



Volume I

Judicial Studies Series

Embracing Complexity:
The Development Assistance Context for Judicial Reform in Serbia

Volume I
Judicial Studies Series

Embracing Complexity:
The Development Assistance Context for Judicial Reform in Serbia

United Nations Development Programme
Belgrade, December 2013

Impressum

Executive Director
Olivera Purić

Editors
Joanna Brooks, Olivera Purić,

Authors
Joanna Brooks
Neven Dobrijević
Jovana Krajnović
Saša Madacki
Žarko Petrović
Olivera Purić
Jasmina Radinović-Bell

The following have participated
Biljana Ledeničan, Jelena Manić, Milica Popović

Design and Layout
Žarko Cvijović

Acknowledgements

UNDP and the authors would like to thank the Judicial Academy of the Republic of Serbia and the Serbian European Integration Office for their kind contribution to this Study.

Disclaimer

“The views expressed in this publication are those of the authors and do not necessarily represent those of the United Nations, including UNDP, or their Member States”

CIP - Каталогизacija y publikaciji
Narodna biblioteka Srbije, Beograd

341.232(4-672EU:497.11)(0.034.2)
347.97/99(497.11)(0.034.2)
340.137(4-672EU:497.11)(0.034.2)

JUDICIAL Studies Series [Elektronski izvor]. #Vol. #1, Embracing Complexity:

#the #development assistance context for judicial reform in Serbia / [prepared by] United Nations Development Programme ; [editors Joanna Brooks, Olivera Purić]. - Belgrade :United Nations Development Programme, 2014 (Belgrade : United Nations Development Programme). - 1 elektronski optički disk (CD-ROM) ; 12 cm

Podataka o autorima preuzet iz kolofona. - Nasl. sa naslovnog ekrana. - Tiraž 300. - Bibliografija uz svako poglavlje.

ISBN 978-86-7728-177-9

1. Purić, Olivera [urednik] 2. United Nations Development Programme (Belgrade)
a) Правосуђе - Реформа - Србија b) Право - Хармонизација - Европска унија - Србија
c) Економска помоћ - Србија COBISS.SR-ID 205269772

Judicial Studies Series

Table of contents

Foreward	V
List of abbreviations	VI
Author's Biographies	VIII
Introduction to the Judicial Studies Series	
<i>By Saša Madacki</i>	XI

Introductory Remarks to Volume I

<i>by Joanna Brooks and Olivera Purić</i>	1
---	---

I Executive Summary

<i>By Joanna Brooks and Olivera Purić</i>	3
1.1 Introduction	3
1.2 Objective	3
1.3 Methodology	4
1.4 Data Collection	4
1.5 Findings and Conclusions	4
1.6. Recommendations	5

II Development Assistance

<i>By Jasmina Radinović-Bell</i>	8
2.1 Sustainable Development Goals	8
2.2 The SDGs and the Rule of Law	10
2.3 Millennium Development Goals	11
2.4 Background to the MDGs	12
2.5 Progress towards the Millennium Development Goals	12
2.6 The United Nations Development Programme and the MDGs	13
2.7 International Commitments to the Rule of Law as a Basis for Development	15
2.8 Potential Approaches for Integrating the Rule of Law into the Post-2015 Agenda	15
2.9 Consultations for a Post-2015 Development Agenda	16
2.10 Post-2015 Serbia Consultation Plan	16
2.11 Bibliography	18

III High Level Fora on Aid Effectiveness

<i>By Jasmina Radinović-Bell</i>	20
3.1 Background	20
3.2 The First High Level Forum on Aid Effectiveness (Rome, 2003)	20
3.3 The Second High Level Forum on Aid Effectiveness (Paris, 2005)	21
3.4 The Third High Level Forum on Aid Effectiveness (Accra, 2008)	22
3.6 The Fourth High Level Forum on Aid Effectiveness (Busan, 2011)	23
3.7 Trends in Development and Aid Effectiveness	24
3.8. Bibliography	27

IV EU Assistance to Serbia in Judicial Reform 2002-2012

<i>By Jovana Krajnović, Žarko Petrović and Jasmina Radinović-Bell</i>	29
4.1 Development assistance – the most recent statistics and data	29
4.2 Analysis of the EU's Progress Reports for Serbia 2005-2012	30
4.4 General Assessment	34
4.5 Table of Relevant Extracts from the EU's Progress Reports on Serbia	31
4.6 Contribution of the European Union to Judicial Reform in Serbia	
2002-2012 (available information)	41
Table I	41
Table II	45
4.7 Conclusion	49
4.8 Bibliography	51

V The Views and Perceptions of the Rule of Law and the Independence of Judiciary in Serbia

<i>By Žarko Petrović and Neven Dobrijević</i>	53
5.1 Introduction	53
5.2 Credible Assessments of the Rule of Law and the Independence of Judiciary	54
5.3 Measurable Qualitative Criteria of the Judiciary	58
5.3.1 Protecting Investors	59
5.3.2 Enforcing Contracts	59
5.3.3 Resolving Insolvency	60
5.4 Perceptions of the Rule of Law and Judiciary in Serbia and the Region	61
5.5 Analysis of the Serbian Budget Allocations	62
5.5.1 Aggregate Analysis for the 2002 – 2012 period	63
5.5.2 Judicial Academy	64
5.6 Conclusion	66
5.7 Bibliography	68

Foreward

Welcome to Volume I of the Judicial Studies Series. The Series is being developed as a result of the long-term partnership between the Judicial Academy of the Republic of Serbia and the United Nations Development Programme. This partnership started over a decade ago, with the establishment of the Judicial Training Centre, and has continued through to the new institutional set-up of the Judicial Academy, including witnessing the recent graduation of the first generation of initial training candidates.

The Judicial Studies Series will be comprised of a number of different Volumes, focused around the issue of judicial reform. The publication of this Series is very timely, coming at a time when the issue of judicial reform is becoming ever more prominent in Serbia, with Serbia's path towards European Union accession and the adopting of the new National Judicial Reform Strategy.

One of the key strengths of this Series is that it has been approached in a multi-disciplinary way, addressing the issue from multiple perspectives. This has been achieved largely due to the diversity of the contributors to the Series. The Series is testimony to the significance that having a range of authors can bring, ranging from those authors who are just starting out with their career in this field to experienced practitioners, but who are still able to find common ground in addressing the issues.

The Judicial Academy is proud to be part of the Judicial Studies Series and looks forward to its continued strong relationship with the United Nations Development Programme in the future.



Nenad Vujić
Director
Judicial Academy
December 2013

List of abbreviations

BTI – Bertelsmann Stiftung’s Transformation Index
CEPEJ – European Commission for the Efficiency of Justice
CIDA – Canadian International Development Agency
CPC – Criminal Procedure Code
CPD – Continuous Professional Development
DAC – Development Assistance Committee
DIME – Development Impact Evaluation Initiative
ECHR – European Court of Human Rights
EU – European Union
GNI – Gross National Income
HJC – High Judicial Council
HLF – High Level Forum
IDGs – International Finance Corporation Development Goals
IFC – International Finance Corporation
JA – Judicial Academy
JAS – Judges’ Association of Serbia
JTC – Judicial Training Centre
MAF – Management Accountability Framework
MDGs – Millennium Development Goals
MfDR – Managing for Development Results
MICs – Middle Income Countries
MOJ – Ministry of Justice
M&E – Monitoring and Evaluation
NGO – Non Governmental Organisation
ODA – Official Development Assistance
OECD – Organisation for Economic Co-operation and Development
OECD/DCD-DAC – OECD/Development Co-operation Directorate-Development Assistance Committee
OSCE – Organisation for Security and Co-operation in Europe
RoL – Rule of Law
RNE – Embassy of the Kingdom of the Netherlands
SDGs – Sustainable Development Goals
SIDA – Swedish International Development Agency
SPC – State Prosecutorial Council

UN – United Nations
UNCT – United Nations Country Teams
UNDAF – United Nations Development Assistance Framework
UNDG – United Nations Development Group
UNDP – United Nations Development Programme
UNICEF – United Nations Children’s Fund
UN SG – United Nations Secretary General
UNU-WIDER – United Nations University-World Institute for Development Economics Research
WGI – World Governance Indicator
WP-EFF – Working Party on Aid Effectiveness

Author's Biographies

Joanna Brooks is a qualified barrister in England and Wales and has been working in the Western Balkans for over a decade. With nine years' experience with UNDP working on judicial reform and access to justice issues, Joanna is well experienced in providing top quality policy advice and in undertaking numerous official researches, studies and analyses. A number of Joanna's previous works have been published at the national, regional and global level.

Jovana Krajnović is an intern with the United Nations Development Programme in Serbia, assisting within the Good Governance section of the Programme. Jovana was previously an intern at the EU Delegation to Serbia in the Political and Information Section. Well versed in the machinations of the judicial reform process in Serbia, Jovana is currently studying for her Masters in International Humanitarian Law and Human Rights Law at the Faculty of Political Sciences in Belgrade.

Saša Madacki is a librarian, information specialist and researcher in the field of social sciences. In the last 20 years his primary research focus has been in the field of human rights, library/information services and the justice sector. Saša is the Director of the Human Rights Centre of the University of Sarajevo and to date has edited six research studies and published numerous research and academic papers. As a lecturer, he has been invited to a number of universities and institutions in Europe and the region. Saša has also been engaged as a consultant for bilateral and multilateral agencies and organizations and major human rights research institutions.

Jasmina Radinović-Bell is a Technical Adviser and Project Manager with UNDP Serbia and has nineteen years of experience both in humanitarian and development assistance in complex and conflict environments, both national as well as international, in particular Pakistan and Afghanistan. She holds a Master's degree in International Relations. During her professional career, Jasmina worked for the EC, the NGO sector and for UNDP. During her 11 years with UNDP, Jasmina has particularly focused on the management of capacity development projects and is well qualified to provide top policy advice and to conduct relevant researches and analysis in this particular field.

Neven Dobrijević is the Project Coordinator at the Ministry of Finance and Economy of the Republic of Serbia for the cost sharing agreement between the Ministry and UNDP Serbia. Neven holds a Bachelor's degree in Economics (Executive Management) and Associate degree in Economics (Taxes and Customs). He has extensive experience in working with UN agencies, governmental institutions, commercial banking, international and national organizations. Since 2007, Neven has been engaged with UNDP Serbia on the implementation of several development projects. Currently, he is implementing the project "Finance Sector Policy Coordination Framework".

Olivera Purić LLM, is the Assistant Resident Representative (Programme) of the United Nations Development Programme in Serbia and is a highly experienced and knowledgeable practitioner on judicial reform issues in Serbia. With extensive experience with governance and the judiciary (Municipal Court of Belgrade, Supreme Court of Serbia), as well as with the non-governmental sector (Humanitarian Law Centre), Olivera has been actively involved with the Judicial Academy since its establishment as the Judicial Training Centre, through to its current institutional set-up. Throughout her career, Olivera has contributed to numerous articles, policy papers, official researches and studies, reports and other innovative and catalytic knowledge products on the subject of the judiciary and judicial reform. Olivera is currently preparing her PhD, which considers the role of international and domestic stakeholders in the institutional judicial reform process in Serbia from 2002-2012, using the Judicial Academy as a case-study

Žarko Petrović, is the Portfolio Manager for the Rule of Law and Access to Justice Programme with UNDP Serbia. He has over twelve years experience in various conflict and development programmes in human rights and the rule of law in the Western Balkans, the Caucasus and Central Asia. He holds a Masters of Studies in International Human Rights Law (University of Oxford, UK) and is a member of the Serbian Bar Association. He has published a number of legal and policy-related articles in Serbia and abroad.

Embracing Complexity: The Development Assistance Context for Judicial Reform in Serbia

Introduction to the Judicial Studies Series

By Saša Madacki

Welcome to the United Nations Development Programme Judicial Studies Series. The aim of the Judicial Study Series is to present the efforts and contribution of the United Nations Development Programme to the judicial reform process in Serbia, and in particular its contribution to judicial education. Special attention is given to development programming and implementation, presented in the light of evidence-based practice with a strong focus on depicting processes surrounding reform initiatives. Taking this into account, the focus of this Series is on analytical perspectives, resulting in recommendations for practitioners currently working in the judicial sector. The experience presented in the Series highlights UNDP's continuous presence in the field, and its commitment towards the ultimate goal: an efficient and independent judiciary. Practitioners, decision makers and scholars will benefit from the interdisciplinary approach of this Series, having immediate access to a range of topics – from development assistance, to sustainable development goals applicable to the judicial sector, budgetary analyses, public opinion and monitoring and evaluation.

This series is presented in the form of a collection of introductory papers and evidence-based studies which can be used as a handbook needed by all stakeholders in all branches of government, and consulted by scholars devoted to the exploration of judicial reform. The Series is distributed both in printed and electronic format. The electronic version will be produced as a knowledge platform allowing the user to navigate in a non-linear, intuitive environment, ensuring immediate access to the body of knowledge – a one stop shop for judicial reform.

The authors of the volumes in this series are experts from the United Nations Development Programme and the Judicial Academy of Serbia.

Introductory remarks to Volume I

By Joanna Brooks and Olivera Purić

Embracing Complexity: The Development Assistance Context for Judicial Reform in Serbia seeks to provide the reader with the framework for the series of studies, methodologies, researches, analyses and assessments, which will follow in subsequent Volumes of the Judicial Studies Series. It also presents readers with the general context surrounding development and the Serbia specific context for judicial reform.

The first Chapter, written by Joanna Brooks and Olivera Purić, details the methodology and data collection process that was adopted for the study. Moreover, it draws out a number of findings and conclusions from the study and provides practitioners with a set of recommendations. These arise from the findings and conclusions and are based around the new development paradigm that is emerging.

In the second Chapter, Jasmina Radinović-Bell provides the general development framework in the context of the post-2015 development agenda. Whereas governance issues were not included in the discourse regarding the development of the Millennium Development Goals, judicial reform, as part of the general governance reform discussion has been validated through the discussions relating to the post-2015 Development Agenda.

In the third Chapter, Jasmina Radinović-Bell looks at the key outcomes from the four High Level Forums that have taken place over the past decade and analyses the trends in development and aid effectiveness that can be drawn from these.

The fourth Chapter provides the context within which the judicial reform process is taking place in Serbia. Jovana Krajnović, Žarko Petrović and Jasmina Radinović-Bell present the most recent statistics and data related to development assistance. The Chapter provides an analysis of the EU Progress Reports for Serbia from 2005-2012. It provides both a general assessment summary as well as a table of relevant extracts from the reports, structured around key components of the judicial reform process; independ-

ence, efficiency/administration, reform strategy, accountability, Judicial Training Centre/Judicial Academy, legislation and prosecution.

The final chapter looks at the views and perceptions of the rule of law and independence of the judiciary in Serbia. Žarko Petrović and Neven Dobrijević analyse a number of credible qualitative and quantitative assessments in the area of the rule of law and independence of the judiciary, which have reviewed Serbia's performance in recent years. The analysis seeks to explore the correlation between the perception of the rule of law and independence of the judiciary provided by credible international methodology standards and Serbia's own efforts to improve the judiciary, which includes the amount of budgetary allocations in human resources, running expenses and investments in the judiciary.

I Executive Summary

By Joanna Brooks and Olivera Purić

1.1 Introduction

Embracing Complexity: The Development Assistance Context for Judicial Reform in Serbia provides readers with the framework for the series of studies, methodologies and assessments, which will follow in subsequent Volumes of the Judicial Studies Series. It also presents readers with the general context surrounding development and the Serbia specific context. This Volume considers the complexities surrounding development assistance and the different processes it comprises. Subsequent Volumes will look at judicial reform through the interaction of citizens and states, the establishment of effective partnerships to enhance the professional advancement and efficiency of the judiciary and how judicial reform can be used as a tool for ensuring a capable and accountable state.

1.2 Objective

The overall objective of this publication is to set the scene for subsequent volumes of the Judicial Studies Series, through providing readers with the general framework and context of judicial reform from a development perspective, while also introducing readers to the context of judicial reform in Serbia. Based on the findings and conclusions that can be drawn from the papers included in the Volume, a set of recommendations for development practitioners have also been included.

1.3 Methodology

The methodology that was adopted for this Volume was a combination of extensive desk research and document review and Internet research combined with validation through on the ground interviews and meetings with key national partners and stakeholders. Where possible, all data has been triangulated. For documents and desk research, this was done through cross verification from more than two sources and for interviews this was done through posing a similar set of questions to multiple stakeholders. The methodology adopted has ensured the integrity and comprehensiveness of the Study.

1.4 Data Collection

Data was collected from a variety of sources. A number of credible qualitative and quantitative assessments in the area of the rule of law and independence of the judiciary were analysed in addition to as much quantitative data as possible from different sources to inform the background and context.

1.5 Findings and Conclusions

There are a number of findings and conclusions that can be drawn from the analysis of the Study. These are summarised as follows:

- (I) Governance and rule of law, with judicial reform as a component of this, are coming to the fore of the post-2015 development agenda. There is extensive evidence to show that governance and rule of law is critical to sustainable development. Governance is linked to economic growth and inequality, and is key to ensuring effective service delivery.
- (II) We are entering a new development paradigm whereby both donors and recipients are raising the bar of mutual responsibility and this will have a long impact on all areas of development including judicial reform. The old development co-operation north-south paradigm is outdated and is being superseded by increased south-south co-operation and the rise of Middle Income Countries (MICs).
- (III) From a development perspective, the shift from technical assistance and capacity building towards more targeted and context specific interventions has begun.
- (IV) Despite the recent proliferation of assessment tools, there are no guides that focus specifically on the measurement of rule of law programmes in poor and post-conflict environments, and due to the lack of data and information available, effective measurement in this sector is challenging. Measurement includes assessment, monitoring and evaluation, which contribute towards enhancing

impact; gauging programme effectiveness; improving data collecting capacity; increasing transparency and accountability; building stakeholder support; and including the perspective of marginalized and vulnerable groups.

