



Volume II

Judicial Studies Series

Judicial Reform through the interaction of Citizens and States:
An Analysis of Public and Professional Opinion regarding Judicial Reform
and Access to Justice in Serbia

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United Nations Development Programme
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Table of contents

Foreward	VI
List of abbreviations	VII
Author's Biographies	VIII
Introduction to the Judicial Studies Series <i>By Saša Madacki</i>	XI
 Introductory Remarks to Volume II <i>by Joanna Brooks and Olivera Purić</i>	1
 I Executive Summary	5
1.1 Introduction	5
1.2 Objectives	5
1.3 Methodology	5
1.4 Data Collection	6
1.5 Findings and Conclusions	6
1.6. Recommendations	7
 II Crowd-Sourcing Survey on Citizen's Opinions and Experiences of Judicial Reform and Access to Justice in Serbia <i>by Joanna Brooks and Marko Milanović</i>	9
2.1 Executive Summary	9
2.1.1 Objective	9
2.1.2 Background	9
2.1.3 Purpose	10
2.1.4 Evidence Based Approach	10
2.1.5 Methodology	11
2.1.6 Survey Questions	12
2.1.7 Summary of Survey Results	14

2.1.8 Summary of Findings and Conclusions	14
2.2 Analysis	16
2.2.1 Overview	16
2.2.2 Survey responses: general appraisal of the judicial reform in Serbia	17
2.2.3 Analysis of Survey Responses - Structural Failures of Reform	18
2.3.4 Survey responses - Failures with Regard to	
Procedural Fairness, Economy and Efficiency	19
2.2.5 Survey Responses: Achievements of Reform	20
2.2.6 Survey Responses: Factors Influencing Reform	20
2.2.7 Survey Responses: Access to Justice	21
2.2.8 Survey Responses: Mediation	22
2.2.9 Survey Responses: Women's, Minority and Disability Issues	22
2.2.10 Survey Responses: Personal Experiences with the Judiciary and with resolving Legal Issues	24
2.3 Conclusion	24

III Focus Groups Analysis

<i>by Joanna Brooks, Saša Madacki and Amar Numanović</i>	25
3.1 Introduction	25
3.1.1 Background and Context	25
3.1.2 Purpose	26
3.1.3 Objective	26
3.1.4 Approach	26
3.1.5 Methodology	26
3.2.1 Questions	27
3.2.2 Questions for Judges, Prosecutors and Lawyers – Focus Groups I, II and III	28
3.2.3 Questions for Representatives from Women's Groups, Minorities, Persons with disabilities - Focus Groups IV, V and VI	29
3.3 Analysis of Focus Groups	31
3.3.1 Analysis of Focus Groups with Judges, Prosecutors and Lawyers	31
3.3.2 Analysis of Focus Groups with Representatives from Women's Groups, Minorities, Persons with disabilities	39
3.4 Conclusion	42

IV The Realization of the Rights of Women, Persons with disabilities and Minorities in Serbia – A Critical Discourse Analysis of the Attitudes of the Citizens of Serbia

<i>by Amar Numanović and Saša Madacki</i>	44
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4.1 Introduction	44
4.2 Methodology	44
4.3 Sample	45
4.4 Research Instruments	45
4.5 Process and Problems	45
4.6 Results of Analysis	46
4.6.1 Representation of Social Actors	47
4.6.2 Do Women, Persons with Disabilities and Minorities Tend to Resolve Legal Problems in Serbia? Identification of the Problem Causes	57
4.6.3 It's Equally Difficult for All: Equality in the Unavailability of Judicial Authorities	58
4.6.4 Subordination or Superordination? Representation of Women, Persons with disabilities and Minorities as Privileged in the Judicial Process	61
4.7 Conclusion	64
V Findings and Conclusion Arising from the Crowd-Sourcing Survey and series of Focus Group discussions relating to Judicial Reform and Access to Justice in Serbia	
<i>by Joanna Brooks and Olivera Purić</i>	66
5.1 Introduction	66
5.2 Findings	67
5.3 Recommendations	71
Bibliography	73

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

ADR – Alternative Dispute Resolution
CSO – Civil Society Organisation
ECHR – European Court of Human Rights
EU – European Union
GDP – Group for Development Policy
HJC – High Judicial Council
JA – Judicial Academy
JAS – Judges’ Association of Serbia
JTC – Judicial Training Centre
LGBT – Lesbian, Gay, Bi-Sexual, Trans-Gender
MoJ – Ministry of Justice
NGO – Non-governmental Organisation
PWD – Person With Disability
SPC – State Prosecutorial Council
UN – United Nations
UNDP – United Nations Development Programme
USA – United States of America

Author's Biographies

Amar Numanović is a postgraduate student at the Department of Comparative Literature and Librarianship, Faculty of Philosophy, University of Sarajevo. He is engaged in the projects of the Human Rights Centre of the University of Sarajevo, and is working professionally with various non-governmental organizations. He is one of the coordinators of the *Youth for Justice Programme*, which is implemented by the Human Rights Centre in collaboration with Youth Initiative for Human Rights.

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.

Dr. Marko Milanović is lecturer in law at the University of Nottingham School of Law. Marko obtained his first degree in law from the University of Belgrade Faculty of Law, his LL.M from the University of Michigan Law School, and his PhD in international law from the University of Cambridge. Marko is Secretary-General and member of the Executive Board of the European Society of International Law, an Associate of the Belgrade Centre for Human Rights, and co-editor of *EJIL: Talk!* the blog of the European Journal of International Law, as well as a member of the EJIL's Editorial Board.

Olivera Purić LL.M., 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.

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.

**Judicial Reform through the interaction of
Citizens and States:
An Analysis of Public and Professional
Opinion regarding Judicial Reform and
Access to Justice 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 II

By Joanna Brooks and Olivera Purić

Volume II of the Judicial Studies Series, *Judicial Reform through the interaction of Citizens and States: An Analysis of Public and Professional Opinion regarding Judicial Reform and Access to Justice in Serbia* considers judicial reform and access to justice from the perspective of the interaction between citizen and states. It is focused on two studies that were undertaken in Serbia during the first half of 2013. The Studies were aimed at measuring citizen's experiences, perceptions and opinions of judicial reform and access to justice in Serbia as well as the experiences, perceptions and opinions of legal professionals and representatives from various vulnerable groups in Serbia. Citizens' opinions were sought in order to provide an insight into the level of awareness that the people of Serbia have regarding judicial reform and access to justice and to contrast this with their perceptions. A person can be hampered in accessing justice not just by the dereliction of duty of responsible legal professionals but also by perceptions of how such officials, and the institutions they work in, behave. Experiences of the respondents, vis-à-vis the judicial system were sought to gain insight into judicial institutions' decision-making processes and how ordinary citizens - parties to cases or other users of the justice system - understood them. Finally perceptions and experiences of legal professional and representatives of vulnerable groups were sought to gain their perception of issues facing citizens in accessing justice as well as for insider insight into the challenges facing service providers.

In the first paper, Joanna Brooks and Marko Milanović analyse the results of a crowd-sourcing survey undertaken by UNDP and the Judicial Academy of Serbia. The Survey, while not scientific in nature, sought to provide a snapshot of the general public's views on key judicial reform and access to justice issues in Serbia.

"We are all equal in a lack of access to justice."

"Justice remains inaccessible within a reasonable time."

“The only cure for the Serbian judiciary is to limit the amount of time that any proceeding can last.”

“Improving individual capacity comes from a love for the job. Improving overall capacity comes from short, direct and precise laws, without any gaps and aiming to a speedy and lawful resolution of the problem/situation.”

These were just a few of the issues that the citizens of Serbia raised in the Survey.

The survey was hosted on the B92 News agency website. The results of the Survey were encouraging: a total of one thousand, six hundred and fifty-six responses were received. In addition, almost one thousand, nine hundred people reviewed the survey, and filled out the demographic data questions (are you a minority, a person with a disability or a member of a women’s groups). The banner – displaying the action was featured on the B92 website approximately 4 million times – which also significantly raised awareness about the issue of judicial reform and access to justice in Serbia.

In the second Paper, Joanna Brooks and Saša Madacki analyse the data gathered during a series of Focus Groups, held with legal professionals – judges, prosecutors and lawyers – and representatives of vulnerable groups in Serbia – minorities, persons with disabilities and women’s groups. The minority representatives included ethnic and linguistic minorities as well as those from the Lesbian, Gay, Bi-sexual and Trans-gender (LGBT) community in Serbia. The findings from the crowd-sourcing survey analysed in the first paper, were used to feed into the discussions in the Focus Groups and enabled UNDP and the Judicial Academy to delve deeper into some of the issues that came out of the crowd-sourcing survey.

One of the main issues that arose in all focus groups was the need for judges to be accountable.

“Someone should judge judges. A system, and criteria for the accountability of judges needs to be established that will not be distorted due to political influences.”

Judge from the High Judicial Council

“Without a good judge there is neither fairness nor justice.”

Representative from a minority group

The participants of all focus groups said that legal uncertainty was caused by uneven judicial practice.

“In our work we have to deal with uncertainty on a daily basis. The jurisprudence is uneven because courts decide differently in the same cases and there is no communication among appellate courts.”

Prosecutor

When it comes to access to justice, many participants said that access to justice is hindered almost exclu-

sively because of political reasons. Some participants went further by voicing their concern that access to justice for people from vulnerable groups depends solely on the judge. Furthermore, people with disabilities and other minorities do not have sufficient information about their rights, which also impedes their access to justice. Although participants recognized that the position of women has been improved by amending and adopting laws, the application of these laws is slow and often depends on the sensitivity of the judge.

When it comes to addressing some of these concerns, all participants agreed on the importance of judicial education and continuous training.

“Professional trainings should be part of the criteria for career advancement, but the training system has to be regulated. Continuous education has to be equally available to all judges, and it should be mandatory.”

Member of the judiciary and representative of the Judge’s Association

The importance of the Judicial Academy was recognized, as was the importance of its continuous development.

“The Judicial Academy, as an educational centre, should create commentaries on new laws and important existing laws to help legal practitioners in their work.”

Prosecutor

Everyone agreed that minority representatives should be included in designing curricula for training legal professionals on the rights and position of minorities.

“Reforms are not there to please, but to improve. In the reform process it is not important that everyone is satisfied, it is much more important to set criteria that will be fulfilled.”

Judge

In the third paper, Amar Numanović and Saša Madacki undertake a critical discourse analysis of the crowd-sourcing survey. The aim of the analysis is to provide deeper and more detailed insights into the attitudes of the citizens of Serbia, when it comes to the problem of exercising the rights of certain social groups; women, persons with disabilities and minorities, and to examine how these attitudes are articulated. Accordingly, it seeks to show which words, phrases, stylistic and rhetorical strategies are mostly used and what are the perceptions and how they are manifested.

In the final Paper, Joanna Brooks and Olivera Purić identify a number of findings and recommendations that can be extrapolated from the analysis of the crowd-sourcing survey and focus group discussions. These will be shared with policy makers, development workers and researchers - who can use the data to

further ongoing efforts to improve and monitor performance and service delivery in the justice sector in Serbia, as well as to inform the next National Judicial Reform Strategy. UNDP and the Judicial Academy will also use the data to help improve and guide programmes and services.

I Executive Summary

By Joanna Brooks and Olivera Purić

1.1 Introduction

Judicial Reform through the interaction of Citizens and States: An Analysis of Public and Professional Opinion regarding Judicial Reform and Access to Justice in Serbia provides readers with the analyses of two studies undertaken by UNDP and the Judicial Academy of the Republic of Serbia in 2013. It provides readers with the innovative methodologies, which were adopted for the studies in order to measure citizen's opinions, perceptions and experiences of judicial reform and access to justice in Serbia, together with analyses of the data and information, which were gathered through the studies. Finally, it provides readers with a set of findings and recommendations, extrapolated from the studies that will be shared with policy makers, development workers and researchers - who can use the data to further ongoing efforts to improve and monitor performance and service delivery in the justice sector in Serbia, as well as to inform the next National Judicial Reform Strategy.

1.2 Objective

The ultimate objective is to improve the efficiency of the justice system in Serbia, thereby increasing access to justice in Serbia, in particular for the poor, women, persons with disabilities, minorities and other vulnerable and marginalized groups.

1.3 Methodology

The methodologies that were adopted for the studies were innovatively designed in order to best capture citizen's opinions, perceptions and experiences of judicial reform and access to justice in Serbia. The crowd-sourcing survey, while not scientific in nature, was designed to capture a snapshot of citizen's views and to provide inputs to the series of Focus Groups which were subsequently held and which

enabled participants to delve deeper into some of the issues raised in the Survey and into some of the most pertinent issues regarding judicial reform and access to justice in Serbia. The methodologies are detailed in Paper I and Paper II and can be used by others undertaking similar initiatives. They also form part of a series of low-cost high impact initiatives, which are being undertaken by UNDP and the Judicial Academy in Serbia throughout 2013. They form part of the new evidence-based approach to programming.

1.4 Data Collection

Data was collected for the crowd-sourcing survey via an online portal hosted by the B92 news agency website, one of the most popular news agencies in Serbia. The website hosted a questionnaire, which respondents could complete online at their own convenience. The questionnaire was accessible for a one-month period between February and March 2013. Additional data was gathered during the series of Focus Groups held at the premises of the Judicial Academy in May 2013. The Focus Group sessions were recorded and then transcribed. Analysis of the transcripts was then undertaken.

1.5 Findings and Conclusions

- **Judicial Reform** – the process of judicial reform in Serbia is perceived by the public as being overwhelmingly negative. The topic of judicial reform is still provoking strong reactions among the public and needs to be addressed with care. Any further reform efforts must not only deal with the various structural problems within the judicial systems, but also directly address the perceptions of the public.
- **Quality criteria for the selection and career advancement of judges** – the judiciary in Serbia have been elected, dismissed and re-elected without the development of any quality criteria. There is no merit-based career system for the judiciary in Serbia. 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. 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.
- **Evaluation** - The evaluation of the performance of individual judges is primarily the responsibility of a superior judge at a level of a department within a court or the court president. The performance of a judge must be evaluated, because courts are financed by public means and play an important role in the protection of the rule of law in countries and the day-to-day life of citizens and companies.
- **Professional Advancement** - Continuous education for judges and prosecutors is essential and is recognised as being one of the key criteria in the quality of judges. Work under supervision, through the mentorship programme offered by the Judicial Academy during its Initial Training Programme is one of

the best mechanisms in the process of selecting a successful judge or prosecutor.

- **Judicial Academy** – The transformation of the Judicial Training Centre into a national Judicial Academy is recognized by both citizens and professionals as being one of the key successes of the judicial reform process in Serbia.

- **Access to Justice** - From the citizens' perspective the whole judicial reform process is linked to the election and re-election of judges. Citizens feel that other issues, that are equally important, have not been addressed at all. The focus on the election and re-election of judges has been carried out at the expense of all other reform issues in particular access to justice, and this has been noted by citizens who feel that access to justice has not been improved. The findings of the crowd-sourcing survey validate this finding.

1.6. Recommendations

- **Judicial Reform** – There needs to be continuous dialogue with the public to create better policies and instill confidence with the judicial reform process. More focus needs to be paid on other reform issues not just the re-election of judges.

- **Quality criteria** for the selection and career advancement of judges - Judges should be appointed on merit, but in order to create a judiciary that has the confidence of citizens, it must fairly reflect all sections of society that are in a position to provide candidates of the requisite ability. In addition, indicators of quality should be introduced.

- **Evaluation** – A comprehensive system of judicial evaluation should be introduced. It is necessary to establish more objective parameters for evaluation, both for trainees and judges in practice - in order to gain insight into their effectiveness. The system should strike a balance between on the one hand 'quality' and at the other hand 'efficiency or productivity'. A Framework Criteria for the evaluation of judges should be introduced including performance quality, professional advancement as well as the more traditional evaluation methods of productivity and efficiency. It is also necessary to construct valid, objective criteria in order to monitor the work of those in the career system.

- **Professional Advancement** - Professional trainings, conducted by the Judicial Academy, should be part of the criteria for career advancement, but the training system has to be regulated. Continuous education has to be equally available to all judges, and it should be mandatory.

- **Judicial Academy** – The Judicial Academy should continue to strengthen its programmes and service. In particular, a framework for mandatory continuous education for all judges should be introduced and the system of mentorship included in the Initial Education Programme should be enhanced, through, for example, the introduction of evaluation and communication mechanisms. Post-training evaluation mechanisms of judges and prosecutors should be introduced in order to monitor progress after attending trainings.

