partners.

*Kosovo is not included in the calculation of summary statistics*

## Alternative Dispute Resolution in Serbia in 2021 (Indicator 9)

| | |
|---|---|
| **Legal aid for court-related mediation or related mediation provided free of charge** | Yes |
| **Court-related mediation procedures** | Yes |
| **Mandatory informative sessions with a mediator** | No |
| **Mandatory mediation with a mediator** | No |

**Mediators**

24,8

**per 100 000 inhabitants**

**WB Average: 11,7**

**67% female mediators**

**Total number of court-related mediations**


In Serbia, court related mediation procedures are available and legal aid for court-related mediation or related mediation provided free of charge could be granted. The judical system does not provide for mandatory mediation. Also, there are no mandatory informative sessions with a mediator. In 2021, the number of mediators per 100 000 inhabitants was 24,8, which was above the Western Balkans average (11,7 per 100 000 inhabitats). The majority of the mediators were women (67%). There were in total 642 cases for which the parties agreed to start mediation, while the number of mediation procedures which ended with a settlement agreement is not available.

### • Mediation procedures

In Serbia, judges are required to inform the parties of a possibility of mediation but cannot order it. Article 11 of the Law on Civil Procedure ("Official Gazette of RS", no. 72/2011, 49/2013 - Decision of Constitutional Court, 74/2013 - Decision of the CC and 55/2014) provides that the court shall direct the parties to mediation or to an informative hearing for mediation, or to instruct the parties of the option of pre-trial settlement of dispute by mediation or through another amicable manner while Art. 305 Para. 3 provides that the court shall inform the parties of their right that the procedure can be conducted by means of mediation. Article 340 of the Law on Civil Procedure provides that the court shall stay the proceedings and refer the parties to mediation procedure when provided for by a special law, or when parties propose that the dispute be resolved through mediation. The mediation procedure is to be implemented in accordance with a special law. If the parties do not resolve the dispute through mediation, the court will schedule a hearing for the trial upon the expiry of 30 days from the day when a party informs the court that it has withdrawn from the mediation (Article 341). In accordance with Article 9 Paragraph 2 of the Law on Mediation in Dispute Resolution ("Official Gazette of RS" no. 55/2014), the court is obliged to provide all necessary information to the parties in the dispute about the possibilities of mediation, which can also be done by referring the parties to the mediator.

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 court-related mediation, it is provided that Mediation Weeks should be organised around the 25 October, i.e. marking the European Day of Justice.

The basic procedural framework for court-related mediation also encompasses the Criminal Procedure Code ("Official Gazette of RS", no 72/2011 and 101/2011), and the Law on Civil Procedure ("Official Gazette of RS", no. 72/2011, 49/2013 - Decision of Constitutional Court, 74/2013 - Decision of the CC and 55/2014). Other laws, such as the Law on Juvenile Crime Offenders and Criminal Protection of Juveniles ("Official Gazette of RS", no. 85/2005), Law on Prohibition of Discrimination ("Official Gazette of RS", no. 22/2009), Law on Bankruptcy Procedure ("Official Gazette of RS", no. 104/2009, 99/2011 – other law, 71/2012 – Decision of CC and 83/2014), Law on Prevention of Harassment at Work ("Official Gazette of RS", no. 36/2010), Law on the Protection of Whistle Blowers ("Official Gazette of RS", no. 128/2014), etc. also contain specific provisions on mediation.

Judges can only perform mediation outside of working hours and free of charge.

A judge who acts in the case concerning the disputed relationship cannot be a mediator. However, such a judge can assist the parties to reach an amicable solution in civil procedure through judicial settlement.

The Law on Prevention of Harassment at Work (“Official Gazette of RS”, no. 36/2010) provides that an employee who considers to be subjected to harassment at work („mobbed“) by a person other than the employer themselves, director or other responsible person within the company can submit directly to the director/employer a reasoned application for initiation of proceedings for protection from harassment. The employer is then obliged under the law to propose to the parties in the dispute within three days upon receipt of the application mediation as a resolution of the dispute. Mediation proceedings in these cases are urgent. The mediation proceeding is considered terminated within eight working days after the date of the determination or choice of the mediator: 1) By signing of a written agreement between the disputed parties; 2) By a decision of the mediator, after consultation with the parties, to terminate the proceedings because further proceedings are not justified; 3) By a withdrawal statement of a disputed party from further proceedings. Due to justified reasons, the deadline for the completion of the mediation process can be extended to a maximum of 30 days from the date of determination or choice of the mediator. Also, a mandatory attempt at peaceful dispute resolution before initiating civil proceedings is prescribed in some Serbian laws (but not mediation per se). The Law on Compulsory Traffic Insurance ("Official Gazette RS", no. 51/2009, 78/2011, 101/2011, 93/2012 and 7/2013 – CC decision) provides that a person entitled to a claim under third party motor liability insurance must file the claim directly to the insurance company - if the contract provides for this possibility and if this is in accordance with the business policy of the insurance company. In case the insurance company fails to submit a reasoned offer of compensation for damages within 90 days from the date of claim receipt, or in case the insurance company fails to pay the small claim within the deadline, the claimant may file a lawsuit against the company and notify the National Bank of Serbia of such proceedings. Therefore, in this specific situation, the lawsuit is considered to be filed prematurely, unless the claimant previously addresses the insurance company in an attempt at out-of-court settlement.
Further, under the provisions of the Criminal Procedure Code a person who intends to file a lawsuit for compensation for unlawful deprivation of liberty, or wrongful conviction, before the filing of the complaint, shall submit a request to the Ministry of Justice in order to agree on the existence of damage, the type and amount of compensation (Article 588, Paragraph 1 of the CPC). A Commission shall decide on the request, whose composition and method of work is regulated by the Minister of Justice (Article 588, Paragraph 2 of the CPC). A member of the Commission is also a Deputy SA. If the request is not granted or the Commission does not decide on the request within three months, a lawsuit may be filed against the Republic of Serbia (Article 589, Paragraph 1 of the CPC). If agreement is reached partially, related to the claim, the lawsuit may request the remaining part (Article 589, paragraph 2 of the CPC). During the duration of the procedure for reaching agreement, the statute of limitation is not running for the right to compensation under Article 591 (Article 589, paragraph 3 of the CPA). The work and results of these commissions show that the way settlement procedure is devised should be fundamentally revised.

There are some exceptions when mediation is mandatory:
If the responsible person in the legal entity is not charged with abuse, ie the employer with the status of a natural person, the employee who considers that he is exposed to abuse submits a reasoned request to initiate proceedings for protection against abuse directly to that person. There is a certain obligation in consumer disputes. There is an obligation for the trader in consumer disputes if the consumer initiates an out-of-court dispute resolution procedure which is by its nature mediation (Article 151 of the Law on Consumer Protection). Initiation and conduct of out-of-court settlement of consumer disputes does not exclude or affect the right to judicial protection, in accordance with the law.- Article 168

Most simply put, in Serbia judges are required to inform the parties of a possibility of mediation, but cannot order it (there are no mandatory mediation provisions). Article 11 of the Law on Civil Procedure provides that the court shall direct the parties to mediation or to informative hearing for mediation, in accordance with the law, or to instruct the parties of the option of pre-trial settlement of dispute by mediation or through another amicable manner while Art. 305 Para. 3 provides that the court shall inform the parties of their right that the procedure can be performed through mediation.

## • Other ADR methods

| Mediation other than court-related mediation | Arbitration | Conciliation (if different from mediation) | Other ADR |
|---|---|---|---|
| ✓ | ✓ | ✓ | ✗ |

The Law on Mediation in Dispute Resolution, which is applicable from 1 January 2015, applies also to mediation other than court-related mediation as it provides that “mediation is a procedure, regardless of its name, where the parties voluntarily seek to settle their dispute through negotiation, facilitated by one or more mediators assisting the parties to reach an agreement”. Mediation may be applied to disputes 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. Mediation is possible especially in property-related disputes concerning the fulfilment of the obligation to act, in other property disputes, in family, commercial disputes, administrative matters, disputes relating to environmental protection issues, consumer disputes, and in all other contentious relations where mediation is appropriate to the nature of the contentious relations and can aid in their resolution. The Law also applies to mediation in criminal and misdemeanour proceedings with respect to property claims and claims for damages, as well as in labour disputes unless otherwise stipulated by a special law. Among the basic principles of mediation established by the law are voluntariness, equality, participation and presence in person during the mediation procedure, exclusion of the public, confidentiality, neutrality and urgency.

Dispute settlement through informal, flexible and voluntary mediation organised by the National Bank of Serbia is an example of non-judicial alternative for disputes between financial institutions and clients. The National Bank of Serbia began conducting such mediation proceedings in the field of insurance in December 2005 and institutionalised such procedures within its Centre for the Protection and Education of Users of Financial Services which reports that in 2014 101 mediation procedures were scheduled, out of which 77 cases were completed with 35.1% ending with a settlement between financial institutions and their clients. The Law on the Protection of Financial Services Consumers (“Official Gazette of RS” no. 36/2011 and 139/2014) provides that the consumer using banking services or leasing services has the right to complaint and the possibility of instituting mediation proceedings for out-of-court settlement of the dispute with the provider of the services. The latest amendments to the law which have become applicable on 27 March 2015, make these procedures more precise and efficient.

Other agencies and organisations, such as the Republic Agency for Electronic Communications (RATEL) also offer non-judicial within their respective purviews. Another example of non-judicial mediation is mediation in consensual financial restructuring of companies, conducted before the Serbian Chamber of Commerce pursuant to the Law on Consensual Financial Restructuring of Companies (“Official Gazette of RS”, no. 36/2011) and relevant bylaws which were enacted in 2012. The Law on Consumer Protection (“Official Gazette of RS” no. 62/2014) provides that a consumer dispute may be settled through out of court resolution of consumer disputes – mediation or arbitration, which are governed by the relevant laws.

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 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 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, 50/18), 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. Additionally, the new competences (2018) are: disputes arising from: payment of salaries/wages, allowance of salaries/wages in accordance with the law, payment of severance pays during retirement, working hours and exercising rights to annual leave.

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, who 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 (“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).

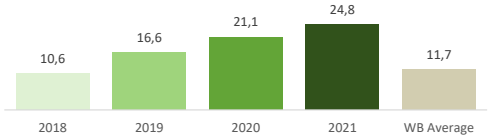
The Minister of Justice has established a Working Group for drafting of amendments to the Law on Mediation in Dispute Resolution on 19 December 2018 with the task of drafting A new legal framework which should strike a balance between the need to regulate, on the one hand, and the need to preserve a sufficient level of party autonomy and procedural flexibility, on the other. The working group has in 2019 worked on the further improvement of all relevant provisions of the law, especially taking care that changes to the legal framework encompass: 1) transparency and clarity of the content of the mediation law in relation to how mediation is started, the mediation procedure itself, standards and qualifications for mediators, mediation centers and mediation training providers, as well as rights and obligations of participants in the mediation process; 2)specifying the position of judges in the mediation procedure; 3)enforceability of clauses on settling disputes through mediation;
4)the principle of confidentiality;
5) the enforceability of agreements reached in mediation and agreements reached in international mediation; and 6) the impact of mediation on the course of a lawsuit, including the possibility of prescribing the first obligatory meeting as a procedural precondition for initiating litigation in certain types of cases, as well as other ways in which the objective of Directive 2008/52/EC may be achieved.

The working group is guided by mediation standards provided in relevant acts of the United Nations, the European Union and the Council of Europe, as well as by the need for adapting standards and best practices to local possibilities and needs.