(V) The EU, collectively, is the world's largest provider of ODA. In 2011, EU member states and the European Commission provided €53 billion in ODA – more than half the world's total reported amount.¹ In recent years aid has become increasingly linked to the political and security goals of the EU through the means of conditionality, yet the impact depends on circumstance, particularly the international and domestic context of the areas it is trying to effect. The European Union's development cooperation is a key driver of poverty eradication, democratization and respect for human rights. More and better EU aid can boost the provision of essential services for all, empower people to claim their rights, and help partner countries to build their own systems and capacities in order to phase out aid-dependence gradually. Judicial reform is a key milestone on Serbia's path towards European Union integration. However, despite the momentum of the Serbian government in recent years to address judicial reform issues, considerable efforts are still required to meet European Union integration requirements.

¹ European Commission (2012): EU Accountability Report on Financing for Development. Review of Progress of the EU and its Member States, p. 53

1.6. Recommendations

Based on the findings and conclusions drawn above and based on Serbia's experiences in development assistance and judicial reform programming, a number of recommendations for practitioners are detailed below:

1. Governance and rule of law have to be included in the post-2015 development agenda and in any sustainable development goals or similar that are set. The issue of governance and rule of law has to remain high on the development agendas of both developing countries and middle-income countries, of which Serbia is one. This is even more crucial now that governance and rule of law have been recognized in a wider development context, despite the recognized difficulties in measuring progress in this sector.
2. Recipient countries need to build up their reform capacity. The emergence of middle-income countries in the G20 signals a dramatic shift in global power. These countries represent development success for other developing countries and are important new sources of south-south knowledge that was not present even a decade ago. South-south exchanges can build inspiration, give practical know-how and build ownership and capacity in ways that the north-south paradigm could not.

There are three new, core values, which should be embraced by development practitioners:

- (I) Country-led reforms: There is a need to develop a new approach that focuses firmly on supporting

country-led reforms by building the capacity of domestic leaders to themselves tackle development challenges.

(II) Collaboration: There is a need for collaborative actions between the state and non-state actors, recognising the growing importance of citizens' voice and active participation.

(III) Leverage aid: There is also a need to leverage aid to achieve stronger and more visible results, while broadening the sources of finance, including south-south investments as well as grants from foundations to build the capacities of non-state actors.

These three core values lie at the heart of a new, open development paradigm, which can bring the world closer to the vision of more inclusive, democratic and effective development.

3. Reformers must adapt and take advantage of windows of opportunity. This implies a locally knowledgeable presence over time, rather than a one-shot, quick-fix by visiting consultants. Orchestrating stakeholders for policy reform with a focus on upstream rather than downstream processes is required. Upstream-downstream synergies in all strategic areas of development should be proactively supported. Upstream flows being geared towards influencing policy, while downstream assistance nurtures interventions on the ground.

4. The transparency of development assistance, public budgets and service delivery is critical for citizen engagement. Innovative technologies provide powerful new tools for strategic planning and greater transparency and accountability.

At the same time, developing countries face huge challenges in accessing up-to-date information about aid – information that they need to plan and manage those resources effectively. Similarly, citizens in developing countries and in donor countries lack the information they need to hold their governments to account for use of those resources. Information about aid spending needs to be easier to access, use and understand. In this way the transparency of aid can be improved in order to increase its effectiveness in tackling poverty.

5. A variety of foreign policy goals have come to effect the distribution and conditions attached to EU aid. Most explicitly, the EU sees itself as a “normative power” in world politics, promoting goals of democracy, human rights and rule of law. Aid is considered to be a relevant means to promote such norms in the developing world and conditionality has become the standard for all aid. Respect for human rights, rule of law and a democratic government, are seen as ways of ensuring a stable world with minimal threat to Europe. In Eastern Europe, the recipient nations of EU aid have become stable and democratic members of the EU thus achieving important EU objectives. In achieving this, aid was clearly not the only factor involved. It must be recognised that enlargement and the “power of attraction” is the principal

instrument, but aid was equally crucial in providing the initial incentives and much-needed material assistance to make this a feasible option. Accession does not happen over night and aid played an important role in creating a stable Eastern Europe, which moved closer to the west, a fact that should not be taken for granted. In the current accession countries, including Serbia, conditionality of aid is similarly being successfully used to achieve the objectives of democracy, human rights and rule of law and the concept of conditionality should continue to be used to positive effect.

² Evans, Alex and David S, Development Policy Center, Agreeing to a Post-2015 Development Framework, Beyond 2015, 2012, <http://www.beyond2015.org/content/relevant-research.html>, accessed on 15 January 2013

²Beyond 2015 is an international campaign aiming to kick-start and accelerate the post-2015 (and post Millennium Development Goals) planning process. The campaign brings together more than 280 organisations, over 70 in Africa and 38 in the Americas.

II Development assistance

By Jasmina Radinović-Bell

2.1 Sustainable Development Goals

One of the main outcomes of the Rio+20 Conference was the agreement by member States to launch a process to develop a set of Sustainable Development Goals (SDGs), which will build upon the Millennium Development Goals and converge with the post 2015 development agenda.

It is vitally important that the Sustainable Development Goals (SDGs) are complementary to the MDGs and support their attainment. The SDGs must be fully integrated into a global, overarching post-2015 development framework, as it would be both inefficient and short-sighted to develop them in isolation.²

Beyond 2015³, an international campaign aimed at accelerating the post 2015 planning process welcomes the attention that is being given to the need for a global, over-arching cross-thematic development framework by the international community. In order to become a truly a legitimate and effective global development framework that is 'part of the post-2015 UN Development Agenda', Beyond 2015 have identified four principles which must be the foundation for the SDGs:

- *Holistic* – the goals must capitalise on synergy across different sectors, and understand and respond to the complex interrelations between global development challenges.
- *Inclusive* – the process through which the goals are formed must be open and participatory, recognising access to information and decision-making as the foundation of good environmental governance, through consultation of vulnerable communities and people impacted by poverty.
- *Equitable* – ensuring that the targets achieve reductions in inequality both within and between nations, give priority to meeting the challenges faced by the most disadvantaged (vulnerable/excluded) within each nation, and that fair allocation of resources is given to both poor people and poor countries to allow a just transition to a developed world.

- *Universally applicable* – all countries, whether developed or developing, have obligations, ownership and accountability through a global framework.”⁴

In June 2012, Jeffrey Sachs, one of the architects of the MDGs, came out with his vision in the *Lancet* for a new set of global objectives to guide international development policy for the next 15 years. Acknowledging that the content of the SDGs is still up for grabs, Sachs has put a stake in the ground with his view of what the SDGs should contain.

For the SDGs, Sachs proposes three broad categories of economic development with a focus on basic needs (SDG1), environmental sustainability (SDG2) and social inclusion (SDG3) with good governance as an overarching dependent condition (SDG4). Sachs calls for a move away from traditional measures of economic performance such as gross domestic product to better capture wellbeing, happiness, life satisfaction and freedom from suffering. At the Rio conference, UNDP moved in this direction with their Human Development Report team unveiling efforts to better measure progress within a sustainability framework, implying that sustainability is the key criteria for measuring progress.

The proposed SDGs represent a fundamental departure in the sense that developed countries are included among those who must strive to achieve these goals. In this way, the SDGs are less paternalistic and less aid-focused and more about mutual global cooperation and national responsibility. Sachs' vision is very optimistic. His SDGs call for “government at all levels to cooperate to promote sustainable development”⁵ and for the world community to help low-income countries bear the additional costs involved in the adoption of sustainable economic systems.⁶

Key questions for the post-2015 development agenda would include the following issues:

- a) Would a new MDG era, post-2015, mean a stronger meta-goal for addressing poverty?
- b) Would the SDGs set ambitious goals linked to environmental sustainability and global partnerships?

From the nature of the MDGs, one clear meta-goal emerges which is that of addressing basic human needs based on the idea of human development. In the case of the SDGs, no clear meta-goal emerges as insofar the process has been discussed on the basis of principles of past multi-lateral processes. Taking the Rio Declaration forward, more ambitious targets in the SDGs for poverty eradication based on principles of equity would be a giant step forward⁷.

⁴ UNEP, Beyond 2015, Sustainable Development Goals, 2012, http://www.unep.org/civil-society/Portals/59/Documents/13_GMGsf/additional_resources/Beyond_2015_SDG_MDG_relationship.pdf.html, accessed 24 December 2012

⁵ Sachs, J, From Millennium Development Goals to Sustainable Development Goals, *Lancet* 2012, 379: 2206–11 Earth Institute, Columbia University, New York, NY, 2012

⁶ Negin, Joel, Development Policy Center, “Sachs' Sustainable Development Goals – vision of the future or more pie in the sky?”, 2012, <http://devpolicy.org>, accessed on 22 December 2012

⁷ The Times of India, Can the SDGs achieve what the MDGs could not?, http://articles.timesofindia.indiatimes.com/2012-09-28/developmental-issues/34147052_1_mdgs-sustainable-development-goals-sdgs/html, accessed on 9 January 2013

⁸ United Nations Rule of Law, High-level Meeting on the Rule of Law, Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels, 2012, http://www.unrol.org/article.aspx?article_id=168.html, accessed 24 December 2012

2.2 The SDGs and the Rule of Law

Regarding the rule of law aspect and its significance for development in general, it should be pointed out that the relationship between the rule of law and development has recently received growing attention. Rule of law has been understood as an outcome of development. In this sense, it is a legal and political order with a set of values, a state of human security, and an outcome of justice. It is also an enabling condition for development, for instance in establishing the basic social order and security required for other development activities to be effective. It is also a process through which other development outcomes are achieved: it determines how decisions are made, rules are adopted and enforced, and grievances and disputes are resolved. Such processes are crucial parts of the framework for the equitable delivery of education, health, jobs, and other aspects of development.

States have repeatedly expressed their commitment to the rule of law through international fora, including the UN General Assembly, regional organizations and international treaties establishing states' responsibility to protect human rights. Incorporating the rule of law into the post-2015 agenda could spur a clearer conception of the actions and investments needed to bring political commitments to the rule of law and development into practice. As states outlined in the Rio +20 Outcome document, the post-2015 development goals should have universal appeal. Although the rule of law is highly complex, it is part of the deep structure of all societies. It reflects a shared sense that human dignity and justice matter, and thus has global political, social and economic resonance. The value of incorporating the rule of law in the development framework has also emerged from the experience of the MDGs.⁸

Although the rule of law was not explicitly incorporated into the eight goals, country reports have highlighted the value of addressing the rule of law to achieve their targets. Establishing transparent and legitimate legal frameworks, ensuring predictable enforcement of rules and procedures, and reducing corruption have enabled effective delivery of health, education and other social services. The absence of these elements has been cited as a factor in countries' failure to meet targets. Legitimate laws and credible enforcement mechanisms have contributed to expanding opportunities. From these and the years of broader experiences of rule of law and development practice, lessons can be drawn for efforts to incorporate rule of law into the post-2015 development agenda.

First, in addressing the rule of law, any future global framework should remain sufficiently adaptable to reflect its context-specific and complex nature. This lesson is especially applicable to the rule of law, with its wide variety of normative commitments, institutions involved, and development functions. While it would be desirable to achieve consensus on a goal that encompasses the elements of the rule of law to be pursued through the post-2015 framework, specific targets and indicators might remain flexible and adaptable to national and local contexts and priorities.

A second lesson is the importance of the rule of law across sectors of development. It is increasingly understood that the rule of law shapes outcomes across sectors, from health and education to equitable growth, through institutions and processes that ensure legitimate legal frameworks, predictable and fair enforcement, and opportunities to equitably resolve grievances and claims. Attention to the rule of law across sectors of development shifts focus from particular government agencies or outputs to incorporating the experience of citizens in defining objectives and targets that address their aspirations and fulfil their rights. This broad view of the rule of law implies that it could be integrated into the development framework beyond a single goal, objective or institution by addressing the enabling factors for development, or informing the definition of targets across objectives and how they are achieved.

Third, goals, targets and indicators related to the rule of law should reflect its multiple dimensions and functions. As a multi-dimensional social and political reality that varies by context, changes in the rule of law cannot easily be captured through a single, time-bound or specific indicator. Efforts to define “baskets” of indicators and to ground them in local challenges and context may be more appropriate. For example, a measure of access to justice might include survey data showing the types of cases of most concern to citizens, capture user perception and experience, measure the performance of several institutions, and assess the availability and quality of a range of services – from courts and paralegals to community mediation and media access – that are relevant to a given context. Such an approach can measure global outcomes while remaining adaptable to local contexts.⁹

2.3 Millennium Development Goals

The Millennium Development Goals (MDGs) are the most broadly supported, comprehensive and specific development goals the world has ever agreed upon. These eight time-bound goals provide concrete, numerical benchmarks for tackling extreme poverty in its many dimensions. They include goals and targets on income poverty, hunger, maternal and child mortality, disease, inadequate shelter, gender inequality, environmental degradation and the Global Partnership for Development. Adopted by world leaders in the year 2000 and set to be achieved by 2015, the MDGs are both global and local, tailored by each country to suit specific development needs. They provide a framework for the entire international community to work together towards a common end - making sure that human development reaches everyone, everywhere. If these goals are achieved, world poverty will be cut by half, tens of millions of lives will be saved, and billions more people will have the opportunity to benefit from the global economy.¹⁰

The MDGs are the world’s biggest promise – committing 189 states and all of the world’s main multilateral agencies to an unprecedented effort to reduce multi-dimensional poverty through a global partner-

⁹ Berg, Louis-Alexandre and Deval Desai, “Rule of Law and Development. Integrating Rule of Law into the Post-2015 Framework”, World Bank, 2013.

http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2013/02/26/000425962_20130226164932/Rendered/INDEX/105960REPLACEMENT0WDR01987.txt., accessed 27 February 2013

¹⁰ United Nations Development Programme, Millennium Development Goal Strategies, http://www.undp.org/content/undp/en/home/ourwork/povertyreduction/focus_areas/focus_mdg_strategies.html, accessed 20 December 2012

¹¹ Hulme, David, *The Making of the Millennium Development Goals: Human Development Meets Result-Based Management in and Imperfect World*, <http://www.capabilityapproach.com/pubs/Hulme07.pdf.html>, accessed on 17 January 2013

¹² United Nations, *Millennium project: Goals, Targets and Indicators*, <http://www.unmillenniumproject.org/goals/gti.html>, accessed 20 December 2012

¹³ Hulme, David, *The Making of the Millennium Development Goals: Human Development Meets Result-Based Management in and Imperfect World*, <http://www.capabilityapproach.com/pubs/Hulme07.pdf.html>, accessed on 17 January 2013

ship. The MDGs have historical significance retrospectively: they are the first time the international community agreed to such a concrete set of goals and made a serious attempt at implementation. They have historical significance prospectively as their achievement, or lack of achievement, will affect the well-being of hundreds of millions of people.¹¹

The MDGs, with 21 targets and 60 indicators, came into existence in international policy after the UN Millennium Summit of 2000 that was held in New York. However the processes associated with the formulation of MDGs started in the 1990s.¹²

2.4 Background to the MDGs

Scholars argue that the determination of the MDGs was underlined by global ambivalence and was an outcome of an unorganized and evolving discourse where certain ideas and actors played a key role. The MDGs came into being at a time when the idea of "human development" was gaining prominence. As David Hulme noticed in *The Making of Millennium Development Goals*: "Core components of human development – gender equality, child survival, maternal survival and others – were argued on and off the evolving lists of UN conference declarations, the International Finance Corporation Development Goals (IDGs), the Millennium Declaration and the Road Map's MDGs. In a similar fashion, the principles of result-based management were applied in different ways to different parts of the MDG listing: specific, time-bound goals for rich countries were assiduously kept off the list. With the wisdom of hindsight, the coherence of the MDGs – economic well-being, social development, environmental sustainability and a global partnership – seems remarkable given the processes from which they emerged."¹³

At the same time, an increased engagement of civil society with multilateral processes was also prevalent. While member states like the United States of America and its Organization for Economic Cooperation and Development (OECD) allies played a key role in defining the purpose as well as the ambition of the MDGs, the United Nations General Assembly, the United Nations Secretariat, United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF) and nongovernmental organizations (NGOs) and think-tanks influenced the specifications of the MDGs.

2.5 Progress towards the Millennium Development Goals

The target of reducing extreme poverty by half has been reached five years ahead of the 2015 deadline, as has the target of halving the proportion of people who lack dependable access to improved sources of

drinking water. Conditions for more than 200 million people living in slums have been ameliorated - double the 2020 target. Primary school enrolment of girls equalled that of boys, and there has been accelerating progress in reducing child and maternal mortality.

These results represent a tremendous reduction in human suffering and are a clear validation of the approach embodied in the MDGs. However, projections indicate that in 2015 more than 600 million people worldwide will still be using unimproved water sources, almost one billion will be living on an income of less than \$1.25 per day, mothers will continue to die needlessly in childbirth, and children will suffer and die from preventable diseases. Hunger remains a global challenge, and ensuring that all children are able to complete primary education remains a fundamental, but unfulfilled, target that has an impact on all the other Goals. Lack of safe sanitation is hampering progress in health and nutrition, biodiversity loss continues apace, and greenhouse gas emissions continue to pose a major threat to people and ecosystems.

The goal of gender equality also remains unfulfilled, again with broad negative consequences, given that achieving the MDGs depends so much on women's empowerment and equal access of women to education, work, health care and decision-making. We must also recognize the unevenness of progress within countries and regions, and the severe inequalities that exist among populations, especially between rural and urban areas.