- **Access to Justice** - There is a clear correlation between the quality of judges and access to justice.

In order to improve access to justice in Serbia, a State-funded system of free legal aid needs to be established. In addition, the involvement of representatives of vulnerable and marginalized groups should be ensured as it is essential in the process of creating new legal regulations that affect those groups.

II Crowd-Sourcing Survey on Citizen's Opinions and Experiences of Judicial Reform and Access to Justice in Serbia

By Joanna Brooks and Marko Milanović

2.1 Executive Summary

2.1.1 Objective

The ultimate objective is to improve the efficiency of the justice system in Serbia, thereby increasing access to justice in Serbia, in particular for the poor, women, persons with disabilities, minorities and other vulnerable and marginalized groups.

2.1.2 Background

UNDP Serbia commenced its justice programming in 2001 with the launch of its flagship project, establishing a Judicial Training Centre. UNDP supported the JTC through 2 project cycles during which time it was established and transformed from a recipient of training in to a full-fledged provider of training and project implementer. It was fully absorbed into the State budget after a phasing-in process. The JTC is now fully institutionalized as the national Judicial Academy. From 2006-2009, the success of establishing and institutionalising the Judicial Training Centre led to the creation of a number of programmatic offshoots being developed in the areas of free legal aid, anti-discrimination, transitional justice, human rights and magistrates training. Since 2010, UNDP Serbia was focused on developing its access to justice programming and implemented an initiation plan in the area of alternative dispute resolution (ADR) for economic justice for the poor/legal empowerment. Part of this programming included the development

¹ The designated National Human Rights Institution for Equality.

of an ADR Database, a cost-benefit analysis of ADR versus court resolved cases and measuring user's experiences of different paths in accessing justice in Serbia. The Database is being piloted in the area of discrimination with the Commissioner for the Protection of Equality.¹

The current phase of programming is focused around conducting a number of evidence-based researches, analysis and studies, that will feed into the dialogue regarding the development of the National Judicial Reform Strategy and will also feed into a co-funding framework document between UNDP and the Judicial Academy, through identifying baselines, targets, indicators, activities and other project related data. The crowd-sourcing survey is one such study.

2.1.3 Purpose

The purpose of the Crowd-Sourcing Survey on Citizen's Opinions and Experiences of Judicial Reform and Access to Justice in Serbia (hereinafter the Survey) is multifaceted:

- (I) To provide a snapshot of the general public's views on key judicial reform and access to justice issues in Serbia;
- (II) To identify key themes/topics and "burning issues" in the judicial reform process in Serbia as well as relevant access to justice issues for discussion in a series of focus groups;
- (III) To define a refined consultation framework for use in the Focus Groups, with leading questions to "probe-down" on emerging (or ignored) priority issues;
- (IV) The analysis of the Survey, together with the findings from the Focus Groups, will feed into a comprehensive Analytical Report, containing recommendations that will be included as part of the consultation process leading to the drafting of the National Judicial Reform Strategy of Serbia;
- (V) To test options relating to the judicial reform process in Serbia;
- (VI) To inform future programming in this area.

2.1.4 Evidence Based Approach

The approach used was based upon experience gained and lessons learned through undertaking a similar representative survey concerning the UPR process in Serbia, entitled "*Rate your Rights*".

The Judicial Reform/Access to Justice Survey was posted on the B92 website, <http://www.b92.net/reforma-pravosudja/> one of the most popular news portals in Serbia. B92 published

two articles about the survey, the first at the beginning of the campaign and the second one mid-way through. Banners for the survey were placed on the B92 information pages and appeared on the home page. During the length of the campaign there were over four million home clicks of the banner. Simultaneously links were sent out on various social media platforms, such as twitter and Facebook, alerting followers to the existence of the survey. A video clip/news spot was also broadcast featuring the UNDP Resident Representative. It was originally planned for the Minister of Justice to participate in the news broadcast as well, but he unfortunately had to withdraw at the last moment. In addition, specific NGOs and CSOs were contacted to ensure that a representative sample of women, PWDs and minorities completed the survey. The objective was to obtain one thousand responses with fifty per cent of these being from women. In addition, a minimum of fifty responses from representatives of women's groups, PWDs and minorities will be sought.

The Crowdsourcing Survey forms part of UNDP Serbia's *evidence-based approach to programming* and was part of the series of low-cost: *high impact* initiatives that are currently being undertaken by UNDP Serbia on judicial reform and access to justice related issues.

2.1.5 Methodology

The methodology was grounded in an analysis of the situational context, through the gathering of both primary and secondary data. As its starting point, a detailed document review of all relevant documents, progress reports, annual reports and other relevant documents provided by UNDP was conducted. Concurrently, extensive desk research was undertaken to inform the background and context for the Survey and ultimately to feed into the final Analytical Report. The Survey gathered qualitative data to inform the Analytical Report. The Questionnaire for the survey was semi-structured around a number of standardized questions, in order to obtain the respondent's knowledge, opinions and experiences of, and with, the judicial reform process and access to justice situation in Serbia. The respondent's knowledge and opinions were sought, in order to provide insight into the level of awareness of ordinary citizens regarding the judicial reform process and access to justice issues, while experiences were sought in order to gain insight into how ordinary citizens experience the judicial institutions decision-making processes in Serbia.

The survey was by its very design not intended to be scientific. It did not provide, and was not intended to provide, a representative sample of the Serbian public. Rather than being a scientific poll, the survey was an exercise in crowdsourcing, i.e. in obtaining opinions and ideas from a particular online community, which has some degree of connection to general Serbian public opinion.

Once the target number of responses to the Survey were received, an initial analysis of the survey was conducted, which helped to inform the series of focus groups, which were held with the following key stakeholders:

- (I) Judges

- (II) Prosecutors
- (III) Lawyers
- (IV) Women's Groups
- (V) Minorities
- (VI) Persons with disabilities

The Focus Groups were used as a forum for discussing and validating the findings from the Crowdsourcing Survey as well as to identify areas requiring further reform and to compile recommendations for inclusion in the Working Group discussions regarding the drafting of the next National Judicial Reform Strategy of Serbia.

2.1.6 Survey Questions

The following questions were developed with a view to obtaining the best possible information and data from the respondents. The questions went through a *peer review process*, undertaken by the Group for Development Policy (GDP), a national think-tank focused on legal and judicial reform issues in Serbia. The questions are complementary and seek to elicit comparable responses:

Access to Justice/Judicial Reform Crowdsourcing Survey

General Introductory Questions

Please select your gender

- ☐ Male
- ☐ Female

Please select if you are a member of a national/ethnic minority

- ☐ Yes
- ☐ No

Please select if you are a person with a disability (ies)

- ☐ Yes
- ☐ No

1. Are you aware of the judicial reform process in Serbia during the past 10 years?
Please explain.

2. What, if any, have been the achievements in judicial reform in Serbia in the past 10 years? Please provide details.

3. What, if any, have been the failings in judicial reform in Serbia in the past 10 years? Please provide details.

4. In your opinion are there any positive factors, which impact the progress of the judicial reform process in Serbia? Please provide details.

5. In your opinion are there any negative factors, which impact the progress of the judicial reform process in Serbia? Please provide details.

6. Did you have direct experience of court proceedings in Serbia in the past 10 years? If so, please briefly elaborate on the nature of the proceedings, which you experienced (for example, civil litigation, criminal prosecution, administrative disputes), and in what capacity (for example, as a party, witness, or lay judge). Please also give your general assessment of the fairness and efficiency of the proceedings. There is no need to provide any detailed personal information, but any such information given will be treated in the strictest of confidence.

7. Are you aware of mediation and would you be prepared to consider using it to resolve your legal issues? Please explain.

8. Do you think it is harder for women, persons with disabilities and/or minorities to resolve their legal issues in Serbia and if so, why? If so, please explain why you believe this to be the case and provide some concrete reasons.

9. What would be most useful for you in terms of improving your ability to resolve your legal issues? Please explain.

10. Do you have any other comments on the progress of judicial reform in Serbia?

Your views count!

We would like your views on judicial reform in Serbia. Your opinions and experiences will be used to feed into the on-going discussion regarding the issues that should be included in the next National Judicial Reform Strategy of Serbia. Thank-you for your participation.

2.1.7 Summary of Survey Results

A total of one thousand, six hundred and fifty-six responses were received with seventy per cent of respondents being male and thirty per cent of respondents being female. Thirteen per cent of responses were received from minorities and three per cent from persons with disabilities.

The survey respondents were overwhelmingly (over ninety per cent) negative in their appraisal of the judicial reform processes implemented in Serbia so far. Most participants stated that the politicization of the judiciary, specifically the influence exerted over judges by the executive and the political parties, was the main factor impeding judicial reform. Even more troubling was the sentiment that judicial reform was largely pre-textual, meant to superficially satisfy the requirements of EU integration, but was in fact designed as a vehicle for securing political control over the judiciary more generally and of judicial appointments specifically.

2.1.8 Summary of Findings and Conclusions

“An overwhelming majority of the survey respondents perceived the Serbian judiciary to be politicized, corrupt and inefficient, and considered efforts to reform it as a series of failures”.²

Successes of the Reforms

Some of the respondents identified a number of positive developments:

- The creation of the Judicial Academy;
- The creation of the Supreme Judicial Council and the State Prosecutorial Council;
- The revitalization of the Constitutional Court and providing it with the competence to hear individual cases on constitutional appeal;
- Some increase in procedural efficiency, particularly in civil cases, and some progress in dealing with the backlog of cases;
- The creation of the special courts and prosecutors for war crimes and organized crime;
- The partial and temporary removal from the judiciary of some judges who were not fit for their office;
- The introduction of mediation;
- The introduction of the prosecutorial investigation (pending).

Positive Factors influencing reform

Similarly to the responses received in the content of the successes of the reforms, most respondents stated either that no such factors exist or that they were overwhelmed by negative factors. A few additional areas were identified:

- The external pressure, as well as assistance given by the European Union, with judicial reform being an indispensable part of the wider process of EU integration.
- The increased public scrutiny to which the judiciary was exposed to, for instance through the press or the work of the civil society.

Negative Factors Influencing Reform

- The press reporting of judicial decisions was frequently incorrect or incomplete.
- The politicization of the judiciary and of the whole reform process, in particular in terms of judicial appointments.
- Systemic and individual corruption.
- The lack of meritocracy in advancement within the judiciary.

Structural Failings of the Reform

- The single most important structural failure of the reform identified by the survey respondents was its inability to secure an adequate quality of judges.
- Judges are seen as lacking in expertise and moral standing.
- The judiciary is seen as being corrupt, both systemic and individual.
- Respondents also identified insufficient resources allocated to the judiciary as both a structural failure and one of the causes of such failure of the reform process
- The lack of adequate courtrooms and facilities in many courts, as well as a lack of adequate staffing, both judicial and administrative were identified by respondents as being structural failings of the reform.
- The system of expert witness was also widely seen as corrupt.
- A lack of public scrutiny of the flaws in the reform of magistrates' (misdemeanour) courts
- The current reform processes were almost universally seen as not having succeeded in improving the efficiency of the processing of both criminal and civil cases by the judiciary.
- The level of procedural inefficiency was generally seen as very negative.
- Inadequate expertise and resources were seen as the main contributing factors to the judiciary's inefficiency.
- In criminal cases, the inefficiency in case management and processing was to many respondents evident in the large number of high-profile cases in which criminal charges were dismissed due to the statute of limitations running out.

- In civil cases, respondents identified the inability of the judiciary to secure the execution of its own judgments as one of the most important failures of reform. They also pointed to lack of consistency in judicial decision-making in cases with identical or near-identical facts.

Judicial Reform in general

- Most respondents thought that the reform solely consisted of the re-appointment of all judges in Serbia.
- Some respondents were aware of the reorganization of the court network.

Access to Justice

- The territorial reorganization rendered access to courts more difficult to significant parts of the population, increased costs for the parties and their lawyers, and indeed adversely affected lawyers working in smaller communities.
- Respondents also identified high filing fees as impeding their access to justice, as well as the lack of a comprehensive legal aid system.

Mediation

- An overwhelming majority of survey respondents stated that they were familiar with the mediation procedure.
- However, there was indeed a lack of familiarity with mediation in the general population and a consequent lack of its use and significance.

2.2 Analysis

2.2.1 Overview

Of the one thousand, six hundred and fifty-six responses received, the total number of responses to each question was as follows:

1. Are you aware of the judicial reform process in Serbia during the past 10 years? If so, please explain what in your view the reform process consisted of. (397 responses)
2. What, if any, have been the achievements in judicial reform in Serbia in the past 10 years? Please explain. (177 responses)
3. What, if any, have been the failings in judicial reform in Serbia in the past 10 years? Please provide details. (152 responses)

4. What, if any, are the main positive factors which impact the progress of judicial reform in Serbia? Please explain. (87 responses)
5. What, if any, are the main negative factors which impact the progress of judicial reform in Serbia? Please explain. (105 responses)
6. Did you have direct experience of court proceedings in Serbia in the past 10 years? If so, please briefly elaborate on the nature of the proceedings, which you experienced (for example, civil litigation, criminal prosecution, administrative disputes), and in what capacity (for example, as a party, witness, or lay judge). Please also give your general assessment of the fairness and efficiency of the proceedings. There is no need to provide any detailed personal information, but any such information given will be treated in the strictest of confidence. (144 responses)
7. Are you aware of mediation and would you be prepared to consider using it to resolve your legal issues? Please explain. (173 responses)
8. Do you think it is harder for women, persons with disabilities and/or minorities to resolve their legal issues in Serbia and if so, why? If so, please explain why you believe this to be the case and provide some concrete reasons. (137 responses)
9. What would be most useful for you in terms of improving your ability to resolve your legal issues? Please explain. (156 responses)
10. Do you have any other comments on the progress of judicial reform in Serbia? (128 responses)

While this was a very good turnout, comparatively few respondents answered all of the questions in the survey. Most focused on the first question, which was more general in nature and was taken as a substitute for answering the subsequent, more structured and specific questions in the survey. In an effort to combat this, at a number of points during the Survey, UNDP Serbia mixed up the ordering of questions, hoping to encourage responses to a larger number of questions. While this was successful in some regards, most of the answers were repetitive when compared to the answers to the original question 1 and failed to address the specific issues raised in the question. For example, rather than dealing with their individual problems with regard to access to justice and possible ways of solving them, the responses to question 4 mainly consisted of very general prescriptions for fixing the Serbian judicial system (e.g. making it less politicized).

2.2.2 Survey responses: general appraisal of the judicial reform in Serbia

The first question asked the respondents to identify what in their view judicial reform consisted of. **Most thought that the reform solely consisted of the re-appointment of all judges in Serbia** and the removal of those judges who did not satisfy the vague criteria, which most felt were used for political ends. Some

respondents also identified the **reorganization of the court network** (i.e. the territorial distribution of the basic and superior courts and courts of appeal) and other more specific efficiency and cost-saving measures.

The generality of the answers given in response to the first question makes it difficult to provide a coherent quantitative analysis. Most of the respondents went on to discuss the perceived failings of the reform process. As a result of this the answers to questions 1 and 3 have been processed together, which were specifically directed at the failings of the reform. In doing so, the stated failures of reform have been grouped into several distinct if overlapping categories: structural failures, failures pertaining to access to justice, and failures with regard to procedural fairness, economy and efficiency.

2.2.3 Analysis of Survey Responses - Structural Failures of Reform

The single most important structural failure of the reform identified by the survey participants was its **inability to secure an adequate quality of judges**. This is reflected above all in the judiciary's perceived subservience to political parties and whichever regime is in power, but is not limited to politicization alone. **Judges are also seen as lacking in expertise and moral standing** and as lacking a proper judicial mind-set, which would be indispensable for constituting them as a co-equal branch to the executive and the legislature. **The judiciary is also seen as corrupt, at both a systemic and individual level.**

While most participants qualified the re-appointment of judges during the extant reform process as a tool for furthering political control over the judiciary by the political parties that were then in power, there was also a widespread feeling that some re-appointment was and remains necessary because many of the judges inherited from the Milosevic era lacked the personal and moral qualities for judicial office. In other words, because it was based on vague criteria and was conducted without adequate institutional safeguards, the re-appointment process was both over-inclusive and under-inclusive, removing from the judiciary some judges that should not have been removed, and leaving within it others whose dismissal was indeed warranted. Thus, the re-appointment process, coupled with its subsequent reversal due to external pressure and decisions from the Constitutional Court, produced the worst of both worlds, by failing to advance the moral and personal quality of the judges while politicizing them even further. This perception of the re-appointment process as a lost opportunity was tied with fears by a significant number of participants that the efforts of the current government to correct prior mistakes will only make matters worse, with judicial appointments still being made under political direction.