## • Mediators and court-related mediations

| Accredited/registered mediators for court-related mediation | | | % Variation between 2019 and 2021 |
|---|---|---|---|
| Absolute number | Per 100 000 inhabitants | WB average per 100 000 inhabitants | |
| 1705 | 24,8 | 11,7 | 47,5% |

**Accredited/registered mediators for court-related mediation per 100 000 inhabitants between 2018 and 2021**



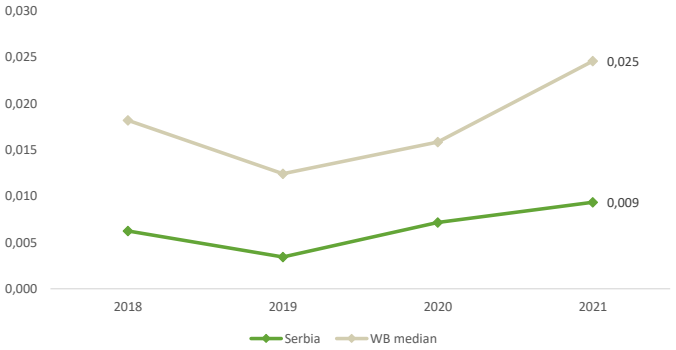

*For reference only: the 2020 EU median is 17 mediators per 100 000 inhabitants.*

In 2021, the total number of mediators in Serbia was 1705, which is 47,5% more than in 2019.The number of mediators per 100 000 inhabitants was 24,8, which is more than the WB average of 11,7.

The number of mediators in the Republic of Serbia is significantly large due to the increased interest of citizens in performing the work of mediators, which is probably due to the documents adopted by the Republic of Serbia to improve the application of mediation in Serbia.

| | Number of court-related mediations | | | Providers of court-related mediation services | | | |
|---|---|---|---|---|---|---|---|
| | Number of cases for which the parties agreed to start mediation | Number of finished court-related mediations | Number of cases in which there is a settlement agreement | Private mediator | Public authority (other than the court) | Judge | Public prosecutor |
| Total (1 + 2 + 3 + 4 + 5+ 6) | 642 | NA | NA | | | | |
| 1. Civil and commercial cases | 319 | NA | NA | ✓ | ✓ | ✓ | ✗ |
| 2. Family cases | 151 | NA | NA | ✓ | ✓ | ✓ | ✗ |
| 3. Administrative cases | 8 | NA | NA | ✓ | ✓ | ✓ | ✗ |
| 4. Labour cases incl. employment dismissals | 117 | NA | NA | ✓ | ✓ | ✓ | ✗ |
| 5. Criminal cases | 19 | NA | NA | ✓ | ✓ | ✓ | ✗ |
| 6. Consumer cases | 28 | NA | NA | ✓ | ✓ | ✓ | ✗ |

**Evolution of the number of court-related mediation for which parties agreed to start mediation per 100 inhabitants**




Court related mediations are provided by private mediators,public authorities (other than the court) and judges. In 2021, mediation was most used for Civil and commercial cases and Family cases (319 and 151 cases, respectively, in which parties agreed to start mediation).

In Serbia, it is possible to receive legal aid for court-related mediation or receive these services free of charge.

Family law provides that 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 psycho-social 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). 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). The procedural legal framework has been adopted in order to allow for certain elements of mediation in penal matters. Namely, pursuant to Article 505 of the Criminal Procedure Code (“Official Gazette of RS”, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 i 55/2014), before scheduling a trial in connection with criminal offences which are prosecutable by private prosecution, the judge shall summon the private prosecutor and the defendant to the court on a certain date to be informed about the possibility of being referred to a mediation procedure. The Criminal Code (“Official Gazette of RS”, Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 i 94/2016)) also provides a possibility of settlement between the offender and the victim (Article 59). Namely, the court may remit from punishment the perpetrator of a criminal offence punishable by up to three years' imprisonment or a fine if the offender has fulfilled all his/her obligations from an agreement reached with the victim. The Law on Peaceful Settlement of Labour Disputes (“Official Gazette of RS”, no. 125/04, 104/09) provides that the competences of the Republic Agency for Peaceful Settlement of Labour Disputes in individual disputes are, among other, issues of termination of employment contract. However, in individual disputes, the Agency offers arbitration, not mediation.

The Law on Consumer Protection (“Official Gazette of RS”, no. 62/2014, 6/2016 and 44/2018) provides two manners of out-court settlement of consumer disputes: mediation (in accordance with the law that regulates mediation in Serbia) and arbitration. Parties in the consumer dispute may assign the resolution of the consumer dispute to one or more mediators chosen from the list of mediators, in accordance with the Law on Mediation.

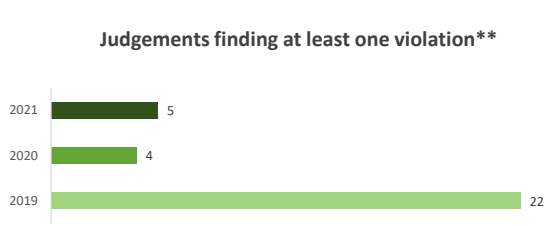
In criminal cases with mediation only refers to property claims and claims for damages.

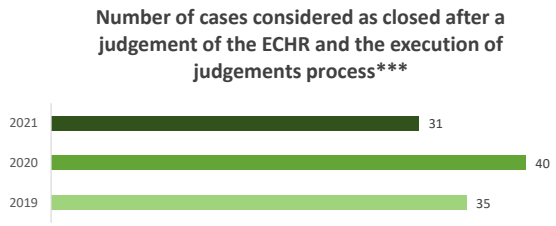
*Kosovo is not included in the calculation of summary statistics*

# European Convention on Human Rights in Serbia in 2021 (Indicator 10)

*European Convention on Human Rights – Article 6 – Right to a fair trial:*

*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*




## • ECHR

Office of the Agent of the Republic of Serbia before the European Court of Human Rights (hereinafter: the Court ), performs monitoring of violations of the Article 6 of the European Convention on Human Rights ( hereinafter: the Convention) in capacity of authority competent to take care of the execution of judgments and decisions rendered by the Court. Following the delivery of judgments establishing violation of Article 6 of the Convention, the Agents office translate the judgment concerned and publishes it in Official Journal, as well as informs domestic courts or other domestic authorities , which acts or omissions led to the violation of the right about the Court's findings. Having in mind that the Agent's office deals with the process of the execution of the Court's judgments and decision's , it cooperates with domestic authorities in order to prepare and enforce appropriate measures to prevent similar violations in future. Moreover, on the request of the Agent's office, all domestic authorities are expected to provide necessary data in order to be presented before the Committee of Ministers of the Council of Europe in the form of action plans or action reports. Presented monitoring system is operated by the Agent's office and it is at the State level. There is no separate mechanism in the Republic of Serbia dedicated only to the monitoring of the violations related to Article 6 of the Convention.

| Monitoring system for violations related to Article 6 of ECHR | | |
|---|---|---|
| Civil procedures (non-enforcement) | Civil procedures (timeframe) | Criminal procedures (timeframe) |
| ✓ | ✓ | ✓ |

**Possibility to review a case after a decision on violation of human rights by the ECHR**

Law of the Republic of Serbia enables a review of a case of the Court previously established a violation of rights guaranteed by the Convention. Actually, Law on Civil Procedure, Criminal Procedure Code and Law of the Administrative Procedure, through prescribed extra-ordinary legal remedies, enable the review of cases following the Court's decision's establishing infringement of rights and freedoms set in the Convention.

In 2021, the applications allocated to a judicial formation** for Serbia were 1993 (157 more than the previous year). The judgements by the ECHR finding at least one violation for Serbia were 5; whereas they were 4 in 2020.

The number of cases considered as closed after a judgement of the ECHR and the execution of judgements process was 31 in 2021; whereas they were 40 in 2020.

| | 2019 | 2020 | 2021 |
|---|---|---|---|
| Applications allocated to a judicial formation of the Court** | 2 160 | 1 836 | 1 993 |
| Judgements finding at least one violation** | 22 | 4 | 5 |

** Source: ECHR

| | 2019 | 2020 | 2021 |
|---|---|---|---|
| Number of cases considered as closed after a judgement of the ECHR and the execution of judgements process*** | 35 | 40 | 31 |

*** Source: Department of Execution of sanctions of the Council of Europe

*Kosovo is not included in the calculation of summary statistics*

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CEPEJ(2022)4

Part 2

# EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

## HFII: Towards a better evaluation of the results of judicial reform efforts in the Western Balkans - "Dashboard Western Balkans"

## Data collection: 2021

## Part 2 (B) - Beneficiary Profile – Serbia

This analysis has been prepared on the basis of the replies from the beneficiary (Dashboard correspondent) to the CEPEJ Questionnaire for the Dashboard Western Balkans, and relevant GRECO reports.

## Selection and recruitment of judges and prosecutors

Judges are elected by the National Assembly upon a proposal of the High Judicial Council (HJC) and dismissed by the HJC as per the Constitution and the Law on Judges (Article 42 to 55, LoJ).

For judges, recruitment procedure is initiated through the publication of holding of elections for judges (in the Official Gazette and in the major daily magazine) by the HJC, to which applications are submitted along with evidence of eligibility. Two parallel ways of accessing the career of a judge exist, namely via: 1) permanent employment at court as a judicial assistant after passing the bar exam »with distinction«; or 2) completing an initial training at the Judicial Academy.

Entry criteria for the election of a judge are publicly available and include: Serbian citizenship, meeting the general requirements for employment in state bodies, being a law school graduate, having passed the bar exam and deserving of a judgeship (Article 43, LoJ). The required professional experience in the legal profession following the bar exam is two years for a judge of a misdemeanour court, three years for a judge of a basic court, six years for a judge of a higher court, a commercial court, and the Misdemeanour Appellate Court, 10 years for a judge of an appellate court, the Commercial Appellate Court and the Administrative Court and 12 years for a judge of the Supreme Court of Cassation.

Other requirements for the election of a judge are qualification, competence and worthiness, i.e. ethical characteristics that a judge should possess, and conduct in accordance with such characteristics. Having a clean criminal record is also necessary.

Those candidates that have completed the initial training at the Judicial Academy are exempt from taking the obligatory entry exam and the final exam grade achieved at the initial training is taken into account when assessing the criteria of competence and qualification evaluation for judicial positions.

The HJC collects information and opinions about the qualifications, competence and moral integrity of a candidate, namely from bodies and organisations where the candidate worked in the legal profession. In case of a candidate coming from a court, it is mandatory to obtain the opinion of the session (collegium) of all judges of that court, as well as the opinion of the session (collegium) of all judges of the immediately higher instance court. In addition, the HJC must take into particular consideration the type of jobs that the candidate performed after passing the bar exam. Before presenting its nominations, the HJC conducts interviews with the candidates. Transparency of the interview is ensured though minutes being taken, and a standardised questionnaire being used for all candidates.

A list of pre-selected candidates that are to be nominated for election is published on the HJC's website. The HJC presents the nominated candidates to the National Assembly for election which can either elect a nominated candidate or reject him/her (it cannot elect a candidate who has not been nominated by the HJC). Those elected as a judge for the first time are elected for a three-year mandate. The decision to elect a judge is published in the Official Gazette.

Non pre-selected candidates may file a complaint against the decision of the HJC in the pre-selection procedure which is to be considered by the HJC; however, the body competent to decide on appeal against the HJC's final decision is the Constitutional Court (Articles 57 and 67, LoJ).