Achieving the MDGs by 2015 is challenging but possible. Much depends on the fulfilment of MDG8 - the global partnership for development. The current economic crisis besetting much of the developed world must not be allowed to decelerate or reverse the progress that has been made.¹⁴

2.6 United Nations Development Programme and the MDGs

"At the international level, UNDP works with the UN family to advance the Global Partnership for Development. At the national level, UNDP works in close collaboration with UN organizations to:

- Raise awareness of MDGs and advocate for countries and sub-national regions to adopt and adapt MDGs;
- Provide leadership and UN coordination to develop capacity in countries to assess what is needed to achieve the MDGs, to conceptualize policies and to design strategies and plans. For this purpose, UNDP organizes consultations and training, conducts research, develops planning and information management tools;
- Provide hands-on support to countries to scale up implementation of initiatives to achieve the MDGs, in areas such as procurement, human resources and financial management;
- Assist countries to report on their progress."¹⁵

¹⁴ United Nations, Foreword of Ban-Ki-moon, Secretary General, United Nations in The Millennium Development Goals Report 2012, p.3, <http://www.un.org/millenniumgoals/pdf/MDGpercent20Reportpercent202012.pdf.html>

¹⁵ United Nations Development Programme, The MDG Acceleration Framework, http://www.undp.org/content/undp/en/home/mdgoverview/mdg_goals/acceleration_framework.html, accessed 21 December 2012

¹⁶ United Nations Development Programme, The MDG Acceleration Framework, http://www.undp.org/content/undp/en/home/mdgoverview/mdg_goals/acceleration_framework.html, accessed 21 December 2012

¹⁷ United Nations Development Programme, The MDG Acceleration Framework, http://www.undp.org/content/undp/en/home/mdgoverview/mdg_goals/acceleration_framework.html, accessed 21 December 2012

The MDG Acceleration Framework (MAF) provides a systematic way for countries to develop their own action plan based on existing plans and processes to pursue their MDG priorities. It also helps governments to focus on disparities and inequalities, two of the major causes of uneven progress, by particularly responding to the needs of the vulnerable.

There is now a great deal of evidence about both the obstacles to MDG progress and how to overcome them. This evidence reveals that there is a range of tried and tested policies which, adapted to national contexts, will ensure MDG progress, where there is the leadership, capacity, and funding to implement them. To accelerate MDG progress, as called for by the MDG Summit Outcome Document, this evidence must be put into practice in a concerted effort that takes us to 2015.

In response to this call, the United Nations Development Group has endorsed UNDP's field-tested MAF which offers a systematic way to identify bottlenecks to those MDGs that are lagging behind in specific countries, as well as prioritized solutions to these bottlenecks. The MAF is expected to build upon existing country knowledge and experiences, as well as policy and planning processes, and to help the development of country-level partnerships, with mutual accountability of all partners, towards the efforts needed to reach the MDGs by 2015.

"The MAF is characterized by four factors:

- Responding to national/local political determination to tackle identified off-track MDGs
- Drawing upon country experiences and ongoing processes to identify and prioritize bottlenecks interfering with the implementation of key MDG interventions
- Using lessons learned to determine objective and feasible solutions for accelerating MDG progress
- Creating a partnership with identified roles for all relevant stakeholders to jointly achieve MDG progress."¹⁶

Once an MDG target making slow progress is identified by a country, the MAF suggests four systematic steps:

- (1) identification of the necessary interventions to achieve the MDG target;
- (2) identification of bottlenecks that impede the effectiveness of key interventions on the ground;
- (3) identification of high-impact and feasible solutions to prioritized bottlenecks; and
- (4) formulation of an action plan, with identified roles for all development partners, that will help realize the solutions.

Following the demand from countries, UNDP, in collaboration with the UN System organizations, has been supporting the development of MDG accelerated Action Plans in about 37 countries covering the 2010 – 2012 period. These include countries where MAF action plans are currently under development, as well as those where completed action plans are under implementation.¹⁷

2.7 International Commitments to the Rule of Law as a Basis for Development

- “The advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law”¹⁸
- “Democracy, good governance and the rule of law, at the national and international levels, as well as an enabling environment, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger.”¹⁹
- “The rule of law is not a mere adornment to development; it is a vital source of progress. It creates an environment in which the full spectrum of human creativity can flourish, and prosperity can be built.”²⁰

2.8 Potential Approaches for Integrating the Rule of Law into the Post-2015 Agenda

Three general approaches to incorporating the rule of law into the post-2015 development agenda could be considered. These approaches, based on current deliberations regarding the future framework as reflected in intergovernmental discussions and outcomes, are not mutually exclusive and could be adopted in concert.

- Define a specific rule of law goal and targets with a flexible basket of indicators that can be tailored to country contexts. A rule of law goal would signal the importance of the rule of law as an outcome of development on par with other outcomes such as poverty reduction and health. Defining these indicators would require broad consultations at the country level to ensure that they resonate with each society’s priorities and experience.
- Adopt the rule of law as a high level “enabling” goal. The enabling goal would focus on a specific element of the rule of law that, according to the empirical evidence, facilitates other aspects of the new development framework, such as fair and predictable property rights and enforcement of contracts; accountable and transparent application of executive authority; protection of physical safety and property; or access for vulnerable groups to knowledge about rights and means to enforce them. The enabling goal would entail concrete commitments to adopt national-level legal or policy changes beyond the sectors related to the other development goals.
- Incorporate the rule of law across development goals. This would require clarifying the elements of process that are essential to achieve the post-2015 goals, such as legitimate and transparent legal

¹⁸ United Nations Rule of Law, High-level Meeting on the Rule of Law, Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels, 2012, http://www.unrol.org/article.aspx?article_id=168.html, accessed 24 December 2012

¹⁹ United Nations, Resolution adopted by the General Assembly 66/288, The future we want, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/476/10/PDF/N1147610.pdf.html>, accessed 24 December 2012

²⁰ United Nations, Legal Empowerment of the poor and eradication of poverty, Report of the Secretary-General, New York, 13 July 2009

²¹World Bank, 2013.
http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2013/02/26/000425962_20130226164932/Rendered/IN/DEX/105960REPLACE/MENT0WDR01987.txt, accessed 27 February 2013

²² United Nations, General Assembly, A/66/126, Accelerating progress towards the Millennium Development Goals: options for sustained and inclusive growth and issues for advancing the United Nations development agenda beyond 2015. Annual report of the Secretary-General, http://mdgs.un.org/unsd/mdg/Resources/Static/Products/SGReports/66_1/A_66_126_E.pdf.html

²³ United Nations Development Group, Post-2015 Development Agenda, Consultations for a Post-2015 Development Agenda, <http://staging.undg.org/index.cfm?P=1627.html>, accessed 24 December 2013

frameworks; public participation and agency; the fair and equitable resolution of disputes and grievances; credible enforcement of the law; and/or rights protection. These elements could be applied across relevant goals by incorporating specific targets and indicators related to the rule of law.²¹

2.9 Consultations for a Post-2015 Development Agenda

The UN Secretary-General (UN SG) Report on accelerating progress toward the MDGs and the issues for advancing the UN development agenda beyond 2015 stated that *“the post-2015 development framework is likely to have the best development impact if it emerges from an inclusive, open and transparent process with multiple stakeholder participation.”*²²

The UN system is uniquely positioned to foster this inclusive multi-stakeholder process and advocate for an agenda informed by national and local priorities. UN agencies, funds and programmes can promote inclusive consultation process by identifying key groups, convening stakeholders, and informing the debate with relevant knowledge on development challenges, opportunities and solutions.

To this end, the members of the UN Development Group (UNDG) have developed a project proposal to *facilitate post-2015 consultations in at least 50 countries*. The oversight for this project is provided by the UNDG MDG Task Force.

The objective of the country consultations is to stimulate discussion amongst national stakeholders, and to garner inputs and ideas for a shared global vision of “The Future We Want”. It will be important that the post-2015 debate is informed by inputs and ideas from a broad base of civil society, marginalized groups, and others previously left out of discussions on development priorities.²³

2.10 Post-2015 Serbia Consultation Plan

Regarding the post-2015 consultations plan in Serbia, the purpose of this plan is to engage the broad public of Serbia, with special emphasis to “voiceless” groups of the population (in particular poor, disadvantaged, young/elderly or disadvantaged people, including women, who live in remote or isolated communities, etc.), into a fundamental dialogue about their and Serbia’s future. Its primary objective is to consult and solicit opinions about Serbia’s priority development goals and roadmap over the coming ten to fifteen years, in order to feed back into the global process of defining development goals for the period post-MDG.

It is of utmost importance and value to take into consideration national strategic and planning documents, as well as key surveys such as the National Strategy for Development Assessment (NSDA), Multi-

ple Indicator Cluster Survey (MICS), Needs Assessment Document, National MDG Report, Migration Profile and other materials, as adequate. Furthermore, Serbia (with support from United Nations Development Programme and United Nations Environment Programme) has developed a “Green Economy Achievements and Perspectives” document in the wake of Rio+20, which contains key identified fields from a national perspective pertaining to Sustainable Growth and Green Economy Development.

Selected Government counterparts will advise on the ongoing processes and existing documents to be taken into consideration and used for the process. It is of great significance to make utmost use of the outcomes beyond the post-2015 consultation process itself. For instance, findings and recommendations could directly inform future United Nations Country Teams (UNCT) development agendas, United Nations Development Assistance Framework (UNDAF) revisions, etc. As feasible, results from this process should also be shared with other international partners and/or used as advocacy tools vis-à-vis national and local partners. In addition, Alliance of Civilization national and regional processes and its programmes/activities will also be taken into consideration for the purposes of this process.²⁴

2.11 Bibliography

Berg, Louis-Alexandre and Deval Desai, *Rule of Law and Development. Integrating Rule of Law into the Post-2015 Framework*, World Bank, 2013,

http://www-wds.worldbank.org/external/default/WDSCContentServer/IW3P/IB/2013/02/26/000425962_20130226164932/Rendered/INDEX/105960REPLACEMENT0WDR01987.txt

Evans, Alex and David S, Development Policy Center, *Agreeing to a Post-2015 Development Framework*, Beyond 2015, 2012, <http://www.beyond2015.org/content/relevant-research.html>

Hulme, David, *The Making of the Millennium Development Goals: Human Development Meets Result-Based Management in and Imperfect World*,

<http://www.capabilityapproach.com/pubs/Hulme07.pdf.html>

Negin, Joel, Development Policy Center, *Sachs' Sustainable Development Goals – vision of the future or more pie in the sky?*, 2012,

<http://devpolicy.org>

Sachs, J, *From Millennium Development Goals to Sustainable Development Goals*, Lancet 2012, 379: 2206–11 Earth Institute, Columbia University, New York, NY, 2012

The Times of India, *Can the SDGs achieve what the MDGs could*

not?, [http://articles.timesofindia.indiatimes.com/2012-09-](http://articles.timesofindia.indiatimes.com/2012-09-28/developmental-issues/34147052_1_mdgs-sustainable-development-goals-sdgs/html)

[28/developmental-issues/34147052_1_mdgs-sustainable-development-goals-sdgs/html](http://articles.timesofindia.indiatimes.com/2012-09-28/developmental-issues/34147052_1_mdgs-sustainable-development-goals-sdgs/html)

United Nations Development Programme, *Millennium Development Goal Strategies*,

http://www.undp.org/content/undp/en/home/ourwork/povertyreduction/focus_areas/focus_mdg_strategies.html

United Nations, *Millennium project: Goals, Targets and Indicators*, <http://www.unmillenniumproject.org/goals/gti.html>

United Nations, Foreword of Ban-Ki-moon, Secretary General, *United Nations in The Millennium Development Goals Report 2012*, p. 3 <http://www.un.org/millenniumgoals/pdf/MDGpercent20Reportpercent202012.pdf.html>

United Nations Development Programme, *The MDG Acceleration Framework*, http://www.undp.org/content/undp/en/home/mdgoverview/mdg_goals/acceleration_framework.html

UNEP, *Beyond 2015, Sustainable Development Goals*, 2012, http://www.unep.org/civil-society/Portals/59/Documents/13_GMGsf/additional_Resources/Beyond_2015_SDG_MDG_relationship.pdf.html

United Nations Rule of Law, High-level Meeting on the Rule of Law, *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, 2012, http://www.unrol.org/article.aspx?article_id=168.html

United Nations, Resolution adopted by the General Assembly 66/288, *The future we want*, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/476/10/PDF/N1147610.pdf.html>

United Nations, *Legal Empowerment of the poor and eradication of poverty*, Report of the Secretary-General, New York, 13 July 2009

United Nations, General Assembly, A/66/126, *Accelerating progress towards the Millennium Development Goals: options for sustained and inclusive growth and issues for advancing the United Nations development agenda beyond 2015*, Annual report of the Secretary-General, http://mdgs.un.org/unsd/mdg/Resources/Static/Products/SGReports/66_1/A_66_126_E.pdf.html

United Nations Development Group, *Post-2015 Development Agenda*, Consultations for a Post-2015 Development Agenda, <http://staging.undg.org/index.cfm?P=1627.html>

UNDG, *Post-2015 Country Consultations Plan*, 2012, <http://staging.undg.org/index.cfm?P=1627.html>

²⁵ Events and Processes, High-Level Forums on aid effectiveness: Rome, Paris, Accra, Busan, <http://www.aideffectiveness.org/Events--Processes-Rome-Paris--Accra-Busan.html>, accessed on 9 January 2013

III High Level Fora on Aid Effectiveness

By Jasmina Radinović-Bell

3.1 Background

The formulation of a set of principles for effective aid - now adhered to by over one hundred countries as the blueprint for maximizing the impact of aid - grew out of a need to understand why aid was not²⁵ producing the development results everyone wanted to see and to step up efforts to meet the ambitious targets set by the Millennium Development Goals (MDGs). These principles are rooted in continuous efforts to improve the delivery of aid, marked by four notable events: the High Level Fora on Aid Effectiveness in Rome, Paris, Accra and Busan, in 2003, 2005, 2008 and 2011, respectively

3.2 The First High Level Forum on Aid Effectiveness (Rome, 2003)

In February 2003, major donors, multilateral organizations and aid recipient countries gathered in Rome for the first High Level Forum on Harmonization. They broke ground by agreeing on a common set of principles to improve the management and effectiveness of aid: *the Rome Declaration*. Ministers, Heads of Aid Agencies and other Senior Officials representing 28 aid recipient countries and more than 40 multilateral and bilateral development institutions endorsed the Rome Declaration on Harmonization in February 2003.

The Rome Declaration set out to improve the management and effectiveness of aid and paved the way for the Paris Declaration. The Rome Declaration *focused on the harmonization of donor procedures and practices so as to reduce transaction costs for partner countries.*²⁵

The Rome commitments can be summarised in four broad areas:

- *Ownership.* The development community would respect the right - and responsibility - of the partner country itself to establish its development agenda, setting out its own strategies for poverty reduction and growth.
- *Alignment.* Donors would align their development assistance with the development priorities and results-oriented strategies set out by the partner country. In delivering this assistance, donors would progressively depend on partner countries' own systems, providing capacity -building support to improve these systems, rather than establishing parallel systems of their own. Partner countries would undertake the necessary reforms that would enable donors to rely on their country systems.
- *Harmonisation.* Donors would implement good practice principles in development assistance delivery. They would streamline and harmonise their policies, procedures, and practices; intensify delegated cooperation; increase the flexibility of country-based staff to manage country programmes and projects more effectively; and develop incentives within their agencies to foster management and staff recognition of the benefits of harmonisation.
- *Managing for Results.* The partner countries would embrace the principles of managing for results, starting with their own results-oriented strategies and continuing to focus on results at all stages of the development cycle—from planning through implementation to evaluation.²⁶

3.3 The Second High Level Forum on Aid Effectiveness (Paris, 2005)

On 2 March 2005, Ministers and other high-level officials of some 85 developed and developing countries as well as heads of some 20 bi and multilateral development organizations gathered in Paris, France, to discuss ways to improve the quality of development assistance. The members of the UN Development Group²⁷ participated as one delegation, itself a sign of the increased depth of cooperation among the operational development agencies of the UN system. The message coming out of Paris was loud and clear: *“Development assistance works best when it is fully aligned with national priorities and needs”*.²⁸

The Paris High-Level Forum was a critical milestone in the overall preparations by the international community for the September 2005 review of the Millennium Declaration and the Millennium Development Goals. As such, the outcome of the meeting, i.e., the adoption of the Paris Declaration on Aid Effectiveness, had major implications for the work of the UNDG and UN Country Teams, opening up new windows of opportunity while also requiring the UN to be bolder and more ambitious in its reform efforts.

²⁶ OECD, The High Level Fora on Aid Effectiveness: A History, <http://www.oecd.org/development/aideffectiveness/41571216.pdf.html>, accessed on 24 December 2012

²⁷ The United Nations Development Group (UNDG) was created by the Secretary-General in 1997, to improve the effectiveness of the UN System in development cooperation at the country level. The UNDG brings together 25 operational agencies working on development plus five observers. The Group is chaired by the Administrator of the United Nations Development Programme (UNDP) on behalf of the Secretary-General.