Participants also identified insufficient resources allocated to the judiciary as both a structural failure and one of the causes of such failure of the reform process. This includes the judiciary's inability to control its own purse, thus inherently increasing their subservience to the government, but **also the lack of adequate courtrooms and facilities in many courts, as well as a lack of adequate staffing, both**

judicial and administrative. Ancillary and administrative staff are particularly seen as being grossly underpaid (unlike judges), thus not only failing to fairly reward their work but also creating incentives for systematic corruption. **The system of expert witnesses was also widely seen as corrupt.** Finally, respondents also identified as a structural failure a **lack of public scrutiny of the flaws in the reform of magistrates' (misdemeanour) courts,** particularly with regard to the re-appointment of magistrates.

2.2.4 Survey responses - Failures with Regard to Procedural Fairness, Economy and Efficiency

The current reform processes were almost universally seen as not having succeeded in improving the efficiency of the processing of both criminal and civil cases by the judiciary. The level of procedural inefficiency was generally seen as very negative, as evidenced inter alia by the very high number of pending constitutional appeals before the Constitutional Court with regard to violations of the right to a fair trial, as well as of applications against Serbia before the European Court of Human Rights in Strasbourg.

Inadequate expertise and resources were seen as the main contributing factors to the judiciary's inefficiency. Some participants specifically pointed to the lack of actual ability for the online filing of submissions to the courts, and the general lack of use of computing or information technologies throughout the judiciary.

In criminal cases, the inefficiency in case management and processing was to many participants evident in the large number of high-profile cases in which criminal charges were dismissed due to the statute of limitations running out (*zastarelost*). A number of participants also claimed that criminal courts frequently showed favouritism or bias towards the prosecution without due respect for the presumption of innocence of the accused. On the other hand, participants also pointed to corrupt collusion between judges and certain attorneys, e.g. with regard to their appointment as public defenders in criminal cases.

Participants were, however, divided in assessing the introduction of the prosecutorial investigation into Serbian criminal procedure. Some thought that this development would improve procedural efficiency, while others not only expressed doubts but also considered Serbian prosecutors to be worse than Serbian judges on all relevant counts. A number of participants also pointed out appalling living conditions in Serbian gaols (i.e. facilities for detention on remand) and prisons.

In civil cases, respondents identified the inability of the judiciary to secure the execution of its own

judgments as one of the most important failures of reform. They also pointed to lack of consistency in judicial decision-making in cases with identical or near-identical facts.

2.2.5 Survey Responses: Achievements of Reform

In response to the second question, asking them to outline the achievements of judicial reform in Serbia, most participants stated that no such achievements exist. In fact, 154 out of 177 (i.e. eighty-seven per cent) respondents to the second question described the results of reform using epithets such as ‘minimal’ or ‘insignificant’ on the one hand, or ‘disastrous’ and ‘catastrophic’ on the other.

Some of the participants did, however, identify a number of positive developments:

- The creation of the Judicial Academy;
- The creation of the Supreme Judicial Council and the State Prosecutorial Council;
- The revitalization of the Constitutional Court and providing it with the competence to hear individual cases on constitutional appeal;
- Some increase in procedural efficiency, particularly in civil cases, and some progress in dealing with the backlog of cases;
- The creation of the special courts and prosecutors for war crimes and organized crime;
- The partial and temporary removal from the judiciary of some judges who were not fit for their office;
- The introduction of mediation;
- The introduction of the prosecutorial investigation.

It must be stressed, however, that these were identified as achievements of judicial reform only by a very small number of respondents. Many of these supposed achievements were in fact criticized by other participants for their real or perceived failings. Thus, for example, the functioning of the judicial and prosecutorial councils and the introduction of the prosecutorial investigation was labelled as weak and ineffectual by some participants.

2.2.6 Survey Responses: Factors Influencing Reform

With regard to question 4, that asked the participants to identify positive factors impacting judicial reform in Serbia, in line with their generally negative appraisal of the reform **most participants stated either that no such factors exist or that they were overwhelmed by negative factors.** The respondents who did think that some positive factors existed focused mainly on two: **the external pressure, as well as**

assistance given by the European Union, with judicial reform being an indispensable part of the wider process of EU integration, and the increased public scrutiny to which the judiciary was exposed to, for instance through the press or the work of the civil society.

Some participants were however ambivalent with regard to the role of the press and the coverage of judicial work in the media. Not only were journalists of exceedingly poor quality, but they were also operating under a high degree of political control and influence or general corruption. **The press reporting of judicial decisions was frequently incorrect or incomplete**, while there were a number of examples of ‘trials by the media’, i.e. of the press hounding particular individuals and creating an atmosphere that was not conducive to fair and impartial trials before the courts.

Responses to question 5 on negative factors impacting judicial reform mainly traced the participants’ responses to earlier questions. The negative factor identified by most participants as being of greatest importance was **the politicization of the judiciary and of the whole reform process, in particular in terms of judicial appointments**. This was closely followed by **systemic and individual corruption**, the lack of needed expertise on the part of those designing and implementing the reform, and the **lack of meritocracy in advancement within the judiciary** and unwarranted resistance to reform within it.

Having now dealt with the survey questions addressing the judicial reform in Serbia as such, we will move on to the questions dealing specifically with access to justice, mediation, women’s, minority and disability issues, and personal experiences with judicial proceedings.

2.2.7 Survey Responses: Access to Justice

Respondents identified a number of failures of reform, which in their view impaired and continue to impair access to justice in Serbia. Chief among them was the **territorial reorganization** of courts that was undertaken as part of the extant reform process. In many of the participants’ view the territorial reorganization not only did not meaningfully advance efficiency in costs and in the processing of cases, but **rendered access to courts more difficult to significant parts of the population, increased costs for the parties and their lawyers, and indeed adversely affected lawyers working in smaller communities**.

Participants also identified **high filing fees as impeding their access to justice**, as well as the **lack of a comprehensive legal aid system** for parties without sufficient means to privately retain the services of a lawyer.

2.2.8 Survey Responses: Mediation

In response to question 7 on mediation, **an overwhelming majority of survey participants stated that they were familiar with the mediation procedure.** A somewhat lesser number stated that they were also prepared to use it, with some doubting its efficiency. Participants made a number of suggestions for improving the mediation procedure.

First, many participants stated that some parties, particularly respondents in civil litigation, did not have sufficient incentives to use mediation, since they could simply afford to wait while the civil litigation drags for years on end. Similarly, lawyers could get higher fees from litigation than from mediation, and it would not be in their own interest for cases to end very quickly. It would also be necessary for the parties to trust the impartiality and fairness of the mediator. Participants also doubted the willingness of the judiciary to direct parties to mediation, mainly due to inertia and resistance to change. Two participants also doubted that (former) judges make the best mediators, since they are more prone to look at a particular problem as a case that they are deciding rather than being adept at finding an opportunity for the parties to reach a mutual agreement.

Somewhat paradoxically, even though an overwhelming majority of the participants claimed to be familiar with mediation, a comment that was given most often was that **there was indeed a lack of familiarity with mediation in the general population and a consequent lack of its use and significance.** Many respondents thus suggested that a concerted campaign to familiarize the people with mediation was necessary, through the media and otherwise.

2.2.9 Survey Responses: Women's, Minority and Disability Issues

Question 8 asked the participants whether it was more difficult for women, persons with a disability and members of minorities to resolve their legal issues in Serbia. As a reminder of the demographic structure of the participants, seventy per cent of the survey respondents were men and thirty per cent women, thirteen per cent of survey respondents identified themselves as belonging to a national or ethnic minority, and 3 per cent as persons with a disability – note however that this demographic data applies to the respondent population as a whole, and not just to the respondents to question 8.

A quantitative and qualitative breakdown of the one hundred and thirty seven responses to this question is as follows (note that the lack of uniformity in the answers again makes the analysis imprecise, so that the different answers will overlap and the numbers might not add up, as the case may be):

- Forty per cent of respondents (fifty-five respondents) thought that the specified groups are not

disadvantaged when compared to the average Serbian citizen, in part because the judicial system treats everyone equally badly;

- Nineteen per cent of respondents (twenty-six respondents) thought that all of the specified groups are disadvantaged; the principal stated reason for this was discrimination based on embedded prejudice on part of the actors within the system;
- Four per cent of respondents (six respondents) thought that only women are disadvantaged; these respondents and those who believed that all specified groups were disadvantaged generally shared the view that women are especially disadvantaged in family law cases (e.g. divorce, support and custody proceedings), but also in cases of domestic violence;
- Twelve per cent of respondents (seventeen respondents) thought that only persons with a disability are disadvantaged; these respondents and those who believed that all specified groups were disadvantaged both emphasized the difficulties for disabled persons to gain physical access to court buildings, especially outside Belgrade, and other practical difficulties that they might face;
- Four per cent of respondents (six respondents) thought that only minorities are disadvantaged; these respondents and those who believed that all specified groups were disadvantaged both pointed especially to the poor situation of the Roma population in Serbia and the racial or ethnic discrimination that they routinely face;
- Four per cent of respondents (five respondents) thought that some or all of the specified groups are actually privileged within the Serbian judicial system; the example most often given was that most of the Serbian judges and ancillary staff were women, and that they were thus inherently more inclined towards parties who were women themselves;
- Nine per cent of respondents (thirteen respondents) thought that members of other groups were at a far greater disadvantage than the members of the groups specified in the question; these included people with little or no education, the poor, people without personal connections in the judiciary or who were not members of a political party, and the elderly;
- Five per cent of respondents (seven respondents) gave answers that were either incomprehensible or irrelevant.

On balance, even though demographically the respondent population was heavily skewed (i.e. was male, not disabled, and not part of a minority), the respondents were about evenly split in their assessment of whether the Serbian judicial system disadvantaged women, disabled persons, and members of minorities.

2.2.10 Survey Responses: Personal Experiences with the Judiciary and with resolving Legal Issues

The responses to question 6 were mainly directed at the general and specific faults within the Serbian judiciary that the survey respondents had identified in their responses to the other questions. The same applies more or less to the responses to question 9, which simply provide anecdotal evidence of the issues already identified, such as inefficiency in the judicial handling of cases, and to question 10, which were simply repetitive and redundant. They provide little added value to the previous analysis.

2.3 Conclusion

The picture of the state of the Serbian judiciary and the reform thereof painted by the survey is bleak. **An overwhelming majority of the survey respondents perceived the Serbian judiciary to be politicized, corrupt and inefficient, and considered efforts to reform it as a series of failures.** Whether the actual state of the Serbian judicial system is as bad as it has been portrayed by the survey participants is to an extent beside the point. The authority of a judiciary in a democratic society rests primarily on the confidence of the citizens. Although the evidence collected in the survey is anecdotal rather than scientific, it is still safe to say that the confidence of the Serbian public in its judiciary is probably at its lowest. Therefore, **any further reform efforts must not only deal with the various structural problems within the judicial systems, but also directly address the perceptions of the public.**

III Focus Groups Analysis

By Joanna Brooks, Saša Madacki and Amar Numanović

3. 1 Introduction

3.1.1 Background and Context

UNDP Serbia has over a decade of experience in the judicial reform and access to justice field. Its programming commenced with the establishment and institutionalisation of the Judicial Training Centre (now the Judicial Academy), and developed into programming in the areas of anti-discrimination, free legal aid, transitional justice and alternative dispute resolution.

Most recently, UNDP has been implementing a number of *low-cost high impact* initiatives, which are aimed at collecting and analyzing data, testing options and validating findings that can be used to feed into the consultation process leading to the drafting of the National Judicial Reform Strategy in Serbia. These activities are being conducted in close cooperation with the Judicial Academy, with which it recently signed a new framework arrangement to co-fund activities.

The first of these initiatives was a crowd-sourcing survey regarding citizen's experiences and opinions of judicial reform and access to justice in Serbia. The Survey provided a snapshot of the general public's views on key judicial reform and access to justice issues to enable UNDP to provide these views to the Serbian decision makers, pointing out the burning issues that citizens feel. The findings and conclusions from the survey were used as a starting point for the discussions in a series of judicial reform and access to justice Focus Groups, which were held with legal professionals – judges, prosecutors and lawyers - and representatives from women's groups, persons with disabilities and minorities. Representatives of minority groups included ethnic and linguistic minorities as well as representatives from the LGBT³ community in Serbia.

3.1.2 Purpose

The purpose of the Judicial Reform/Access to Justice Focus Groups (hereinafter Focus Groups) was multifaceted:

- (VII) To test and inform UNDP's activities in judicial reform and access to justice
- (VII) To validate findings identified through the inter-linked Judicial Reform and Access to Justice Representative Survey
- (IX) To test the results and data identified through the afore-mentioned Survey
- (X) To test different options regarding the judicial reform process in Serbia
- (XI) To inform the consultation process leading to the drafting of the National Judicial Reform Strategy of the Republic of Serbia
- (XII) To inform future programming in this area.

3.1.3 Objective

The ultimate objective is to improve the efficiency of the justice system in Serbia, thereby increasing access to justice in Serbia, in particular for the poor, women, persons with disabilities, minorities and other vulnerable and marginalized groups.

3.1.4 Approach

The Focus Groups were led by a Facilitator and were aimed at discussing specific questions, which were derived from the initial analysis of the Crowd-Sourcing Survey, as well as from activities and issues in the judicial reform/access to justice area during the past decade.

3.1.5 Methodology

The methodology was grounded in an analysis of the situational context, through the gathering of both primary and secondary data. As its starting point, a detailed document review of all relevant documents, progress reports, annual reports and other relevant documents provided by UNDP was conducted. Concurrently, extensive desk research was undertaken to inform the background and context for the Focus Groups and ultimately to feed into the final Analytical Report. Following the situational context analysis, the ten thematic clusters were developed for the "Crowdsourcing Survey" i.e. gathering citizens' input on reform of judiciary and access to justice in Serbia. The focus groups further processed the gathered information in the following manner:

Specifically, the focus group sessions concentrated on:

- Gathering opinions, beliefs, and attitudes about judicial reform and access to justice starting from general impressions on reform, ending with particular insight into selected vulnerable groups.
- Assumptions drawn from the survey were tested within the focus groups sessions.

The Focus Group discussions produced data and insights, which would have been less accessible without interaction in a group setting. Listening to others' verbalized experiences stimulates memories, ideas, and experiences in participants. This is also known as the group effect where group members engage in "a kind of 'chaining' or 'cascading' effect; talk links to, or tumbles out of, the topics and expressions preceding it".⁴ The benefit of having focus group discussion is that "The group context provides a key opportunity to explore difference and diversity. It is not only that differences will be displayed as the discussion progresses (and thus more immediately than across individual in-depth interviews). There is a particular opportunity in group discussions to delve into that diversity - to get the group to engage with it, explore the dimensions of difference, explain it, look at its causes and consequences".⁵

All discussions held during the Focus Groups were confidential and all comments have remained anonymous. Participants and observers were required to sign a Statement of Confidentiality prior to the start of each Focus Group session.

3.2.1 Questions

The questions below were formulated partly based on the captured feedback from the crowd-sourcing survey and partly based on UNDP's experiences and activities in judicial reform and access to justice in Serbia in the past ten years. The questions were focused around the recruitment, professional evaluation and promotion and training of judges and prosecutors as well as on access to justice in Serbia. More specifically the questions dealt with basic legal education, recruitment, professional evaluation, career, continuing education, as well as broadly with the terms and conditions of judicial service.

⁴ Lindlof, T. R., & Taylor, B. C. (2002). *Qualitative Communication Research Methods*, 2nd Edition. Thousand Oaks, CA: Sage.

⁵ Jane Ritchie and Jane Lewis: *Qualitative Research Practice: A Guide for Social Science Students and Researchers*, Sage: London, 2003, p. 188.