A first-time elected judge whose work during the first three-year term of office is assessed as having "performed the judicial duty with exceptional success", is elected mandatorily to a permanent office by the HJC. If the assessment is "not satisfactory", appointment to permanent office is not possible and the HJC issues a decision on the termination of office against which an objection may be filed with the HJC; the HJC makes a final decision against which an appeal is possible to the Constitutional Court (Article 57 and 67, LoJ). Every decision related to election (including a final decision on termination of office) must be reasoned and published in the Official Gazette.

In the GRECO Evaluation Report from 2015 (see para. 111 to 115) the involvement of the National Assembly in the election (and promotion) of judges and court presidents was subject to GRECO's criticism which also referred to the opinions of the Council of Europe's Venice Commission and the EU expressed on this matter. Such involvement of the National Assembly seemed to be "a recipe for politicisation of the judiciary". Another issue of criticism was the lack of objective and clear criteria of the procedures for first election, appointment to permanent office and career advancement for judges and that the proposals for the selection among candidates made by the HJC were made in a non-transparent manner, based mainly on interviews held behind closed doors. Although GRECO noted that the Serbian authorities had already been working on these issues which had been foreseen by the National Judicial Reform Strategy (NJRS), it recommended reforming the procedures for the recruitment and promotion of judges and court presidents, in particular by excluding the National Assembly from the process, ensuring that decisions are made on the basis of clear and objective criteria, in a transparent manner and that positions of court presidents are occupied on an acting basis only for short periods of time.

In the compliance procedure GRECO found some progress made, namely bylaws adopted by the HJC on evaluation criteria and discussions held on possible constitutional amendments to exclude the National Assembly from the process of appointment of judges (see para. 36 – 42, GRECO Compliance Report from 2017), as well as a preparation of constitutional amendments to exclude the National Assembly from the appointment process (see para. 33 – 40, Interim Compliance Report from 2019). However, due to the fact that the constitutional amendments had not yet been adopted and that the rulebooks, although provided for merit-based criteria and standards for the objective evaluation of candidates to judicial positions, had not bound the HJC when making a decision, GRECO assessed this recommendation to be partly implemented (see para. 32 – 36, GRECO Second Compliance Report from 2020).

Integrity of a candidate judge is checked in the pre-selection and the selection process via obtaining opinions on candidates (i.e. on the qualification, competence and moral character of a candidate) from bodies and organisation where the candidate worked in the legal profession, including an opinion of the collegium of all judges of a court where the candidate worked, and via checking the candidate's criminal record.

A judge is appointed »for life«. A judge's office ends either at the request of a judge, upon retirement age 65 (age 67 for Supreme Court of Cassation judges), due to a permanent inability to work, if not elected to permanent office, or in case of dismissal (Articles 56 to 67, LoJ). As mentioned above, judges are first elected to office for a three-year term and are then mandatorily elected to permanent office if their work during the first three-year term has been assessed as having »performed the judicial duty with exceptional success«. A judge can be dismissed if convicted of an offence carrying a sentence of imprisonment of at least six months or of a punishable act that demonstrates that s/he is unfit for the judicial function, in case of incompetence or due to a serious disciplinary offence (LoJ).

Lay judges are appointed by the HJC based on proposals by the Minister of Justice – who must first obtain an opinion from the court to which a lay judge is to be appointed –, for a period of five years. They may be re-appointed. Any national of Serbia of legal age who is not older than 70 years at the time of appointment and who is worthy of the function may be appointed as a lay judge. As is the case for professional judges, worthiness means ethical characteristics that a judge should possess, and conduct in accordance with such characteristics. A lay judge is suspended from office by the court president if criminal proceedings have been instituted against him/her for an offence that might lead to dismissal, or if dismissal proceedings have been instituted. Possible reasons for dismissal of a lay judge are political activity or political party membership. The procedure to determine the reasons for the termination of the function of a lay judge is initiated on proposal of the court president, president of the immediately superior court, the president of the Supreme Court of Cassation or the Minister of Justice; the HJC conducts the proceedings and takes a decision.

Public prosecutors (including deputies) are elected by the National Assembly upon a proposal of the Government and dismissed by the National Assembly (while deputy public prosecutors are dismissed by the SPC) as per the Law on Public Prosecution Office (LPPO). Several bylaws of the SPC regulate in detail the election process (i.e. Rulebook on criteria and standards for evaluation of qualification, competence and worthiness of candidates when proposing deputy public prosecutors elected for the first time, 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, 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).

Deputy public prosecutors who are elected for the first time are elected by the National Assembly based on proposals by the SPC, for a term of three years. Apart from meeting the general conditions, they are required to have three years of professional experience in the legal profession following the bar exam. Their qualifications and competences are evaluated at the entry exam conducted by the Examination Commission of the SPC. Those candidates who have passed the initial training at the Judicial Academy are exempt from taking the entry exam the final grade awarded at the end of the training will be taken into consideration (Article 77a, LPPO). Following the three-year term, deputy public prosecutors are elected to a permanent office by the SPC within the prosecution service.

Public prosecutors (and deputy public prosecutors) are elected by the National Assembly, from the ranks of public prosecutors and deputy public prosecutors, upon the proposal of the government based on a list of candidates determined by the SPC, for a term of six years, with a possibility for a re-election. The SPC proposes to the government a list of one or more candidates for election. If only one candidate is proposed, the government may return the proposal to the SPC. The government and the National Assembly do not have the competence to elect a candidate who has not been nominated by the SPC.

In the GRECO Evaluation Report from 2015 (see para. 172 and 173) GRECO repeated its concerns expressed with respect to the recruitment (and promotion) of judges and court presidents also in relation to recruitment (and promotion) of public prosecutors, namely that the involvement of the National Assembly in the process provided room for undue political influence, that the selection of candidates by the SPC was non-transparent and lacked objective and clear criteria, that there had been cases where prosecution offices had been headed by acting public prosecutors for long periods of time, making them liable to pressure, and that the government enjoyed wide discretion in the appointment process when accepting or refusing candidates proposed by the SPC for election by the National Assembly. GRECO thus recommended reforming the procedures for the recruitment and promotion of public prosecutors and deputy public prosecutors, in particular by excluding the National Assembly from the process, limiting the discretion of the government and ensuring that decisions are made on the basis of clear and objective criteria in a transparent manner and that positions of public prosecutors (i.e. heads of office) are occupied on an acting basis only for a short period of time.

In the compliance procedure (see GRECO Compliance Report from 2017, para. 63 – 68; GRECO Interim Compliance Report from 2019, para. 61 – 68; and GRECO Second Compliance Report from 2020, para. 54 - 57), GRECO noted draft constitutional amendments addressing part of the recommendation (as regards the exclusion of the National Assembly and limiting the discretion of the government, although as regards this latter point GRECO noted that much of this would also depend on the influence over the process of selection at the Judicial Academy once it becomes the single entry point for the prosecution service). As these amendments had not been adopted yet, GRECO concluded that this part of the recommendation was partly implemented. There was no progress with regard to the other part of the recommendation.

Elections of public prosecutors and deputy public prosecutors are publicly announced by the SPC (in the Official Gazette, the SPC website and in other sources of public information with a coverage of the whole territory of the country) and applications are submitted along with evidence of eligibility.

Entry criteria for the election of a (deputy) public prosecutor are publicly available and include: Serbian citizenship, meeting the general requirements for employment in state bodies, being a law school graduate, having passed the bar exam and being worthy of the office. The required professional experience in the legal profession following the bar exam is 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 prosecutor and deputy public prosecutor with special jurisdiction, 12 years for the Public Prosecutor of the Republic and 11 years for the Deputy Public Prosecutor of the Republic.

As well as having the required qualifications and competence, a candidate must demonstrate worthiness, i.e. the requisite ethical and moral integrity (honesty, diligence, fairness, dignity, persistence and exemplarity). Having a clean criminal record is also necessary.

The SPC collects information and opinions about the qualifications, competence and moral integrity of a candidate, namely from bodies and organisations where the candidate worked in the legal profession. Before presenting its nominations, the SPC conducts interviews with the candidates. Transparency of the interview is ensured though minutes being taken, and a standardised point system being used to evaluate the candidates. The lists of pre-selected candidates compiled by the SPC are published on its website. The SPC must justify its proposals and decisions.

Non-selected candidates may file a complaint against the decision of the SPC on the ranking list in the selection procedure which is to be considered by the SPC; however, against the SPC's final decision an administrative dispute may be initiated.

Integrity of a candidate public prosecutor is verified by examining a program of organisation and promotion of work of the public prosecutor's office that is to be submitted by the candidate – on the basis of the program the candidate's ability to organize work, knowledge of the affairs of the public prosecutor's office, advocacy for preserving the reputation of the public prosecutor's office in the public and other measures of importance for the work of the public prosecutor's office for which is running are checked.

Public prosecutors enjoy a six-year tenure and may be re-elected. The tenure of deputy public prosecutors is permanent, until reaching the retirement age of 65 (may be extended for two years with the consent of the deputy public prosecutor due to cases already initiated) or upon completion of 40 years of service. The office may terminate earlier, either at the request of a public prosecutor, due to a permanent inability to work, or in case of dismissal.

The Public Prosecutor of the Republic is elected for a six-year term and may be re-elected.

Public prosecutors and deputy public prosecutors are dismissed if sentenced for a criminal offence to at least six months' imprisonment or convicted for a punishable offence that renders them unworthy of office, or if they discharge their functions incompetently (i.e. their performance is rated "unsatisfactory"), or for committing a grave disciplinary offence. The National Assembly decides whether to terminate the functions of a public prosecutor if the recommendation for dismissal emanates from the government and is based on reasons for dismissal determined by the SPC. The SPC decides whether to terminate the functions of a deputy public prosecutor. Decisions on termination can be appealed to the Constitutional Court, which takes a final decision. Decisions on termination are published in the Official Gazette.

## Promotion for judges and prosecutors

The HJC is responsible for the promotion of judges who are elected by the National Assembly.

There is no specific procedure for the promotion of judges and thus the general procedure for the election of judges is applied (see the section Appointment/recruitment/mandate of judges/prosecutors).

The promotion procedure is based on the expertise and competence which is to be checked through a performance evaluation for the last three years done by a HJC's committee composed of three judges, who are elected members of the HJC.

The criteria and standards in the process of election of judges to another or higher court are prescribed by 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 (Article 4). Especially the following criteria are taken into account: expertise (includes possession of theoretical and practical knowledge required to perform judicial function); participation in the trainings for judges and court personnel; participation in training programs organized by the institution responsible for judicial training; scientific and professional papers in the field of legal doctrine, which the candidate has published as author or co-author; presentations in national and international scientific and professional conferences. Worthiness of candidates (ethical qualities a judge should possess and behaviour in accordance with those qualities) is also important and shall be assumed.

For candidates judges with permanent tenure an opinion of the Session of all judges of the court where the judge is serving is obtained, as well as the opinion of the Session of all judges of immediately higher court. A list of preliminary candidates is then made and published on the HJC's website.

Decisions of the HJC on the selection of judges to permanent judicial positions at another or higher court must be reasoned and published in the Official Gazette. As a rule, a judge is elected only to the court where s/he applied.

Objections to evaluation are decided on by a commission composed of three members appointed by the HJC from among judges of the Supreme Court of Cassation. An administrative complaint to an administrative court may be made against the HJC's decision.

The involvement of the National Assembly in the (recruitment and) promotion of judges and court presidents has been subject to criticism and recommendations by international instances, including GRECO. For the recommendation addressed to Serbia with regard to promotion of judges and progress made by the Serbian authorities see the section Appointment/recruitment/mandate of judges/prosecutors.