²⁸ World Health Organization, Strategic Alliance and Partnership Action Plan, http://www.searo.who.int/LinkFiles/Strategic_Alliance_and_Partnership_Action_Plan.html, accessed on 17 December 2012

²⁹ OECD, The High Level Fora on Aid Effectiveness: A History, <http://www.oecd.org/development/aideffectiveness/41571216.pdf.html>, accessed on 24 December 2012

³⁰ The World Bank, Harmonization and Alignment, Challenges and opportunities for U.S. and European donors post-Accra, <http://siteresources.worldbank.org/ACCRAEXT/Resources/4700790-1217425866038/AAA-4-SEPTEMBER-FINAL-16h00.pdf.html>, accessed on 29 November 2012

UNDG foresees actions in the following areas to turn the commitments made in Paris into practice:

1. Putting national development plans at the centre of UN country programming.
2. Strengthening national capacities.
3. Increasingly using and strengthening national systems

3.4 The Third High Level Forum on Aid Effectiveness (Accra, 2008)

The Third High Level Forum (HLF) was held in Accra on 2 - 4 September 2008, to accelerate reforms to the processes by which developed and developing countries work together to ensure that development assistance is well spent. The Forum brought together some 1700 participants, including ministers, heads of development agencies, civil society organizations, parliamentarians and foundations from more than 125 countries and 30 institutions. The Accra Agenda for Action (AAA) was endorsed at the Forum. In essence, *developing countries are committing to take control of their own futures, donors and other development actors to deliver and manage aid differently, and co-ordinate better amongst themselves, and both parties to account to each other and their citizens.* ²⁹

The Accra Agenda for Action (AAA) identifies three major challenges to accelerate aid effectiveness:

- *Strengthening country ownership* through: broadening country-level policy dialogue on development; developing countries strengthening their capacity to lead and manage development; and strengthening and using developing country systems to the maximum extent possible.
- *Building more effective and inclusive partnership* through: reducing costly fragmentation of aid; increasing aid's value for money; welcoming and working with all development partners; deepening engagement with civil society organizations; and adapting aid policies for countries in fragile situations.
- *Achieving development results and openly accounting for them* through: focusing on delivering results; being more accountable and transparent to our publics for results; continuing to change the nature of conditionality to support ownership; and increasing the medium-term predictability of aid. ³⁰

Key elements of progress in the Accra Agenda for Action (AAA) are a *stronger focus on development results as the overarching objective of aid, including references to the MDGs and the MDG High Level Event*. There is also reference to the catalytic role of aid; acknowledgement that gender equality, respect for human rights and environmental sustainability are cornerstones for achieving enduring impact on the lives and potential of poor women, men and children; together with a call to address these issues more systematically; stronger language on capacity development and other commitments/indicators made in Paris (2005) including on use of country systems, predictability, mutual accountability; strong language on South-South collaboration. The UN development system is called upon to step up its capacity devel-

opment support to developing countries, a formulation very much in line with the 2007 Triennial Comprehensive Policy Review: “We call upon the UN development system to further support the capacities of developing countries for effective management of development assistance.”³¹

3.5 The Fourth High Level Forum on Aid Effectiveness (Busan, 2011)

The Fourth High Level Forum was held in 2011, in Busan, attended by approximately three thousand government officials, policy experts, NGOs and a large number of private sector representatives to discuss how the aid system could be made more effective.

Busan's success hinged on:

1. a broader and deeper partnership at all levels of development, including developing and developed countries, and private and non-governmental organizations.
2. a set of aid effectiveness principles based on persuasive evidence to eliminate policies that make development results more difficult to reach.
3. a revitalized global effort towards reaching the MDGs and addressing the need for global public goods.
4. the recognition that the world's poorest and most fragile states need security, capacity and special consideration.
5. the recognition that achieving results must be based on policies, laws and institutional arrangements that encourage everyone to directly participate in the development process.
6. the recognition that all participants in development are mutually accountable in producing and measuring results - which means that they must develop the capacity to collect, evaluate and report data that illustrates the effectiveness of programmes and their worth.³²

There were *four significant outcomes* from Busan:

- *The beginning of a new global partnership.* The new donors and large emerging economies³³ are not bound to any particular commitments to improve their aid, but it must be a step forward everyone accepts the need of these new donors to be part of the conversation.
- *The new deal for fragile states.* A group of 19 fragile and conflict-affected countries, known as the G7+ ,³⁴ has been working with donors on how to improve peace-building and state-building efforts in these situations, beyond the aid effectiveness agenda. The resulting “New Deal for Engagement in Fragile States” was endorsed at Busan.
- *Significant progress on transparency.* Since Accra, transparency has shifted from the periphery to the centre of the discourse on aid effectiveness. Donors committed to draw up plans within a year, explaining how by 2015 they will publish electronically full details of all current and planned future aid projects in a common, open standard.

³¹ United Nations Development Programme (UNDP), Triennial Comprehensive Policy Review, 2007, <http://www.snap-undp.org/Docs/Forms.html>, accessed on 27 December 2012

³² OECD, The High Level Fora on Aid Effectiveness: A History, <http://www.oecd.org/development/aideffectiveness/41571216.pdf.html>, accessed on 24 December 2012

³³ New emerging economies are China, India and Brazil.

³⁴ The G7+ include Afghanistan, Burundi, Central African Republic, Chad, Comoros, Côte d'Ivoire, The Democratic Republic of the Congo, Guinea Bissau, Guinea, Haiti, Liberia, Papua New Guinea, Sierra Leone, The Solomon Islands, Somalia, South Sudan, Timor-Leste (Chair), Togo.

³⁵ Center for Global Development, Atwood, Brian J, Creating a Global Partnership for Effective Development Cooperation, www.cgdev.org/content/publications/detail/html, accessed on 4 January 2013

³⁶ OECD, The High Level Fora on Aid Effectiveness: A History, <http://www.oecd.org/development/aideffectiveness/41571216.pdf.html>, accessed on 24 December 2012

³⁷ OECD, The High Level Fora on Aid Effectiveness: A History, <http://www.oecd.org/development/aideffectiveness/41571216.pdf.html>, accessed on 24 December 2012

- *Significant changes in the international governance of the aid system.* This may be one of the most important outcomes of Busan. The Busan agreement abolishes the Working Party on Aid Effectiveness, which is technically a sub-committee of the Organization for Economic Co-operation and Development - Development Cooperation Directorate (OECD/DCD-DAC). In its place will be a new “Global Partnership for Effective Development Cooperation”, to be supported by the OECD and UNDP. The implementation of Busan will take place through a series of ‘*building blocks*’, which are described as “voluntary, practical and actionable game-changers in the global dialogue on aid and development effectiveness.” This model was apparently conceived in the light of the experience of work on transparency – the issue on which most progress has been made since Accra – which was taken forward by a coalition of the willing in the form of the International Aid Transparency Initiative. Stepping outside the DAC structures enabled a group of donors, foundations and civil society to work together without the constraint of an implicit veto of reluctant partners. Busan marks a shift in the global governance of development cooperation from consensus in the DAC to the ‘variable geometry’ of building blocks.³⁵

3.6 Trends in Development and Aid Effectiveness

The First High Level Forum (Rome, 2003) marked the first occasion at which the principles for aid effectiveness were outlined in a concrete declaration. The Rome Declaration listed the following priority actions:

1. That development assistance should be delivered based on the priorities and timing of the countries receiving it.
2. That donor efforts concentrate on delegating co-operation and increasing the flexibility of staff on country programmes and projects, and
3. That good practice be encouraged and monitored, backed by analytic work to help strengthen the leadership that recipient countries can take in determining their development path.³⁶

The Second High Level Forum marked the first time that donors and recipients both agreed to commitments and to hold each other accountable for achieving these. The commitments were laid out in the Paris Declaration. Beyond its principles on effective aid, the Paris Declaration lays out a practical, action-oriented roadmap to improve the quality of aid and its impact on development. It puts in place a series of specific implementation measures and establishes a monitoring system to assess progress and ensure that donors and recipients hold each other accountable for their commitments.³⁷

The Paris Declaration outlines the following five fundamental principles for making aid more effective:

1. *Ownership:* Developing countries set their own strategies for poverty reduction, improve their institutions and tackle corruption.

2. *Alignment*: Donor countries align behind these objectives and use local systems.
3. *Harmonization*: Donor countries coordinate, simplify procedures and share information to avoid duplication.
4. *Results*: Developing countries and donors shift focus to development results and results get measured.
5. *Mutual accountability*: Donors and partners are accountable for development results.

The Paris Declaration was a landmark in defining the principles by which aid would be made more effective, securing practical commitments to new ways of working, setting a target date of 2010, specifying measurable indicators, and setting up a monitoring system. The Accra HLF was about applying these principles in practice; it was the occasion for a mid-term review by those who are accountable for the progress they have made, and for reaffirming and, where necessary, redefining commitments.³⁸

The Third High Level Forum emphasized the need to deepen implementation towards the goals set in 2005, along with a set of priority areas for improvement. Designed to strengthen and deepen implementation of the Paris Declaration, the Accra Agenda for Action takes stock of progress and sets the agenda for accelerated advancement towards the Paris targets. It proposed improvement in the areas of ownership, partnership and delivering results. Capacity development also lies at the heart of the AAA.³⁹

The Busan High Level Forum is a major milestone and turning point for the global aid effectiveness agenda. The conference assessed the achievement of the Paris Declaration targets and the commitments of the Accra Agenda for Action by the 2010 deadline, as well as reported on the monitoring of the Fragile States Principles. Significantly, the event also charted future directions for more effective development aid and contributed towards new international aid architecture as follow-up to the Paris process.

Declaration adopted at the HLF-4, “The Busan Partnership for Effective Development Cooperation”⁴⁰ *for the first time establishes an agreed framework for development cooperation that embraces traditional donors, South-South co-operators, the BRICs, CSOs and private funders.* This marks a turning point for international development cooperation. The process has been guided by the Working Party on Aid Effectiveness (WP-EFF), which brings together representatives of over 80 countries and organizations.

“Busan was an expression of new geopolitical realities.”⁴¹ A key achievement of HLF-4 is that it moves discussion of development cooperation modalities away from the dichotomy of North-South versus South-South to the recognition of a continuum of vertical, horizontal and triangular partnership modalities, with each offering positive benefits and opportunities for achieving shared objectives. This is a view that is very much in keeping with the World Bank’s vision of the democratization of development.⁴²

³⁸ The World Bank, Chair’s Summary - The Third High Level Forum on Aid Effectiveness, http://siteresources.worldbank.org/ACCRAEXT/Resources/Chair_summary-ENG.pdf.html, accessed on 17 January 2013

³⁹ OECD, The High Level Fora on Aid Effectiveness: A History, <http://www.oecd.org/development/aideffectiveness/41571216.pdf.html>, accessed on 24 December 2012

⁴⁰ Fourth High Level Forum on Aid Effectiveness, Busan Partnership for Effective Development Cooperation, www.aideffectiveness.org/g/busanhl4/en/component/content/article/698.html, accessed on 22 January 2013

⁴¹ Center for Global Development, Atwood, Brian J, Creating a Global Partnership for Effective Development Cooperation, www.cgdev.org/content/publications/detail/html, accessed on 4 January 2013

⁴² The World Bank,

Karp, E. Philip, Is South-South Cooperation Really Different? New Development Partners in Busan, <http://blogs.worldbank.org/voices/fr/node/html>, accessed on 9 January 2013

⁴³ The World Bank, Trotsenburg, Axel Van, The future of aid—and how to make it more effective, <http://blogs.worldbank.org/voices/the-future-of-aid-and-how-to-make-it-more-effective.html>, accessed on 4 January 2013

The aid landscape has seen *three important changes* during the last decade that have had a transformative, positive effect on the very nature of aid.

- *The increased focus on the quality of aid* - especially on the results being achieved on the ground.
- *The substantial increase in the volume of aid*, including massive debt relief to the world's poorest and most indebted countries.
- *Support for developing countries* is no longer purely OECD-centric, but is *counting increasingly on middle-income countries to shore up the assistance*.⁴³

3.7. Bibliography

Center for Global Development, Atwood, Brian J, *Creating a Global Partnership for Effective Development Cooperation*, www.cgdev.org/content/publications/detail/html

Events and Processes, *High-Level Forums on aid effectiveness: Rome, Paris, Accra, Busan*, <http://www.aideffectiveness.org/Events-Processes-Rome-Paris-Accra-Busan.html>

Fourth High Level Forum on Aid Effectiveness, *Busan Partnership for Effective Development Cooperation*, www.aideffectiveness.org/busanhlf4/en/component/content/article/698.html

OECD, *The High Level Fora on Aid Effectiveness: A History*, <http://www.oecd.org/development/aideffectiveness/41571216.pdf.html>

United Nations Development Programme (UNDP), *Triennial Comprehensive Policy Review, 2007*, <http://www.snap-undp.org/Docs/Forms.html>

The World Bank, Chair's Summary - *The Third High Level Forum on Aid Effectiveness*, http://siteresources.worldbank.org/ACCRAEXT/Resources/Chair_summary-ENG.pdf.html

The World Bank, Harmonization and Alignment, *Challenges and opportunities for U.S. and European donors post-Accra*, <http://siteresources.worldbank.org/ACCRAEXT/Resources/4700790-1217425866038/AAA-4-SEPTEMBER-FINAL-16h00.pdf.html>

The World Bank, Karp, E. Philip, *Is South-South Cooperation Really Different? New Development Partners in Busan*, <http://blogs.worldbank.org/voices/fr/node/html>

The World Bank, Trotsenburg, Axel Van, *The future of aid—and how to make it more effective*,
<http://blogs.worldbank.org/voices/the-future-of-aid-and-how-to-make-it-more-effective.html>

World Health Organization, *Strategic Alliance and Partnership Action Plan*,
http://www.searo.who.int/LinkFiles/Strategic_Alliance_and_Partnership_Action_Plan.html

IV EU Assistance to Serbia in Judicial Reform

By Jovana Krajnović, Žarko Petrović and Jasmina Radinović-Bell

4.1 Development assistance – the most recent statistics and data

According to the European Commission's Serbia 2012 Progress Report,⁴⁴ overall between 2001 and 2012, the EU committed over EUR 2.2 billion to Serbia in the form of grants, and EUR 5.8 billion in the form of soft loans. According to the European Commission's Special *Eurobarometer survey*⁴⁵, conducted in June 2012, the EU and its member states continue to be the world's largest donor of development assistance, providing more than half of all official aid (EUR 53 billion in 2011). 85 per cent of EU citizens believe Europe should continue helping developing countries despite the economic crisis, and 61 per cent are in favour of increasing aid. Only 18 per cent think that aid to developing countries should be reduced. At the same time, 55 per cent think rapidly growing emerging countries should no longer receive aid. Most people (61 per cent) believe aid should focus on fragile countries that have suffered conflict or natural crises. Human rights (34 per cent), education (33 per cent) and health (32 per cent) are seen as the most important areas in development policy.⁴⁶

According to the Organization for Economic Cooperation and Development, the most recent statistics of Official Development Assistance (ODA) recipient flows, the Development Assistance Committee (DAC) member countries official development assistance in 2011 amounted to USD 134,038 billion (0.31 per cent of Gross National Income (GNI)).⁴⁷ DAC member countries assistance to multilateral organizations in 2011 amounted to USD 39,970 billion, out of which DAC EU countries contributed USD 27,686 billion. The largest single donor within this category was the United Kingdom contributing USD 5,359 billion.

Regarding the overview of net development assistance across DAC countries in 2011, the largest donor by amount was the United States contributing USD 30,924 billion, and in the same year, the largest donor by percent of GNI was Sweden contributing 1.02 per cent of its GNI.

⁴⁴ European Commission, Serbia 2012 Progress Report, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf.html, accessed on 25 February 2013

⁴⁵ European Commission, Special Eurobarometer 392 - Solidarity that Spans the Globe, Europeans and Development Aid, Report, October 2012, http://ec.europa.eu/public.opinion/index_en.html, accessed on 25 February 2013

⁴⁶ European Commission, Special Eurobarometer 392 - Solidarity that Spans the Globe, Europeans and Development Aid, Report, October 2012, http://ec.europa.eu/public.opinion/index_en.html, accessed on 25 February 2013

⁴⁷ DAC member countries include: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Korea, Luxembourg, Netherlands,

New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, and United States.

⁴⁸ Organization for Economic Cooperation and Development, DAC list for ODA recipient flows, <http://www.oecd.org/dac/stats/List/used/for/2011flows.pdf.html>, accessed on 27 February 2013

⁴⁹ From 2002 to 2004, the European Commission reported on progress achieved by Serbia and Montenegro in the form of Stabilization and Association Reports (no longer available at the official web site of the EU Enlargement), while since 2005 it started reporting within the form of Progress Reports.

⁵⁰ European Commission, Serbia 2012 Progress Report, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf

⁵¹ Implementation of

Official development assistance from non-DAC donors in 2011 totalled USD 9,725 billion. Within this category, Turkey was by the amount the largest donor among OECD non-DAC countries, contributing USD 1,273 billion, and by percentage of GNI, the largest donor was Iceland, contributing 0,21 per cent of its GNI. Among other donors, Saudi Arabia is the largest donor by the amount, which totalled USD 5,095 billion, and by percentage of GNI, it was Malta with the contribution of 0,25 per cent of its GNI.⁴⁸

4.2 Analysis of the EU's Progress Reports for Serbia 2005-2012⁴⁹

Since March 2002, the European Commission has reported regularly to the Council and the Parliament on progress made by the countries of the Western Balkans region.⁵⁰ The EU Progress Reports assess achievements of each candidate and potential candidate country over the last year.

The reports on Serbia have largely followed the same structure, briefly describing the relations between Serbia and the European Union, analyzing the political situation in Serbia in terms of democracy, the rule of law, human rights, protection of minorities, and regional issues and analyzing the economic situation in Serbia. The Reports were also reviewing, until 2012, Serbia's capacity to implement European standards.⁵¹ In 2012, Serbia was granted candidate status, and accordingly the Progress Report on 2012 assessed Serbia's capacity to take on the obligations of EU membership. Furthermore, it is important to note that for the year 2011 the Commission adopted the Analytical Report for Serbia, which takes account of the conclusions of the European Council in Copenhagen in 1993⁵² and subsequent European Council conclusions and brings more detailed analysis, compared to the Progress Reports.