3.2.2 Questions for Judges, Prosecutors and Lawyers - Focus Groups I, II and III

Recruitment, Professional Evaluation and Training of Judges and Prosecutors

1. What in your opinion are the capacities required of judges and prosecutors?
 - Professional capacities?
 - Personal capacities?
2. What are the basic quality criteria necessary for judicial and prosecutorial selection?
 - Professional criteria
 - Personal criteria
 - Social criteria
3. Do you think judges and prosecutors should be evaluated?
 - If so, how often?
 - What should the performance indicators/criteria be? (e.g. general professional abilities, legal and technical skills, organizational skills and working capacity)
 - What should the evaluation be comprised of? Written test, observation, oral test?
 - Who should undertake the evaluation?
 - What happens if a candidate receives a negative evaluation? Should there be a right to appeal?
 - Should the evaluation be linked to promotion – see below?
4. What do you think about applying quality criteria for the promotion of judges and prosecutors?
 - What should these criteria be?
 - What should the procedure for promotion be?
 - Who should carry out the procedure?
5. Do you think that judicial training should be one of the criteria in the appointment and promotion of judges and prosecutors?
 - If yes, what type and quality of judicial training should be provided?
 - By whom?
6. Do you think that the initial and continuous education of judges and prosecutors should be mandatory?

7. While most participants in the survey qualified the re-appointment of judges during the extant reform process as a tool for furthering political control over the judiciary by the political parties that were then in power,
 - There was also a widespread feeling that some re-appointment was and remains necessary because many of the judges inherited from the Milosevic era lacked the personal and moral qualities for judicial office.
 - Because it was based on vague criteria and was conducted without adequate institutional safeguards, the re-appointment process was both over-inclusive and under-inclusive, removing from the judiciary some judges that should not have been removed, and leaving within it others whose dismissal was indeed warranted.
 - What are your views on this?
8. From your point of view is there any correlation between access to justice and the quality of judges, in particular for women, persons with disabilities and minorities?
9. Do you think that a formalized system of alternative dispute resolution would help relieve the burden on the courts and increase access to justice in Serbia?
 - Would this assist in decreasing the backlog of cases?
 - Would it reduce the number of cases, in particular civil cases that reach the courts?
 - Would legal professionals be receptive to such a system?

3.2.3 Questions for representatives from Women's Groups, Minorities, Persons with disabilities - Focus Groups IV, V and VI

Access to Justice

The questions for Focus Groups IV-VI were based on both the responses to the crowd-sourcing survey and on UNDP's experiences with judicial reform and access to justice in Serbia in the past decade.

Common questions for groups IV-VI

Context: The survey respondents were overwhelmingly (over ninety per cent) negative in their appraisal of the judicial reform processes implemented in Serbia so far. Most participants stated that the politiciza-

tion of the judiciary, specifically the influence exerted over judges by the executive and the political parties, was the main factor impeding judicial reform. Even more troubling was the sentiment that judicial reform was largely pre-textual, meant to superficially satisfy the requirements of EU integration, but was in fact designed as a vehicle for securing political control over the judiciary more generally and of judicial appointments specifically.

Questions

1. What in your view are the main obstacles impacting access to justice in Serbia for minorities/women/persons with disabilities?
2. From your point of view is there any correlation between access to justice and the quality of judges, prosecutors and lawyers in particular for women, persons with disabilities and minorities?
3. Do you think judges, prosecutors and lawyers should receive specific training on how to deal with minorities/women/persons with disabilities?
 - What should this training encompass?
 - Who should set the criteria?
4. Would the introduction of a formalized system of alternative dispute resolution increase access to justice for women/persons with disabilities/minorities?
 - Would these groups be prepared to use ADR to resolve their disputes?
5. Has access to justice for minorities/women/persons with disabilities in Serbia improved or declined in the past decade?
 - What factors have impacted the improvement/decline?
6. What factors would enhance access to justice in Serbia for minorities/women/persons with disabilities?
 - State system of legal aid?
 - Reduced filing fees?
 - Court translation and interpretation?
 - Location of courts?
 - Improved access for PWDs?
 - (Victim/witness support system)

3.3 Analysis of Focus Groups

Once the Focus Groups were completed, the information and data gathered was analyzed to assist in the process of forming a number of recommendations to feed into the consultation process leading to the drafting of the National Judicial Reform Strategy in Serbia.

Given that the ultimate goal of this study was the reform of the judiciary in order to facilitate access to justice for all citizens of Serbia, with an emphasis on minorities, persons with disabilities and women, the analysis of the data obtained in the focus groups has been interpreted on the level of two groups:

- (I) The reform of the judiciary and
- (II) Access to justice

This offered a comprehensive summary of the data and insights gained.

In order to ensure the quality of data processing in the analysis, participants were divided into two categories, based on whether they were legal professionals or whether they belonged to a marginalized and socially excluded group.

3.3.1 Analysis of Focus Groups with Judges, Prosecutors and Lawyers

(I) Capacities Required of Legal Professionals

When asked what capacities are required of a judge and prosecutor, both professional as well as personal, and the capacities that judges and prosecutors should have, judges in the focus group corresponded that with regards to professional qualities, in addition to general education and passing the bar exam, the most important is expertise, knowledge of a foreign language, knowledge of history and moral integrity. They stressed that **it is essential that the person who holds the position is responsible, honest and able to examine the general situation, taking into consideration the whole social state, and to be more sensitised to different social groups.** As some of the most important personal characteristics, they found **the ability to impose authority**, not having prejudice, the possibility of rejection of any pressure, as well as stability and calmness. One focus group participant stated that:

“A Judge just needs to abide by the regulations and to know the procedural law, substantive law and have authority and nothing more than that ... Only a professional approach, authority, and that's it”.

In the focus group in which prosecutors participated, it was expressed that, in addition to the necessary education, years of service and experience - that is, the capacities which are required by law - **prosecutors need to have an adequate code of conduct**, and that they should be moral, that is to be role models with their behaviour and actions. It was considered as very important for prosecutors to become aware that their attitude towards work and, the *"false sense of equal position,"* is necessarily wrong and that they should be more modest in expressing their opinions, but they must have a specialisation for matters in the area where they work. They noted that, in younger colleagues, an unwillingness to improve is omnipresent, and that, therefore, **the expertise of prosecutorial and judicial personnel is at an unsatisfactory level**. Such an attitude is reflected in the following statement:

"I think we have another problem which is reluctance, especially with some colleagues who may be older, but this problem is recognised in younger colleagues too, which is a reluctance to improve and to repair their professional capacity, or to enrich it. We can see that in those trainings organized by the Judicial Academy, or organized otherwise, that if some training is organized after working hours then the attendance is very poor, that ... is intolerable".

The judges and prosecutors stated that **professional courage and integrity**, in the condition of what justice of Serbia is, are urgent problems that need to be worked on, therefore, **it is necessary to introduce an adequate principle of evaluation**, which will extract and validate the work of those judges and prosecutors who are truly of a high quality.

Lawyers pointed out that the problem of justice and the judiciary is that it is always conditioned by desires and pressures of the Supreme Court or censorship - as reported by one of the participants, who said that:

"The greatest scourge of Serbian justice, I say this as someone who is fifteen years in the judiciary, is censorship, self-censorship which is based on fear ... experience in the past twelve years, says that at some point, if not for two, what four, five or seven years, someone with some position, whether it is in the High Judicial Council or somebody from government, or the ministries, it's all intertwined, someone might say a word or evaluate his work in terms of procedures and decisions in specific cases".

Therefore, the judge is insufficiently enlightened but repressed in interpreting the decision, as well as suppressed in passing judgment. For these reasons, they said, **it would be good to work on continuous education, in the form of seminars, training (development of techniques of writing judgments, for example), workshops and such**, but in that lawyers should be involved as well, because:

"... Within that, they, when, in the initial act they refer not only to the decision, but the practice, of something previously created, created legal system, thus, they impose the obligation to the Court and encourage, inspire a judge to think a little further, to be creative in his role..."

The Lawyers noted that it is necessary to devise the leading criteria in assessing ones own efficiency, because they consider that appropriate selection, and also the principle of competition, can greatly contribute to the purpose of the development of the judiciary. For example, one of the participants pointed out that:

"We in the legal profession have a concept that is dignity, as such it is existing, but its assessment is also discretionary, and practice has proved that it is very, very often, in some cases, even when you are in your position, you're not skilled enough to objectively evaluate one's worthiness, except in extreme cases, but there is lots of grey in between cases where consequences are very drastic, but you are not skilled enough to say, "Oh yes, he does not have or he has the personal competence required to be or not to be a judge".

Of course, in addition to the criteria prescribed by law, it is essential that judges and prosecutors meet other certain criteria such as having completed a specialization in a particular matter, the ability to be targeted and systematic and all other interpretations, understanding, personal integrity, independence, and - very importantly - training with regards to the application of international instruments.

(II) Selection of Legal Professionals

When discussing some basic quality criteria required for the selection of judges or for legal professionals, judges, given that this it is their most accessible material, as a criterion take the average grade score and the average length of studying, but they note that it is a very unreliable method for estimating a person's competence and that other relevant factors should be taken into account such as:

"As my colleague says, it does not mean that if his average grade is ten, that he is capable to do the work of judge. Perhaps he is good as a professor, as a lecturer, or a researcher. If he would start to work as a senior associate, then we have this in addition to the ratings of which we were talking, about the length of studying and so on, the key element must be the result of his work that he accomplished in that one period, and that is a period of several years, as well as the law prescribes for providing the conditions for admission to the judiciary, in any case there is a need to pass a certain time".

One of the participants in the first focus group with members of the judiciary stressed that the there is an issue within the law faculties in Serbia, where courses, essential for the development of desirable qualities in a judge, are not processed:

"One of the gaps in the curricula of the law faculties in Serbia is that they don't possess the subject called Logic. I think, it is necessary because we have to work on that every day, in the past years we were left alone to do it... or to use our capacity for abstract thinking ... So I think it's very important...also Philosophy ... All this I started in the context of ethics, then, maybe it would be very desirable to do so during the election of

⁶ It should be noted that personality tests are part of the final examination for candidates undertaking the initial training programme at the Judicial Academy.

judges, some - well, now it's probably also an integral part of the personality test for candidates of the initial training programme at the Judicial Academy, but perhaps in this personality test, and some moral beliefs, because judges come from different families, education, we have different law students who still are not judges. So these ethical criteria, I think, are very, very important for performing this function to a high quality and adequately”.

Also, they believe that it is necessary to take into consideration the results of the personality tests:

*“Next, I think, it is very important ... to do personality tests. I think it was one of the great failures that it hasn't been taken into account in Serbia. That colleague said, right, I think it was - it is very important for a judge to be able to control his emotions, ability to control emotions is very important”.*⁶

Since interns usually come with no experience to their new jobs, as they claim, it is necessary to be guided by a mentor - if taken into account that this is a person with pronounced ethical qualities, this can provide the most objective insight into the working capability of the person. Therefore, **it is necessary to establish more objective parameters for evaluation, both for trainees and judges in practice** - in order to gain insight into their effectiveness. The necessity to establish valid criteria is highlighted in the following example:

“You now have about two thousand professional associates in Serbia, who are handled or supervised by the same number of judges, and all they get from the judges evaluation is "Very Successful". That's the problem that appears to us in the judiciary, the lack of an objective approach, those who are just, well, who supervised the work and control the work and evaluate the work and so on, and then we will have easy, if the judge was conscientious, he will say for an associate, with whom he drinks coffee every day, hangs out, but as a conscientious judge - a moment ago, we said what a judge needs to have to be a good judge, what are the characteristics - that says, "Yes, we are companions, perhaps we are godparents, but I think he should not be the judge of this and that reason". When we overcome this, then the choice will be easy”.

One of the judges, when it comes to selecting judges and prosecutors, believes that it is important to emphasize that:

“An associate must show willingness to evolve, a willingness to admit that he made a mistake, a willingness to be open to consult with colleagues who are more experienced. Perhaps this can be done through some control issues, but at the level of interns”.

Participants from the second focus group shared a similar opinion with lawyers. Specifically, they believe that **work under supervision is one of the best mechanisms in the process of selecting a successful judge or prosecutor**. Also, they noted that it is necessary to construct valid, objective criteria in order to monitor the work of those in the career system (employees of the Judiciary), because they feel it is an

important part of improving the justice system.

Sensibility of the judges, as one of the criteria set aside by the participants, is necessary when working with marginalized groups. **Professionalism, responsibility and efficiency have been singled out as the most important criteria for the selection of judges, where:**

- Expertise means permanent education through tests and through certain mechanisms of grading and evaluation of success in tests, of monitoring specific knowledge, and this is possible, this can be introduced as compulsory education as a test, as a measure of one's professional competence.
- Another thing is responsibility, disciplinary responsibility is their obligation, whatever they are independent, meaning, consistent sanctioning of certain disciplinary offenses that had not existed before, and now it is being introduced.
- So consistent sanction and implementing the principle of responsibility as the second and the third criterion is efficiency.

(III) Efficiency of Legal Professionals

As for the concept of efficiency, one of the participants explained that **efficiency is a measurable category**, which can be validated by using the system of weighting the complexity of the case, explaining that:

“There is no need at all to use the cube system, I mean, pondering the complexity of the case, each receives a proportional number of extremely complex, medium or mild cases, and then we see, in the end, who, statistically, passes better, thus, the statistical results are not a comparable category - and the last thing, the number of solved cases”.

It is very important that the number of solved cases to be discriminatory, that is, to take into account all relevant factors for evaluation of the success of solved cases.

(IV) Evaluation of Legal Professionals

In the Focus Groups with members of all three professional focus groups (judges, prosecutors, lawyers), it may be noted that they all share the same opinion that **the evaluation of judges is necessary, primarily because it serves as a corrective tool and motivator for the successful exercise of their functions**, which can be read from the following example:

“So that they wouldn’t relax, understand, and realize that, once you reach these functions, you don’t have much to take, to make sure that your every decision must be the fruit really of your opinions you showed when you signed it”.

Also, they mentioned that **there are already established criteria for the evaluation of the work, but that they are largely based on statistical parameters** (percentage of reversal of decisions, the percentage of solved decisions, speed of solving the case), and are therefore not always measuring efficiency. The solution, as they suggest, is the randomization of allocated cases.

One of the problems stated by participants is the disrespect for the law by judges, and that during the selection process of new judges **it is necessary to tighten the criteria on which they are evaluated**. If the evaluation result is negative, the judges pointed out; there are legal rules, which are necessary to follow - to maintain a professional relationship. Often, the judge, due to a negative evaluation, can be sent to additional training:

“As much as I am informed, there are options, depending on how big the failure of the judge is, that he can be sent to, and possibly predicted by this regulation, right, to be sent to training if it, if possible”.

As for the focus groups in which lawyers participated, regarding the question whether the work of judges and prosecutors should be evaluated, they all answered in the affirmative way, and as well as the judges, they find it an extraordinarily motivating factor. Thus, **the criteria for evaluation are seen as a set of criteria necessary for checking work efficiency** through, for example, applying a new statute:

“It can be seen in some evaluation of a judges’ work, who is lazy to apply and who is not, and now, if the intention of the government is to strengthen the alternative ways of resolving disputes and to establish a new institute, then it is logical that to the prosecutor’s office, as a state agency, the application of new institutions is a measure that represents the criterion for assessing the efficiency of one’s work... and such examples can be even more”.

Prosecutors point out that there is already a system of evaluation of the work of prosecutors imposed by the Constitution, which, in their opinion, is a huge obstacle in the reform of the judiciary. Thus, they believe that, although there is already a regulation made by the professional association, **it is necessary to develop new criteria for evaluation of operational efficiency**, and they note that, although already existing, criterion for measuring the number of incorrect procedures is wrong when it comes to the evaluation of judges and prosecutors, where prosecutors have yet another dimension for measuring what is the evaluation of the number of reversals.

Therefore, as stated, **it is necessary to introduce disciplinary responsibility, because there are currently no criteria that are measurable**:

“So this is simply the speed of solving the case, and that one criterion which is simply an objective one, should be introduced first, except that it is not a definitive assessment, I mean the process will be finished in the moment when other criteria are established, which applies not only to the quality but also the quantity”.

The prosecutors believe that the control of the higher authorities, which have access to the work of other, lower bodies, is much needed. On the question of who should exercise that control, opinions were divided among the prosecutors. Some believe **that the Judicial Academy should be the bearer of the evaluation:**

“I just think that this evaluation is supposed to go through the Judicial Academy, but more significantly, if that should be your contribution to the project, so, to strengthen the role, and in order to strengthen the role of the Judicial Academy finances are primary, if you do not have a building, not to speak further about the conditions of work, you do not have speakers”.

Others believe that the bearer of the evaluation should be the State Prosecutorial Council.

