Judges' Association of Serbia

Strengthening of independence and integrity of judges in Serbia

Belgrade 2017

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1. Introductory notes of the researcher

As part of the project *Strengthening the independence and integrity of judges in Serbia*, Judges' Association of Serbia, in cooperation with the Centre for Free Elections and Democracy (CeSID) and the Embassy of the Kingdom of the Netherlands in Serbia, conducted a survey on the judges' views on the current situation in the judiciary and justice system in Serbia. The goal of the project was to obtain an insight into the views of all judges, by an anonymous survey, related to the issues of importance to the judiciary.

Similar survey has already been conducted among all public prosecutors and deputy public prosecutors in Serbia and the results have proven to be useful and relevant for the judiciary in Serbia, and they are still quoted among the public. Thus, by the review of the obtained opinions of judges in Serbia, a portrait of the judiciary from the perspective of holders of judicial offices will be completed.

The research instrument itself was formed through extensive cooperation and communication between the CeSID expert research team and the representatives of the Judges' Association of Serbia, and after four sessions in the spring of 2016, the final version of the questionnaire was designed. The final version of the questionnaire contained concise questions that the judges considered the most meaningful indicators of the situation in the judiciary.

The original idea was for the sample to include the entire population of the judges or that all judges in Serbia are the respondents in the survey. However, not all judges have agreed to participate in the survey, although the anonymity and confidentiality were fully guaranteed. The reason for refusal to participate in the research has a subjective dimension; some judges for the reasons known only to them (fear and mistrust in anonymity, lack of interest, etc.) were not willing to participate in the survey. Therefore, we can say that this was an obstacle in the realization of the survey, which was overcome by the researchers to the greatest extent possible.

The High Court Council supported the survey as well.

The opinions expressed in this report are those of the authors of the report and do not necessarily represent those of the Judges' Association of Serbia.

*** All the terms in the survey expressed in the masculine gender refer to the feminine gender as well.**

2. Notes on methodology

Survey implemented by	Agency for Public Opinion Research CESID and Judges' Association of Serbia
Field work	In the period between May 25 and July 10 2016
Type and size of the sample	Random, representative sample of 1585 judges of the Republic of Serbia
Sampling frame	Courts in the Republic of Serbia
Selection of court	All the courts in the Republic of Serbia
Selection of judges within the court	Sampling without replacement – all judges
Research instrument	Questionnaire

The survey about the views of judges, implemented by CESID and Judges' Association of Serbia, with the support of the High Court Council and the Embassy of the Kingdom of the Netherlands in Serbia, was conducted in the period between May 25 and July 10 2016, on the territory of the Republic of Serbia.

The survey was conducted on a representative sample of 1585 judges.

The research instrument was a questionnaire, designed in cooperation with the Judges' Association of Serbia, containing 172 questions (mostly of closed type). The design of the questionnaire was aligned with the recommendations of the Judges' Association of Serbia.

Method of self-completion questionnaire was used in the interviews with judges, supported by CeSID interviewers who were in direct contact with the judges. During the training for the interviewers, instructors insisted on the implementation and compliance with the rules which, besides the sample itself, significantly influence the representativeness - regard and guarantee of anonymity and mostly the one answer rule (one answer is given to each question).

3. Description of sample

Based on the methodology established during the implementation of this survey, the following categories of respondents/judges were included:

Gender structure: 69% of women and 31% men.

Age structure: average age among judges is 53.

Years of service in legal profession: average years of service in legal profession is 26 years.

Years of service in judicial office: average years of service in judicial office is 19 years.

Permanence of the office: permanent tenure (94%), every three years (6%).

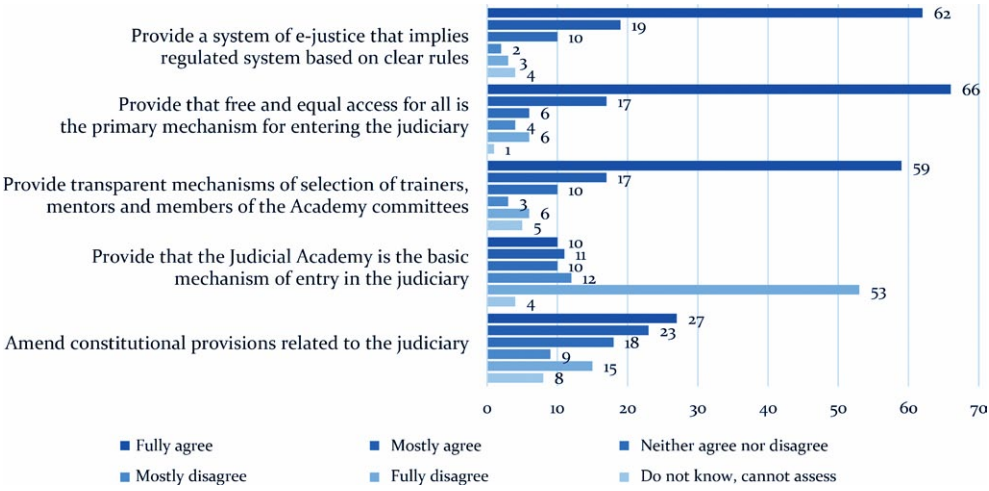
Court jurisdiction: general – Basic Court (46%), general – Higher court (11%), general – Court of Appeal (7%), special – Commercial Court (8%), special – Commercial Court of Appeal (1%), special – Misdemeanour Court (23%), special – Misdemeanour Court of Appeal (2%), special – Administrative Court (1%), the Supreme Court of Cassation (1%).