GRECO also addressed the system of appraisal of judges' performance (see GRECO Evaluation Report from 2015, para. 116 – 118), especially the fact that the system relied almost exclusively on elements of productivity, even among the so-called "qualitative" criteria (e.g. percentage of decisions set aside after a legal remedy has been sought, time period for rendering decisions in writing). It pointed out in this connection that, even though productivity was certainly a necessary element of the evaluation of judges' work, it should not be the only one. Elements of a more qualitative character, like the quality of reasoning and its contribution to the development of case-law, or the behaviour of a judge including adherence to ethical and integrity values, also had an important role to play. Moreover, GRECO was concerned that the excessive dependence on quantitative criteria could instil an improper attitude where the focus was on statistical targets rather than high-quality work. GRECO was furthermore concerned that evaluations served as grounds for dismissal if "unsatisfactory" and that the HJC could initiate evaluations outside the usual three-year cycle, which could carry a risk of possible harassment or pressure. GRECO therefore recommended that the system of appraisal of judges' performance be reviewed (i) by introducing more qualitative criteria and (ii) by abolishing the rule that unsatisfactory evaluation results systematically lead to dismissal of the judges concerned.

In the GRECO Compliance Report from 2017 (see para. 43 – 49) and the GRECO Interim Compliance Report from 2019 (see para. 41 - 47) GRECO noted some progress made with respect to the second part of the recommendation, namely explanation provided by the Serbian authorities showing that the evaluation mark "unsatisfactory performance" was not really an issue in practice and that the issue would be further addressed in the constitutional reform process, leading to corresponding changes to the Law on Judges. Since the amendments were still pending, GRECO concluded the recommendation was partly implemented. The same conclusion was made also in the GRECO Second Compliance Report form 2020 (see para. 37 – 41).

The SPC is responsible for the promotion of deputy public prosecutors.

Promotion of a public prosecutor by means of election to a higher ranking public prosecution office follows the same procedure as for the election of public prosecutors.

The work of all prosecutors is subject to a regular evaluation, which represents, together with an interview conducted by the SPC, the basis for election to a higher position. Performance evaluation is to be conducted on the basis of the publicised, objective and uniform criteria and standards established by the SPC (Rulebook on criteria and standards for evaluation of performance of public prosecutors and deputy public prosecutors). The performance evaluation of a public prosecutor is conducted by the directly superior, after obtaining the opinion of the Collegium of the directly superior public prosecution office. The performance evaluation of a deputy public prosecutor is conducted by the public prosecutor, after obtaining the opinion of the Collegium of the public prosecution office. If the candidate has not evaluation of his/her performance, an extraordinary evaluation is ordered by the SPC to be made by the prosecutor's office where the candidate performs his/her function.

According to the Rulebook, the criteria for the evaluation of the work of a public prosecutor are: general ability to administer a public prosecution office, ability to monitor and include the total performance results of the public prosecution office under his/her management. The criteria for evaluation of the work of a deputy public prosecutor are promptness when proceeding, expertise and results, professional commitment and cooperation. Performance ratings – "performs prosecutorial function exceptionally", "satisfactory performance of prosecutorial function" and "unsatisfactory performance" – are entered onto the prosecutor's personnel file. Prosecutors can submit reasoned objections to the rating to the SPC.

Interview aims to determine the candidate's communication skills, readiness to perform the public prosecutor's office and the professional integrity necessary for the position s/he applied for.

Based on the decision on performance evaluation as well as the interview conducted with the Commission of the SPC, candidates are being ranked for the purpose of election to a higher position (promotion). In case more candidates are ranked with the same score, the candidate with longer experience after passing the bar exam takes the priority over the others. The ranking list is published on the SPC's website and bulletin board. The same procedure as for the election then follows.

The non-selected candidate may initiate an administrative dispute at an administrative court.

The concerns expressed by GRECO with respect to the (recruitment and) promotion of judges and court presidents applied *mutatis mutandis* to the (recruitment and) promotion of public prosecutors and deputy public prosecutors (see the section Appointment/recruitment/mandate of judges/prosecutors).

In its Evaluation Report from 2015 (see para. 176) GRECO also addressed a recommendation with regard to the system for appraising the performance of public prosecutors and deputy public prosecutors. It was noted that the system might give too much weight to quantitative factors, some of which appeared inadequate, that the evaluations served as grounds for dismissal if "unsatisfactory" and that the SPC could initiate them outside the usual three-year cycle, which provided room for possible harassment or undue pressure, and that the rules didn't provide for adequate participation of prosecutors in the evaluation procedure. GRECO thus recommended that the system for appraising the performance of public prosecutors and deputy public prosecutors be reviewed (i) by revising the quantitative indicators and ensuring that evaluation criteria consist principally of qualitative indicators and (ii) by abolishing the rule that unsatisfactory evaluation results systematically lead to dismissal and ensuring that prosecutors have adequate possibilities to contribute to the evaluation process.

In the GRECO Compliance Report from 2017 (see para. 69 – 79) and the GRECO Interim Compliance Report from 2019 (see para. 61 - 68) progress made by the Serbian authorities in respect of implementation of this recommendation was noted. The SPC set up a working group to prepare evaluation criteria that would include qualitative evaluation criteria. As regards the second part of the recommendation the matter would be addressed following the constitutional reform process, leading to further changes to the Law on Public Prosecution Office – at the time of compliance procedure the amendments were still pending.

GRECO therefore concluded this recommendation to be partly implemented. However, no progress was made since as GRECO concluded in the GRECO Second Compliance Report (see para. 58 – 61).

## Confidence and satisfaction of the public with their justice system

The legislation for protecting the right of citizens to seek compensation in case they have suffered pecuniary or non-pecuniary damage due to the violation of the right to a trial within reasonable time is in place (Law on Protection of Right to Trial within a Reasonable Time). 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. Legal remedies as per this law are: a complaint to speed up the procedure, an appeal and a request for just satisfaction which includes the right to payment of monetary compensation for pecuniary or non-pecuniary damages cause due to violation of the right to a trial within reasonable time. A lawsuit for monetary compensation against the Republic of Serbia may be filed within one year from the day when a party acquired the right to fair satisfaction. The amount of compensation for non-pecuniary damages is limited to 300 – 3.000 EUR while the amount of compensation for pecuniary damages is determined by court on the basis of principle of causality and provisions of the Law on Contracts and Torts.

Prior to entry into force of the Law on Protection of Right to Trial within a Reasonable Time rehabilitation and legal consequences of rehabilitation of persons deprived of life, liberty, and other rights for political, religious, national, or ideological reasons were regulated in the Law on Rehabilitation. Higher courts decide on requests for rehabilitation, which could be filed until December 15, 2016. Pursuant to the provisions of this law and based on a court decision approving the request for rehabilitation, rehabilitated persons and other persons determined by this law apply for rehabilitation compensation. The Rehabilitation and Compensation Commission, formed on 9 February 2012 by the decision of the Ministry of Justice, 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.

| | 2019 | | | 2020 | | | 2021 | | |
|---|---|---|---|---|---|---|---|---|---|
| | Number of requests for compensation | Number of compensation | Total amount (in €) | Number of requests for compensation | Number of compensation | Total amount (in €) | Number of requests for compensation | Number of compensation | Total amount (in €) |
| Total | 1097 | 406 | 798.268 | NA | NA | NA | NA | NA | NA |
| Excessive length of proceedings | 145 | 30 | 330.611 | NA | NA | NA | NA | NA | NA |
| Non-execution of court decisions | 28 | 4 | 12.102 | NA | NA | NA | NA | NA | NA |
| Wrongful arrest | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| Wrongful conviction | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| Other | 157 | 164 | 379.471 | NA | NA | NA | NA | NA | NA |

Based on the Law on the Organisation of Court (Article 8) a party and other participants in court proceeding have a right to a complaint about the work of the court when they believe that the proceeding is being prolonged, is irregular or that there is some undue influence on its course and outcome. The court president must consider the complaint, forward it to a judge to whom it concerns for an opinion and inform the complainants and the president of the immediately superior court of its merits and measures taken, within 15 days from the day of the receipt of the complaint (Article 55). The complaint may be filed either directly with the court or through the Ministry of Justice, the High Judicial Council or the immediate superior court – in such a case these bodies are informed about the complaint's merits and the measures taken.

| | 2019 | | 2020 | | 2021 | |
|---|---|---|---|---|---|---|
| | Number of complaints | Compensation amount granted | Number of complaints | Compensation amount granted | Number of complaints | Compensation amount granted |
| TOTAL | NA | NA | NA | NA | NA | NA |
| Court concerned | NA | NA | NA | NA | NA | NA |
| Higher court | NA | NAP | NA | NA | NA | NA |
| Ministry of Justice | 9912 | NA | NA | NA | NA | NA |
| High Judicial Council | 1144 | NA | NA | NA | NA | NA |
| Other external bodies (e.g. Ombudsman) | NAP | NAP | NA | NA | NA | NA |

On 31st December 2020, 5.739 complaints were received out of which 3.104 were with regard to the work of courts and 1.101 with regard to the work of lower courts. 1.102 were well-founded while 483 were not.

There is no procedure in place to effectively challenge a judge in case a party considers the judge is not impartial. Parties may challenge the adjudicating judge only during court proceedings, as per procedural laws.

There is no law/regulation in place that prevents specific instructions to public prosecutors to prosecute. The public prosecutors' office in Serbia is not a part of the executive nor the judicial power. It is also not a mixed model nor has other status. No information has been provided with regard to who can give instructions to a prosecutor.

## Promotion of integrity and prevention of corruption

According to the Constitution, independence of the judiciary as a whole and of judges individually is guaranteed. In performing their judicial function, judges are independent and responsible only to the Constitution and the law, and any influence on judges while performing their judicial function is prohibited (Articles 3, 4, 142 and 149). Under Article 153 of the Constitution, the High Judicial Council (HJC) is established as an independent and autonomous body to provide for and guarantee the independence and autonomy of courts and judges – more detailed provisions are contained in the Law on High Judicial Council. In addition, the Law on Organisation of Courts emphasises the prohibition of use of public office, the media or any public appearance to unduly influence the course and outcome of court proceedings. It makes it clear that any single act of judicial administration interfering with the autonomy and independence of courts and judges is deemed null and void. Moreover, among the generally accepted principles prescribed by the Law on Judges (LoJ) figure independence, security of tenure and non-transferability, material independence, immunity, right to association and right to advanced professional education and training. Other legal texts which guarantee the independence of judges and the judiciary are the Code of Ethics and the Rules of Procedure of the HJC, adopted by the HJC.

Judges enjoy functional immunity (Article 151, Constitution), which implies that they cannot be held responsible for their expressed opinion or voting in the process of passing a court decision (except in cases when they committed a criminal offence by violating the law), nor may they be detained or arrested in legal proceedings instituted due to criminal offences committed in performing their judicial function without the approval of the HJC.

The prosecution service is an autonomous institution in relation to other state bodies. Its autonomy is guaranteed by the Constitution (Article 156) and by the Law on Public Prosecution Office (Articles 2, 5, 45, 46 and 50, LPPO). Any influence on the work of the public prosecution service and on actions in cases by the executive and the legislative powers through the use of public office, public media and in any other manner that may jeopardise the independence of the work of a public prosecution office, is prohibited (Articles 5 and 45, LPPO). Other legal texts which guarantee the independence of prosecutors are the Rulebook on Administration in Public Prosecutor's Offices (Article 4) and the Code of Ethics of the Public Prosecutors and Deputy Public Prosecutors (Article 1).