“I would like to oppose my colleague [name] and I’m expressing a reservation that maybe I didn’t understand well. I believe that the evaluation of prosecutors should be under the prosecutorial organization, with the obligation to inform the competent state authorities of the results of the final evaluation by State prosecutors, so that obtained data can be provided to State prosecutors, I think it is an institution that will survive long, and finally the Assembly of the government should be informed”.

Finally, regarding the question of evaluation, the prosecutors emphasized that the evaluation should be primarily based on the rules and adequately specified criteria.

That the criteria do not need to be present only for evaluation, in the negative sense, underline all the participants of the three focus groups. If you take into account the time factor and the statistical corrective factor that is used in the evaluation, the judges find that the same criteria can be applied when it comes to promoting people.

(V) Professional Training

When it comes to the need for training of judges and prosecutors, the general opinion of participants is that **continuous education is essential**, and that as such it should be a lot better organized and that allows the equal participation of all interested participants, which is reflected in the following comment by the judges:

“We must make a system of training, continuous training which will be mandatory to attend, in which we

measure whether someone wanted to go or not. The fact that he did not want, it will take him to the downside, because the citizen is expected of him to be tried effectively and with high quality. The fact that he is not doing the job, will hold against him, and so on”.

Prosecutors, in terms of training, consider that, in addition to the abovementioned, it is necessary to emphasise the value of practical work, and that people who hold these trainings are authorities in a particular area. In addition, **the training materials used during the training must be carefully prepared**, as stated by one of the participants:

“Good guides which do not strive to provide a theoretical concept and theoretical explanation, because it is the easiest to write such a book, but actually true guides where there will be a number of potentially contentious issues that may arise, or are anticipated, before they appear in practice, and that a good author can assume that will occur”.

Given the lack of funding for training, a large number of judges and prosecutors find that **the training of trainers is a very effective and efficient method of teaching**.

(VI) Access to Justice

What is emphasized as the most important thing is that in the courtroom, **the judge should not allow his personal characteristics to affect the course and outcome of the procedure**. Public opinion that judges often discriminate against persons from vulnerable groups is not considered proper and judges claim that this is the product of lack of knowledge about the system and its processes. One of the participants held that the lack of education is one of the reasons for such thinking:

“I think because of that they have the wrong picture, unfortunately. And we are constantly, in Serbia, evaluated based on the perception of the citizens ... Can you really evaluate one, 'let's say, really intellectual elite of a state, based on the experience of forty percent of the functionally illiterate people”.

Formalized systems of alternative dispute resolution (ADR) are more than necessary in order to facilitate the work of the judiciary in Serbia. The most common form of ADR is mediation, presenting both positive and negative comments from the legal professionals:

- If to establish any parallel system that would even bring into question the authority, and in the end, the meaning of the Judiciary. There are problems that can only be solved by state authorities, and only in legally established and lawfully conducted proceedings.
- The huge number of cases, in fact, in civil matters, it is a big problem and should also be the focus of the mediation, where really, because, here is a colleague, she knows the best what a huge number of

cases you have.

It is important to determine which procedures can be resolved by mediation, because, as one participant said:

“I think it simply has to be a certain something that can be properly solved only by due process, and this process is, therefore, a trial which has its own very strict rules, and which in the end, should be obeyed if it is a serious problem, if the problem is not serious than you can simply leave the problem, therefore, to individuals and mediation”.

However, the legal professionals drew attention to the fact that, prior to the establishment of any alternative methods of dispute resolution, it is necessary to work on the legal system of Serbia and prepare it for such conditions, but also to **establish free legal aid to citizens**, so that they, at any time, can rely on the support of the judiciary.

(VII) Re-election of Judges

The influence of political elites, the participants stated was omnipresent in the process of re-electing judges, but is also present in other contexts in the judiciary. Unfortunately, such a thing has resulted in the distrust of citizens in the judiciary, but also the distrust of employees within the system, between the branches, and similar. As stated by one participant:

“Judges themselves are convinced that the people who sit on the High Judicial Council are under strong political influence, it is one half of an expert, and the other half, perceived to set up by function, are the politicians, chairman of the committee, the minister, and so further”.

3.3.2 Analysis of Focus Groups with Representatives from Women’s Groups, Minorities, Persons with disabilities

(i) Access to Justice

People with disabilities, women and minorities were the participants in this series of three focus groups where they answered questions about the state of the judiciary and their possibility to access it. Thus, to the question of what are the main barriers that affect access to justice for persons with disabilities, they

answered that **the main problem is actually the physical inaccessibility to the judicial facilities**. With that, even if the mechanism is found to enter the building, the problem arises with a lack of inside adaptability and **inability to access the information because it is not taken into consideration the existence of multiple forms of disability**, and thus, one participant in this focus group with persons with special needs said that:

“There is no what is called easy reading information, information that is easy for understanding, graphed, or some such method. So that alone the ability to reach it, and to some justice, a process that is in a physical sense reduced, in relation to the other categories of people”.

One of the most important obstacles to the achievement of justice that the participants raised are **the attitudes, prejudices and stereotypes that judges, prosecutors and lawyers have towards people with disabilities**, which is explained by a lack of knowledge and of specific cooperation with persons with disabilities, as well as insufficient sensitivity. As one of the major problems they mention the corruption of judges, which is reflected in supporting the exploitation of people with disabilities, by manipulating the certificate of legal capacity by caregivers, and where there is no need for overhauling the validity of that decision and the control of caregivers.

Also, given that persons with disabilities are generally of lower socioeconomic status, they are not able to provide themselves with legal aid, and therefore do not have the ability to seek protection from the law. In the same status are women:

“So that is a serious obstacle for women, their financial status... more marginalized groups of women, it is more difficult to achieve justice and it is a poorer access”.

In addition to the difficult financial position that women are facing is the inability to obtain adequate information about which institutions to contact, where to go for free legal assistance and similar. Participants from the representatives of women's groups suggested that the presence of prejudice and negative attitudes, directed towards women, is noticeable during the procedure, and therefore women declare distrust of the courts and the judicial system.

“Trust in institutions, among women, is less, by the experiences that we have, than men, because they are still in very important positions, and I'm not going to say anything bad about them, only a reflex of that, that the more men you have in one institution, the more female stereotypes you have, in respect of the exercise of rights”.

That **the lack of funding is a problem with all marginalized groups** is also reflected in an interview in a focus group in which minorities participated, where one of the participants said:

“Perhaps the biggest obstacle at this point... is that they probably do not have enough money to pay for legal services”.

The language problem in the process is highlighted, when it comes to minorities, which leads to the same problem that have other marginalized groups, and that is **inability to access to information. Corruption and political reasons stand out as important factors that impede access to justice.**

Participants in all three focus groups expressed the view that their involvement is essential in the process of creating new legal regulations that affect them, because, as mentioned, mostly, the people dealing with issues facing minorities in general are people who are not familiar with the issues and do not have the knowledge to deal with the same, but they are involved in the creation of laws concerning these vulnerable groups - as noted by one participant:

“If you look closely, we see that in all projects where somewhere has rights, everyone is engaged in the protection of rights, they protect us so much that we remained there so unprotected, it's really over, here, more debatable”.

Participants believe that **there is a clear correlation between the quality of judges and access to justice.** Specifically, they find that the outcome is always conditioned by the sensitivity of the judge and his knowledge about the legal status of persons with disabilities, women and minorities. One of the participants considered:

“Without quality judges, there is no realization of the principles of fairness, justice or satisfaction in any proceedings, whether it's criminal, civil, or administrative contentious procedure”.

Trainings should be designed to intensify the sensitization of the judges about the issues of these groups but also to enhance and improve the application of the law. One of the proposals is a seminar on the application of the Convention of the European Court, so the same, since it is ratified, would be applied in practice. Also, they find that **the evaluation of judges and prosecutors is essential in order to monitor progress after attending such training.** Also, they noted that specialization of certain subjects is necessary. A participant in the focus group with representatives from minorities believed that it is more necessary to educate other actors in order to put some pressure on the work of judges.

As for the use of alternative dispute resolution, many agree that such a system is necessary to lighten the burden of the judiciary and to speed up the realization of justice. Of course, it should be taken into account, which type of offense is concerned and for what purposes it is used:

“I would say, even in segments of the story of violence, this story is good, especially the part that refers to an alternative approach, it may be useful particularly in those segments that are related to determining marital

issues and determination of child support, for example, because most of the time lost is lost, the most powerlessness is collected in every woman who is trying to come to, justice, and what belongs to her and her child”.

Comparing the present with the situation of a decade ago, all of the participants agreed that there has been a significant progress for the better, in terms of the adoption of new laws, adjustment of the existing ones, and similar, but they find that a lot more could have been done - as claimed by women's group representatives:

“But people, we could win the moon in ten years, and we did not do anything for us to be substantially better”.

3.4 Conclusion

As a general conclusion, general dissatisfaction with the work of judicial institutions can be stated, as expressed in all groups. In this regard, focus group participants repeatedly emphasized **the importance of evaluating the work of employees in the judicial institutions, which is essential in the context of ongoing work to improve the quality of judicial institutions**. Such an evaluation would function, as some of the participants consider, as a kind of monitoring which should ultimately result in the implementation of sanctions for employees whose work is negatively evaluated - its function would, therefore, be corrective. On the other hand, such an evaluation will indicate the basic omissions and errors that need to be repaired, which suggests the possibility of additional training of employees in the judiciary, which would imply their professional training, but also raising awareness of certain issues and sensitization for specific topics. In addition, the judiciary, through education, should be able to decide independently, with raising courage, overcoming self - censorship and fencing off of various influences such as those of higher judicial instances and political pressures.

However, when it comes to the education of judges and prosecutors, focus group participants identified a number of problems, considering that **the Judicial Academy should introduce new courses**, which have not yet been represented, and tighten criteria when it comes to the selection of persons who will attend the Academy.

All of the participants emphasized the direct relationship between the quality of judges and access to justice, where it is considered that the judges of higher professional qualities contribute to fairness and facilitate access to justice. Some of the most important professional qualities, that are listed as necessary, when it comes to judges as well as prosecutors and lawyers are **ongoing training, specialization in a particular matter, constructed sensitivity to certain issues** - also it was frequently discussed how it is

essential that judges have expressed authority. However, when it comes to the above-mentioned route, in the second group of focus groups (access to justice) **negative experiences prevail**, and, thus, the negative opinions about the quality of the majority of judges.

It is important to note that the participants of both groups of focus groups underlined the problem of **non-application of international instruments that have been ratified** and that as such, this, in different aspects can contribute to the quality of justice in Serbia. In the second group of focus groups there was a prevailing opinion that the main obstacle to access to justice in Serbia, in fact, is inaccessibility *per se* - not being able to equally access the court because of misunderstandings, prejudices and attitudes of the employees of the judiciary but very often other restrictions and inadequacies are mentioned, when it comes to access to the courts, from the impossibility of physical access to the courts of persons with special needs (lack of ramps for the disabled), through failure to follow the trial and usage of the required supporting documents (document formats for blind and visually impaired, language for ethnic minorities, general maladjustment to LGBT, etc.), to the considerable financial problems that interfere with conduct of the proceedings, which is why it is necessary, consider the respondents, to work on the Law on Legal Aid, in order to be able to gain access to justice and enjoy all the benefits of justice. In general, as one of the main problems faced by participants in the second group of focus group is **the problem of accessing information**.

When it comes to minorities, women and persons with disabilities and improving access to justice for these social groups, what is often ignored and is of great importance, is **the participation of these groups in the process of proposing or adopting new legislation**, which would in their opinion, greatly improve their legal protection.

Part of the participants agreed that **it is necessary to formalize the systems of alternative dispute resolution**, for the sake of unburdening the courts and improving the speed and efficiency in resolving disputes, but that the general public should be informed about the existence of such systems and the benefits that they carry. Mediation would, they emphasize, shortened procedures, but it should be carefully selected which disputes can be resolved in this way.

However, all participants in both groups of focus groups, note that in the last ten years there has been some progress and improvement, but many still find it necessary to intensify efforts when it comes to the formation of a more independent, more professional and more efficient judiciary in Serbia.

⁷ See more in Wodak, R., & Meyer, M. (Ed.). (2001). *Methods of Critical Discourse Analysis*. London; Thousand Oaks; New Delhi: SAGE Publications.

IV The Realization of the rights of women, persons with disabilities and minorities in Serbia - A critical discourse analysis of the attitudes of the citizens of Serbia

By Amar Numanović and Saša Madacki

4.1 Introduction

The aim of this analysis is to provide deeper and more detailed insight into the attitudes of the citizens of Serbia, when it comes to the problem of exercising the rights of certain social groups; women, persons with disabilities and minorities, and to examine how these attitudes are articulated. Accordingly, it seeks to show which words, phrases, stylistic and rhetorical strategies are mostly used and what are the perceptions and how they are manifested.

4.2 Methodology

In this study, for the purpose of analysis, qualitative research methods were used, with the main focus on analysis of attitudes and (critical) discourse analysis. The exploration of the citizens' attitudes in Serbia was carried out by analyzing the corpus of collected responses to a given question.

Discourse analysis has a purpose of analyzing text on its discursive level, using linguistic, stylistic, semi-otic and other findings with the aim of ensuring a deeper understanding of the text, while critical discourse analysis is trying to contextualize discursive (textual) practice with wider social, cultural, political, economic and other influences.⁷

4.3 Sample

The analysis includes one hundred and forty seven responses / comments during the period of February 19, 2013 to May 5, 2013. The sample is probabilistic – the applied sampling strategy was simple random sampling that involved random types of respondents and responses (those who have visited the B92 website, which contained the questionnaire) who participated on their own initiative in accordance with the invitation to participate. This allowed the plurality of respondent profiles, according to gender, ethnicity, age, cultural, economic, social and personal characteristics, etc.

4.4 Research Instruments

The questionnaire that was used was an open *format questionnaire with open-ended questions*. The *online questionnaire* consisted of 10 (independent but inter-related) questions, but this study analyzes responses for only one question (third in order), that follows: *Do you think that women, persons with disabilities and/or minorities have difficulties resolving their legal problems in Serbia? If yes, please explain why you think so and provide specific reasons.*

4.5 Process and Problems

First, all of the one hundred and forty seven responses to the question, mentioned above, were gathered and all are included in the analysis.

Given the spelling characteristics, specific to the form of internet comments, and which imply the absence of common grammar and punctuation rules, starting with punctuation, capitalization, to typing errors such as replacing or absence of certain characters, are neglected in the analysis because they are not in the focus of research. Therefore, in the English translation, such mistakes are corrected, and the comments in the original form can be found on the original website. Also, during the translation, some of the characteristics of the comments are lost, but the translations retained the essential elements required for the purposes of this study.

Identification of the comments was carried out on the basis of name given by the researcher to all of the respondents (name: “comment”), but the date and time of the comment posting are left.

Even though codenames that the participants left on their own initiative are, as such, available to the general public, in this study, we decided to change them, and through that not to violate the ethical prin-

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)

ciples of research.

Furthermore, the retention of such data, the date and the time of comment posting, makes it easier for potential researchers to find the location of the comment, in the purpose of comparison, verification and implementation of new conclusions.

4.6 Results of Analysis

The conducted analysis is focused on the different perspectives and aspects related to the issue of the problem of difficult access to justice of certain, marginalized social groups, such as in this case, women, persons with disabilities and minorities.

Efforts were made to gain insight into public opinion in its full complexity, which includes an analysis of attitudes, but also an analysis of the articulation of these views. Therefore, the results do not imply any kind of quantification of data, but aim to identify, describe, and put into a broader context the key positions as well as the rhetorical and stylistic strategies of representation of social actors and expression of individual beliefs.

Although it is not possible to conclude that the collected comments were uniform, it is possible to identify several dominant matrix opinions as dominant views and explanations, which will be exhibited in the sequel, separated by subject matter.

To analyse claims, set out in the comments, and figure them out of the structure, and in order to be understood in the context, it is necessary to ask a series of questions such as:

How are *social actors* represented? Which of them are represented *as agents* (those who motivate action or state) and which as *patients* (those who suffer)? Which *social actors* are attributed with responsibility? Which *actors* are represented as victimized? How are the relations between them presented? What are the *rhetorical strategies* used in presentation and with what cause? Which phrases and keywords are used to describe the problem and what does that suggest?

Analysis of these issues, as well as a wide observation, has led to significant results that opened access to the Serbian public opinion when it comes to problem-defined questions.