It is important to underline that, in the EU enlargement documents, progress has been measured on the basis of decisions *actually* taken, legislation *actually* adopted and the degree of implementation. As a rule, legislation or measures, which are in various stages of either preparation or Parliamentary approval, have not been taken into account. This approach ensures equal treatment for all countries and permits an objective assessment of each country in terms of their concrete progress implementing the Stabilization and Association Process.

The reports are based on information gathered and analyzed by the Commission. In addition, many sources have been used, including contributions from the government of Serbia, the Member States, European Parliament reports and information from various international and non-governmental organizations, including the United Nations Development Programme (UNDP).

The judicial reform agenda has become an important segment of the overall reform agenda of the country, and has led to significant changes in how the Commission addresses the set of issues within the

judicial reform process such as independence, efficiency/administration, reform strategy process *per se*, accountability, Judicial Training Centre/Judicial Academy, legislation and prosecution.

The section below shows a summary of the findings and recommendations for the period from 2005 to 2012, as extracted from the Reports.

4.4 General Assessment

2005: Judiciary has continued to be affected by serious weaknesses and its independence is undermined by undue *political interference*, while the *efficiency remains weak*.

2006: Judiciary remains in a *difficult situation*, although there has been some progress since the 2005 report.

2007: There has been *little progress* in the judiciary.

2008: There has been *little progress* with the judicial reform process.

2009: Serbia is *moderately advanced* in the area of reform of the judiciary.

2010: Serbia made *little progress* towards further bringing its judicial system into line with European standards.

2011: *Substantial reforms* of the judiciary have been pursued in Serbia since the adoption of the national strategy in 2006, and were intensified in 2009 and 2010. At the same time, the Serbian judiciary still faces *a number of challenges*.

2012: Serbia has made *little progress* on judicial reform.

European standards refers to gradually approximation of legislation and policies with those of the "acquis", in line with the Stabilization and Association Agreement and the European Partnership priorities.

⁵² Accession criteria (Copenhagen criteria): Any country seeking membership of the European Union (EU) must conform to the conditions set out by Article 49 and the principles laid down in Article 6(1) of the Treaty on European Union. Relevant criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995. To join the EU, a new Member State must meet three criteria: political: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; economic: existence of a functioning market economy and the capacity to cope with

competitive pressure and market forces within the Union; acceptance of the Community acquis: ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union. For the European Council to decide to open negotiations, the political criterion must be satisfied. Any country that wishes to join the Union must meet the accession criteria. The pre-accession strategy and accession negotiations provide the necessary framework and instruments.

4.5 Table of Relevant Extracts from the EU's Progress Reports on Serbia

Independence

2005	Weak/ Seriously undermined by political pressure on the appointments of judges and prosecutors and their activities.
2006	Affected by political influence. The credibility of the judiciary is harmed by corruption cases involving some of its highest instances. The Reform Strategy does not provide sufficient guaranties for an autonomous prosecution.
2007	The Constitution and Constitutional Law leave room for political influence over the appointment of judges and prosecutors; Concerning level of influence of parliament over the judiciary
2008	There is no clear and objective criteria for the re-election of judges, and there are concerns that such reappointment exercise could be affected by undue political influence.
2009	There were cases of interference by the Government in the work of the judiciary and conflicts of interest. The appointment procedure does not provide for sufficient participation by the judiciary and leaves room for political influence. Concerns as to the autonomy of the prosecution service persist. However, the autonomy of the prosecution service was strengthened by extending the mandate of deputy prosecutors to permanent posts upon appointment by the new State Prosecutorial Council.
2010	The reappointment procedure for judges and prosecutors was carried out in a non-transparent way, putting at risk the principle of the independence of judiciary
2011	The constitutional and legislative framework still leaves some room for undue political influence on the judiciary. The impartiality of judges is broadly ensured. Legal provisions on conflict of interest are in place. Cases are generally allocated on random basis, which is more difficult in small courts or court units with only a few judges. The prosecution service is vulnerable to political influence due to its hierarchical organization and the ongoing practice of issuing oral instructions, despite the legal obligation for written instruction.

2011

The legal framework still leaves room for undue political influence over the judiciary, in particular as regards parliament's power to appoint judges and prosecutors — including the President of the Supreme Court of Cassation and the Republic Public Prosecutor — and its direct participation in the work of the HJC and the SPC. The impartiality of judges has continued to be broadly ensured thanks in particular to automated allocation of court cases, which has now been introduced in all commercial courts and general courts.

Efficiency / Administration

2005

Weak /The lack of adequate resources to ensure financial sustainability and provide for better functioning are reflected in the continuing inefficiency of the justice system. In spite of efforts to improve legislative provisions (mainly in the area of civil law) aiming at shortening procedures and measures to deal with the sizable backlog of cases, the continuing inefficiency of the judicial system represents a serious obstacle to the reform process.
-State Union Court- 1000 inherited cases from federal courts; Civilian courts- 3500 inherited cases from the former Supreme Military Court.

2006

The level of efficiency in the administration of justice is not satisfactory. The situation is particularly difficult as concerns civil cases. The lack of adequate financial resources coupled with the limited capacity of the judiciary contributes to inefficiency. The Government has proposed to further postpone the establishment of administrative and appellate courts to September 2007
-Over 4,300 cases are to be transferred to the Supreme Court of Serbia from the State Union Court.
-Around 1,000 cases against former SCG pending before the ECtHR.

2007

There is not yet an effective system of case-management and problems with the overall efficiency of the judiciary remain. Administrative and appellate courts have not yet been established. The significant backlog in both civil and criminal cases is a matter of serious concern even if there was a slight reduction in 2006. The excessive length of court proceedings led to exoneration of inductees in a number of cases.
- Total number of pending cases before the ECHR regarding Serbia is around 1300 (843 new applications).

2008

Progress in the judicial reform has been slow and largely confined to administrative improvements. The efficiency is hampered by the uneven workload of court and judges. Appellate and administrative courts are still not operational. In the absence of efficient court management

2008	<p>systems and of legislation streamlining procedures, the Serbia judiciary has been unable to reduce the number of pending cases or average length of proceedings.</p> <p>-ECHR: There are approximately 1,800 pending cases against Serbia (1131 new applications).</p>
2009	<p>The effectiveness of the law enforcement and judicial authorities remains low. On top of the already large backlog of cases at the Constitutional Court, 1,787 new cases were filed in 2008. The Court processed 786 cases.</p> <p>ECHR: there are almost 3000 eligible cases pending against Serbia (1361 new applications).</p>
2010	<p>A new structure of the court network was implemented. Under the new court system, courts which were closed continue to function as court units, in which civil cases are heard. This means that judges and judicial staff have to travel between courts and courtnits requiring significant resources and creating security concerns.</p> <ul style="list-style-type: none"> - The Constitutional court faces a backlog of some 7,000 pending cases - There were over 3,000 eligible cases pending before the ECHR regarding Serbia (1364 new applications) - 45 judgments finding that Serbia had violated the Convention
2011	<p>The reduction of the number of courts had positive effect towards a more equal distribution of work between courts. The newly-established Administrative Court took over the entire backlog from the previous administrative section of the Supreme Court and succeeded in proceeding large number of cases.</p> <p>-The Constitutional Court had over 8,549 pending cases in September 2011, at the same time there were 5,704 allocated applications regarding Serbia were pending before the ECHR (the largest number relate to the violation of the right to a fair trial and the length of proceedings, including non-enforcement of judicial decisions).</p>
2012	<p>Overall, little progress was made on judicial reform, mostly in enforcing new legislation aimed at improving the efficiency of the judicial system. A number of laws came into force aimed at improving the efficiency of the judiciary and applying international standards in national courts. New case management software has been introduced in the Administrative and Appellate Courts in Belgrade and the Supreme Court of Cassation and the first private bailiffs were sworn in and first notaries selected.</p> <p>-In 2011, the courts received 2.23 million new cases, resolved 2.65 million cases and were left with a backlog of 3.34 million cases. The Administrative Court continued to increase its activity and so managed to reduce the backlog by some 2,500 cases to 17,711.</p> <p>-A total of pending applications before the ECHR is 9.478 (4833 new applications).</p>

REFROM STRATEGY

2005	Finalization of the strategy has been delayed. The strategy includes worrying provisions on the reappointment of judges after the initial limited mandate of five years, which in the absence of clear, professional criteria and transparency in the appointment procedure severely undermine the independence of the judicial system. Equally worrisome are the provisions placing the prosecutor system under the Ministry of Justice.
2006	In May 2006 the Judicial Reform Strategy was adopted by the Government and submitted to the Parliament. The Strategy does not fully ensure permanent tenure of judges as it keeps a controversial probation term. It does not provide for an effective self-governing structure of the judiciary, or sufficient guaranties for an autonomous prosecution.
2007	The new Constitution confirmed permanent tenure of judges and deputy prosecutors. Clear criteria and procedures for judicial appointments have not yet been established. MoJ has launched an in-depth analysis of the Serbian judiciary, preparing the ground for important legislative changes.
2008	To counterbalance the influence of parliament over appointing judges and prosecutors, objective selection criteria have been developed including a plan to introduce two years of initial training for all judges plus a final exam. However, in the absence of the new law on the judicial academy, these criteria have not been applied. As regards access to justice, the right to mandatory defence in most serious criminal cases is enshrined in the new Criminal Procedure Code but there are still no specific provisions on mandatory defence in cases of pre-trial detention.
2009	Overall, Serbia is moderately advanced in the area of reform of the judiciary. Two new bodies – the High Judicial Council and the State Prosecutorial Council – were established. The members representing judges in the first composition of the new HJC were nominated by the previous High HJC which was not bound by the proposal from the courts. This appointment procedure does not provide for sufficient participation by the judiciary and leaves room for political influence.
2010	There are serious concerns over the way recent reforms were implemented, in particular, the reappointment of judges and prosecutors. Objective criteria were not applied. Judges and prosecutors were not heard during the procedure and did not receive explanations for decisions. The overall number of judges and prosecutors was reduced by 25-30%.
2011	The initial significant shortcomings identified in the reappointment procedure are in the course of being addressed through a review process, for which there are clear guidelines.

2012	The review of reappointments of judges and prosecutors did not correct the existing shortcomings and was overturned by the Constitutional Court which ordered the reinstatement of all judges and prosecutors that had appealed their non-reappointment. The Court considered inter alia that the HJC did not apply the required quorum and breached the requirement of impartiality. The HJC and the SPC have not yet adopted rules on regular evaluation of the work and performance of serving judges and prosecutors.
------	---

Accountability

2011	The regulatory and institutional framework ensuring the accountability of the judiciary is generally in place. Judges and prosecutors, as well as the elected members of the two Councils, enjoys functional immunity. Since the entry into force of the new Constitution in 2006, immunity has been lifted only 5 times, which raises concerns over too high protection for judges and prosecutors from criminal investigations.
2012	The HJC introduced a disciplinary prosecutor and commission, which handled a little number of cases and took a few final decisions. The SPC adopted Rules on disciplinary procedure and liability which remains to be fully aligned with European standards. The SPC has yet to set up disciplinary bodies and establish a track record of investigating and imposing penalties in disciplinary cases. The higher courts and the Ministry continued internal inspections on technical and administrative matters.

Judicial Training Centre / Judicial Academy

2005	No legal framework for the JTC and no initial induction training for newly appointed judges. The JTC remains a very weak institution. Present training activities for the judiciary are donor-driven, with little coordination or directions provided by Serbian authorities, and are very limited in terms of participating practitioners, scope of training and results achieved.
2006	Law on education of judicial professionals has been adopted; it strengthens the role of the JTC
2008	The overall professionalism of judges and prosecutors is relatively high and has been further improved by trainings of the Judicial Academy. In the absence of the new law on the Judicial Acad

2008	emy, an objective selection criterion has not been applied. Furthermore, objective criteria have not yet been established for appointments to be made during the interim period between adoption and full implementation of the new law. No decision has been taken on proposals to re-appoint all practicing judges and prosecutors. Concerns remain that such a re-appointment exercise could be affected by undue political influence and disrupt the functioning of the judiciary.
2009	The Judicial Training Centre continues to provide training on the ECHR. Awareness among judges of international human rights obligations has improved.
2010	The Law on the Judicial Academy was adopted, and the Academy established as the body responsible for the vocational training and continued professional development of judges, prosecutors and judicial staff. The setting up of the JA as still at early stage and vocational training have not yet started. The JA provides regular training on human rights standards.
2011	Amendments of 2011 to the Law on Judicial Academy strengthened the merit based approach to recruitments, making the completion of a vocational training program a general precondition for the appointment of basic court and misdemeanour judges, as well as for deputy basic prosecutors. The first vocational training started in September 2010. A proper merit-based career system for judges and prosecutors needs to be fully developed. It is still possible to enter the judicial profession, in particular at higher levels, on the basis of unclear criteria without having passed the Judicial Academy. Regular performance evaluations are only starting to be introduced. The Judicial Academy operates on scarce resources and has not yet finalized its curricula.
2012	The Judicial Academy selected a new generation of students and provided a variety of in-service training programs for judges, prosecutors, judicial staff and attorneys, which still need to be systematized and structured. A proper merit-based career system for judges and prosecutors remains to be fully developed. It is still possible to enter the judicial profession, in particular at higher levels, on the basis of unclear criteria without having passed through the Judicial Academy.

Legislation

2005	Adoption of the new Criminal Code; Comprehensive reform of the legislation on the organization of the judiciary is pending. There has been little progress as regards the implementation of the witness protection law.
------	---

2006	Amendments to the Criminal Code entered into force in 2006. A broad revision of the Criminal Procedure Code introduces the prosecutorial-police model of investigation and modifies the present role of the investigating judge. As regards access to justice, the new Criminal Procedure Code, coming into force in June 2007, prescribes mandatory defence in most serious cases.
2007	New legal framework still pending. Entry into force of the new CPC postponed. The Constitutional Law lacks clear and objective criteria regarding the re-election of judges. In the area of access to justice legislation on free legal aid has not yet been adopted.
2008	Key legislation necessary for implementation of the Constitution and the judicial reform strategy has not yet been adopted. Specific laws establishing clear and objective criteria for re-election of judges have not yet been adopted and the provisions in the Constitutional Law lack clarity and transparency.
2009	A set of judicial laws were adopted, introducing a broad reform of the judiciary. It included laws on the High Judicial Council, on judges, on the organization of courts, on the State Prosecutorial Council and on the public prosecution service. However, the new package of judicial laws contains major weaknesses. The adoption and entry into force of a substantially revised Criminal Procedure Code was further postponed.
2010	Adopted: Law on the Judicial Academy, New Court Rules of Procedure, Law on Administrative Disputes. The planned new Criminal PC, the new Civil Procedure Code, the law on enforcement of judgments and the law on notaries have not been adopted.
2011	Amendments of 2011 to the Law on Judicial Academy strengthened the merit based approach to recruitments. New Civil and Criminal Procedure Codes have been adopted in September 2011. The Civil Procedure Code aims at streamlining civil procedures and is generally a good basis to increase the efficiency of the Serbian judiciary. The Criminal Procedure Code profoundly changes criminal proceedings by giving the lead of investigations to the prosecution service and introducing an adversarial system. There are concerns over insufficient procedural safeguards in the new Code.
2012	The Constitution is largely in line with European standards but some provisions still need to fully reflect the recommendations of the Venice Commission. A number of laws came into force aimed at improving the efficiency of the judiciary and applying international standards in national courts. The new Civil Procedure Code has been in force since February 2012, aimed at increasing efficiency in civil procedure, which accounts for two thirds of all cases before the Serbian courts.

Prosecution

2005	Special Prosecutor for Organized Crime appointed and the Office is operational, modest results; Domestic war crime trials-good work in trying some low-profile cases. The reform strategy has worrisome provisions placing the prosecutor system under the Ministry of Justice, in particular given the envisaged transfer to prosecutors of all the investigative tasks so far attributed to the investigative judges.
2006	The revised Criminal Procedure Code gives police and prosecution the leading role in the investigation and collecting evidences, but new rules have been adopted in a situation where there are no sufficient constitutional guarantees as regards the autonomy of prosecution. Prosecutors were often exposed to political influence.
2007	The short terms of office of the special prosecutor for organized crime and his deputies hamper the continuity and efficiency of work. The prosecution service and courts for war crimes and organized crimes have been active. The important role of the witness protection was recognized, despite inadequate system for witness protection.
2008	There are concerns that the prosecution service is not being adequately prepared for its enhanced role in criminal investigations (lack of financial resources, training and stuff).
2009	The procedure for the election of public prosecutors and their deputies remains subject to influence of the parliament. However, the autonomy of the prosecution service was strengthened by extending the mandate of deputy prosecutors to permanent posts upon appointment by the new State Prosecutorial Council.
2010	Progress on domestic war crimes continued to be slow, while there has been little progress in prosecution of corruption cases. The respond of police and prosecution has improved concerning attacks on journalists.
2011	The Prosecution service is vulnerable to political influence due to its hierarchical organization and the ongoing practice of issuing oral instructions, despite legal obligation for written instructions. The Criminal Procedure Code profoundly changes criminal proceedings by giving the lead of investigations to the prosecution service and introducing an adversarial system.
2012	The new model of criminal investigation gives the prosecution the lead role in collecting the evidence and presenting it before the court. One aim is to shorten the investigative phase, but this will require that the prosecution services rise to the complexity of their new role. The fully adver-

⁵³ ISDACon is available at: <http://www.evropa.gov.rs/Evropa/PublicSite/DonationSearch.aspx>, the data used the following search criteria: Development Partner=European Union; OECD Sector=Legal and Judicial Development

serial system raises questions regarding procedural safeguards, in particular the ability of poorer defendants to finance an effective defence. In order to enforce accountability, the SPC adopted the Rules on disciplinary procedure and liability.