4. National Judicial Reform Strategy – Five key principles

National Judicial Reform Strategy for the period 2013-2018[1] recognized five key principles of the judicial reform. The document states that the entire reform is based on the five key principles: *independence, impartiality and quality of justice, competence, accountability and efficiency*. They provide a framework for the establishment, development and organization of judicial institutions in order to create a judicial system that can fully protect the rights of all citizens, with permanent endeavours towards their improvement and practical implementation at every stage of the development of the judiciary and implementation of the law.

In our survey, we posed different sets of questions concerning the fulfilment of the principles, whether they are complied with, to what extent and how they could be improved. The chart below demonstrates the opinions of judges regarding the basic principles of justice and court practice.

Chart 4.1. To ensure that the principles of independence, efficiency, impartiality and quality of justice, competence and accountability are achieved fully, it is necessary to…: (in %)



[1] The definitions and explanations are provided from two main sources: the National Judicial Reform Strategy for the period 2013-2018 and the document Negotiating position of the Republic of Serbia within the framework of the Intergovernmental Conference on Accession of the Republic of Serbia to the European Union for Chapter 23 „Judiciary and Fundamental Rights".

Free and equal access for all should be the primary mechanism for entering the judiciary, consider 83% of judges (66% fully agrees with this statement and 17% partially agrees), while 10% of judges in Serbia think the opposite. The judges agree that it is necessary to provide a system of e-Justice, which implies regulated system based on clear rules – collectively speaking, 81% of respondents agree with this concept (62% of which is in full agreement), 9% of the judges are undecided and 23 % does not agree with the presented view.

When it comes to the Judicial Academy, as an independent institution responsible for initial and continuous training of candidates and bearers of the judicial office, we wanted to check the degree of agreement and disagreement of the respondents with the following assertions about its operations and principles of functioning: *It is necessary to ensure that the Judicial Academy is the basic mechanism of entry in the judiciary; It is necessary to provide a transparent mechanism of selection of trainers, mentors and members of the Academy committees*.

Fifty-nine percent of judges completely agree that transparent mechanisms of selection of trainers, mentors and members of the Academy committees should be provided, and 17% partially agrees with this. In summary, 76% of the judges agree that the transparency should be one of the basic principles of functioning of the Judicial Academy. With the above statement 9% of judges does not agree, 10% is not sure in their position (neither agree nor disagree), 5% of the judges does not know, or cannot provide their assessment. The answers to this question do not reflect significant difference between the judges working in the courts of different jurisdictions.

On the other hand, when it comes to the views of the judges regarding the fact that Judicial Academy should be the primary mechanism for entering the judiciary, we recorded almost the inverse data. Namely, in summary 65% of judges does not consider that the Academy should be a basic mechanism of entry in the judiciary (53% of which disagree with the statement entirely and the remaining 12% mostly disagree). 10% of judges neither agrees nor disagrees; while in summary, 21% of them nevertheless see the Academy as a basic mechanism for entering the judiciary. This attitude, presumably, stems from the fact that the Judicial Academy still does not possess the necessary capacity, on the one hand, and that in the European countries there is no *acquis* on the method of training and entering the judiciary, because the training of judges, besides the academies, is done also through mentoring or combined system.

Opinion of the judges about the need for amending the provisions of the Constitution relating to the judiciary, in order to improve and consistently comply with the fundamental principles of justice, points to the fact that the provisions of the Constitution should be amended. Half of the judge believes that the constitutional provisions related to the judiciary should be amended, while nearly half less judges believe the opposite (24%). 18% of judges neither agrees nor disagrees with this statement, while 8% of judges does not know how to answer this question. The fact that a substantial number of judges does not consider amending the Constitution as necessary for the improvement of their position, testifies to the awareness that independence is not attained only by the Constitutional proclamation, but that in the existing Constitutional framework it could be strengthened by the amendments to the law, if there was a political will.

Regarding the jurisdiction of the courts, the largest number of judges who chose the option "I do not know, I cannot assess" comes from the courts of special jurisdiction, mainly from the misdemeanour courts.

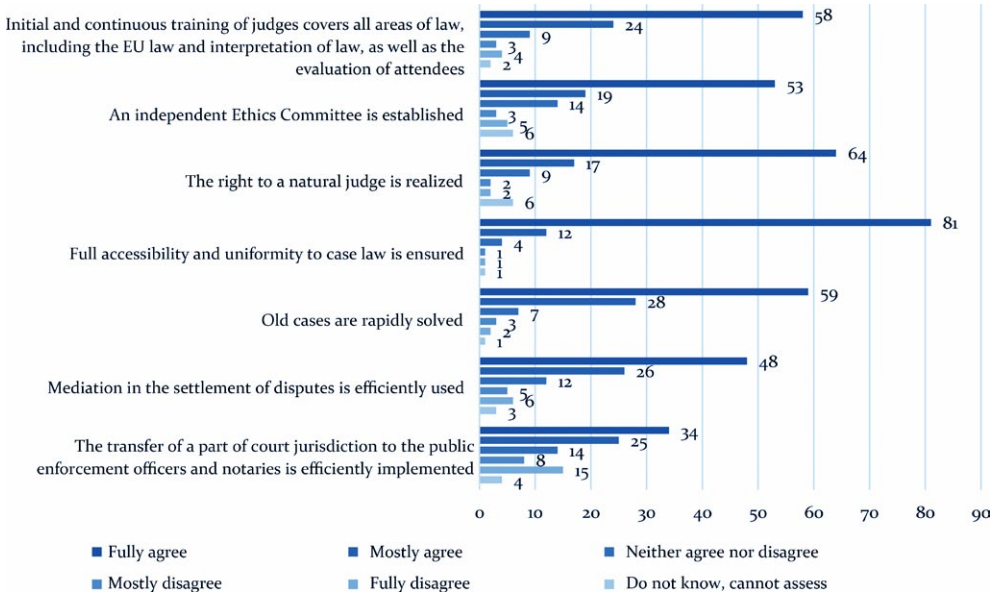
Training of judges should be permanent and cover all areas of law, including the EU law and interpretation of law, as well as the evaluation of attendees – this view is shared collectively by 82% of judges (58% fully agrees with the statement and 24% of judges predominantly agrees), while 7% of judges did not see the initial and continuous training of judges as too important. Nine per cent of judges neither agrees nor disagrees with the statement, and 2% of judges does not know what to answer to this question or has no opinion. Regarding the jurisdiction of the courts, there is no significant difference between misdemeanour courts and other courts: 81% of the judges of misdemeanour courts agree with the statement, 11% neither agrees nor disagrees, 6% disagrees, whereas 82% of judges from other courts agrees with the statement, 9% neither agrees nor disagrees, and 7% disagrees with the statement.