4.6.1 Representation of Social Actors

The analysis of the representation of social actors in the comments of the Serbian citizens is very important if we want to identify attitudes about the responsibilities of actors, define relations between the actors, and identify and diagnose the general perceptions of the actors in the context of the problem of exercising the rights in the Serbian judiciary.

Social actors that can be identified and extracted of the existing body of comments are (a) *women* (b) *persons with disabilities*, (c) *minority* (d) *judiciary - employees of the judicial institutions*, and (e) *the government and political elite* as a more abstract category, which, very often, is important and responsible in connection with the problem of (non)realization of the rights of these groups, but also the rights of Serbian citizens in general.

Representations of these social actors in the analyzed corpus of comments are not consistent, which is the indicator of diverse opinions of citizens when it comes to the problem of exercising the right way and these actors per se.

(a) Women

The perception of vulnerability of women and representation of women as social actors varies within a range from complete affirmation of the attitude that women are highly marginalized and vulnerable in Serbian society and the judiciary, to the attitudes where it is possible to say that they border with misogyny. It is common to hear that women have exclusive rights in relation to men, especially when it comes to divorce lawsuit and disputes related to child custody and alimony.

In the comments, women are seen as *patiens*, but also as *agens*, especially if they occur in the function of the judge.

In most cases, women are shown as being deprived of their rights, discriminated against, or as a party with a weaker position in the legal dispute, such as:

- *I believe that women are discriminated and it's harder for them to exercise their rights.* (comment, March 15, 2013 15:30)
- *Women and the disabled are less protected.* (comment, March 30, 2013 24:04)

So women are sometimes considered disadvantaged in the same way/category as well as persons with disabilities and minorities, and the disenfranchisement or inferiority of women in judicial proceedings is treated as a separate issue and, in a sense, is singled out in relation to other marginalized groups.

Examples of this situation, by the respondents are recognized in a variety of ways, and the most commonly identified reasons are the general social position of women in Serbia, as well as their economic status or poverty. Thus, one of the respondents, cites poverty and the lack of education among women (comment, March 25, 2013 03:16), although it remains unclear what was meant by lack of education. However, we can guess that it is a social/family conditioned lack of education, arising out of the local cultural context and traditions, among which still largely dominates the practice of women being uneducated, and a lack of recognition by one part of the population for the education of women, especially higher education.

The key difference is actually the economic one, arising from gender, and represents the cause of the poor position of women in the judicial process, similar the attitude is expressed in the following comment:

- *I think so. To women sure is, because, in percentages, they are economically weaker party, and I think that the services are not of the same quality of justice for the poor, as well as for people who can not afford better quality trials and better legal protection.* (comment, March 11, 2013 11:27)

This comment suggests a different quality of trials depending on financial ability, which in itself means that the judiciary does not provide equal opportunities for all citizens, and in this case for women as compared to men.

However, several comments insist on the fact that women are significantly worse off, in general, and that the judicial proceedings are only one of these aspects. So, for example, one of the respondents stated that the rights of women as citizens are, in every context, discriminated and subordinated:

- *Therefore the position of women is very difficult. Everywhere, they are exposed to harassment and bullying.* (comment, February 26, 2013 13:34)

To specify such a position, that is, to make it more visible, not as a passive, but as an active, so to say, attack on women, respondents resort to describing the specific situation of women in a way that represents them as patients, as social actors who submit bullying and harassment. This stylistic construction has expressively strengthened the description of the poor status of women in Serbian society.

Particularly expressive is a comment of one respondent, who believes that the position of women in Serbia is beneath human dignity, comparing the treatment of women in relation to objects, which aims to draw attention to the patriarchal cultural context in which the perception and attitudes towards women are still not at a satisfactory level:

- *The position of women is below the dignity of every human, and they are seen as objects with which*

it can be manipulated to whom comes to mind. Examples are in employment, pregnancy, court proceedings ... (comment, March 1, 2013 07:19)

That, in the opinion of the respondent, reflects the different social segments, resulting in the poor status and position of women in society.

According to these comments, it is possible to draw the conclusion that the disadvantaged position of women in the judicial process, that these respondents recognize, is the projection of the general social status of women with all the other problems that such a position produces (from the disregarding of women to the economic problems they face).

In terms of the former, it is possible to interpret and statements like:

- *Women are not doing so badly if they are in politics.* (comment, March 11, 2013 18:57)

This suggests that the position of women in Serbia is not universal, and that it depends largely on the economic and social status of women. Therefore, considers this respondent, if women are in certain functions, such as political, they have much more power and influence. Again, the dichotomy, material status is emphasized, where the manifest cause is identified at the level of relations between the poor and wealthy citizens, even when it comes to members of the listed groups.

As a special issue on several occasions, court cases have been singled out related to divorce proceedings and disputes about child custody and child support payments. Also, as a significant problem, there is the problem of domestic violence.

As some of the problems in connection with this type of dispute are that in the cases of domestic violence there is no compliance with the statutory urgency, then the lack of sanctions for non-payment of child support (comment, March 13, 2013 11:11), then, women are, considers one respondent, asked to agree on everything, the pressure is on them to get a divorce (comment, April 4, 2013 14:12) etc.

Again, we stress the fact that men are financially superior and that this is certainly affecting the whole process, and women are (mostly mothers) placed in an unfavourable position because they do not have the same financial opportunities, and very often have to take into consideration a number of other elements, such as concerns about children, household and business, etc. In particular, the problem of avoiding payment of child support by fathers is emphasized, which tells us about the existence of this experience in Serbia and recognizing the problems of a large number of respondents.

These problems are clearly pointed out in the comments, such as:

- *(...) and most women are single mothers of minor children and damaged by this institutional failure.* (comment, March 13, 2013 11:11)

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

- *This position is largely hampered by the fact that in Serbia it is still expected for women to take care of children, and often for that reason women are unemployed and do not have enough resources for hiring lawyers. Therefore they are often demotivated to pursue their rights in court. Woman as an extra-marital partner is also always at a disadvantage, because the regulations are not sympathetic. Although, by divorce, children, as a rule, belong to the mother, fathers avoiding child support payments, and there are still not enough developed mechanisms to solve these systemic problems efficiently.* (comment, March 11, 2013 13:38)

- *During the litigation (over a year) alimony is not determined. So it is very often the case that women do not receive a single dinar for Child Support. During that time, a man has money to pay lawyers and expert evidence mounted.* (comment, April 4, 2013 14:12)

In addition, the problem and the lack of a mechanism to prove domestic violence is identified, which impairs or prevents the efficient conduct of the proceedings, which, again, puts a woman - the most common victim of violence - at a disadvantage:

- *By domestic violence it is understood only murder or serious bodily injury, so it is virtually impossible to prove. I think it is clear to everyone that violence against women is not done in front of witnesses, but at night, within four walls.* (comment, April 4, 2013 12:48)

Still, there are those respondents who think differently. So, when it comes to divorce and procedures related to domestic violence, one of the respondents believed that women are in a far more favourable position than men:

- *Moreover, I think that in the divorce trials and procedures related to reports of domestic violence, women are now far more privileged* (comment, March 13, 2013 10:47)

There are comments that exaggerate the so-called privileged women. One respondent believes that women in Serbia are even more favourable compared to women from the countries of Scandinavia. In that way, Scandinavia is used as the merits of women's rights and democratic values:

- *Women of course not, they have a better position than in Scandinavia.* (comment, March 16, 2013 18:34)

However, this implies the opposition between developed countries, that are considered to have introduced democracy in the countries of former Yugoslavia, and Serbia, as a newborn democratic state in which, according to one of the represented narratives, are implemented values from the outside (even those, according to one of the local population, which truly do not work, not even in developed countries). This is evident from the following comments:

- *I think the whole women issue in Serbia is imported by force from cultures where women had, up to thirty years ago, a disadvantaged position and over there has justified a variety of reforms, however this fits us as much as the Swedish air conditioning. Where there is a problem with women and other categories with disabilities, they need to be solved, but you should always take local specifics of our state into consideration. And the question was posed in the spirit of defaming worry about the position of women, even though in the context of the legal system there are many aspects in which men are at a disadvan-*

tage - the case allocation to a custody in the divorce proceedings, blanket victimization of women in the criminal proceedings, etc. (comment, March 14, 2013 14:45)

When it comes to attitudes which, the position of women, treat as privilege, one comment raised by a Father, who on the basis of his own experience tries to point out that there are cases in which women are more favourable:

- *To the question I will answer with a question. Do you know how it feels when, on a hearing for child custody, you have prosecutor (women), lawyer (female), the judge (a woman), two lay judges (women), typist (women) sitting against you? What kind of discrimination are we talking about in the country, where in the media, women (public figures) praise the fact that they don't allow fathers to see their children, despite court decisions? In a country where procedures of child support and seeing the child are separated, where the failure to provide maintenance is a criminal act, and disabling the other parent to carry out parental responsibilities is not? (comment, February 22, 2013 19:09)*

Repetition of this lexeme 'woman' is in the purpose of highlighting the presence of women in the justice system, but also functions as an indicator of injustice in relation to him as a man and a father in a dispute, which he has directly experienced. By using these formulations in the form of questionable sentences and using means of rhetorical questions, the respondent wanted to create an additional expressive charge, but also to put the reader in the position of someone who fits and completes the thought. In addition, the respondent expresses scepticism towards the true presence of discrimination against women, citing an example in which the women - public figures, praise how they do not allow fathers to see the children, which in the context of the comment is interpreted as evidence of the possibility that men are the ones who are actually discriminated against.

However, the respondent has largely projected his private experience and self-interpretation of that experience on a wider social context.

(b) Persons with disabilities

People with disabilities are generally perceived as vulnerable, very often in the comments that exclude or deny the vulnerability of women and ethnic minorities. However, an indicative fact is that in most of the comments the only problems mentioned are difficulties approaching the buildings of judicial institutions and insufficient financial resources, while identification of other potential problems is mostly absent. This fact indicates the lack of familiarity with the problems which marginalized and socially excluded groups of citizens have to deal with and resolve. Furthermore, it is possible to note that the disability is mainly perceived as a disability related to the possibility of movement (non-functionality or lack of limbs, or, although not explicitly stated, low vision or blindness, which also hinders movement and access to buildings and institutions), while other forms of disability are not present or are represented only implicitly.

People with disabilities, in all commentaries, are represented as patients. It is interesting that, even in the comments where the other two groups are not recognized as marginalized, people with disabilities are:

- *As far as women or ethnic minorities are concerned, I do not think anyone has difficulties to "access justice", but ones who do most certainly are persons with disabilities. Persons with disabilities have problems with transportation from the place to the place, then access to facilities, etc. I think that persons with disabilities should be allowed to perform certain legal tasks over the Internet and/or to form teams to carry out work for immobile or hardly movable citizens.* (comment, March 11, 2013 10:07)

However, as noted above, the focus is mainly, and explicitly, on the possibility of physical access to the premises of the court, so that in many of the comments like the most problematic issues occur lack of specialized equipment (ramp, etc.) for people with disabilities, lack of lifts in some institutions, the lack of adequate access roads etc. Thus, in a commentary, such situation is described as terrifying and painful to persons with disabilities (stylistically marked vocabulary is used, such as the use of the term Golgotha):

- *All the above-mentioned categories of persons are equal in court, but the way to the courthouse is true Golgotha for people with disabilities, because approaches are not adapted to such persons. The physical pain that they suffer while climbing to the courthouse is immeasurable. And then the trial is postponed ... and so again and again.* (comment, March 16, 2013 00:25)

In addition, in one of the comments, as the problem allocated is the inability to recognize persons with disabilities as such, but underdevelopment of mechanisms and the realization of rights on the basis of disability is also stressed:

- *When, for example, it comes to people with disabilities-they are in a very large number of cases unrecognizable "in the system" as such (people with disabilities), and they don't even have secured exercising of the rights on the basis of disability, which is definitely unacceptable. People with disabilities have the opportunity to achieve a very narrow circle of law, which is mostly limited to social rights, as this category of persons who are unjustly marginalized. The very definition of disability in Serbia is formal - medical and social category. This attitude towards this category of persons is certainly not acceptable, because the state does not seek to provide them with support and guarantees, but "social welfare". I believe that the situation is similar with the other specified categories of persons.* (comment, March 27, 2013 18:11)

That the attitude towards persons with disabilities is particularly bad is visible in yet another comment:

- *As far as persons with disabilities are concerned, I have noticed that they are simply treated as ... nothing, they do not even want to hear if someone does not stand behind you, and if someone does not intercede for you.* (comment, March 20, 2013 13:53)

To emphasize the extent to which such a relationship is bad and inhuman, the respondent avoided finishing the sentences, leaving them unsaid, but suggesting the "weight" of the concept. Such a rhetorical strategy leads to the intensification of an emotional and expressive charge. Complementary to this commentary, the next comment, by using a metaphor, also highlights one very bad position of persons with disabilities:

- *Persons with disabilities undergo the worst in the whole story, because usually they are very poor,*

and no one is behind them, so in any process they have no chance because they are NOBODY!
(comment, March 7, 2013 02:40)

From the previous two comments, it can be seen that people with disabilities are missing actual support from people who would have some sort of impact or could otherwise help them through the dispute. However, comments where it is considered that people with disabilities are not discriminated against, is separated:

- *I think that people with disabilities are not discriminated against and have equal rights in resolving litigation.* (comment, March 15, 2013 20:40)

This indicates that even in terms of the status of persons with disabilities, there is no absolute consensus.

(c) Minorities

The term minority is in the comments generally perceived in the semantic field as the term ethnic minorities.

For example, sexual, cultural and other minorities are almost not covered by the comments, which acts as an indicator of specific and exclusive perceptions and attitudes, and a reflection on the concept of minorities and issues specific to them.

Exactly critical discourse analysis, the absence or omission of certain social actors, identifies as rhetorical strategy or exclusion of certain social actors, and therefore the omission of their role in a broader context, or as unconsciousness of their existence, action, or the importance of these social actors, which functions as a symptom of a particular public opinion.

When speaking of (ethnic) minorities, they are in the comments usually reduced to the Roma community, so that Roma can function as a distinct sub-group within the category of minorities. Although minorities are less commented about in relation to the other two groups, it is possible to extract some important points.

One of the problems faced by the (ethnic) minorities mentioned is the nationalism of some judges, as explained in the following comment:

- *Justice is unavailable in Serbia for ethnic minorities because there are nationalists among judges. It would be great if there was a video camera in the courtroom to see how those judges behave. The worst is the First Basic Court in New Belgrade. There is general chaos.* (comment, March 21, 2013 14:04)

The respondent even cites the First Basic Court in New Belgrade as an example, although it remains unclear whether he refers to the problem of nationalism or general problems such as inefficiency, etc.

That the main problem, encountered by minorities, actually is nationalism or prejudice towards ethnic minorities by particular judges, this attitude is also expressed in another comment:

- *Yes, because some judges convict them just because they are the minority.* (comment, March 15, 2013 23:28)

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

However, such a bias can be considered to be socio-culturally-rooted and as such reflect the judiciary, which was considered by one of the respondents:

- *Second, the prejudices against members of ethnic and other minorities are deeply rooted in our nation, and therefore in the judiciary.* (comment, March 1, 2013 07:19)

On the other hand, the problem is the social status of these minorities, who often do not have the opportunity to be adequately educated; they have financial and other difficulties. Therefore, ignorance in the functioning of the judiciary, lack of awareness about their rights, etc., represents, as some of the subjects believe, a special problem, which aggravates the situation of these groups:

- *Members of some minorities are, for example the Roma population who do not have sufficient knowledge of who they need to contact for legal assistance, and not enough financial resources for implementation and support.* (comment, March 5, 2013 16:21)

Apart from lack of education and the lack of information, the material conditions of these groups makes it difficult for them when it comes to their social status and position within the judicial process, just as is the case with the other two other groups, when it comes to the attitudes of respondents:

- *Persons with disabilities and national minorities do not have money to achieve justice and are always in the background. These categories should be given help and advantage in legal proceedings, at least legal and financial help* (comment, March 16, 2013 19:15)

The respondent believes that these groups should enjoy a different status (in the form of aid/benefits) to be in a more favourable and equitable position.

However, some respondents see it just the opposite, so in a commentary is cited the problems of the reduction in the number of courts in the territories where minorities are quantitatively superior:

- *Reducing the number of courts in the territories where minorities outnumbered.* (comment, March 25, 2013 03:16)

By using this construction 'superior', it is suggested some kind of antagonism between ethnic groups, or more precisely in relation to the majority-minority.