4.6 Contribution of the European Union to the Judicial Reform in Serbia 2002-2012

The following data has been obtained from the official, Serbian EU Integration Office database “ISDACon”.⁵³ The ISDACon database is the most up-to-date database about the assistance in to the judiciary available in Serbia. However, the accuracy of information from ISDACon, as confirmed by the Serbian EU Integration Office, is dependent upon donors and implementers submission of project data, as well as the quality of the submitted data. For instance, it is conceivable that only the most important component of the Project is submitted for registering at ISDACon, or that one component of a larger project is promoted in public as a separate project – and thus cannot be found in ISDACon. It is also possible that, upon insertion into ISDACon, the project was registered under different keywords, and thus does not show in regular rule of law or judiciary searches of ISDACon.

Table I

	Project	Area of Work	Project Description	Invested in EUR	Timeframe	Recipient	Note
1	Cooperation in Criminal Justice: Witness Protection in the Fight against Serious Crime and Terrorism (WINPRO) DEARJUD2693	Cooperation and Coordination	Strengthen cooperation to support the fight against serious crime and terrorism at regional and European level through encouraging witnesses and collaborators of justice to testify in criminal proceedings and give appropriate evidence in return for protection against intimidation, coercion, corruption or bodily injury.	4,000,000.00	2010	Deputy Prime Minister for European Integration	Started
2	Improvement of efficiency and transparency of judiciary system DEARJUD1997	Strengthening capacities	Shortening the length of proceedings in cases and reducing the backlog of cases in court; Building institutional capacity to better monitor and evaluate the functioning and efficiency of the judicial system; Improving the transparency of court proceedings and the judicial system.	3,000,000.00	2007	Ministry of Justice	Started

	Project	Area of Work	Project Description	Invested in EUR	Timeframe	Recipient	Note
3	Judicial Reform and Border Control 1 CARDS 2006 DEARJUS1726	Judicial Reform, Transfer of Management	Assist the MOJ with implementation of core objectives under the National Judicial Reform Strategy and facilitate the transfer of management of the judiciary from the MOJ to the Commission of the High Judicial Council. Support implantation of criminal sanctions and improve juvenile detention centres.	5,500,000.00	2006	Ministry of Justice	Finished
4	Justice CARDS 2005 Supplies and TA for the Judicial reform Strategy DEARJUS1362	Capacity Building; Information Technology	Advise, drafting and revision of legislation, by laws and regulations in the area of economic and/or organised crime; Court modernization/IT support programme, with a particular focus on court registries.	2,500,000.00	2005	Ministry of Justice	Finished
5	Regional Cooperation in Criminal Justice: Strengthening capacities in the fight against cybercrime DEARJUD3072	Strengthening capacities	Strengthen cross-border and international operational cooperation between law enforcement and judicial authorities of the Beneficiaries and EU Member States in investigations and prosecutions of cybercrime.	2,000,000.00	2008	Ministry of Justice	Started

	Project	Area of Work	Project Description	Invested in EUR	Timeframe	Recipient	Note
6	Standardised System for Education and Training of Judges and Prosecutors DEARJUD2017	Judicial Training	Strengthen the performance of courts and prosecutorial offices by supporting the Judicial Academy to provide standardised training to judicial staff	2,000,000.00	2008	Ministry of Justice	Started
7	Strengthening the rule of law in Serbia DEARJUD2931	Anti Corruption	Ensuring the rule of law, efficient state border security, improving the efficiency and accountability of the public sector, and tackling corruption as essential elements of a framework.	9,750,000.00	2011	Deputy Prime Minister for European Integration	Started
8	Support for Judiciary (2002 Budget) DEARJUS0188	No Data	No Data	3,000,000.00	2002	Ministry of Justice	Finished
9	Support to the Judiciary CARDS 2003 DEARJUS1683	Information Technology; Judiciary Reforms	Empower Courts to combat cross-border, internal and organised criminality in Serbia more effectively.	1,000,000.00	2003	Ministry of Justice	Finished
10	Support to the Ministry of Justice CARDS 2004 DEARJUD1281	Information Technology; Judicial Training;	Improve case management and court efficiency in a number of important courts throughout Serbia; Strengthen capacities of the Ministry of Justice and the Judiciary.	10,200,000.00	2004	Ministry of Justice	Finished

	Project	Area of Work	Project Description	Invested in EUR	Timeframe	Recipient	Note
11	Support to the Rule of Law System DEARJUD3231	Capacity Building	Strengthen the independence, efficiency, quality and accountability of the judiciary enabling it to fight against all forms of crime through more efficient criminal justice system in the Republic of Serbia.	13,600,000.00	2012		Contracted
12	Improvement of Transparency and Efficiency (Prosecutors and Penal System) DEARJUD2284	Capacity Building	To improve the efficiency and transparency of the judicial system by enhancing its overall technical capacity. To contribute to improvement of efficiency of the prosecutorial and the penal systems (including the AEPS) of the Republic of Serbia by introducing an efficient case management and statistical system and increasing public access to information in all judicial branches.	4,500,000.00	2008	Ministry of Justice	Started
Total Invested Resources 61,550,000 Euros							

Table II

The following data has been obtained from an EU commissioned study, with a view to complementing the information from the ISDACON database.⁵⁴ The responsibility for accuracy and credibility of these data belongs to authors.

	Project	Area of Work	Project Description	Timeframe	Invested in EUR
1	"Assistance to the Implementation of the National Judicial Reform Strategy"	Institutional Building (IB); Legal Framework (LF); Transparency and Anti-Corruption (TC)	Implemented by the EU's Consultant's Organization. Institution building and strengthening for the (reconstituted) High Judicial Council and State Prosecutorial Council, assistance with the execution of their mandates according to newly passed legislation. Assistance with the delineation of criteria for judicial and prosecutorial re-appointment. Implementation of National Judicial Reform Strategy and associated Action plan. Drafting and implementation of secondary legislation, by-laws, rules of procedure, instructions, and manuals. Organization of public debates and public informational campaign regarding judicial reform strategy and its implementation.	2008-2010	4,000,000.00
2	"Support to Juvenile Detention Facility"	Institutional Building (IB); Information Technology (IT)	Delivery of WET procurement. Training for Detention Facility Staff. Organization of Workshops. Purchase of IT equipment, and new ambulance room..	2004-2006	1,000,000.00
3	"Implementation of the National Judicial Reform Strategy in the Republic of Serbia"	Institutional Framework (IF); Institutional Building (IB)	Work to improve justice system according to the National Judicial Reform Strategy. Institutional support for the Secretariat of the Strategy Implementation Commission in charge of carrying out NJRS, including technical assistance and the preparation of organic documents. Promotion of donor coordination through database and cooperation in line with strategic goals, and outreach to the legal community.	2006-2007	1,100,000.00

⁵⁴ Segal, M. (May 2009). Assessment of International Assistance for Judicial Reform in the Republic of Serbia (European Union Framework Project Number 2008/167579). Retrieved from United Nations Development Programme website at: [http://rol.undp.org.rs/HUMAN_RIGHTS/Documents/Report--AssessmentSerbiaFinal\[1\].pdf](http://rol.undp.org.rs/HUMAN_RIGHTS/Documents/Report--AssessmentSerbiaFinal[1].pdf)

	Project	Area of Work	Project Description	Timeframe	Invested in EUR
4	"Project Against Economic Crime"	Jurisprudence (JU); Legal Framework (LF); Law Enforcement	Strengthened legislative and institutional framework for preventing and combating economic crime. Worked on law enforcement, and to improve the capability of Judges and Prosecutors to adjudicate and prosecute economic crimes. Performed diagnostic of court and public prosecutor services, to calculate costs associated with the National Judicial Reform Strategy.	2005-2007	1,499,290
5	"Judicial Training Centre"	Institutional Building (IB); Human Resources (HR)	Enhancement of training capacity of the Judicial Training Centre. Strengthened internal infrastructure of JTC, including business planning, governance, and teaching capacity. Conducted a training needs analysis, and assisted with development of the training curriculum. Provided targeted legal training for Judges, Prosecutors and court staff.	2005-2007	2,700,000.00
6	"Database for Legal Practitioners"	Information Resources (IR); Information Technology (IT)	Development of a database system containing legislation, regulations, and case law, in cooperation with the Ministry of Justice and the Official Gazette. Work to ensure dissemination of updated legal materials to the legal profession, and expand access to information resources	2004-2006	1,163,972
7	"Strengthening the Capacity of the Ministry of Justice"	Institution Building (IB)	Building the capacity of the Ministry of Justice to carry out legal reforms, assistance with legal reform initiatives.	2003-2006	1,491,028
8	"Support for Out of Court Settlements" and "Public Awareness Campaign for ADR"	Dispute Settlement (DS); Human Resources (HR); Legal Framework (LF)	Introduction of Alternative Dispute Resolution system. Preparation of Action Plan to reduce backlog of civil cases, analysis of the legislative/regulatory requirements for improving court procedures, identification and design of institutional structures for ADR/Mediation, professional profiling for mediators, development of training programme for mediators, preparation of public awareness campaign to introduce ADR system to professional and wider public. Introduction of ADR in the First Municipal Court.	2004	697,878

	Project	Area of Work	Project Description	Timeframe	Invested in EUR
9	"Support to Court Administration (Phase I and II) and IT Training"	Court Management (CM); Human Resources (HR)	Modernization and improvement of court efficiency and case management, to reduce backlogs and rationalize case handling. Delivery of training to strengthen capacity of the Ministry of Justice and judges according to judicial requirements. Total funding in Phase One of EUR 2,743,093 Provision of IT training with focus on throughout Serbia, for System Administrators and Technical Support Staff in courts. Development of training skills for Technical Support staff in courts; with focus on application software, capacity building for IT staff in the Ministry of Justice. Total funding in Phase Two of EUR 293, 400.	2004-2005	3,036,493
10	Sena Software	Information Technology (IT)	Work for Ministry of Justice, to change Linux Platform to Microsoft.	2004	161,600
11	"Refurbishment of JTC Premises in Nis and Belgrade"	Institutional Building (IB)	Renovation of entire wing of Judicial Training Centre in Belgrade, installation of facilities.	2005	
12	"Support to the Reform of the Justice System"	Court Management (CM); Institutional Building (IB)	Capacity building for the Ministry of Justice, improvement of court administration system, and up-grading of the civil and court registries. Work to make the judicial process more efficient and effective.	2004-2006	2,400,000
13	Reconstruction of the Courtroom Number One in the District Court of Belgrade	Court Management and Operations (CM)	Reconstruction of the Courtroom Number One in the District Court of Belgrade, including renovation of HVA and security equipment.	2003	996,534
14	"IT Support to Serbia Judiciary"	Information Technology (IT)	Procurement of IT equipment, software, and electrical equipment and materials for the District Court of Belgrade and five Belgrade Municipal Courts.	2002-2004	3,300,000

15

Project	Area of Work	Project Description	Timeframe	Invested in EUR
"Supply of IT Equipment to Prosecutors"	Information Technology (IT)	Establishment of a modern IT system in the Office of the Public Prosecution in Belgrade. Procurement of hardware and software, three types of servers, LCD rack monitors, rack console switches, racks, UPS racks, workstations, printers, routers, switches, firewall, LAN cabling, and antivirus software.	2003	412,183
Total Invested Resources 21,958,978 Euros				

4.7 Conclusion

In this context, questions to be addressed refer to the correlation between the achieved progress and political conditioning.

- In spite of continuous remarks of the Commission related to undue political influence over the judiciary, which is protected in the constitutional and legal framework, there has been no significant improvement in this area.
- The efficiency of the judiciary has been slightly improved over the years due to a new court structure, which has created a more equal distribution of workload between courts, while a number of laws aimed at increasing the efficiency of the justice system have been adopted. Improvements related to this aspect of judicial reform were recognized in the Progress Reports, particularly in the most recent ones. However there is still much to be improved and achieved.
- The reappointment of judges and prosecutors has had significant shortcomings that were not corrected during the review of reappointment. Objective selection criteria were adopted but were not applied.
- The Judicial Training Centre, subsequently the Judicial Academy, has been strengthened by the adopted legislation. However, despite very clear criticism, there has been no adequate follow-up. A proper merit-based system for judges and prosecutors is still not in place and it is possible to enter the judicial profession, in particular at higher levels, on the basis of unclear criteria and without having passed through the Judicial Academy.
- The new legal framework was adopted, but it did not meet the requirements. The Commission's remarks regarding different aspects of the judiciary have been followed by the adoption/revision of laws with a delay. For example, in the Progress Reports from 2007 to 2010 the Commission noted that entry into force of the new Criminal Procedure Code (CPC) had been postponed, until the new CPC was finally adopted in 2011.
- The Reports have noted a strengthened role of the prosecution in investigations, but the Commission has been warning of a questionable ability of the prosecution to deal with its new role. The Prosecution has also been seen as vulnerable to political influence and its autonomy as potentially endangered. There were some improvements as regards the prosecution's autonomy, for example, an extension of the mandate of deputy prosecutors to permanent posts upon the appointment by the new State Prosecutorial Council.⁵⁵
- In general, there has been follow-up of the recommendations deriving from the Progress Reports, although not in the expected time and manner. Furthermore, follow-up of the recommendations is often just partial, like in the case when objective criteria for appointment of judges and prosecutors was adopted but not applied, which as expected did not create the required results.
- Partial improvements have been achieved concerning the legislative framework, since the necessary laws were adopted but with some worrisome provisions, that were not in line with European standards. The process of the reappointment of judges and prosecutors can be used to describe the

⁵⁵ European Commission, Serbia 2009 Progress Report, http://ec.europa.eu/enlargement/pdf/key_documents/2009/sr_rapport_2009_en.pdf, accessed on 15 January 2013

manner in which the whole judicial reform in Serbia has been conducted. There was a correction of the initial shortcomings, but not in the right direction, which led to a significant loss of time, money and public trust. *Therefore, the Progress Reports for Serbia in most cases concluded that little progress has been achieved.*

4.8 Bibliography

European Commission, *Special Eurobarometer 392 - Solidarity that Spans the Globe, Europeans and Development Aid*, Report, October 2012,
http://ec.europa.eu/public.opinion/index_en.html

European Commission, *Serbia and Montenegro 2005 Progress Report*,
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1428_final_progress_report_cs_en.pdf

European Commission, *Serbia 2006 Progress Report*,
http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/sr_sec_1389_en.pdf

European Commission, *Serbia 2007 Progress Report*,
http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/serbia_progress_reports_en.pdf

European Commission, *Serbia 2008 Progress Report*,
http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/serbia_progress_report_en.pdf

European Commission, *Serbia 2009 Progress Report*,
http://ec.europa.eu/enlargement/pdf/key_documents/2009/sr_rapport_2009_en.pdf

European Commission, *Serbia 2010 Progress Report*,
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf

European Commission, *Serbia Analytical Report 2011*,
http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_analytical_rapport_2011_en.pdf

European Commission, *Serbia 2012 Progress Report*,
http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf

Organization for Economic Cooperation and Development, *DAC list for ODA recipient flows*,
<http://www.oecd.org/dac/stats/List/used/for/2011flows.pdf.html>

V Views and Perceptions of the Rule of Law and Independence of the Judiciary in Serbia

By Žarko Petrović and Neven Dobrijević

5.1 Introduction

Successful judicial reform can only be accomplished with accurate assessment of its weak points and areas in need of improvement. Without credible measurements of the rule of law in general or the independence of the judiciary in Serbia, it seems necessary to turn to the assessments of leading reports from various international and independent institutions which use credible methodologies.

A number of credible qualitative and quantitative assessments in the area of the rule of law and independence of the judiciary have reviewed Serbia's performance over the past three years. The rule of law was viewed as a broader concept, which included legislative reform, implementation of laws and efficiency of the judicial system, but also corruption and political influence over judges. The independence of the judiciary however, is viewed almost exclusively from the prism of recent judicial reform.

The result of these perceptions, as the following analysis will show, requires a concerted effort by the Republic of Serbia to address the shortcomings of the existing system. This effort should be concentrated on three particular aspects of the rule of law and judiciary in Serbia: (1) human resources; (2) running expenses and (3) investments. The only national sources of information, which can provide some general idea about these three aspects, are the allocations for the judiciary in the state budget. The Serbian budget however, is not programmatic. It is compiled annually and changes depending on the governmental priorities and legislation; it follows a different methodology each year. Furthermore, the annual expenditure reports are not publicly available, therefore, the budget analysis below depicts only the state's plans vis a vis the judiciary for each following year – and not the actual expenditures and effectuation of these plans. Certain analysis however, can be extrapolated to show how much Serbia is addressing the issues of

⁵⁶ Report of the UN Secretary General, The rule of law and transitional justice in conflict and post-conflict societies, S/2004/616, paragraph 6, <http://www.unrol.org/files/2004%20report.pdf>, accessed 14 August 2012

⁵⁷ Kaufmann, Daniel, Kraay, A and Mastruzzi, M, Data for Serbia in World Governance Indicators, 2012, <http://info.worldbank.org/governance/wgi/index.asp>, accessed 14 August 2012

the rule of law and judiciary.

This analysis seeks to explore the correlation between the perception of the rule of law and independence of the judiciary provided by credible international methodology standards and Serbia's own effort to improve the judiciary, which includes the amount of budgetary allocations in human resources, running expenses and investments in the judiciary.