Prosecutors enjoy identical functional immunity as that of judges (Article 162, Constitution) – the approval for their detention or arrest is to be given by the Judicial, Public Administration and Local Self-Government Committee of the National Assembly.

No information has been provided with regard to existence of specific measures to prevent corruption with regard to judges and prosecutors.

Different breaches of integrity of judges are criminalised in the Criminal Code: Aggravated Murder (Article 114), Endangerment of Safety (Article 138), Obstruction of Justice (Article 336b), Violation of Law by a Judge, Public Prosecutor or his Deputy (Article 360).

Different breaches of integrity of public prosecutors are defined in LPPO, i.e. disciplinary offences, disciplinary liability and disciplinary sanctions (Articles 103, 104, 105). Further breaches are criminalised in the Criminal Code: Violation of Law by a Judge, Public Prosecutor or his Deputy (Article 360), Trading in Influence (Article 366), Soliciting and Accepting Bribes (Article 367).

Breaches of integrity of court staff are defined in Law on Civil Servants, i.e. disciplinary liability (Articles 107 – 110) and are criminalised in the Criminal Code.

The Code of Ethics for Judges, which was adopted in 2010, contains a compilation of ethical principles and rules of conduct with which judges must comply in order to maintain and improve their dignity and reputation. The document revolves around the following tenets: independence, impartiality, competence and responsibility, dignity, dedication, freedom of association and dedication to the principles of the Code of Ethics. The Code was inspired, in particular, by the 2002 Bangalore Principles of Judicial Conduct. Judges were involved in its preparation through their representatives in the HJC. Serious violations of the Code of Ethics constitute disciplinary offences. The code is published on the HJC's website. However, it is not regularly updated. The Ethics Committee which is composed of judges and other legal professionals is competent to monitor compliance of judges with the Code of Ethics, issue opinion on whether a judge's behaviour is in conformity with the provisions of the Code of Ethics, provides written guidelines with practical examples on ethical matter, issues complementary guidance on provisions of the Code of Ethics etc. The opinions are published on the HJC's website. In June 2018 the Ethics Committee of the HJC decided to adopt a new code of ethics as the current one contained certain defaults. The draft Code of Ethics for Judges had been prepared and wes discussed in 2020.

The Code of Ethics for public prosecutors and deputy public prosecutors of the Republic of Serbia, which was adopted in October 2013, is aimed at strengthening the rule of law and public trust in the prosecution service by establishing standards of professional ethics for prosecutors. It covers the basic duties of public prosecutors and the ethical principles of independence, impartiality, respect of rights, responsibility and professional commitment, professionalism and dignity. Significant violations (i.e. deliberate, serious or repeated) of the Code of Ethics with respect to those ethical principles constitute disciplinary offences. On 29 May 2014, the SPC created an Ethics Committee as an *ad hoc* working body of the SPC consisting of five members (one of which is an elective Council member, three are prosecutorial position holders, and one is a person, who publicly affirmed itself as defender of ethical values) who are elected by the SPC for a period of three years, with a possibility to be re-elected. According to the Code of Ethics, the Ethics Committee is tasked with development of standards of professional ethics for prosecutors, with interpreting particular provisions of the Code and giving individual advice to prosecutors. A yearly report of the Ethics Committee should be submitted to the SPC. The Code of Ethics is publicly available. However, it has not been updated so far. The opinions of the Ethics Committee are not publicly available.

In Serbia, Guidelines for the Prevention of Undue Influence on Judges and Guidelines on recognising and countering risks of undue influence intended for public prosecutors, deputy public prosecutors and prosecutorial assistants have been adopted in 2019. They provide guidance to judges and (deputy) public prosecutors on different mechanisms available to them in the event of undue influence exerted on them. One such mechanism is laid out in the Law on Anti-Corruption Agency which prescribes that an official shall promptly notify the Agency of any prohibited influence to which s/he has been subjected in the course of discharge of a public office. The Agency shall notify the competent body of the allegations of the official, to institute disciplinary, misdemeanour and criminal proceedings, in accordance with the law (Article 37). Furthermore, on the basis of Article 87, any natural or legal person may make a complaint to the Agency in which facts causing suspicion of corruption are presented. The identity of the complainant is protected as per the law. The Agency either reviews the complaint, rejects it as irregular (if containing faults that prevents the Agency from acting upon it), unclear and incomplete or refers it to the competent body. As per the Code of Ethics of the Public Prosecutors and Deputy Public Prosecutors public prosecutors and deputy public prosecutors are obliged to maintain confidence in independence of their function, and in particular to inform the competent state bodies of any unauthorized influence on the work of the public prosecutor's office in accordance with the law and other regulations. In relation to attempt on influence, public prosecutor or deputy public prosecutor are entitled to submitted complaint to the SPC`s Commissioner for independence. Judges, public prosecutors and deputy public prosecutors are entitled (like other natural persons) to file a criminal complaint for attempt of corruption. As per the Law on Whistleblower Protection anyone who reports or discloses corruption or other wrongdoing is entitled to protection as per this law.

Transparency in distribution of court cases is ensured. A random, computer generated allocation of court cases to judges is ensured via an information system, which takes into account urgency of the case as well as the number of urgent cases and the number of other cases assigned to a judge base on the case weighting methodology system adopted in May 2017. Allocation of court cases is based on a court schedule of tasks, in accordance with the Court Rules of Procedure, according to the order determined in advance for each calendar year, exclusively on the basis of the designation and the number of the case file. The order of admission of cases can be departed from in cases stipulated by the law, as well as in the case of work overload or justified unavailability of judges (sick leave, vacation etc.), in accordance with the Court Rules of Procedure. In its Evaluation Report from 2015 (see para. 122) GRECO referred to some concerns heard about the system for random allocation of cases which is not yet automated in all courts and the related risk of circumvention; the authorities are invited to address these concerns.

Court cases may be reassigned due to conflict of interest declared by the judge or by the parties, recusal of the judges or requested by the parties or physical unavailability (i.e. illness, longer absence).

All reassignments of cases are processed through the computerised automatic allocation of cases and have to be reasoned.

The table below shows number (absolute and per 100 judges/prosecutors) of criminal cases initiated and completed against judges and prosecutors as well as number of sanctions pronounced:

| | 2019 | | | | 2020 | | | | 2021 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Judges | | Prosecutors | | Judges | | Prosecutors | | Judges | | Prosecutors | |
| | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 |
| Number of initiated cases | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| Number of completed cases | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| Number of sanctions pronounced | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |

Level of implementation of GRECO recommendations in October 2020 (adoption of the GRECO Second Compliance Report on Serbia):

| | Judges | Prosecutors |
|---|---|---|
| Implemented | 0,00% | 0,00% |
| Partially Implemented | 100,00% | 100,00% |
| Not Implemented | 0,00% | 0,00% |

## Declaration of assets for judges and for prosecutors

The disclosure regime for judges and public prosecutors is laid out in the new Law on the Prevention of Corruption (LPC), which has been adopted on 21st May 2019 and has become fully applicable as of 1st September 2020. It applies to public officials, thus both to judges and public prosecutors.

As per Articles 68 and 69 of the LPC judges and public prosecutors are required to submit a property disclosure report (report).

The report should include information on property rights on real estate at home and abroad; property rights on movable property subject to registration with the competent authorities in Serbia and abroad; property rights on movables of high value (valuables, valuable collections, art collections, etc.); deposits in banks and other financial organisations, at home and abroad; shares and interests in legal entities and other securities; rights deriving from copyright, patent and similar intellectual property rights; debts (principal, interest and repayment period) and receivables; source and amount of income from the discharge of public office, or public functions; entitlement to use an apartment for official purposes; source and amount of other net incomes; other public functions, jobs or activities discharged in accordance with the law and other special regulations; membership in civic association bodies; cash, digital property and valuables, as well as other movable property value of which exceeds 5.000 EUR; all other data and evidence deemed by the official as relevant for the implementation of this Law (Article 71, LCP).

Reports are to be submitted within 30 days of election, on an annual basis and within 30 days from the day of the termination of function as well as over a period of two years following the termination of public functions. In addition, a report must be filed if any significant changes occur since the previous report providing information on assets as on 31st December of the preceding year (i.e. any change which exceeds the average annual net income in Serbia). Also, a report should be filed upon appointment to another function (Articles 68 and 69, LPC).

Judges and public prosecutors are also required to report the assets and income of their spouses or common-law partners and of minors living in the same household (Article 68, LPC has extended the circle of associated persons as to include a family member of the public official, a blood relative of the public official, i.e. lateral blood relative to the second degree of kinship, as well as a natural person or a legal entity who may, on other bases and circumstances, be reasonably assumed to be associated in interest with the public official). The report is the same for the family members.

Declarations are submitted to the Anti-Corruption Agency (Agency) which keeps a Property Register containing all data provided in the reports (Article 72, LPC). The Agency also keeps a Register of Officials that are obliged to submit their reports (the officials that have assumed office or on the officials whose offices have terminated) and publishes it on its website – the information is provided by bodies in which the officials hold offices (Article 67, LPC).

Information on salary and other income received by officials from the budget and other public sources, and information on the public offices they are discharging, is public. The same is true for certain information concerning property, such as ownership rights on real estate at home or abroad (without specifying the address of such property), ownership rights on vehicles (without specifying the registration number), savings deposits (without specifying the bank and account number) and the right to use an apartment for official purposes. Furthermore, information on officials' property which is public according to other regulations, as well as other information which may be disclosed with the consent of the officials or their spouses or common-law partners, are deemed public information. The above-mentioned information is published on the official ACA website (http://www.acas.rs/pretraga-registra/), upon submission of the disclosure reports. Information from disclosure reports which is not deemed public may not be used for other purposes except in proceedings for determining whether a violation of the law has occurred.

Regarding financial disclosure verification competencies, the Agency checks the timeliness of submitting the report, completeness and accuracy of the information submitted as well as unexplained financial discrepancies (Articles 75 and 76, LPC). In case of suspected concealment of property, the Agency may request data on property and income directly from persons associated with a public official (i.e. judge, prosecutor) (Article 76, LPC).

Infringements of the obligations emanating from the LPC (including the requirement to file a report on assets and income in the manner and within the time limits provided by the law) constitute a misdemeanour which is punishable with fines (between 100 000 to 150 000 RSD/approximately 870 to 1 315 EUR) (Articles 103, LPC).

A reprimand and a public announcement of a recommendation for a dismissal from public office are other possible measures that may be pronounced with respect to public officials while a reprimand and a public announcement of a decision on violation of the law on corruption prevention may be pronounced with respect to directly elected officials and officials whose public functions have terminated. (Article 82, LPC).

Furthermore, public officials including judges and public prosecutors who fail to report assets and income to the Agency or provide false information about their assets and income, with the intention to conceal information on it, are criminally liable and the applicable sentence is imprisonment for a period of six months to five years. In addition, their office terminates in accordance with the law and they are banned from assuming public office for a period of ten years from the day the court decision becomes final (Article 101, LCP).