Not all respondents agree on this issue. Thus, one of the comments, which can be treated as a racist, suggests that the rights of minorities are sometimes advantaged, arguing this as a kind of social, cultural and economic difference, without being aware of the very essence of the problem:

- *It seems to me that minority rights are being exploited. Why should, for example, Roma receive social housing from cardboard hovel? A mass of people who work, pay taxes, obey the state, are deprived of the apartment.* (comment, March 12, 2013 10:43)

Except for explicitly insulting the Roma population, this view also introduces polarization between people who work, pay taxes, obey the state, and the Roma, whom the respondent considers to be the opposite. It is possible to conclude from this that a certain part of the general public is not sufficiently informed and sensitive when it comes to minorities, and thus falls into the trap of reasoning based on stereotypes. Stereotypes are also exploited in the following paragraph, which makes the difference between, so to speak, emancipated, adapted Roma, and stereotypical ones, shown as messy and uncivi-

lized:

- *I ask you, would you also judge if you see a Roma who is nicely and normally dressed or wearing earrings, unshaven and stinks? I have a friend, a normal man, a citizen of Serbia and a Roma. According to him, I have no prejudice, and behave as if he is a Serb, and the court treats him the same, therefore he gained the appropriate sentence for the offense for which he is guilty, as well as my Serb friend.* (comment, March 11, 2013 16:19)

These comments indicate to us that when it comes to issues of ethnic minority, more rigid attitudes are noticeable, when compared to the other two groups and that it is possible to perceive a broader social issue that involves the need for education, information and breaking stereotypes in a broader social context, in order to make impact on the quality of justice and court cases when it comes to minorities.

(d) Judiciary

Employees of the judiciary are generally represented as agents of those who directly produce discrimination in the justice system and are responsible for it. Several times the comments mention the legislation and aspects of its validity or inadequacy, while it is very often mentioned that judges inadequately apply the law or that they are guided by their personal beliefs or acquaintances, the pressures that are on them or financial benefits for an event of corruption.

When it comes to the relation between judges towards these groups, women, persons with disabilities and minorities, we often talk about unfair treatment.

As for the reasons for this, the following factors are mentioned; nationalism (comment, March 21, 2013 14:04), insufficient sensitization (comment, March 11, 2013 11:27) and others, and, one of the reasons is identified as a kind of stubbornness and arrogance as can be read from one of the comments:

- *If the opinion of the judge does not agree with the facts, then the judge acts in the way he thinks it should be, and disregards the facts* (comment, March 17, 2013 09:40)

However, the prevailing view is that the biggest cause of the problem, whether it be on marginalized groups or the citizenry in general, are corrupt judges and prosecutors, and the ability to exercise political influence on them, or influence through networking. Such attitudes, in various forms, can be read from several comments, such as:

- *With the help of corrupt judges and prosecutors in Serbia, which are enough?* (comment, April 14, 2013 17:16)
- *We have a lot of trained judges; the problem is they are obedient but immoral.* (comment, March 27, 2013 18:18)
- *I think in Serbia "justice" is in the hands of those who have money, power or family links with the*

judges. (comment, March 15, 2013 19:09)

Also, nepotism is stated as one of the factors, which negatively affects the work of the judiciary:

- *Here, the law is not respected by judges and the courts. That's why so many judges are placed through "connections".* (comment, March 10, 2013 24:50)

In contrast to these, there are somewhat more moderate views that see the judges as the victims (patients) or applicants of a system, and one of the problems to identify is the work standard by which the judges must meet the quantitative standard cases resolved within a certain period of time:

- *Unfortunately, judges are standardized in their work, and since it takes years (standard, dismissal, etc.), the judiciary came down to the finished item. No one in the court has any time, desire, energy or special motivation to deal with someone's life. The important thing is just to finish the case as soon as possible.* (comment, March 8, 2013 19:19)

On the other hand, in the second commentary it is said that the courts are too slow:

- *According to information from the President of the Association of Judges, one of the judges in Austria does twice the number of cases in half the time than those judges in Serbia. So that all this talk about how they work in Serbia.* (comment, February 27, 2013 20:44)

Generally speaking, judges are generally recognized as responsible for the current legal climate, and poor judicial processes and outcomes of these procedures, but very often, comments are suffering from a lack of information, "from the other side", or suffer from a lack of political perspective that would eventually include constraints and problems faced by the judges. However, it is possible to conclude that among the citizens of Serbia, worrying distrust is dominant towards the judiciary, judges and prosecutors.

(e) Government and political elite

Although, based on a given corpus of comments, authorities and political elites can be extracted as social actors, yet it often remains unclear what that implies, because they are, in the comments, represented abstractly by the respondents.

Although, based on a given corpus of comments, authorities and political elites can be extracted as social actors, yet it often remains unclear what that implies, respectively, they are represented abstractly.

Therefore, it is possible to conclude the basic factors that are associated with scepticism and mistrust towards them, and that is reflected in the attitudes that the authorities and the political elites exert influence on the judiciary, and are developing policies that are going to damage the categories mentioned or, as a number of comments point out, the poor and those who have no social capital that would guarantee an impact on the outcome of the trial.

4.6.2 Do Women, Persons with disabilities and Minorities Tend to Resolve Legal Problems in Serbia? Identification of the Problem Causes

In the analyzed comments, predominant is the view that these social groups are facing more difficulties in exercising their rights in the judicial system in Serbia. Besides this basic conclusion that these groups are in a worse position when it comes to exercising their rights, there are a number of other stylistic and rhetorical structures - argumentative, expressive, referential, etc., which supplement the general picture of this problem.

However, very often, within the comments themselves, these three groups are distinguished, different roles are attributed to them, different positions and so on, and it is therefore evident that these three groups must be approached in different ways, that is, to them and their position must be approached on the individual level, whether it is about the problems they face or the causes of these problems.

Citizens of Serbia, in the comments, identified several different causes of problems, when it comes to listed social actors.

Thus, the lack of financial resources of these groups (women, the disabled, minorities) is often taken as a relevant reason for their inferior position in relation to other citizens, but it is not explained what are the reasons why they are in a worse financial position.

Poverty and scarcity of material resources, or subordination, or marginalization of economically inferior in judicial processes, in a very large number of comments is identified as the primary problem faced by marginalized groups and citizens in general, so that the problem of the economic status is given a priority, considering the problem of social groups to which a party to the dispute belongs.

Given the prevalence of this attitude, as for example in the following comments:

- *I think that Serbia has a wider group of people than those you specified, and which are more difficult to solve legal problems. I would select it in the following way. Eighty percent of people in Serbia have difficulties resolving their legal problems, and the reason for this is lack of money.* (comment, April 14, 2013 17:16)
- *I think that it is more difficult for them. And not just for them, but for all people who are poor and without any money.* (comment, April 3, 2013 00:12)

It is possible to talk about the poor as special social actors, although in this study they weren't allocated separately because of the focus of the research. It is possible to argue that, as a basic dichotomy in the position and status, for a large part of the surveyed Serbian public the difference builds on the class differ-

ences, or between the economically superior (the rich) and economically inferior (poor), except that very often, social capital, as well as symbolic and institutional power, is taken for the essential characteristic, when we talk about the eligibility of certain individuals in relation to others.

Moreover, on several occasions, in the comments are extracted the elderly as a separate, (unrecognized) category, which, in the context of justice, can be considered as vulnerable.

When it comes to the other causes, that is, the reasons that lead to the disadvantage of marginalized groups, unsatisfactory level of education, the general cultural context (marginalization in the culture that is projected on the position within the judiciary), the political climate and the political pressure are most frequently listed.

However, in contrast to attitudes that tend to confirm the bad position of these social groups, there is one group of comments that views this position from a different angle. Thus, for example, one of the respondents think that the problem does not lie in the judiciary, that the reasons should be sought elsewhere, and that discrimination occurs as a sporadic and not as a dominant practice:

- *However, based on a very personal bad experience with the judiciary, I believe that for these people it is harder to exercise their rights, because they are in a more difficult position, in most cases insufficiently educated and often with a difficult financial situation. However, I think that there was no discrimination, or it occurs rarely, as a sporadic phenomenon.* (comment, March 24, 2013 17:10)

In addition, there are a large number of views that deny the opinion that the target groups are harder to solve their legal problems in Serbia. However, such responses are generally not further explained (which is probably largely influenced by the very structure of the question), so that in these cases it is unsaid if it is considered that these groups are not affected by this issue (with the assumption that they are all protected against law) or is it believed that all citizens are in an equally poor condition, as some of the respondents clearly emphasized.

4.6.3 It's Equally Difficult for All: Equality in the Unavailability of Judicial Authorities

In the analyzed comments it is a very frequent attitude that all citizens of Serbia have difficulties in exercising rights, and that these specified groups do not represent exceptions. In relation to this kind of attitude, it is possible to conclude that a significant portion of citizens believe that the phenomena, such as the problem of exercising rights and discrimination do not represent excess, it is more a dominant practice of judicial institutions in Serbia.

It is possible to diagnose the general dissatisfaction of the citizens with the justice system. Therefore, it is

a common opinion that "all" are "threatened" in the judiciary when it comes to exercising of rights. To the intensification of the general feeling of dissatisfaction contributes the repetition of certain sentences noticeable in several comments, such as "We're all having difficulties equally" or "We are all equal in the inability to exercise rights," as in the following examples:

- *Judicial authorities are equally inaccessible to everyone, and unfortunately, in that we are all equal.* (comment, March 18, 2013 11:15)
- *I think everyone in Serbia has equal difficulties to exercise their rights through the courts.* (comment, May 5, 2013 17:55)
- *I think everyone in Serbia has difficulties solving legal problems, as well as these groups.* (comment, March 16, 2013 13:29)⁴
- *I think that we all have, as citizens of this wannabe state, prevented access to justice in any way.* (comment, March 11, 2013 17:22)
- *Generally speaking, so far all categories of citizens were prevented from legal and effective realization of the rights in court.* (comment, February 27, 2013 11:18)
- *I believe that all ordinary citizens of Serbia are powerless in front of the judiciary.* (comment, March 15, 2013 23:33)
- *I have no information about it, but I do not belong to any of these categories, and still I put up with great humiliation in proceedings before the courts, the procedures themselves, and by judges, public prosecutors and the Public Attorney* (comment, March 15, 2013 19:55)

However, some citizens who make the survey sample, by using the construction "all" or speaking about the general vulnerability and inability to exercise the rights, are introducing the polarization between "ordinary", "honest" citizens and the political and social elite. By such dichotomy where it is used the rhetorical strategy "we - they" to emphasize the vulnerability of the "we" (with which these respondents identify) it is outlined that the second "they", are those who threaten or have a privileged position. In representation of the citizens as a category, moderately stylish marked lexemes are used, and the adjectives that have the goal of the positive evaluation of citizens as social actors or even to present them as subordinated, oppressed, circumvented (e.g. "losers of transition") in contrast to socially privileged individuals are added. In this case, the difference in the degree of discrimination or the problems in exercising rights in the justice system between these groups and the rest of the citizenry is transcended, but a new financial or tangible (or class) dimension in the understanding of this problem is introduced. When it comes to social and political elites, which represent the second half of this dichotomy, the representation of these factors by respondents generally follows the trend of using pejorative vocabulary and stylistic resources, in order to describe them as privileged, criminals, etc., and therefore respondents resort to use language structures and expressions which denote or connote socially unacceptable behavioural patterns, such as the use of the term "tycoons" which in the Serbian culture and colloquial language, but also in everyday discourse connotes extremely negatively.

Such stylistic constructions reflect the attitude of the citizens of Serbia who cause or the main focus of the problem find in those individuals in the domain of the so-called social and political elite, the powerful ones, who have the benefits to exercise their rights or the impact on the non-realization of the rights of

the parties who are, in accordance with this dichotomy, of poor socio-economic status. Offered examples clearly illustrate this type of thinking:

- *Yes, absolutely, but in the extremely inefficient judicial system whose state directly influences all those who live entirely fair of its work (losers of transition). Justice is too expensive, too slow and often unattainable for the common man.* (comment, March 27, 2013 09:24)
- *In this country, anyone who doesn't have a rich background, is resolving very difficulty problems of this nature ...* (comment, March 16, 2013 13:37)
- *I think it's equally hard for everybody except the politicians and tycoons!* (comment, March 16, 2013 10:56)

If this problem is simplified, the surveyed citizens identify poverty as a problem in conducting legal proceedings, in its formal and informal ways. In a formal sense, as a significant problem it is often identified the extremely high costs of the dispute - from providing yourself with adequate legal assistance in the form of lawyers to court fees and other associated expenses - and such opinions can be read in the following (parts) comments:

- *(...) and I think that the judicial services are not the same quality for the poor as well as for people who can afford trials of better quality and better legal protection* (comment, March 11, 2013 11:27)
- *First of all, for an adequate defence or action is required a capable lawyer, whose "tariff" is shamelessly high and not many people can afford this* (comment, March 1, 2013 07:19)

To particularly emphasize the problem of inequality in terms of differences in the economic status of the parties to a dispute, structures that highlight that these differences are not fair, honest, and especially emphasizing the solemnity and costs of the lawsuit and representation are used - as in the example of the case of using adjective "shamelessly" in the second example, to be precise, construction of "shamelessly high" rate, which indicates the luxury of legal disputes in Serbia. Also, in relation to the dichotomy between rich and poor, that is, inferior and privileged citizens, the dichotomy in the perception of the relevant qualitative dimensions of the trial establishes, arguing that wealthier citizens have better conditions as the parties to the dispute but "ordinary" citizens, where the quality is much worse. The unfair relationship within this dichotomy underlines this again.

When it comes to the informal aspects of the problem of poverty and lack of financial resources, the problems of bribery and corruption are very often identified. Part of the citizens believe that those citizens who are unable to pay a bribe to employees of judicial institutions cannot achieve a satisfactory level of quality outcomes of trials, which is reflecting a sort of distrust towards equality and fairness of these institutions. Considering the problems of corruption in Serbia, it is possible to conclude that citizens have built a type of stereotype in which all public institutions and civil servants within public institutions are, in a way, declaratively charged with solicitation or acceptance of a bribe.

Some of the examples where these stereotypes are expressed are visible in the following comments:

- *Our biggest problem is corruption in every sense and political pressures* (comment, March 18, 2013 09:51)
- *People with money in Serbia tailor justice by their sole discretion with the help of corrupt judges and prosecutors in Serbia, and there are plenty of them* (comment, April 14, 2013 17:16)

- (...) but all the others are in the same cage, in the grip of the bulky, unjust, corrupted and lazy justice system in our country. (comment, March 16, 2013 13:09)

The possibility of media influence and the daily political discourse on the attitudes of citizens cannot be excluded, since the phenomenon of corruption in Serbia is a significant and widely represented question, as well as in countries in the region.

4.6.4 Subordination or Superordination? Representation of Women, Persons with Disabilities and Minorities as Privileged in the Judicial Process

Although not significant in relation to the total sample of respondents, however, there are a significant number of claims that these groups are in a privileged position compared to the rest of the citizenry. From the comments, referring to people with disabilities, and in which it is expressed the basic claim that they are, as a group, easier to litigate,

- *Why is it more difficult for people with disabilities, everyone is complicated to litigate, I even appreciate that it is easier for them; realistically.* (comment, February 22, 2013 02:31)

...than through somewhat complex and problematic statements, which suggest that the status these people have and which is taken into account in the court process, directly affects the disadvantage or discrimination against the rest of the public, as in the following examples:

- *I do not agree that they are privileged. On the contrary, the court, especially women judges will always break the law and decide in favour of the persons with disabilities, they elicit pity and compassion among them.* (comment, March 2, 2013 18:06)
- *I think that the majority rather than the minorities have a bigger problem – I see officers for Roma issues, for this and that matters – and nowhere are officers for Serbian questions? I've seen a few cases where people refer to the rights of minority, and by that, directly damaging members of the majority group-although I saw this absurdity abroad.* (comment, March 15, 2013 19:00)

In the first isolated (part) comment "pity" and "compassion" of judges to persons with disabilities are used as terms that seek to describe the relationship between judicial institutions towards this category, indicating the supposed emotional or personal dimension of relationship of judges to this group, versus professional which includes the principle of legal certainty.

That "minority rights" are being exploited for the wrong purposes and in that sense can be exclusive compared to the rest of the citizenry is the attitude expressed in another separate comment (comment section). Specifically, a respondent expressed the position where he believes that Serbs are threatened - compared to minorities, but it is problematic that this attitude connotes that the Serbs, as the majority,

should have exclusive rights in relation to the other, in this case, ethnic groups.