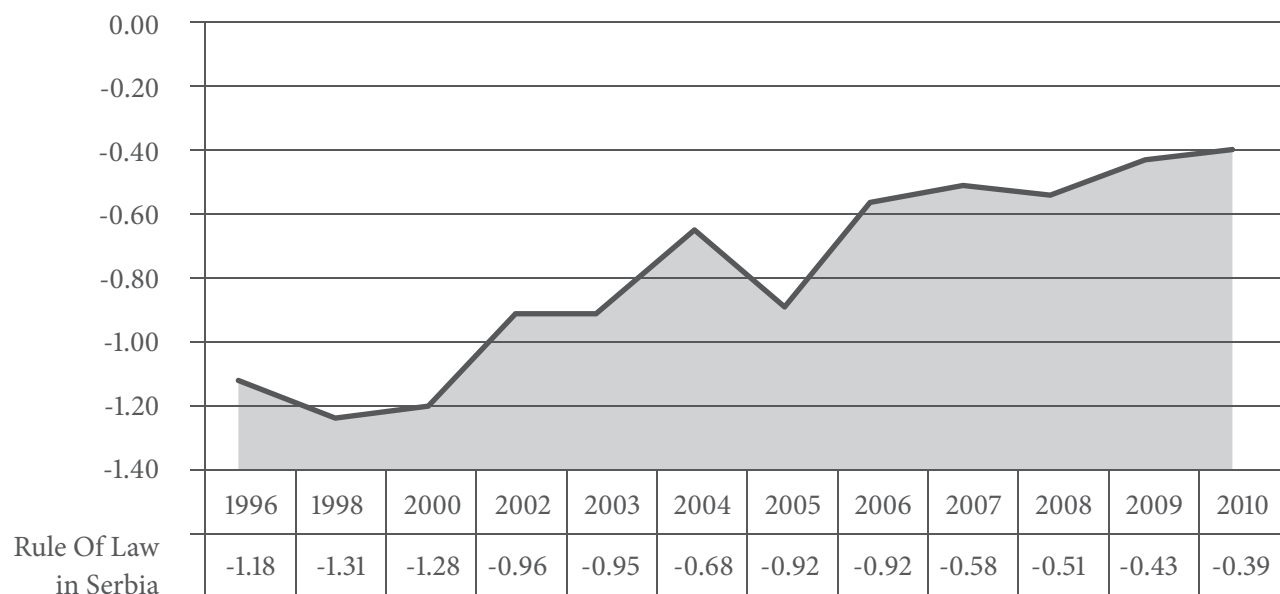
5.2 Credible Assessments of the Rule of Law and Independence of Judiciary

Serbia generally scores better on the rule of law overall, than on judiciary issues. The reason could probably be found in the broader concept of the rule of law, which, in addition to the reform of the judiciary, also includes highly technical issues, which demand significant financial investments. For the United Nations, the *rule of law* (RoL) refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁵⁶

The most credible and widely quoted assessment is the *World Governance Indicator* (WGI), which views RoL as one of the six areas of governance under scrutiny.⁵⁷ This governance indicator reflects the statistical compilation of responses of the quality of governance given by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries, as reported by a number of survey institutes, think-tanks, non-governmental organizations, and international organizations. The estimate of governance ranges from approximately -2.5 (weak) to 2.5 (strong) governance performance. Serbia's performance in the RoL field, according to WGI is one of constant improvement since 1998, albeit the starting point was so low, that even 12 years on, Serbia has still not entered into a positive "+" outlook. Furthermore, this improvement is somewhat slower since 2008, improving only by 0.1 points. The following graph shows the WGI RoL indicator:

World Governance Indicators

Rule of Law in Serbia



Perceptions on confidence in the Rules, in particular the quality of contract enforcement, property rights, the police and the courts.

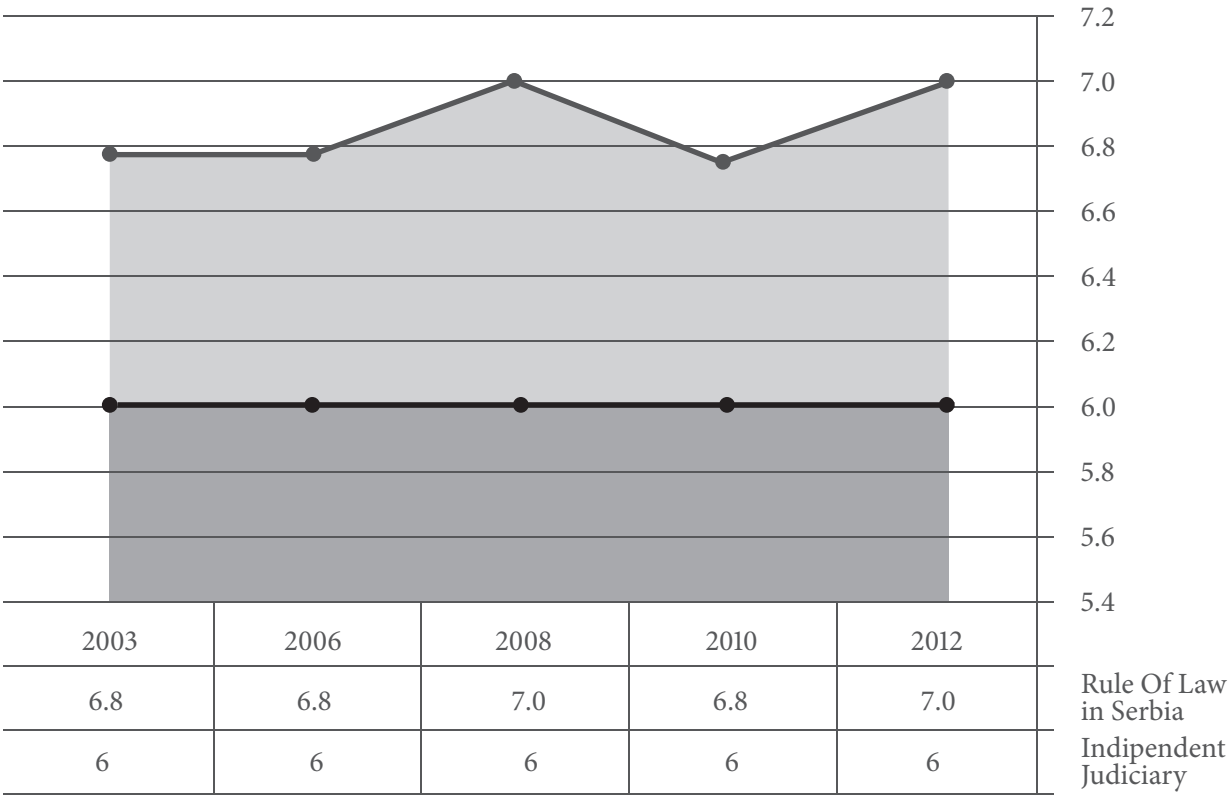
The seeming discrepancy between the rule of law and independence of the judiciary could be attributed to the increased volume of legislative improvements and the establishment of independent bodies, which added significant weight to the overall improvement of the RoL in Serbia.

The Bertelsmann Stiftung's Transformation Index (BTI) is a global assessment, which includes rule of law and independence of the judiciary. Leaning heavily on the WGI for data, this assessment transition processes applies a quantitative and qualitative methodology for measuring progress. Bertlesmann Stiftung has been reviewing Serbia since 2003, and conducts reviews once every two years. Its 2012 Report has assessed Serbia's RoL context through its separation of powers, independence of judiciary, prosecution of office abuse and civil rights. While scoring fairly well on the separation of powers and civil rights (8 out of 10), Serbia scored only six (6) in assessment of its independence of the judiciary and pros-

ecution of office abuse. In reviewing its judiciary, the Report acknowledged that while the judiciary, in practice, operates relatively independently, its functions are partially restricted by corruption, nepotism and cronyism, political influences and inefficiencies, with limited fiscal and administrative autonomy.⁵⁸

Serbia
Rule of Law and Independent Judiciary

— Rule of Law — Independent Judiciary



Furthermore, BTI found that the judges’ and prosecutors’ reappointment procedure was highly controversial. Moving from the judiciary onward, BTI found notable improvements in the Serbian RoL system

in an improved legal framework to combat corruption, and abuse of power, free access to information, an improved Criminal Procedure Code and the establishment of independent bodies. Corruption is the main source of an overall mixed outlook for Serbia. There is a lack of high-profile cases, lack of protection of whistle-blowers and lack of capacity of institutions to improve the situation. Overall ranking of the RoL in Serbia is at seven (7), which puts it regionally ahead of Montenegro, Bosnia and Herzegovina and Macedonia, but behind Croatia.

Rank	Country ⁵⁹	Rule of Law Score (1 lowest – 10 highest)
15	Croatia	7,8
21	Serbia	7,0
25	Macedonia	6,8
27	Montenegro	6,5
39	Bosnia and Herzegovina ⁶⁰	6,8

*The American Bar Association (ABA) Judicial Reform Index for Serbia*⁶¹ assessed reforms in this sector in 2002, 2003 and 2005. Rather than quantifying in exact figures, ABA chose qualitative assessments awarding one of three marks: negative, neutral and positive. Also, ABA avoided an overall assessment, focusing instead on a selected list of 30 factors influencing reform and the independence of the judiciary.

Generally, the ABA index shows modest progress in the rule of law but notes both upward and downward trends in judicial reform. Judicial qualification and preparation, judicial review of legislation, infrastructure, immunity of judges, removal and discipline of judges, case filing and tracking systems and distribution and indexing of current law were assessed as having an overall positive trend.

With eight factors assessed as having a positive trend and three as being negative, the most valuable result of this assessment has been the fact that 19 factors have been neutral, i.e. little or no movements in either positive or negative directions. This should have caused alarm in itself, since, at the time, judicial reform was underlined as one of the most important features of democratic reform.

Freedom House's Nations in Transit Report has also followed the Judicial Framework and Independence in Serbia since 2003.⁶² The best mark being one (1) and the worst (7), *Freedom House's Nations in Transit 2012 Report* assessed that both the framework and independence was better from 2003 – 2006, than in the following 2007 – 2011 period. Although not detailing trends, the 2012 Report stressed that the judiciary is a “weak component of democratic capacity and practice, lagging behind and impeding broader efforts to ensure rule of law in the country”.⁶³ The following table details Serbia's assessment over the years, in comparison to other nations in the region:

⁵⁹ Transformation Index BTI 2012, Status Index, BTI Project, 2012, <http://www.bti-project.org/index/status-index/>, accessed 14 August 2012

⁶⁰ Bosnia and Herzegovina, though better on the Rule of Law, scored worse on other indicators, which put it behind Macedonia and Montenegro.

⁶¹ American Bar Association, *Judicial Reform Index for Serbia*, 2005, http://wcjp.unicri.it/proceedings/docs/ABA_Judicial%20reform%20index%20Serbia_2005_eng.PDF, accessed 26 november 2012

⁶² Nenadovic, Aleksandra, *Serbia Country Report in Freedom House Nations in Transit Report*, 2012, <http://www.freedomhouse.org/report/nations--transit/2012/serbia>, accessed 14 August 2012

⁶³ Nenadovic, Aleksandra, *Serbia Country Report in Freedom House Nations in Transit Report*, 2012, <http://www.freedomhouse.org/report/nations--transit/2012/serbia>, accessed 14 August 2012

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Serbia	4.25	4.25	4.25	4.25	4.50	4.50	4.50	4.50	4.50	4.50
Croatia	4.25	4.50	4.50	4.25	4.25	4.25	4.25	4.25	4.25	4.25
Macedonia	4.50	4.00	3.75	3.75	3.75	4.00	4.00	4.00	4.00	4.00
Bosnia and Herzegovina	5.00	4.50	4.25	4.00	4.00	4.00	4.00	4.00	4.25	4.25
Albania	4.25	4.25	4.50	4.25	4.00	4.00	4.25	4.25	4.25	4.75

This Report, much like many similar ones, focuses on the reform of the judiciary (2009 – 2012) and ensuing problems, implementation of court decisions in practice, legislative improvement and the efficiency of the criminal justice system.

5.3 Measurable Qualitative Criteria of Judiciary

The International Finance Corporation (IFC) and World Bank produced an "Ease of Doing Business" report, which ranks 183 economies by each topic. They developed key indicators for each topic and benchmarked them against regional and high-income economy (OECD) averages. It assesses regulations affecting firms in ten areas of business regulation, including in protection of investors and enforcing contracts (also in court), and resolving insolvency. The 2012 data cover regulations measured from June 2010 through May 2011. According to this Report, Serbia performs far worse than on the BTI index. It leads only Bosnia and Herzegovina, which testifies to an unfriendly business environment.

Economy	Ease of Doing Business Rank	Protecting Investors	Enforcing Contracts	Resolving Insolvency
Macedonia, FYR	22	17	60	55
Montenegro	56	29	133	52
Croatia	80	133	48	94
Albania	82	16	85	64
Serbia	92	79	104	113
Bosnia and Herzegovina	125	97	125	80

This table averages the country's percentile rankings on three out of ten topics, made up of a variety of indicators, giving equal weight to each topic. The rankings for all economies are benchmarked to June 2011.

In this report, Serbia dropped four places in 2012 compared to 2011 on the overall business score. It also dropped on particular judiciary – related criteria. In protecting investors it fell five places, in enforcing contracts it fell by ten places and in resolving insolvency it fell by 22 places.

TOPIC RANKINGS	DB 2012 Rank	DB 2011 Rank	Change in Rank
Protecting Investors	79	74	-5
Enforcing Contracts	104	94	-10
Resolving Insolvency	113	91	-22

5.3.1 Protecting Investors⁶⁴

Protecting investors measures a number of legislative entitlements of shareholders, which a shareholder can enforce in case of a dispute with other shareholders, position in the proceedings, corporate liability in the law, procedural entitlements and standard of proof in the evidentiary proceedings before the court. Serbia dropped five places in 2012 in comparison to 2011 and is currently in seventy-ninth place, better than the Eastern European and Central Asia average, but worse than the OECD average.

5.3.2 Enforcing Contracts⁶⁵

Enforcing contracts measures time (in days) and cost (per cent of the claim) as well as the number of procedures required for successful enforcement of the contract. Serbia scores poorly on all three measurements. It takes 635 days to recover 31.3 per cent of the claim, having gone through 36 procedures. The following table displays the statistics with relative regional comparisons.

⁶⁴ This index is an average of the Extent of Disclosure index, the Extent of Director Liability index, and the Ease of Shareholder suit index. International Finance Corporation and World Bank, Status Index in Ease of Doing Business in Serbia, 2012, <http://www.doingbusiness.org/data/exploreeconomies/serbia#protecting-investors>, accessed 14 August 2012

⁶⁵ The average number of procedures to enforce a contract. The list of procedural steps compiled for each economy traces the chronology of a commercial dispute before the relevant court. International Finance Corporation and World Bank, Ease of Doing Business in Serbia, 2012, <http://www.doingbusiness.org/data/exploreeconomies/serbia#enforcing-contracts>, accessed 14 August 2012

⁶⁶ The time to resolve a dispute, counted from the moment the plaintiff files the lawsuit in court until payment. This includes both the days when actions take place and the waiting periods between.

⁶⁷ The cost in court fees and attorney fees, where the use of attorneys is mandatory or common, expressed as a percentage of the debt value. The average number of procedures to enforce a contract. The list of procedural steps compiled for each economy traces the chronology of a commercial dispute before the relevant court.

⁶⁸ The recovery rate calculates how many cents on the dollar claimants (creditors, tax authorities, and employees) recover from an insolvent firm. International Finance Corporation and World Bank, Status Index in Ease of Doing Business in Serbia, 2012, <http://www.doingbusiness.org/data/exploreconomies/serbia#resolving-insolvency>, accessed 14 August 2012

Indicator	Serbia	Eastern Europe & Central Asia	OECD
Time (days) ⁶⁶	635	412	518
Cost (% of claim) ⁶⁷	31.3	27.3	19.7
Procedures (number) ⁶⁸	36	37	31

5.3.3 Resolving Insolvency⁶⁹

The following table portrays the time (in years), the cost (in per cent of the estate) and recovery rate in cents on the dollar. Serbia, again, falls behind the Eastern Europe and Central Asia average on these criteria, because it takes 2.7 years to resolve insolvency, which recovers only 24.4 per cent of the estate.

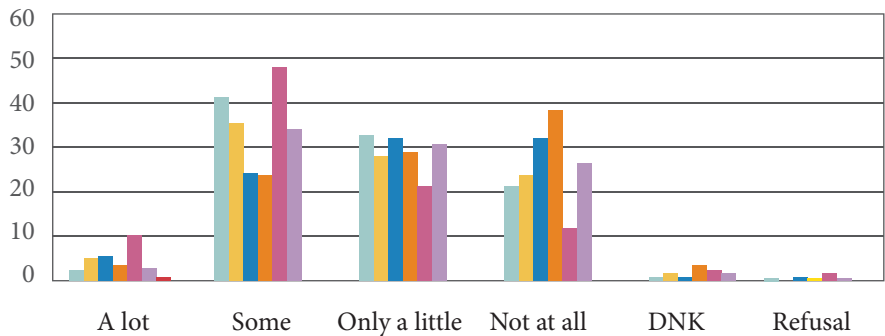
Indicator	Serbia	Eastern Europe & Central Asia	OECD
Time (years) ⁷⁰	2.7	2.7	1.7
Cost (% of claim) ⁷¹	23	13	9
Recovery rate (cents on the dollar) ⁷²	24.4	35.8	68.2

5.4 Perceptions of the Rule of Law and Judiciary in Serbia and the Region

The judiciary is notoriously suspicious to the citizens of Serbia and the region as being an inefficient and corrupt institution. This perception is based on personal – direct experiences and secondary experiences

of friends and relatives. One of the credible surveys in the region – the Gallup Balkan Monitor, produced the following results:

Confidence in the Judicial System 2010



Bosnia and Herzegovina	2.8	41.9	33.2	21	0.8	0.3
Croatia	6.1	36.5	28.3	26.8	2.1	0
Kosovo*	6.4	25.7	33.9	32.2	1.2	0.6
Macedonia	4	24.1	29.4	39.3	2.9	0.3
Montenegro	12.7	48.1	21.9	13.4	2.1	1.9
Serbia	3.4	34.6	31.6	28.4	1.9	0.1
Albania	1					

According to the Gallup Balkan Monitor, confidence in the judicial system and courts is rather poor throughout the region.⁷³ Montenegrins have the most confidence, while other results in the region are more or less similar.