Number (absolute and per 100 judges/prosecutors) of proceedings against judges for violations or non-declaration of assets in 2019, 2020 and 2021:

| Serbia | Judges | | | | | | Prosecutors | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number of initiated cases | | Number of completed cases | | Number of sanctions pronounced | | Number of initiated cases | | Number of completed cases | | Number of sanctions pronounced | |
| | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 |
| 2019 | 32 | 1,18 | 27 | 1,00 | 24 | 0,89 | 13 | 1,66 | 13 | 1,66 | 13 | 1,66 |
| 2020 | 14 | 0,53 | 14 | 0,53 | 15 | 0,57 | NA | NA | NA | NA | NA | NA |
| 2021 | 3 | 0,11 | 3 | 0,11 | 2 | 0,07 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 |

## Conflict of interest for judges and for prosecutors

The legal framework for the prevention and the resolution of conflicts of interest applicable to judges is provided by the relevant provisions of: 1) the Constitution, as regards conflicts of interest, incompatibilities and accessory activities (Articles 6 and 152); 2) the procedural laws, which contain rules on recusal and self-withdrawal in individual cases (the Criminal Procedure Code – Articles 37 and 38; the Civil Procedure Code – Articles 66-69); 3) the Law on Judges (LoJ), as regards incompatibilities and accessory activities (Articles 30 and 31); 4) the Law on the Corruption Prevention - LCP, as regards *ad hoc* conflicts of interest (Article 42), gifts (Articles 57 to 66, LCP), incompatibilities and accessory activities (Article 45 to 50, LCP); and 5) the Code of Ethics.

As per Article 152 of the Constitution judges are prohibited from engaging in political actions and in other functions, actions or private interests which are incompatible with the judge's function as stipulated by law.

The reasons for disqualification of judges are listed in the relevant procedural laws (Article 37 to 42 of the Criminal Procedure Code; Articles 66 to 73 of the Civil Procedure Code) and include *inter alia* conflicts of interest due to being related by family or business relations to the parties or their representatives, by being a victim or a party to the case, by having worked on it before e.g. during preliminary proceedings etc. Aside from such specific reasons, a judge can be excluded from a case when there are any circumstances that cast doubt on their impartiality. Judges must, immediately upon becoming aware of the existence of any of the reasons for exclusion, discontinue proceedings upon the case and duly inform the parties (in civil proceedings) and the court president, who has to appoint a substitute. Likewise, in case of doubt judges must suspend the proceedings and duly inform the parties and the court president of the grounds for possible disqualification. Furthermore, the parties and the defence counsel (in criminal proceedings) may submit a motion for recusal of a judge. The court president is competent to decide on disqualification of the judge. Where the recusal concerns a court president, the recusal ruling is rendered by the president of the immediately higher court, and where the recusal of the president of the Supreme Court of Cassation is sought, the ruling is rendered by a General Session. In criminal proceedings (but not in civil proceedings), a ruling denying a recusal motion may be challenged by a special appeal which is decided by the appellate court. A ruling upholding a recusal motion is not appealable.

Pursuant to Article 30, LoJ, judges may not hold office in bodies enacting or enforcing legislation, public offices, or autonomous province and local self-management units. They may not be members of a political party or politically active in some other manner, engage in any paid public or private work, provide legal services or legal advice for compensation. As an exception judges may, without explicit permission, engage in compensated educational and research activity outside working hours and, in cases set out by law, in teaching and research activities in a judicial training institution during working hours. During working hours, with the approval of the court president, they can also participate in activities of professional bodies established in accordance with special regulations, and working groups for the drafting of laws and other regulations, and they may be sent on study and/or other professional visits abroad by

decision of the HJC, following the opinion of the court president. Finally, the HJC decides, on the basis of the Code of Ethics, whether other functions, engagements and activities are to be considered contrary to the dignity and independence of a judge or damaging to the reputation of the court, in which case they would be deemed incompatible. As per Article 46, para. 4, LCP, a judge must also obtain a prior authorisation from the Agency for accessory activities s/he is about to take up.

A judge is required to notify the HJC, in writing, of any engagement or work that may be deemed incompatible, and the HJC notifies the court president and the judge if there is an incompatibility. The court president has to file disciplinary charges immediately upon learning that a judge is engaged in service, or work, or engaging in activities that may be deemed incompatible with his/her function.

The legal framework for the prevention and resolution of conflicts of interest is provided by Articles 40 – 42, 45 – 50, 56 LCP which are applicable to all "officials", including judges. Article 41, LCP defines a conflict of interests as "a situation where an official has a private interest which affects, may affect or appears to affect the discharge of public office." Articles 40 to 42, LCP provide for, *inter alia*, general rules on conflicts of interest and the duty to notify such conflicts; the prohibition on holding another public office; rules on holding a function and being a member in a political party/a political entity, on engaging in another job or activity etc. The law also provides that officials (judges included) must discharge their duties in a way that does not subordinate the public interest to the private interest, to secure and maintain the public's trust in their conscientious and responsible discharge of public office, to avoid creating relations of dependency towards persons who may influence their impartiality in the discharge of public office and not to use public office to acquire any benefit or advantage for themselves or any associated person (a family member, a lineal blood relative, collateral blood relative to the second degree of kinship, as well as a legal or natural person whose interests, based on other grounds and circumstances, may be reasonably assumed to be associated with those of the official). Moreover, when taking up and holding public office, officials have to notify their direct superior and the Agency, in writing, within five days, of any doubts they might have concerning a conflict of interests that might involve themselves or an associated person

LCP (Articles 57 to 66) regulates the acceptance and handling of gifts. In particular, officials - including judges - (and associated persons) may not accept gifts in connection with the discharge of public office, except for protocol or appropriate gifts. Protocol gifts – as well as other gifts which cannot be refused – must be handed over to the body competent to manage property in public ownership, unless the value of the gift does not exceed 10% of the value of the average monthly net salary in Serbia, or the total value of gifts received during a calendar year does not exceed the amount of one average monthly net salary in Serbia. Officials must notify in writing the public authority in which s/he discharges public office about any gifts received – the court - in ten days from receiving the gift and/or from the day of returning to the country. The court keeps records of gifts received by public officials and their family members and submits a copy of the record of gifts to the Agency by 1st March of the current year for the preceding calendar year. The Agency must notify the public bodies of any determined violation of the law and publish a catalogue of gifts for the previous year by 1 June of the current year.

Proceedings for breaches of rules on conflicts of interest in respect of judges are regulated in the LCP and the LoJ. The LCP also regulates the procedure to sanction breaches of the rules on conflicts of interest in respect of judges.

The legal framework for the prevention and the resolution of conflicts of interest applicable to public prosecutors is provided by the relevant provisions of: 1) the Constitution, as regards incompatibilities and accessory activities (Article 163); 2) the procedural laws, which contain rules on recusal and self-withdrawal in individual cases (the Criminal Procedure Code); 3) the Law on Public Prosecution Office (LPPO), as regards incompatibilities and accessory activities; 4) the Law on the Corruption Prevention - LCP, as regards *ad hoc* conflicts of interest (Article 42), gifts (Articles 57 to 66, LCP), incompatibilities and accessory activities (Article 45 to 50, LCP); and 5) the Code of Ethics of Public Prosecution Office.

As per Article 163 of the Constitution public prosecutors are prohibited from engaging in political activities and in other functions, actions or private interests which are incompatible with the prosecutor's function as stipulated by law.

The provisions of the Criminal Procedure Code on disqualification of judges described above also apply to prosecutors. Public prosecutors decide on motions for the recusal of a deputy public prosecutor and motions for recusal of a public prosecutor are ruled on by the immediately superior public prosecutor. Motions to exclude the Public Prosecutor of the Republic are decided by the SPC once the opinion of the Collegium of the Office of the Public Prosecutor of the Republic has been obtained.

Pursuant to Article 65 LPPO, prosecutors may not hold office in authorities enacting or enforcing regulations, in bodies of executive power, public services, and bodies of autonomous provinces and local self-management units. They may not be members of political parties, engage in public or private paid work, nor provide legal services or legal advice for compensation. As an exception prosecutors may, without explicit permission, engage in compensated educational and research activity outside working hours and, in cases set out by law, in teaching and research activities in a judicial training institution during working hours. They may also engage in cultural, humanitarian and sports activities without the Agency approval if by doing so s/he does not compromise the impartial discharge and dignity of public office. However, they are required to report incomes from these activities to the Agency. They may also be sent on study and/or other professional visits abroad by decision of the SPC, following the opinion of the directly superior prosecutor. Finally, the office of public prosecutor is also incompatible with other offices, engagements or private interests that are contrary to the dignity and autonomy of a public prosecutor's position or are damaging to its reputation, which is decided upon by the SPC.

The legal framework for the prevention and resolution of conflicts of interest is provided by Articles 40 – 42, 45 – 50, 56 LCP which are applicable to all "officials", including public prosecutors. As per these provisions, the Agency aims to eliminate causes for corruption through procedures for resolving conflicts of interest, decumulation of public offenses and decisions on other legal violations. If a violation is determined, measures as per the law are applied. the

measures are: public announcement of recommendation for dismissal from a public office, a decision which imposes termination of the second public office by force of law. The aim of these measures is to eliminate such violations as much as possible.

The rules on gifts which are set out in the LCP apply also to public prosecutors.

A prosecutor does not need prior authorisation regarding performance of accessory activities (teaching, research and publication, mediation – with or without remuneration) nor has to inform his/her hierarchy or the Agency about these activities if it does not endanger his/her impartiality of office.

Proceedings for breaches of rules on conflict of interest in respect of public prosecutors are regulated in the LPC, Articles 77 to 86, LPPO and the Regulation on Disciplinary Liability and Disciplinary Proceedings of Public Prosecutors and Deputy Public Prosecutors. The same laws also regulate the procedure to sanction breaches of the rules on conflicts of interest in respect of public prosecutors.

Judges and prosecutors may combine their work with the following other functions/activities:

| | | With remuneration | | Without remuneration | |
|---|---|---|---|---|---|
| | | Judges | Prosecutors | Judges | Prosecutors |
| Combine work with other functions/activities | Teaching | √ | √ | √ | √ |
| | Research and publication | √ | √ | √ | √ |
| | Arbitrator | | | | |
| | Consultant | | | | |
| | Cultural function | | | | |
| | Political function | | | | |
| | Mediator | | | | |
| | Other function | | | | |

On the basis of Article 46 (para. 2), LPC, a public official (a judge and a prosecutor) may engage in scientific research, teaching, cultural, artistic, humanitarian and sports activities without the consent of the Agency, if they do not jeopardise the impartial discharge and reputation of the public office. A public official is obliged to report income from such work and/or business activity to the Agency.

On the basis of the Law on Mediation and Dispute Resolution (Article 33) judges may mediate outside of court working hours without compensation. Instead, such activities are taken into account in the work appraisal of the judge based on the Rulebook on the criteria, Standards, Procedures and Authorities for Evaluating the Work of Judges and Court Presidents.

Number (absolute and per 100 judges/prosecutors) of procedures for breaches of rules on conflict of interest for judges and prosecutors in 2019, 2020 and 2021:

| Serbia | Judges | | | Prosecutors | | |
|---|---|---|---|---|---|---|
| | Number of initiated cases | Number of completed cases | Number of sanctions pronounced | Number of initiated cases | Number of completed cases | Number of sanctions pronounced |
| **2019** | **1** | **NA** | **1** | **0** | **1** | **NA** |
| **2020** | **1** | **NA** | **2** | **2** | **1** | **NA** |
| **2021** | **5** | **8** | **2** | **1** | **1** | **1** |

In 2021, in respect of judges one reprimand was given and one decision issued which imposes termination of the second public office by force of the law.

## Discipline against judges and prosecutors

Disciplinary accountability of judges is regulated in Articles 89 to 98 of the Law on Judges (LoJ) and relevant bylaws, namely Rulebook on Procedure for Establishing the Disciplinary Responsibility of the Judges and Court Presidents.