Similar to others is the following comment in which it is considered that the potentiation of vulnerability (and rights) of women and marginalized groups is the form of systematic implementation of policies, which the respondent takes as harmful on account of others' interests, but also emphasizes that such policies do not aim to create better conditions for these groups:

- *Potentiation of the vulnerability of women and the so-called marginal groups is part of the policy, implemented by various non-governmental organizations with the help of the media and the exponent in the government on behalf of others' interests, and not to create a better status of women, minorities and the disabled.*

If we were to see what the position of these groups is in the EU or the USA, we would realize that there it is incomparably worse, and that the agitators in Serbia should be arrested, and the regulation of the rights of women, minorities and disabled people returned into the regular flow of legal state and its institutions. (comment, March 30, 2013 04:37)

It is interesting to comment on the stylistic and rhetorical constructions used in this comment. Marginalized groups are additionally marked with the adjective "so-called", which can be in the service of pejorative characterization of the term, or expressing scepticism towards the essence and/or validity of the concept. Furthermore, in the comment position of these groups in the EU and USA which Serbia is compared to, where the first (EU and USA) are distinguished, in a manner of speaking, as merit in the context of human rights. This completely free, subjective, therefore unfounded on the facts, comparison suggests worse position of these groups in the EU and the USA than in Serbia.

If we take in consideration the context of the anti-globalist and national regional countries discourse, then we realize that this statement is linked to the widely represented narratives in which Western countries and international actors are valid rules imposers, even those which do not work in their home countries, while political, non-governmental and other actors who are trying to implement good practice from the West in local laws, policies, culture, etc. are considered as kind of "traitors", international-men, spies, etc. (who, according to the logic of such narratives, work to the detriment of the nation) and therefore the concept of "agitators" is introduced for those actors who are the carriers or motivators of such dynamics. These statements indicate a kind of distrust towards the international community, organizations, and practices that are coming from outside the framework of Serbia, or better to say, from the developed European countries and America. However, such confidence is often based on a lack of information, misinformation, ignorance or dissatisfaction already carried out by these actors. Accordingly, the local narrative often relates them to international policy and practice for certain social categories, although they may have a connection (through the implementation of projects related to the improvement of the position of certain groups, international support, etc.), there essentially is no correlation, because the rights of all citizens is one of basic democratic principles.

However, even with the concept of democracy all do not agree, or do not treat it as a good model. So in the comment of one of the subjects it is noted that the rights of these categories is linked directly to the concept of democracy "where", as stated in the commentary, "good and evil are equal":

- *I am absolutely convinced that the rights of persons with disabilities and special needs are not, in any way, affected. I think the same for the members of national communities. I personally feel that this novelty is arising from the concept of democracy where good and evil are equal. I work on a project for supportive fund resources and it is absolutely proven and verifiable that if you don't mention marginalised groups and persons with special needs, the project, no matter its superior quality, will not be funded. I am afraid that healthy persons / at least physically / with clearly declared nationality as Serbs will be forced to fight for their rights.* (comment, March 13, 2013 15:13)

Although from the comment it remains unclear what exactly is meant by the construction that "good and evil are equal," that is, it remains unclear what is meant by "good" and what by "evil". However, if we put the comment in the context of the question, and the rest of the comment, it is possible to say that the attitude of the respondent does not affirm the concept of the rights of these groups and polarizes them compared to rights of the Serbs.

The respondent asserts that actively applied projects are not accepted unless they include problems of marginalized groups or people with special needs. This is also one of the more abundant narratives in Serbia and the countries of the region related to these issues, which borders with the conspiracy theories, according to which projects in the field of human rights fall under instructed or conspiratorial meta projects.

This comment, in the end, separates "healthy people - at least physically," and those with "clearly declared" Serb nationality, believing that they will be *forced* to fight for their rights. Using nationalist and discriminatory vocabulary which separates itself of non-Serbs and (physically) healthy people from unhealthy (whatever that means), this part of the comment establishes a hierarchy of values in which the first half, therefore healthy Serbs, applies to only legitimate rights holders and others, on a very discriminatory manner, puts in a *less valuable* position in the legal and social context. The used stylish and emotionally marked lexeme "forced" tends to suggest that the rights of *true citizens* of Serbia are hampered and compromised to the point of intolerance. They will have to fight for this right, as stated in the commentary, by using "a set of sorrow and grief," which further emphasizes the attitude of the respondent - that in the commentary is understood as a common-sense truth - that Serbs in Serbia are oppressed under the pressure of minority rights and the rights of certain groups.

All this testifies to the existence of those who do not have affirmative attitudes towards minority rights or, in some cases, do not recognize their importance, which indicates the necessity of informing and educating the general population on this issue and strengthen sensitivity towards the rights of vulnerable or disadvantaged groups.

4.7 Conclusion

The results of the conducted analysis has indicated the diversity of opinions and views, which tells us about, so to speak, the division of Serbian public opinion, when it comes to the question of the status of women, persons with disabilities and minorities in relation to judicial resolution of disputes in Serbia.

- *It is possible to identify the basic matrix of thoughts - some of the dominant attitudes, some of which are in conflict with each other, are that the minorities are at a disadvantage compared to the rest of the citizenry when it comes to judicial proceedings, but also to the more general socio-cultural milieu.*
- *The attitude towards minorities is described with words such as discrimination, threats and so on, all with the intent to suggest the seriousness of such a position that is inconsistent with the idea of human rights, but even with some more general human and moral values.*
- *A large number of respondents insisted on the idea that loss of values and a sense of the right relationship towards people is not unique to marginalized social groups, rather to the wider citizenry.*
- *Vulnerable groups (meaning wider citizenry, not only these three categories) refers to all the so-called ordinary citizens, so those who do not possess any form of power, and, consequently, who live in poverty and poor economic status and have a lack of important contacts, which can in a certain way affect employees in the judiciary and the outcome of proceedings, are treated as the main reason for the poor position.*
- *There are participants who do not recognize or did not experience discrimination and differences in relation to various citizens.*
- *One part of the respondents believes that discrimination does not occur in the judiciary or it occurs as a sporadic case, meaning that it is not a practice.*
- *There are quite a few respondents who do not perceive the position of these groups as abused or privileged and who believe that other citizens of Serbia are actually in a worse position than them, who, consider some of the respondents, have the exclusive right and enjoy greater protection. Sometimes this relationship is considered as a kind of result of pressure and intervention from the countries of the developed world, and the discourse of human rights is often seen, as a manner of speaking, violent or outrageous.*
- *It is important to have insight into the representation of the accrued social actors, thus, who can acquire the understanding of perception of these groups by the general public, but also gain a clear insight into the stereotype and prejudice that are related to the representation of these groups, even when that attitude itself is not exposed pejoratively.*
- *It is possible to observe a high level of dissatisfaction and distrust towards judicial institutions, and employees of these institutions, but also towards meta structures such as governmental and legal actors and institutions.*
- *Respondents can often be subjects of narratives created by the media or narratives from daily political discourse, and those attitudes often do not have to be based on direct experience.*
- *It is noticeable that there is a clear lack of criticism and analyticity in the comments themselves,*

which generally exclude certain perspectives that would give a more complete picture of the problem, so the comments can be considered to have a more expressive character.

- We can detect the real problems in understanding the position of these three groups, and stress the importance of informing and educating the general public – which are the characteristics and problems of marginalized groups, as well as on the very issues faced by employees of the judicial institutions.*
- Only the inclusion of perspectives from all social actors can create something objective and a concrete picture of the problems (which are also different and focused on different actors).*

V Findings and Conclusion Arising from the Crowd-Sourcing Survey and series of Focus Group discussions relating to Judicial Reform and Access to Justice in Serbia

By Joanna Brooks and Olivera Purić

5.1 Introduction

In February and March 2013, UNDP Serbia and the Judicial Academy of Serbia ran a crowd-sourcing survey on judicial reform and access to justice in Serbia. The Survey aimed to gather citizen's perceptions, opinions and experiences of judicial reform and access to justice in order to inform policy makers, practitioners and researchers and feed into strengthening the judicial reform process in Serbia. The Survey was hosted by the B92 news agency website, one of the most popular news agencies in Serbia. A total of one thousand, six hundred and fifty-six responses were received.

Some of the issues raised in the Survey were used as a basis for discussions in a series of Focus Groups held with key representatives of legal professionals – judges, prosecutors and lawyers – and representatives from minority groups, persons with disabilities and women's groups. The purpose of the Focus Groups was to delve deeper into some of the issues raised in the Survey and into some of the key issues regarding judicial reform and access to justice in Serbia.

The Findings and Conclusions that follow have been borne out of the analysis of both the Survey data and the Focus Group discussions.

5.2 Findings

“An overwhelming majority of the survey respondents perceived the Serbian judiciary to be politicized, corrupt and inefficient, and considered efforts to reform it as a series of failures”.

Successes of the Reforms

A number of positive developments were identified by the survey respondents, although it should be emphasized that only a small minority of respondents mentioned any successes at all.

- The creation of the Judicial Academy;
- The creation of the Supreme Judicial Council and the State Prosecutorial Council;
- The revitalization of the Constitutional Court and providing it with the competence to hear individual cases on constitutional appeal;
- Some increase in procedural efficiency, particularly in civil cases, and some progress in dealing with the backlog of cases;
- The creation of the special courts and prosecutors for war crimes and organized crime;
- The partial and temporary removal from the judiciary of some judges who were not fit for their office;
- The introduction of mediation; (pending)
- The introduction of the prosecutorial investigation (pending).

Positive Factors influencing reform

Similarly to the responses received in the content of the successes of the reforms, most respondents stated very bluntly either that no such factors exist or that they were overwhelmed by negative factors. However the following positive factors influencing the reform were noted:

- The external pressure, as well as assistance given by the European Union, with judicial reform being an indispensable part of the wider process of EU integration.
- The increased public scrutiny to which the judiciary was exposed to, for instance through the press or the work of the civil society.

Judicial Reform in general

- Most respondents thought that the reform solely consisted of the re-appointment of all judges in Serbia.
- Some respondents were aware of the reorganization of the court network.

Structural Failings of the Reform

- The single most important structural failure of the reform identified by the survey respondents was its inability to secure an adequate quality of judges.
- Judges are seen as lacking in expertise and moral standing.
- The judiciary is seen as being riddled with corruption, both systemic and individual.
- Respondents also identified insufficient resources allocated to the judiciary as both a structural failure and one of the causes of such failure of the reform process
- The lack of adequate courtrooms and facilities in many courts, as well as a lack of adequate staffing, both judicial and administrative were identified by respondents as being structural failings of the reform.
- The system of expert witnesses was also widely seen as corrupt.
- A lack of public scrutiny of the flaws in the reform of magistrates' (misdemeanour) courts.
- The current reform processes were almost universally seen as not having succeeded in improving the efficiency of the processing of both criminal and civil cases by the judiciary.
- The level of procedural inefficiency was generally seen as appalling.
- Inadequate expertise and resources were seen as the main contributing factors to the judiciary's inefficiency.
- In criminal cases, the inefficiency in case management and processing was to many respondents evident in the large number of high-profile cases in which criminal charges were dismissed due to the statute of limitations running out.
- In civil cases, respondents identified the inability of the judiciary to secure the execution of its own judgments as one of the most important failures of reform. They also pointed to lack of consistency in judicial decision-making in cases with identical or near-identical facts.

Negative Factors Influencing Reform

- The press reporting of judicial decisions was frequently incorrect or incomplete.
- The politicization of the judiciary and of the whole reform process, in particular in terms of judicial appointments.
- Systemic and individual corruption.
- The lack of meritocracy in advancement within the judiciary.

Access to Justice

- The territorial reorganization rendered access to courts more difficult to significant parts of the

population, increased costs for the parties and their lawyers, and indeed adversely affected lawyers working in smaller communities.

- Respondents to the Survey also identified high filing fees as impeding their access to justice, as well as the lack of a comprehensive legal aid system
- All of the participants in the Focus Groups emphasized the direct relationship between the quality of judges and access to justice.
- Corruption and political reasons stand out as important factors that impede access to justice.
- One of the main problems is actually the physical inaccessibility to the judicial facilities.
- There is an inability to access information because it is not taken into consideration the existence of multiple forms of disability.
- The attitudes, prejudices and stereotypes that judges, prosecutors and lawyers have towards people with disabilities impedes their access to justice.
- The lack of funding is a problem with all marginalized groups.

Mediation

- An overwhelming majority of survey respondents stated that they were familiar with the mediation procedure.
- However, there was indeed a lack of familiarity with mediation in the general population and a consequent lack of its use and significance.

Competencies and Skills of Judges or Prosecutors

- It is essential that the person who holds the position is responsible, honest and able to examine the general situation, taking into consideration the whole social state, and to be more sensitised to different social groups.
- Professionalism, responsibility and efficiency have been singled out as the most important criteria for the selection of judges.
- The judge should not allow his personal characteristics to affect the course and outcome of the procedure.
- The expertise of prosecutorial and judicial personnel is at an unsatisfactory level.
- It is essential that judges and prosecutors meet other certain criteria such as having completed a specialization in a particular matter, the ability to be targeted and systematic and all other interpretations, understanding, personal integrity, and independence.
- It was found that there is an over-whelming non-application of international instruments that have been ratified.
- There is a general lack of use of computing or information technologies throughout the judiciary.

Evaluation of Judges and Prosecutors

- The evaluation of judges is necessary, primarily because it serves as a corrective tool and motivator for the successful exercise of the function.
- There are already established criteria for the evaluation of the work, but that they are largely based on statistical parameters.
- It is necessary to tighten the criteria on which judges and prosecutors are evaluated.
- It is necessary to establish more objective parameters for evaluation, both for trainees and judges in practice.
- Although there is already a regulation made by the professional association, it is necessary to develop new criteria for evaluation of operational efficiency.
- It is necessary to introduce disciplinary responsibility, because there are currently no criteria that are measurable.

Evaluation of Judicial Institutions

- The importance of evaluating the work of employees in the judicial institutions, which is essential in the context of on-going work to improve the quality of judicial institutions, was emphasized by participants in the Focus Groups.

Judicial Training

- Continuous education for judges and prosecutors is essential.
- The training of trainers is a very effective and efficient method of teaching.
- Work under supervision, through the mentorship programme offered by the Judicial Academy during its Initial Training Programme is one of the best mechanisms in the process of selecting a successful judge or prosecutor.

5.3 Recommendations

Access to Justice

- A State-funded system of free legal aid needs to be established.
- The involvement of representatives of vulnerable and marginalized groups is essential in the process of creating new legal regulations that affect them.
- Courts should be equipped to meet the needs of persons with vulnerable and marginalised groups.
- Judges and other legal professionals should be sensitised to the needs of vulnerable and marginalised groups.

Evaluation of Judges and Prosecutors

- It is necessary to introduce an adequate principle of evaluation for judges and prosecutors.
- It is necessary to establish more objective parameters for evaluation, both for trainees and judges in practice - in order to gain insight into their effectiveness.
- It is necessary to construct valid, objective criteria in order to monitor the work of those in the career system (employees of the Judiciary), because it is an important part of improving the justice system.
- If a judge or prosecutor receives a negative evaluation, they should be sent for additional training to target the problem.
- Prosecutors need to have an adequate code of conduct.

Judicial Training

- A Framework for Continuous Training needs to be established at the Judicial Academy in the form of seminars, training, development of techniques of writing judgments, for example, simulation exercises etc.
- The Continuous Training Programme should be made mandatory.
- The Judicial Academy should introduce new courses, which have not yet been represented, and tighten criteria when it comes to the selection of persons who will attend the academy.
- Trainings should be designed to intensify the sensitization of the judges about the issues of vulnerable and marginalized groups with representatives from those groups assisting in the design of the curricula.
- Post-training evaluation of judges and prosecutors is essential in order to monitor progress after

attending such training.

- The Judicial Academy should further strengthen its mentorship programme because work under supervision is recognized as being one of the best mechanisms in the process of selecting a successful judge or prosecutor.
- The training materials used during the training must be carefully prepared and targeted.

Competencies and Skills of Judges and Prosecutors

- The use of computers and information technologies among judicial institutions should be upgraded.

Awareness Raising

- Many respondents suggested that a concerted campaign to familiarize the people with mediation was necessary, through the media and otherwise.
- Any further reform efforts must not only deal with the various structural problems within the judicial systems, but also directly address the perceptions of the public.

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