In Serbia, confidence in the Judiciary and Courts is declining, and scepticism towards courts is increasing. The following table paints a grim picture of the 2008 – 2010 results.

⁶⁹ The recovery rate calculates how many cents on the dollar claimants (creditors, tax authorities, and employees) recover from an insolvent firm. International Finance Corporation and World Bank, Status Index in Ease of Doing Business in Serbia, 2012, <http://www.doingbusiness.org/data/exploreconomies/serbia#resolving-insolvency>, accessed 14 August 2012

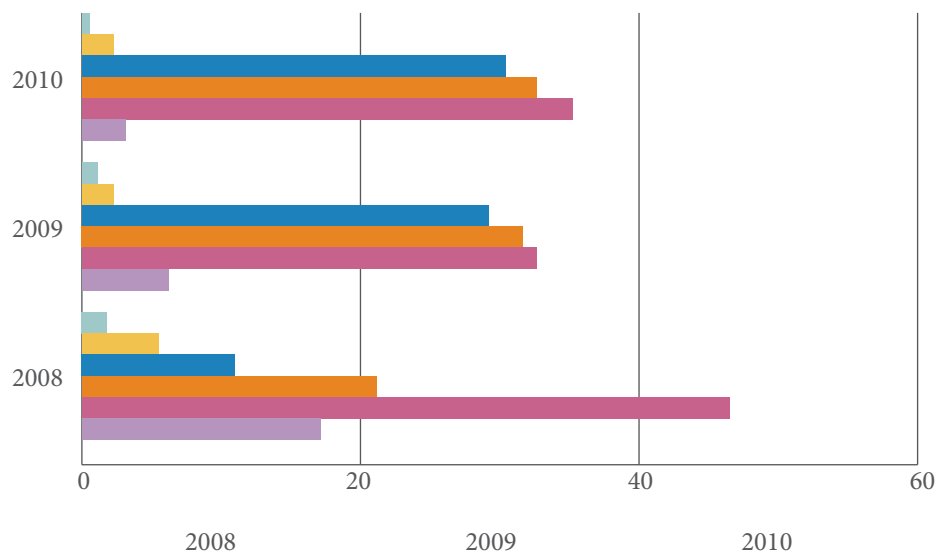
⁷⁰ The average time to close a business. Information is collected on the sequence of procedures and on whether any procedures can be carried out simultaneously.

⁷¹ The cost of the proceedings is recorded as a percentage of the estate's value.

⁷² The recovery rate calculates how many cents on the dollar claimants (creditors, tax authorities, and employees) recover from an insolvent firm.

⁷³ Gallup Balkan Monitor, Insights and Perceptions, Voices of

Serbia Confidence in Judiciary and Courts 2008- 2010



	2008	2009	2010
Refusal	1	1	0.1
DK	3.5	1.8	1.9
Not at all	10.9	28.3	28.4
Only a little	21.9	31.8	31.6
Some	47.3	32.8	34.6
A lot	15.3	4.3	3.4

5.5 Analysis of the Serbian Budget Allocations

In order to address these perceptions, significant investments are needed in the judiciary. Over the course of the past ten years, the Republic of Serbia has undertaken several efforts to address these issues, both using its own – and donor funds.

There are three broadly-defined types of planned expenditures in the state budget which are present

throughout the reporting period: (1) salaries; (2) running expenses; and (3) investments. These types of expenditures portray the state's orientation regarding the reform of the judiciary and are reflected in the following institutions: Constitutional Court, High Judicial Council, Courts, State Prosecutors Council, Public Prosecution and Judicial Academy (JA).⁷⁴

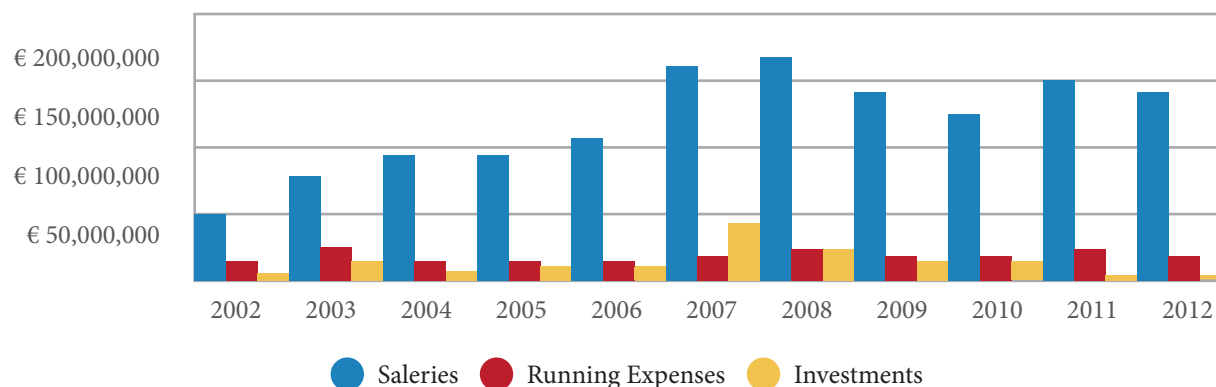
1. The category "Salaries" includes both net salary and the contribution to health and pension funds. These are budget lines 411 (salaries) and 412 (benefits);
2. The Category "Running costs" includes 421 (permanent expenses), 422 (Travel expenses) 425 (current maintenance) and 426 (material);
3. The Category "Investments" includes 511 (buildings) 512 (machines and equipment) 515 (non-physical assets);

The analysis of Serbia's investment into judiciary reform can be done on an aggregate level, and for each category.

5.5.1 Aggregate Analysis for the 2002 – 2012 period

The aggregate annual analysis shows that the total sum for salaries and running expenses peaked in the 2007 – 2008 period (when macroeconomic data was most conducive to high public sector wages), with a downward trend in the following 2009-2012 period. This trend is partially connected to the reduction of the number of judges following the reform, and partially, to austerity measures. However, without the expenditure reports for these years, the analysis is incomplete.

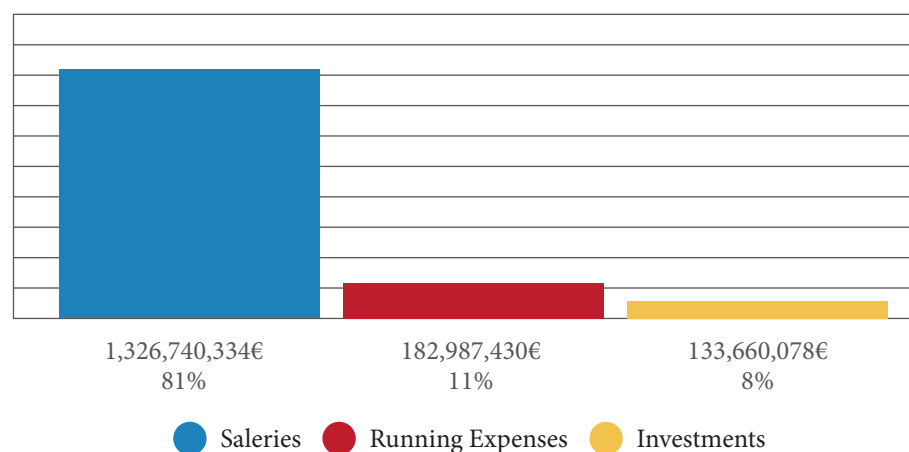
Annual Analysis per Category



⁷⁴ For Judicial Academy, the review is from 2010 onwards, since it appears in the budget. For the High Judicial Council and State Prosecutorial Council, the figure is since 2007.

Furthermore, the aggregate analysis shows that only 6.8 per cent of the budget was intended for the investment sphere (buildings equipment etc.) and it was highest in the 2007 period, when it exceeded EUR45, 000.

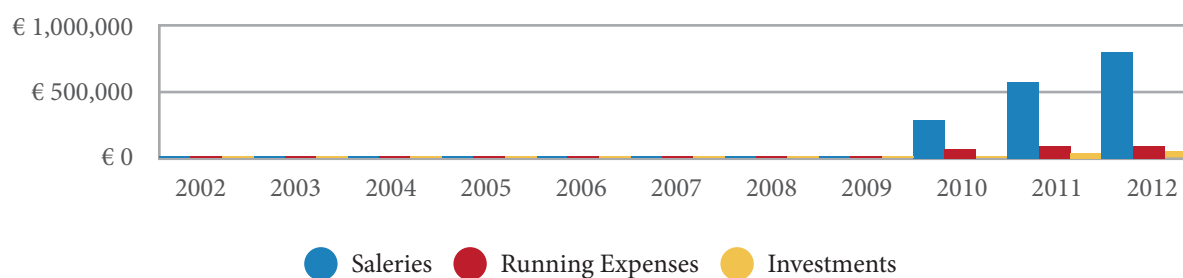
Aggregate Analysis of Serbian budget 2002-2012



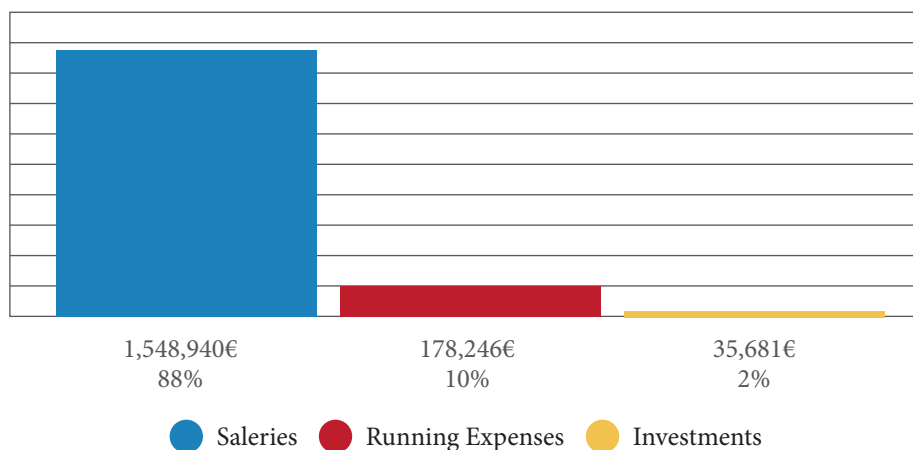
5.5.2 Judicial Academy

The Judicial Academy, as the specific avenue for addressing the most pressing judicial issues in Serbia – human resources in courts, has seen a constant rise in salaries but an even investment in running expenses and investments.

Judicial Academy for the period 2002- 2012



Judicial Academy for the period 2002- 2012

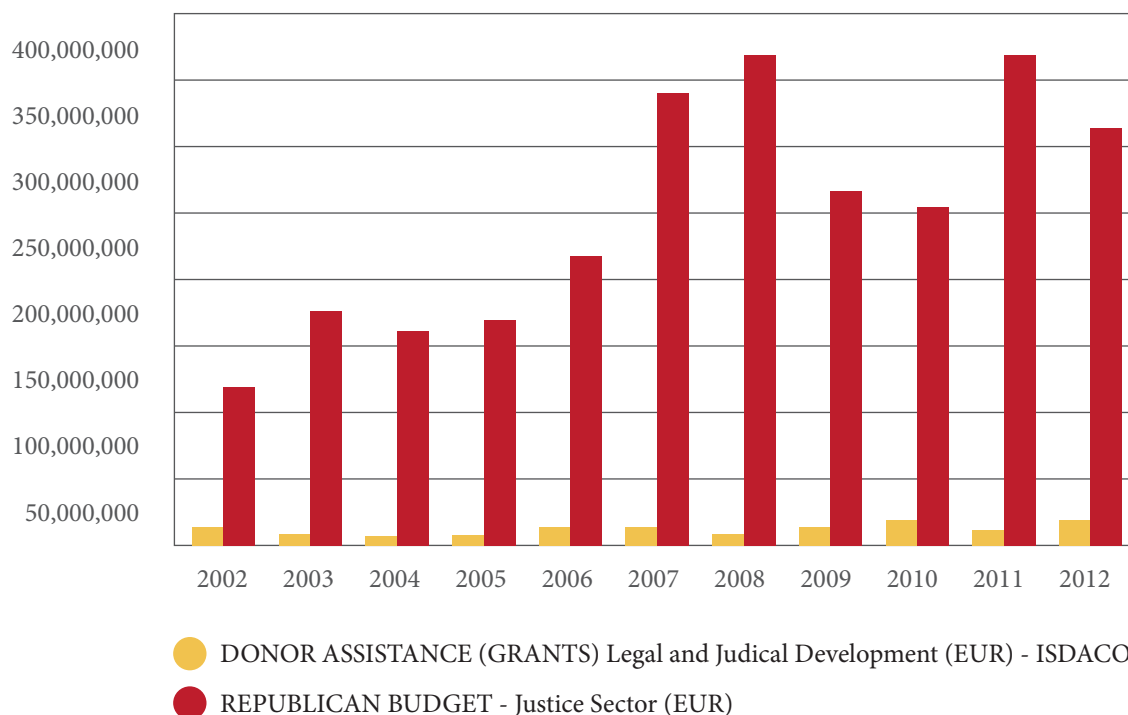


	2002 - 2009	2010	2011	2012	TOTAL
Salaries	€ 0	€ 195,380	€ 584,149	€ 769,410	1,548,940 €
Running Expenses	€ 0	€ 56,337	€ 69,338	€ 52,570	178,246 €
Investments	€ 0	€ 19	€ 19,068	€ 16,593	35,681 €

The table on the next page shows the amount of donor funds, which are in the ISDACON database , run by the Serbian EU Integration Office).⁷⁵

⁷⁵ ISDACON database is a national system for data collection, analytical processing of data and preparation of reports on EU and development assistance funds
<http://www.evropa.gov.rs/Evropa/PublicSite/AboutUs.aspx>

Donor Assistance (ISDACon v.State Budget)



5.6 Conclusion

The analysis has shown that perceptions of the rule of law in Serbia are significantly better than the perceptions of the judiciary and its independence. Reasons for this could be found in the fact that measurements of the rule of law rely on much broader and less measurable indicators than reform of the judiciary. The judiciary is, on the other hand, emphasized as the weak point. Both general assessments of the judiciary and its independence, as well as specific assessments of resolving insolvency, enforcing contracts, or protecting investors are reported to suffer from serious shortcomings.

For the past ten years, Serbia has been a recipient of donor aid in the judicial sector. The magnitude of this aid testifies to the importance of the judiciary issue for principal donors in Serbia.

The key question however, is the correlation between the international perception of the rule of law and independence of the judiciary in Serbia, as well as its own efforts to improve the judiciary, which includes the amount of budgetary allocations in human resources, running expenses and investments into the judiciary. As seen in the 2002 – 2012 aggregate analysis above, except in allocations for salaries, which includes investments into the Judicial Academy, no significant increase is seen in either running costs or investments into the proper functioning of the judiciary.

Without a concerted effort in all three branches (1) salaries; (2) running expenses; and (3) investments, little improvement will be seen in the judiciary of Serbia in the foreseeable future. The reason lies in the fact that the operation of the system remains reliant on both human resources and operational expenses. The improvement in the judicial aspect of the rule of law will positively reflect on the overall rating of the rule of law in Serbia.

5.7 Bibliography

American Bar Association, *Judicial Reform Index for Serbia*, 2005,
http://wcjp.unicri.it/proceedings/docs/ABA_Judicial%20reform%20index%20Serbia_2005_eng.PDF

Gallup Balkan Monitor, *Insights and Perceptions, Voices of the Balkans - Survey Data - Confidence in the Judicial System*, 2010,
<http://www.balkan-monitor.eu/index.php/dashboard>

International Finance Corporation and World Bank, *Ease of Doing Business in Serbia*, 2012,
<http://www.doingbusiness.org/data/exploreeconomies/serbia#enforcing-contracts>

Kaufmann, Daniel, Kraay, A, and Mastruzzi, M, 'Data for Serbia' in *World Governance Indicators*, 2012,
<http://info.worldbank.org/governance/wgi/index.asp>

Nenadovic, Aleksandra, Serbia Country Report in *Freedom House Nations in Transit Report*, 2012,
<http://www.freedomhouse.org/report/nations-transit/2012/serbia>

Report of the UN Secretary General, *The rule of law and transitional justice in conflict and post-conflict societies*, S/2004/616, <http://www.unrol.org/files/2004%20report.pdf>

Transformation Index BTI 2012, BTI 2012 Serbia Country Report, *BTI Project*, 2012, <http://www.bti-project.org/country-reports/ecse/srb>

Transformation Index BTI 2012, *Status Index*, BTI Project, 2012,
<http://www.bti-project.org/index/status-index/>



PRAVOSUDNA AKADEMIJA

Karađorđeva 48
11000 Beograd, Srbija
Tel: +381 (11) 2184-030
Fax: +381 (11) 2183-276
Web: www.PARS.rs



*Empowered lives.
Resilient nations.*

UNDP SRBIJA

Internacionalnih brigada 69
11000 Beograd, Srbija
Tel: +381 (11) 2040-406
Fax: +381 (11) 3444-300
Web: www.undp.org.rs