In our survey, we asked judges whether Ethics Committee should be formed as an *independent body*[2]. 53% of the judges entirely agree that we should establish an independent Ethics Committee, 19% of judges largely agrees with that, which collectively represents 72% of the judges who agree that an independent Ethics Committee should be established. 14% of respondents neither agrees nor disagrees and 8% collectively disagrees (3% mostly disagrees and 5% completely disagrees).

[2] The High Court Council and State Prosecutorial Council formed Ethics Committees in 2015, as part of their bodies.

There is no statistically significant difference between the courts of different jurisdiction regarding this: 69% of the judges of misdemeanour courts agrees that an independent Ethics Committee should be established, 17% is not sure, and 7% disagrees, whereas 72% of judges of other court agrees that an independent Ethics Committee should be established, 13% is not sure, 8% disagrees with the statement.

Chart 4.2. To ensure that the principles of independence, efficiency, impartiality and quality of justice, competence and accountability are achieved fully, the following is necessary that…: (in %)



Judges are aware to what extent the realization of the right to a natural judge is an essential precondition of fulfilling justice and judicial principles – 81% of judges agrees that this right is of great importance for the achievement of the five key judicial principles, 4% does not agree with that, and 9% of the judges neither agrees nor disagrees. There is no statistically significant difference between the responses of judges of misdemeanour courts and those of the judges of other courts: 80% of the judges of misdemeanour courts agrees with the statement, 11% is not sure, 4% disagrees, whereas 82% of judges of other courts agrees that an independent Ethics Committee should be established, 8% is not sure, 4% disagrees with the statement.

With regard to the predictability of the judicial system of the Republic of Serbia, or the interpretation of legislation, its interpretation and con-

sistent implementation, the survey showed that 93% of judges dedicates special attention and value to the concept of uniformity and full access to case law (81% of judges completely agrees, while 12% mostly agrees), while 2% of judges does not value highly this requirement of case law, and 4% of judges neither agrees nor disagrees that the request for full accessibility and uniformity of case law is an essential requirement for the basic principles of justice. Regarding the responses of judges working in the courts of different jurisdictions, there is no statistically significant difference in their responses.

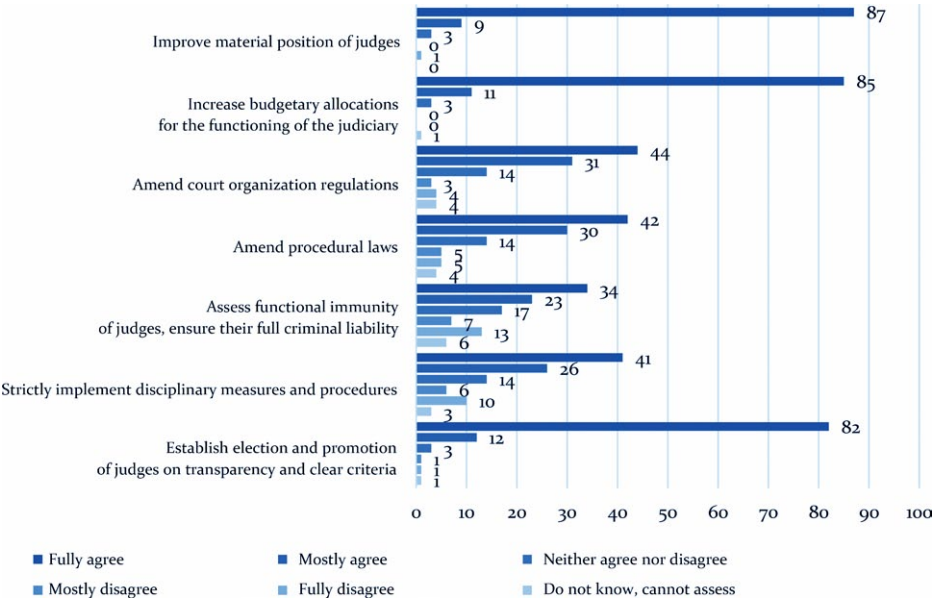
To also ensure that the principles of independence, efficiency, impartiality and quality of justice, competence and accountability are achieved fully, it is necessary to rapidly solve the (backlogged) old pending cases, 87% of judges thinks. Their view is not shared by 5% of them, while 7% of the judges neither agrees nor disagrees with the view that it is necessary to rapidly solve old cases. In addition to the necessity of rapid solving old backlog, judges agree in the assessment that effective implementation of mediation in resolving disputes is essential – 74% of judges underscores the importance of efficient implementation of mediation in resolving disputes while 11% in summary does not agree with the necessity of efficient implementation of mediation in resolving disputes, and 12% of judges neither agrees nor disagrees. While the previous statement did not provoke statistically different responses of judges of courts with different jurisdictions, in the response to the last statement ("Efficient use of mediation in the settlement of disputes") there is a difference between the judges working in the courts with different jurisdiction in responses that do not correspond with this statement. Specifically, among the judges of misdemeanour courts, 6% does not agree with the fact that the effective implementation of mediation is important for resolving disputes, while among the judges of the other courts 12% disagrees with this statement.