A judge is held disciplinarily responsible if s/he, *inter alia*, violates the principle of independence, fails to request his/her recusal due to negligent performance in cases where there are reasons for recusal or exclusion foreseen by law, unjustifiably delays proceedings, accepts gifts contrary to the regulations on conflicts of interest, obviously incorrectly treats parties and other participants in proceedings and court staff, engages in activities that are incompatible with a judge's function under the law, commits serious violation of provisions of the Code of Ethics (Article 90, LoJ).

Anyone may file a complaint against a judge, including a court user, the HJC, the president of the court where the judge works, the president of the higher court, the Ombudsman, the National Assembly, the executive branch (i.e. the Ministry of Justice) etc. based on which the Disciplinary Prosecutor formally initiates the disciplinary proceeding.

Disciplinary proceedings against judges are initiated by the Disciplinary Prosecutor, who is appointed by the HJC from among judges, and conducted by the Disciplinary Commission (members of which are also appointed by the HJC from among judges).

A judge may present his/her argumentation in a disciplinary proceeding at a hearing or in writing.

Decisions on disciplinary measures against judges are taken by the Disciplinary Commission and can be appealed to the HJC which has to decide within 30 days after receiving the appeal. It may either uphold or reverse the first-instance decision of the Disciplinary Commission. The decision by the HJC is final but the judge concerned may initiate an administrative claim (Article 98, para. 4, LoJ).

Disciplinary measures consist of reprimand, salary reduction of up to 50% for a period not exceeding one year, prohibition of advancement for a period of up to three years, and ultimately dismissal. Dismissal proceedings are instituted by the Disciplinary Commission if it established the judge's responsibility for a serious disciplinary offence as defined by law, in case of a conviction for a criminal offence to unconditional prison sentence of at least six months or of a punishable offence rendering the judge unworthy of judicial office, or in case of unprofessional performance of judicial office.

Judges may also be subject to ordinary criminal proceedings and sanctions if they commit offences such as bribery, fraud, breach of professional confidentiality or failure to report property to the Anti-Corruption Agency (Agency) or giving of false information, with an intention to conceal facts about it.

A judge may be transferred to another court without his/her consent only due to organisational reasons (e.g. if a court closes), if the court or the prevalent part of the court jurisdiction to which s/he was elected is dismantled by a decision of the HJC (Article 19, LoJ).

Disciplinary accountability of public prosecutors is regulated in Articles 103 to 111 of the Law on Public Prosecution Office (LPPO) and relevant bylaw (Rulebook on Disciplinary Procedure and Disciplinary Responsibility of Public Prosecutors and Deputy Public Prosecutors).

A public prosecutor is held disciplinary responsible if s/he, *inter alia*, fails to request recusal in cases where legal grounds for doing so exist, fails to comply with the written instruction of a superior public prosecutor, accepts gifts, contrary to regulations governing the conflict of interest, engages in inappropriate relations with the parties or their legal counsels in pending proceedings, engages in activities set forth by the Law as incompatible with a public prosecutorial office, violates the principle of impartiality and jeopardising the public's trust in the public prosecution service, significantly breaches the provisions of the Code of Ethics. Serious disciplinary offence are deemed to exist if a disciplinary offence referred to above resulted in a serious disruption in the performance of prosecutorial office, or in the performance of work tasks in the public prosecution, or in serious damage to the reputation of, and trust in, the public prosecution, which in particular includes the expiry of the statute of limitations for criminal prosecution, as well as in cases of repeated disciplinary offences (Article 104, LPPO).

Anyone may file a disciplinary charge against a public prosecutor (i.e. a citizen, the Ombudsman, the Agency etc.). However, in certain cases institutions and individuals have a duty to file a disciplinary charge (i.e. the SPC and the Public Prosecutor of the Republic in case of a conflict of interest of a public prosecutor; the Agency in case of violation of the anti-corruption legislation). Based on the disciplinary charge filed the Disciplinary Prosecutor formally initiates the disciplinary proceeding.

Disciplinary proceedings are conducted by the Disciplinary Commission at the motion of the Disciplinary Prosecutor. Members of both disciplinary bodies are appointed by the SPC from among public prosecutors.

A prosecutor has a possibility to present his/her argumentation at a hearing or in writing.

An appeal may be filed against the decision of the Disciplinary Commission within eight days and the SPC has to take a decision on the appeal within 30 days, which is final, but the public prosecutor concerned may initiate an administrative claim.

Disciplinary sanctions include public reprimand (only in the case of a first disciplinary offence by a public prosecutor or a deputy public prosecutor), salary reduction of up to 50% for a period not exceeding one year and prohibition of advancement for a period of three years (Article 105, LPPO). A grave disciplinary offence is a reason for dismissal, to be decided upon by the National Assembly or the SPC (in the case of a deputy public prosecutor).

Public prosecutors may also be subject to ordinary criminal proceedings and sanctions if they commit offences such as bribery, fraud, breach of professional confidentiality or failure to report property to the Agency or giving of false information, with an intention to conceal.

| | | 2019 | | | | 2020 | | | | 2021 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Judges | | Prosecutors | | Judges | | Prosecutors | | Judges | | Prosecutors | |
| | | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 | Abs | Per 100 |
| Number of disciplinary proceedings initiated during the reference year | Total number (1 to 5) | 7 | 0,26 | 7 | 0,89 | 10 | 0,38 | 0 | 0,00 | 6 | 0,22 | 17 | 2,42 |
| | 1. Breach of professional ethics (including breach of integrity) | 2 | 0,07 | 2 | 0,26 | 1 | 0,04 | 0 | 0,00 | 2 | 0,07 | 17 | 2,42 |
| | 2. Professional inadequacy | 2 | 0,07 | 5* | 0,64 | 0 | 0,00 | 0 | 0,00 | 4 | 0,15 | 0 | 0,00 |
| | 3. Corruption | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 |
| | 4. Other criminal offence | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 |
| | 5. Other | 3 | 0,11 | 0 | 0,00 | 9 | 0,34 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 |
| Number of cases completed in the reference year against | Total number (1 to 5) | 11 | 0,41 | 4 | 0,51 | 11 | 0,42 | 6 | 0,76 | 1 | 0,04 | 17 | 2,42 |
| | 1. Breach of professional ethics (including breach of integrity) | 2 | 0,07 | 0 | 0,00 | 3 | 0,11 | 1 | 0,13 | 0 | 0,00 | 17 | 2,42 |
| | 2. Professional inadequacy | 9 | 0,33 | 4 | 0,51 | 0 | 0,00 | 5 | 0,64 | 0 | 0,00 | 0 | 0,00 |
| | 3. Corruption | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 |
| | 4. Other criminal offence | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 |
| | 5. Other | 0 | 0,00 | 0 | 0,00 | 8 | 0,30 | 0 | 0,00 | 0 | 0,00 | 0 | 0,00 |
| Number of sanctions pronounced during the reference year | Total number (total 1 to 10) | 6 | 0,22 | 3 | 0,38 | 11 | 0,42 | 5 | 0,64 | 1 | 0,04 | 17 | 2,42 |
| | 1. Reprimand | 1 | 0,04 | 1 | 0,13 | 1 | 0,04 | 1 | 0,13 | 0 | 0,00 | NA | NA |
| | 2. Suspension | NAP | NAP | 0 | 0,00 | NAP | NAP | 0 | 0,00 | NAP | NAP | NAP | NAP |
| | 3. Withdrawal from cases | NAP | NAP | 0 | 0,00 | NAP | NAP | 0 | 0,00 | NAP | NAP | NAP | NAP |
| | 4. Fine | NAP | NAP | 0 | 0,00 | NAP | NAP | 0 | 0,00 | NAP | NAP | NAP | NAP |
| | 5. Temporary reduction of salary | 4 | 0,15 | 1 | 0,13 | 5 | 0,19 | 3 | 0,38 | 1 | 0,04 | NA | NA |
| | 6. Position downgrade | NAP | NAP | 0 | 0,00 | NAP | NAP | 1 | 0,13 | NAP | NAP | NAP | NAP |
| | 7. Transfer to another geographical (court) location | NAP | NAP | | NAP | NAP | NAP | NAP | NAP | NAP | NAP | NAP | NAP |
| | 8. Resignation | NAP | NAP | 0 | 0,00 | NAP | NAP | 0 | 0,00 | NAP | NAP | NAP | NAP |
| | 9. Other | 0 | 0,00 | 0 | 0,00 | 5 | 0,19 | 0** | 0,00 | 0 | 0,00 | NA** | NA |
| | 10. Dismissal | 1 | 0,04 | 1 | 0,13 | 0 | 0,00 | 0 | 0,00 | 6 | 0,22 | 17 | 2,42 |

*A professional inadequacy as one of the reasons for initiating disciplinary proceedings against public prosecutors is considered to be a failure to make public prosecutorial decisions and to file regular and extraordinary legal remedies within the prescribed period; often missed or late to scheduled hearings, hearings and other procedural actions in cases assigned to him/her; refusal to perform the tasks and tasks entrusted to him/her etc.

** A ban on promotion in the period of three years.

## Council for the Judiciary/ Prosecutorial Council

Following the judicial reforms in Serbia since 2000, two bodies of self-administration were constituted in 2009, namely the High Judicial Council (HJC) and the State Prosecutorial Council (SPC).

The HJC is established as an independent and autonomous body to provide for and guarantee the independence and autonomy of courts and judges. Its composition and competences are defined in the Constitution (Article 153) and the Law on the High Judicial Council (LHJC).

It has 11 members, three of whom are *ex officio* members (the President of the Supreme Court of Cassation, the Minister of Justice and the President of the authorised committee of the National Assembly, i.e. the Committee on Justice). The other eight members are elected by the National Assembly, from candidates proposed by the competent bodies, namely six members are judges that are nominated by the HJC, following the result of an election by judges, and two members are respected and prominent lawyers who have at least 15 years of professional experience, one of whom must be a solicitor (nominated by the Bar Association of Serbia) and the other a professor at the law faculty (nominated by a joint sessions of deans of all law faculties in Serbia.

The eight electoral members of the HJC have a five-year term and can be re-elected, however, not consecutively. The HJC elected judges hold a full-time position in the HJC, while ex-officio members do not.

In the GRECO Evaluation Report from 2015 (see para. 97 – 99), GRECO recommended changing the composition of the HJC as crucial to strengthening its independence and creating the conditions for resorting public trust in the judiciary. GRECO recalled that as per Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe, judges elected by their peers should make up not less than half the members of councils for the judiciary. It also pointed out the Council of Europe's Venice Commission's criticism of the constitutional provisions on the composition of the HJC, stating that "the judicial appointment process is thus doubly under the control of the National Assembly: the proposals are made by the High Judicial Council elected by the National Assembly and the decisions are then made by the National Assembly itself. This seems a recipe for politicisation of the judiciary and therefore the provisions should be substantially amended." While the Law on the HJC was then amended so that the National Assembly is only presented with the name of the person elected by the authorised nominators in respect of each vacancy, the National Assembly is still entitled to reject the candidate, in which case another election would take place. The *ex officio* membership of the Minister of Justice and the President of the Parliamentary Committee on Justice was also criticised and GRECO drew the attention of the authorities to Opinion No.10 (2007) of the Consultative Council for European Judges, which explicitly stresses that members of the Judicial Council should not be active politicians, in particular members of the government.