When it comes to efficient implementation of the transfer of a part of court jurisdiction to the public enforcement officers and notaries, judges' opinion is more divided compared to the other issues, although the prevailing view is that such transfer of part of court jurisdictions is also necessary in order to achieve the basic principles fully. Although 59% of judges agrees that efficient implementation of the transfer of a part of court jurisdiction to the public enforcement officers and notaries is necessary, a share of judges who disagrees with that is one of the highest among all the statements concerning the possibility of improving the basic five principles of judicial activity and amounts to 23% (and it is

important to emphasize that 15% of them completely disagrees with the statement, while 8% mostly disagrees).

The chart 4.3. shows the last set of statements that are related to improving the principles of independence, efficiency, impartiality and quality of justice, competence and accountability.

Chart 4.3. To ensure that the principles of independence, efficiency, impartiality and quality of justice, competence and accountability are achieved fully, the following is necessary to…: (in %)



The economic aspect and the material position is one of the factors that affect the performance of judicial office and improvement of the basic principles, consider the judges. Namely, 87% of judges fully agree that in order to promote the basic principles of justice, material position of judges should also be improved, 9% of the judges largely agrees with that, while only 3% neither agrees nor disagrees and 1% does not agree with the given statement. In other words, 96% of judges in Serbia believe that the improvement of the material position of judges is one of the key factors that could contribute to the improvement of the basic principles of justice. It is interesting to note that the judges, who agreed with the statement that it is important to improve the material position of judges, considered that judicial salaries in Serbia are worse in comparison to all other public officials, or at least in comparison to most state officials.

Specifically, among the judges who completely agree with the statement that material position of judges should improve, 67% of judges considers that judicial salaries are lower in comparison to all/most of the other state officials (44% believes that they are lower compared to most others and 23% that they are lower in comparison to all other public officials).

Regarding the responses of judges working in the courts of different jurisdictions, there are no statistically significant differences in the answers to the previous statement: less than 1% of the judges of misdemeanour courts, or less than 1% of the judges of other courts disagrees with the statement that material position of judges should be improved in order to improve the basic principles of justice, i.e. 97% of the judges of misdemeanour courts and 95% of the judges of other courts agrees with the above statement.

Closely related to the improvement of the material position is a question of the amount of the budgetary allocations for the functioning of the judiciary. Taken as a whole, 96% of judges agree with the statement that increased budgetary allocations should be provided for the functioning of the judiciary (of which 85% is in full agreement and 11% mostly agrees), while only 1% of judges disagrees with the statement that increased budgetary allocations should be provided for the judiciary. 97% of the judges of misdemeanour courts agree with the statement that increased budgetary allocations should be provided for the functioning of the judiciary, as well as 96% of the judges of all other courts.

Amendments to the court organization regulations and amendments to the procedural laws are also seen as essential prerequisites for fully improving the achievement of the basic principles of justice. Thus, collectively 75% of judges say it is necessary to amend court organization regulations, and 72% that amendments to the procedural laws are required as well. 14% of judges neither agrees nor disagrees with the amendments to the court organization regulations/procedural laws, 7% of judges does not see amending the court organization regulations as a solution, that is every tenth judge would not amend the procedural legislation.

Regarding the jurisdiction of the courts, 68% of judges of misdemeanour courts agree with the statement that the amendments to the procedural laws are required, 21% of judges neither agrees nor disagrees, and 7% disagrees with it. On the other hand, among the judges of all other courts, 74% of them agree with the statement that the amendments to the procedural laws are required, 11% of judges neither agrees nor disagrees and 12% disagrees with it.

When it comes to immunity, judges in Serbia believe that the issue of the functional immunity of judges should be assessed, or ensure their full criminal liability – in aggregate 57% (34% + 23%) of judges agrees with this, 17% of judges neither agrees nor disagrees while 20% judge disagrees with this. It is also important to note that 6% of judges have no opinion on this subject. As per the type of courts, in aggregate 56% of judges (completely agree 32% + mostly agree 24%) of the basic courts agrees that assessment of the issue of functional immunity of judges and ensuring their full criminal responsibility are necessary in order to fully achieve judicial principles, while in aggregate 18% of judges disagrees. In other courts, the frequencies are distributed as follows: the higher courts of general jurisdiction – 43% of judges agrees with the statement, while 33% disagrees; the Court of Appeal – 64% of judges agrees, while 13% disagrees; Commercial Courts – 46% of judges agrees with the statement, while 34% disagrees; Commercial Court of Appeal – 80% of judges agrees with the statement, while 20% of judges disagrees; misdemeanour courts – 63% of judges agrees with the statement, while 11% disagrees; Misdemeanour court of Appeal – 68% of judges agrees, while 20% of judges disagrees; Administrative Court – 57% of judges agrees, 14% disagrees; the Supreme Court of Cassation – 75% of judges agrees, 25% disagrees.

Also among those judges who are members of a professional association, collectively 58% of judges agrees that the assessment of issues of functional immunity of judges and ensuring their full criminal responsibility are necessary in order to achieve judicial principles in full, 16% neither agrees nor disagrees, 19% of judges disagrees with the statement, and 7% of judges does not know. On the other hand, among the judges who are not members of any professional association, in aggregate 55% of judges agrees that the assessment of issues of functional immunity of judges and ensuring their full criminal responsibility are necessary in order to achieve judicial principles in full, 17% neither agrees nor disagrees, 20% of judges disagrees with the statement, and 8% of judges does not know. In other words, there is no statistically significant difference in the responses to this question, with respect to whether the judge is a member of a professional association or not.

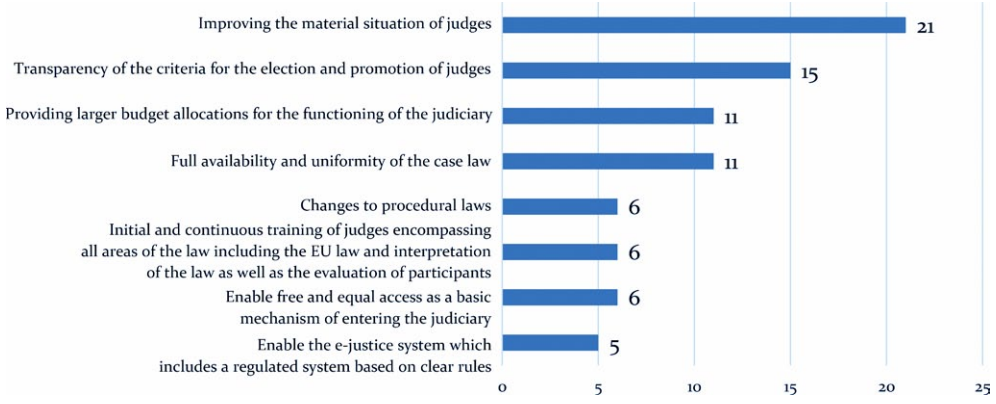
The survey has shown that 67% of judges are for the strict implementation of disciplinary measures and procedures, as opposed to 16% of judges who are against such measures. Regarding the competences of the courts, 72% of judges of misdemeanour courts believe that strict imple-

mentation of disciplinary measures and procedures is required, 16% neither agrees nor disagrees with that, 9% disagrees with this statement. On the other hand, among the judges from other courts frequencies are distributed as follows: 65% of judges consider that strict implementation of disciplinary measures and procedures is needed, 14% neither agrees nor disagrees with that, while 19% disagrees with this statement.

Finally, transparency and clear criteria for election and promotion of judges are essential prerequisites of fulfilment and achievement of the principle of judicial practice – 94% of judges advocates the existence of clear criteria for the election and promotion of judges, while 2% of judges considers that it is not so important for the achievement of the basic principles in full extent. There was no statistically significant difference between the responses of judges concerning the jurisdiction of the courts in which they work.

So far, we have seen the opinion of the judges on each individual element that could affect the full achievement of the basic principles of independence, efficiency, impartiality and quality of justice, competence and accountability. However, we were interested in the type of responses we would get when we requested that judges set aside one of these elements that they believed is the most important. The judges had the opportunity to name three elements that they believe are of great importance, and as they did not rank them, we displayed them in a summary chart 4.4.

Chart 4.4. Which of the preceding elements you consider as most important for the principles of independence, efficiency, impartiality and quality of justice, competence and responsibility? (in %)



We see that the judges are the strongest advocates for improving the material situation, because that could provide full implementation of basic principles of justice (21% of judges). The transparency of the criteria for the election and promotion of judges is also one of the most important elements for the achievement of judicial principles – 15% of judges consider this element as the most important. In addition, full availability and uniformity of the case law is the most important element for 11% of the judges, besides providing larger budget allocations for the functioning of the judiciary. Finally, as separate and important elements for the achievement of judicial principles fully emerge the following: changes to procedural laws (6%), the initial and continuous training of judges encompassing all areas of the law including the EU law and interpretation of the law, but also the evaluation of participants (6%), free and equal access as a basic mechanism of entering the judiciary (6%), as well as the e–justice system which includes a regulated system based on clear rules (5%). Regarding the jurisdiction of the courts, there is no significant statistical difference in the responses of judges of the misdemeanour courts and those of other courts.

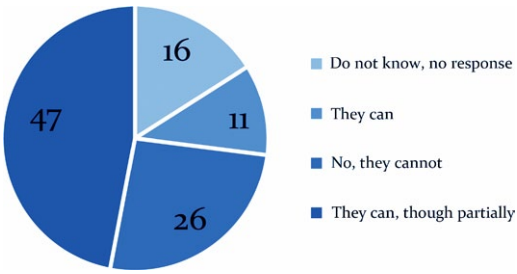
4.1. Streamlining the system of public administration and strengthening the capacity of the courts

We were interested in how the judges conceive the streamlining of the public administration system and whether and how it can possibly affect the National Judicial Reform Strategy principles of independence, efficiency, impartiality and quality of justice, competence and accountability. This is especially important because the streamlining is usually related and associated with different cost savings – judges, staff, resources, etc. However, at this point it is particularly important to underline that the judiciary does not fall under the category of public administration, although exercising public powers, since the judiciary is the third branch of government. Streamlining the number of employees in the judiciary should not affect the functioning of the judiciary, i.e. the courts.