GRECO therefore recommended (i) changing the composition of the High Judicial Council, in particular by excluding the National Assembly from the election of its members, providing that at least half its members are judges elected by their peers and abolishing the ex officio membership of representatives of the executive and legislative powers; (ii) taking appropriate measures to further develop the role of the High Judicial Council as a genuine self-governing body which acts in a pro-active and transparent manner.

In the GRECO compliance procedure that followed, the GRECO Compliance Report on Serbia from 2017 and the GRECO Interim Compliance Report on Serbia from 2019 were adopted; some progress with regard to the first part of the recommendation has been made since as per draft constitutional amendments the HJC is to be composed of 10 members, of whom five are judges elected by their peers (for which it is provided that equal representation of all levels of the judiciary is to be taken into account), and the other five are prominent lawyers elected by the National Assembly. The National Assembly will thus be excluded from electing the judge-members of the HJC and the *ex officio* membership of representatives of the executive and legislative powers will be abolished. However, since GRECO's recommendation also calls for the complete exclusion of the National Assembly from the election of the members of the HJC (and not just from electing the judge-members as it proposed by the amendments), as the government has also committed itself to in its own National Justice Reform Strategy and Action Plan for Chapter 23 and since the constitutional amendments have not been adopted yet, GRECO considered this part of the recommendation to be partly implemented (see para. 29 – 35 of the Compliance Report and Interim Compliance Report, para. 25 – 32). No progress was noted also in the GRECO Second Compliance Report from 2020 (see para. 25 - 31).

The HJC is competent to elect judges to permanent office and to propose candidates for election for a first three-year mandate, to appoint lay judges, to rule on the termination of a judge's functions, to propose the election and dismissal of the President of the Supreme Court of Cassation and court presidents to the National Assembly, to decide on the transfer and assignment of judges, to rule on the process of the performance evaluation of judges and court presidents, to rule on issues of immunity of judges and members of the HJC, to rule on the incompatibility of other services and jobs, to perform tasks in respect of the implementation of the National Strategy for the Reform of the Judiciary within its remit and to perform other duties as specified by law (Article 13, LHJC).

In the GRECO Evaluation Report from 2015 (see para. 99) GRECO also pointed out the perception of the HJC as being weak and ineffective and unlikely to perform key functions properly due to, *inter alia*, the role of the HJC in the re-appointment process, not acting in cases of public pressure put on judges, carrying out its important tasks with significant delay etc. A second part of the recommendation (see above) was to address these deficiencies. In the compliance procedure (see GRECO Compliance Report from 2017, para. 32, 34 and GRECO Interim Compliance Report from 2019, para. 28, 29, 31) the Serbian authorities provided information on amendments to the LHJC from 2015 and to the HJC's Rules of Procedure from 2016 and 2018 which provided for public sittings of the HJC, reasoned decisions and publication of the HJC's decisions, progress reports, agendas, minutes and decisions of the HJC's sessions and a calendar of activities on its website. Furthermore, the HJC adopted a communication strategy with an aim to make the work of the judiciary more accessible

and transparent to the public. The amended Rules of Procedure provided for a clear procedure on necessary actions to be undertaken to publicly respond in case of undue political influence on the judiciary (including obligation to issue public statements) and introduced greater transparency of the selection procedure of judges (by allowing all interested parties to attend interviews for the first election to a judicial function, by recording those interviews, by publishing the list of candidates and the grades achieved in sitting examinations on the HJC's website). GRECO concluded that as practice needed to be established and further developed within the HJC for a transparent and proactive action, this part of the recommendation was partly implemented. Additional information provided by the Serbian authorities regarding the HJC's pro-active role as regards communication, to defend the court system and individual judges against political attacks and in the election of judges as well as about the HJC having some budgetary and management autonomy was noted by GRECO in its Second Compliance Report from 2020 but it concluded that recommendation remained partly implemented (see para. 25 – 31).

Under Articles 164 and 165 of the Constitution, the State Prosecutorial Council (SPC) is an autonomous body that provides for and guarantees the autonomy of prosecutors. Its composition and competences are defined in detail in the Law on the State Prosecutorial Council (LSPC).

It comprises of 11 members: the Public Prosecutor of the Republic, the Minister of Justice and the President of the Judicial, Public Administration and Local Self-Government Committee of the National Assembly are *ex officio* members, and eight electoral members who are elected by the National Assembly. Electoral members must include six prosecutors holding permanent posts – one of whom from the autonomous provinces – and two respected and prominent lawyers who have at least 15 years of professional experience, one of whom must be a solicitor and the other a professor at the law faculty. Upon the decision of the President of the SPC to initiate the nomination procedure for electoral members which is published in the Official Gazette authorised nominators (the SPC, the Bar Association of Serbia, the joint session of law school deans in the Republic of Serbia) initiate their respective procedures for selection of their candidates for electoral members. Candidates from the ranks of (deputy) public prosecutors are elected from the public prosecutor's offices as follows: one from the State Public Prosecutor's Office, one from the appellate public prosecutor's office and two specialised prosecutor's offices (for organised crime and war crimes), one from higher prosecutor's offices, two from basic prosecutor's offices and one from a public prosecutor's office from the territory of an autonomous province. (Deputy) public prosecutors are elected by their peers, in a secret vote based on the candidacy application submitted to the electoral commission. Electoral members of the SPC are elected for a five year term and may be re-elected, but not consecutively. The SPC members hold a full-time position in the SPC.

In its Evaluation Report from 2015 (see para. 164) GRECO reiterated its comments and concerns as regards the composition of the HJC also in respect of the SPC's composition and recommended (i) changing the composition of the State Prosecutorial Council (SPC), in particular by excluding the National Assembly from the election of its members, providing that a substantial proportion of its members are prosecutors elected by their peers and by abolishing the ex officio membership of representatives of the executive and legislative powers; (ii) taking appropriate measures to strengthen the role of the SPC as a genuine self-governing body which acts in a pro-active and transparent manner.

The second part of the recommendation above relates to the competence of the SPC which involves, *inter alia*, the election and termination of the functions of public prosecutors, promotion of public prosecutors, decides on suspension and dismissal of public prosecutors, determines positions and private interests that conflict with the dignity and independence of the public prosecution office, proposes the scope and structure of budget funds necessary for the work of the public prosecution offices, having obtained the opinion of the Minister of Justice, distributes the funds amongst the public prosecution offices, conducts supervision of expenditure of budget funds etc.

During the evaluation procedure GRECO found a similar situation with regard to the SPC in respect of its weakness, ineffectiveness and lack of transparency and accountability as with the HJC (see para. 164 of the GRECO Evaluation Report from 2015), hence the second part of the recommendation above was addressed.

In the compliance procedure similar steps as those for implementing the recommendation addressed on the HJC have been taken by the Serbian authorities to implement also this recommendation. Due to draft constitutional amendments the new High Prosecutorial Council is to be composed of 10 members, of whom four members are (deputy) public prosecutors equally representing all levels of the prosecution service (elected by their peers) and four prominent lawyers (elected by the National Assembly), with additionally the Supreme Public Prosecutor and Minister in charge of the judiciary as *ex officio* members. GRECO considered the fact that the National Assembly would only elect four out of the ten SPC members a vast improvement. However, it noted that the planned amendments fell short of the requirements of the recommendation and of the government's own commitments as outlined in its National Justice Reform Strategy and Action Plan for Chapter 23, which called for the exclusion of the National Assembly in electing members of the SPC. Furthermore, GRECO noted that only four prosecutors out of ten members of the SPC are to be elected by their peers and that the *ex officio* membership of the executive power would remain in place (even if the *ex officio* membership of the legislature will be abolished, which was to be welcomed). Furthermore, amendments had not yet been adopted. GRECO therefore considered this part of the recommendation to be partly implemented (see para. 54-56 and 58 of the Interim Compliance Report from 2019). No progress was noted by GRECO in its Second Compliance Report from 2020 (see para. 47 – 49 and 51, 53).

With regard to the second part of the recommendation GRECO found in the compliance procedure various measures taken to be appropriate responses to the concerns expressed in the GRECO Evaluation Report, i.e. amended Law on the SPC in 2015 which provided for publicity of the SPC's sessions and decisions, amended Rules of Procedure in 2017 which required the SPC to publicly respond in case of political interference in the work of public prosecutors, adoption of the multi-year strategic plan to strengthen the SPC's role and capacities as a genuine self-governing body, and on its basis adoption of the first annual work plan, the establishment of the Commissioner for autonomy in cases of political and other undue influence to whom public prosecutors could turn to in concrete cases of undue influence and who issued several opinions on allegations of political pressure exerted on public prosecutors, several workshops held on how to report undue influence in the prosecutors' work etc. Since the whole reform process had not been completed and the SPC still needed to enhance its role GRECO considered this part of the recommendation as partly implemented (see GRECO Compliance Report from 2017, para. 58 – 62, and GRECO Interim

Compliance Report from 2019, para. 54 – 60). In the GRECO Second Compliance Report from 2020 (see para. 47 – 48, 50, 52 – 53), GRECO noted public positions taken by the SPC and the active role it played to defend the autonomy of the prosecution service through the inspections it carried out as well as capacity building activities undertaken with international partners to strengthen the role of the SPC as a self-governing body and the SPC's increased resources. However, it also noted that the Rules of Procedure of the Commissioner for autonomy had not been adopted and that he continued to act on an ad hoc basis. As a result, GRECO concluded this part of the recommendation remained partly implemented.

Regarding operational arrangements in place to avoid an over-concentration of powers in the same hands concerning different functions to be performed by members of the HJC and the SPC no information has been provided by the Serbian authorities.

Accountability measures in place regarding the activities of the HJC include publication of the activity reports and decisions which are reasoned. The same applies to the SPC's activity reports and decisions.

In case of an evident breach of the independence or the impartiality of a judge the HJC is competent to provide for and guarantee independence and autonomy of courts and judges (see Article 153 of the Constitution). Rules of Procedure of the HJC (last amended in April 2021) prescribe the manner of work and decision-making of the HJC in cases of political and other influence on judges and the judiciary. In a case of a political interference in the judiciary the HJC shall react publicly; a judge who considers there is a political influence on his/her work may address the HJC in writing. The HJC's session to consider the political influence on the work of the judiciary shall be held without delay on the President of the HJC's initiative/proposal of the HJC's member/address made by the judge in writing. The matter of political influence on the work of the judiciary shall be put on the agenda of the HJC's session by the President of the HJC and should not be voted on or changed. After the session, the public will be informed of the conclusions via press conference, public statement or publication of the conclusions on the HJC's website (Rules of Procedure of the HJC). In May 2021, the HJC appointed a judge competent to act in cases of undue influence on judges and the judiciary. S/he is authorised to: act upon requests of judges or protection against undue influence, examine the existence of undue influence expressed in public, through media, social networks, at public gatherings on otherwise; submits a reasoned proposal for convening a session of the HJC to decide on the existence of undue influence; presents the factual situation and gives a proposal for a decision at the session of the HJC; cooperates with the competent institutions in conducting training of judges on recognizing and reacting to undue influence ; proposes to the HJC measures to prevent undue influence, cooperates with the Ethics Committee and disciplinary bodies; keeps records of all cases of undue influence and submits to the HJC an annual report on the undue influence on judges and the judiciary.

In case of an evident pressure on a prosecutor the SPC provides for and guarantees autonomy of (deputy) public prosecutors (as per the Constitution and the Law on the SPC). At the SPC the Commissioner for autonomy in cases of political and other forbidden influence on work of the public prosecution office has been appointed (as per the SPC's regulation on Work).