The streamlining of the public administration system affects the principles of independence, efficiency, impartiality and quality of justice, competence and accountability in such a way that these principles can be only partially fulfilled and achieved, that is the opinion of 47% of judges in Serbia. The basic principles can be fully achieved even under the con-

ditions of streamlining of public administration system, which is the opinion of 11% of judges. 26% of judges in Serbia believe that streamlining hinders the achievement of the principles of independence, efficiency, impartiality and quality of justice, competency and accountability. Finally, 16% of judges do not know how to assess the correlation between the streamlining and basic principles of justice. In other words, in aggregate, 73% of judges consider that the judiciary may not be functional at all, or may be only partially functional if the streamlining is implemented, which is always associated with saving – judges, staff, resources, etc.

Chart 4.5. In your opinion, can the principles of independence, efficiency, impartiality and quality of justice, competence and accountability be achieved under the conditions of streamlining of public administration system? (in %)

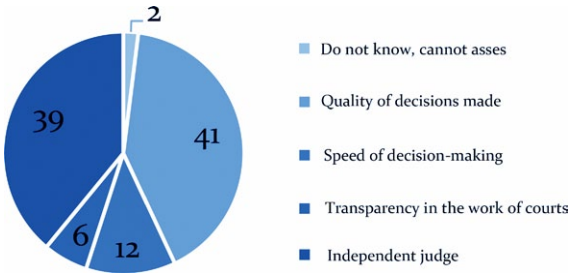


Regarding the jurisdiction of the courts in which judges work, the frequencies are distributed as follows: among the judges of misdemeanour courts, 13% of them considers that under the conditions of streamlining the basic principles can be fully achieved, 51% believes that under the conditions of streamlining the basic principles can be achieved partially, 22% that it is not possible, and 14% of the judges does not know what to answer to this question. On the other hand, among the judges of the other courts, 11% of them considers that under the conditions of streamlining the basic principles can be fully achieved, 45% believes that under the conditions of streamlining the basic principles can be achieved partially, 28% that it is not possible, a 16% of judge does not know what to answer to this question.

We have seen that the judges are not unanimous in their answers. Therefore, we asked a question that relates to, what actually contributes to the institutional and professional strengthening of the capacities of the courts, bringing justice to the citizens and strengthening confidence in the judicial system (chart 4.6).

In contrast to the previous question, where 16% of respondents, i.e. judges could not provide an answer to the question, we see that the judges are significantly more willing to express their opinion in terms of what contributes most to strengthening the capacity of the courts, bringing justice to the citizens and strengthening confidence in the judicial system (only 2% of judges could not assess what it is that contributes to the above characteristics). As the most frequent responses occur those that refer to the decision-making, as well as the independence of the work of judges. 41% of judges believes that *the quality of decisions made* contributes most to strengthening the capacities of the courts, bringing justice to the citizens and restoring confidence in the judicial system. Not far behind is the answer that relates to the *independence of the judges* – 39% of judges think that this is the determinant that contributes to strengthening the capacity of the courts, bringing justice to the citizens and strengthening confidence in the judicial system. This response correlates with the information that 44% of judges in the course of their court practice felt a kind of pressure to pass a certain decision (more about this issue in the second part of the report – chapter 10). When these two responses are compared to the answers of respondents concerning the transparency and speed of proceeding, it seems that judges highly value the quality in the work and that they want less pressure, and that it is of secondary importance whether the decisions will be adopted quickly and whether the public will have more insight into their work. In this sense, we can say that the response regarding the importance of the quality of decisions made is encouraging.

Chart 4.6. In your opinion, institutional and professional strengthening of the capacities of the courts, bringing justice to the citizens and strengthening confidence in the judicial system, would mostly be contributed by… (in %)



That the speed of the decision-making is the determinant that can contribute to strengthening the capacity of the courts, bringing justice to the citizens and strengthening confidence in the court system, is believed by 12% of judges in Serbia, while 6% thinks that the transparency in the work of the courts is nevertheless crucial.

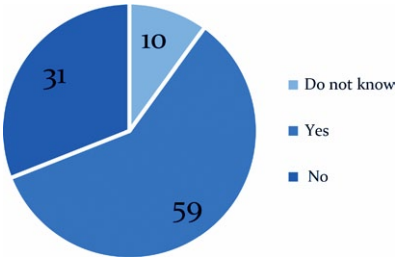
Regarding the jurisdiction of the courts, judges of misdemeanour courts believe that strengthening the capacity of the courts, bringing justice to the citizens and strengthening confidence in the judicial system are mainly contributed by, namely: the quality of decisions made (46%), independent judge (35%), speed of decision-making (12%), transparency in the work of courts (6%). Among the responses of the judges from other courts, frequencies are distributed as follows: independent judge (40%), the quality of decisions made (39%), speed of decision-making (12%), transparency in the work of courts (7%).

5. Performance evaluation of judges and promotion of judges

5.1. Performance evaluation of judges

Fifty-nine present of judges in Serbia believes that there should be a periodic evaluation of judges' performance[3]. 31% of judges believe the opposite while 10% of judges is not sure and does not know how to answer to this question. It is interesting that when we look at the answers from the perspective of the jurisdiction of the courts where the judges work, we get the following – prevailing view among the judges in almost all courts is that there should be a periodic performance evaluation of judges, except in the case of the Administrative Court, where the opinions of the judges of this court are divided – 43% of judges is for and 43% is against the periodic evaluation. In addition, in the case of the Misdemeanour Court of Appeal, there is an interesting finding – this is a court in which 90% of the judges is for the periodic performance evaluation of judges, and only 5% is against the periodic performance evaluation of judges. In general, 63% of the judges of misdemeanour courts considers that there should be a periodic performance evaluation of judges (27% thinks the opposite), or 58% of judges of the other courts considers that there should be a periodic performance evaluation of judges (33% thinks the opposite).

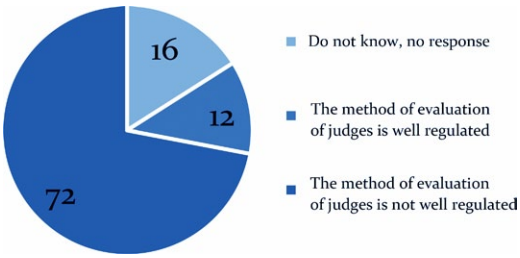
Chart 5.1. Do you think that there should be a periodic performance evaluation of judges? (in %)



[3] Article 2 of the *Rules on the Criteria, Standards, Procedures and Bodies for Performance Evaluation Of Judges and Court Presidents* stipulates that "the purpose of evaluation of the performance of judges and court presidents is to enhance efficiency of the judicial system, preserve and improve expertise, capacities and accountability of judges and court presidents, encourage judges and court presidents to achieve best possible work performance, maintain, strengthen public trust in the work of judges and courts, and career advancement", while Article 3 stipulates that the performance of judges with a standing tenure of office and the court presidents shall be regularly evaluated once every three years, and once a year for the judges elected for the first time.

Judges in Serbia believe that the method of evaluation of judges is not well regulated – this view is shared by 72% of judges, while 12% of judges do not agree with them. The answer was not provided by 16% of judges. Among the judges who said that the most important thing for the achievement of basic judicial principles to the full extent is actually the election and promotion of judges under clear criteria, 74% of them considers that the method of evaluation of judges is not well regulated, and 15% that it is well organized.

Chart 5.2. Is the method of performance evaluation



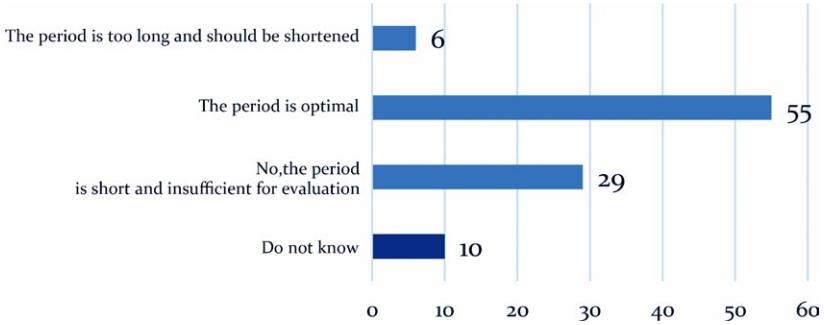
When we look at individual courts, by jurisdiction, the judges of the higher courts of general jurisdiction stand out – 82% of judges of these courts considers that the method of evaluation of judges is not well regulated (compared to 6% of those who think it is, and 12% of those who do not know). Judges of the Misdemeanour Court of Appeals also stand out – 42% of judges considers that the method of evaluation of judges is not well regulated (compared to 24% who believe it is, and as much as 34% of those who do not know). As the judges generally in most cases said that the method of evaluation of judges is not well regulated, we asked them whether they agreed that the deadline of 3 years for the first election and performance evaluation of judges with standing tenure of office is suitable (Chart 5.3).

Although judges mostly think that the method of evaluation of judges is not well regulated, in most cases the deadline is not primarily seen as the problem in evaluating. Specifically, 55% of judges consider that the deadline is actually optimal. On the other hand, 29% of judges argue that the deadline is short and insufficient for evaluation, while 6% of judges thinks that the deadline is long and should be shortened. 10% of judges do not know how to answer to this question.

Regarding the jurisdiction of the courts, 59% of judges of misdemeanour courts consider that the period of three years is optimal, 22% that the deadline is short and insufficient for evaluation, and 6% that the

deadline is long and should be shortened. On the other hand, judges from other courts have responded as follows: 54% of judges consider that the period of three years is optimal, 32% that the deadline is short and insufficient for evaluation and 6% that the deadline is long and should be shortened.

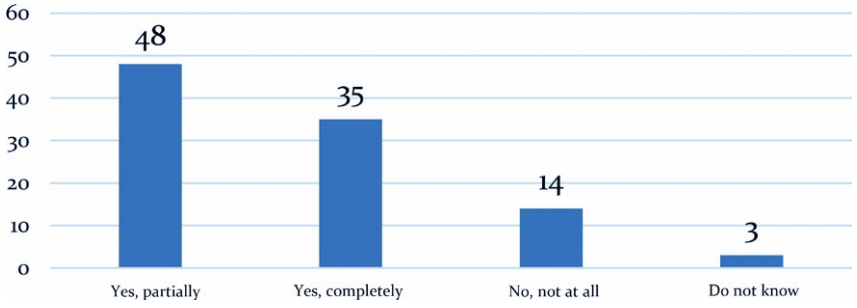
Chart 5.3. Do you agree that the period of 3 years is suitable for the first election and performance evaluation of judges with standing tenure of office? (in %)



5.2. Promotion of judges

Closely associated with the performance evaluation of judges is the promotion of judges. *Rules on the Criteria, Standards, Procedures and Bodies for Performance Evaluation of Judges and Court Presidents* and its amendments exhaustively stipulate the criteria and standards for the evaluation and promotion of judges.

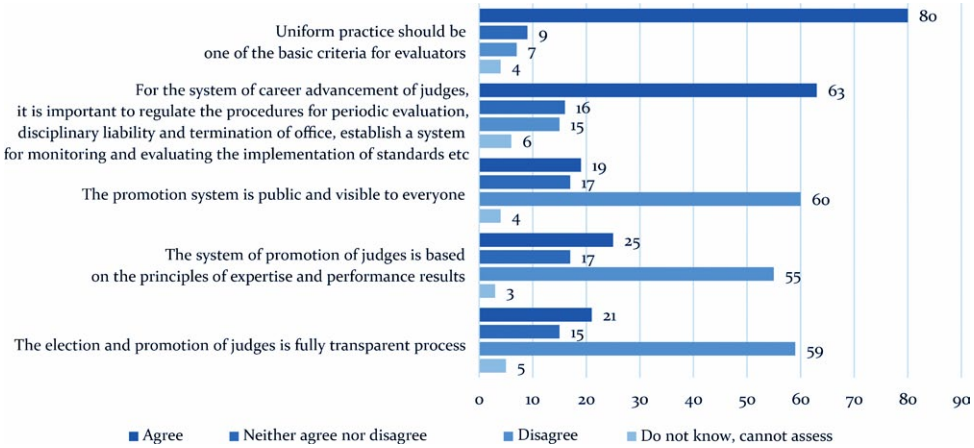
Chart 5.4. Are you familiar with the criteria and standards for the promotion of judges?



Complete familiarity with the criteria and standards for promotion of judges is recorded in 35% of judges in Serbia. 48% is only partially aware

of a these criteria and standards, while 14% of judges is not aware of the criteria and standards for the promotion of judges. Among the responses of judges working in the courts of different jurisdiction there are no statistically significant differences in the responses to this question.

Chart 5.5. Rate agreement with the following statements related to the method of evaluating the judges (in %)



Uniform practice should be one of the basic criteria for evaluators, for fair performance measurement and evaluation of judges and their promotion, is the opinion of 80% of judges in Serbia. With this disagrees 7% of judges and 9% neither agrees nor disagrees. For 84% of judges of misdemeanour courts and 79% of judges of all other courts uniform practice should be one of the basic criteria for evaluators for fair performance measurement and evaluation of judges and their promotion (for 4% of judges of misdemeanour courts, or 8% of judges of all other courts uniform practice should not be one of the basic criteria for evaluators for fair performance measurement and evaluation of judges and their promotion). For the system of career advancement of judges, it is important to regulate the procedures for periodic evaluation, disciplinary liability and termination of office, establish a system for monitoring and evaluating the implementation of standards, rules for evaluators and their training and the program for weighting of the cases – this statement is supported by 63% of judges, 16% neither agrees nor disagrees with it while 15% of judges considers that all the stated is not necessary for the system of career advancement of judges. 61% of the judges of misdemeanour courts, or 63% of the judges of all other courts, considers that for the

system of career advancement of judges it is important to regulate the procedures for periodic evaluation, disciplinary liability and termination of office, establish a system for monitoring and evaluating the implementation of standards, rules for evaluators and their training and the program for weighting of the cases (for 10% of the judges of misdemeanour courts and for 17% of the judges of all other courts opposite is true).

That the promotion system is public and visible to everyone is the opinion of 19% of the judges, while 60% of the judges nevertheless argue that the promotion system is not public and visible to everyone, and 17% of judges neither agrees nor disagrees with this statement. Regarding the jurisdiction of courts, half of the judges (50%) of the misdemeanour courts disagree with the statement that the promotion system is public and visible to everyone, and 63% of the judges of other courts disagree with this statement. That the promotion system is public and visible to everyone is the opinion of 26% of the judges of misdemeanour courts and 17% of the judges of all other courts.

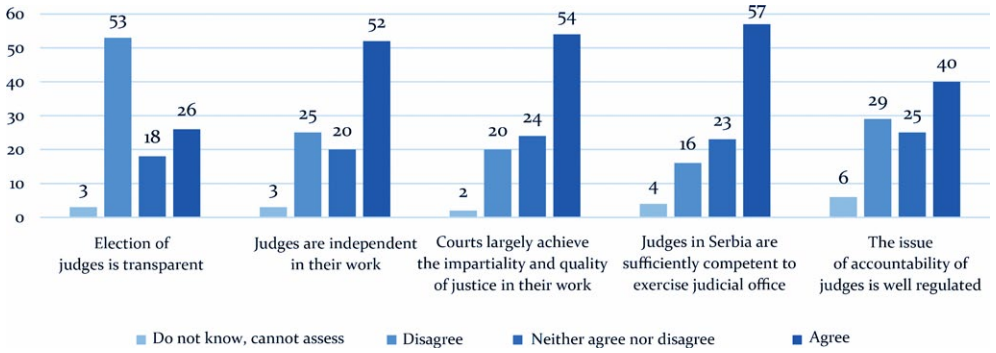
Closely associated with the publicity and the visibility of the process is the complete transparency of the process. Judges in Serbia do not think that the election and promotion of judges is a fully transparent process and that is claimed by 59% of judges, 15% neither agrees nor disagrees with that, and 21% of judges still believes that it is fully transparent process, while 5% of judges could not respond to this question. 48% of the judges of misdemeanour courts disagree with the fact that the election and promotion of judges is a fully transparent process, while 63% of the judges of other courts disagree with the statement. That the election and promotion of judges is fully transparent process is the opinion of 26% of the judges of misdemeanour courts or 19% of the judges of all other courts.

Finally, 55% of judges in Serbia consider that there are criteria and standards for promotion of judges other than expertise and performance results. 25% of judges believe, however, that the process of evaluation and promotion of judges is based on the principles of regard of expertise and performance results, and 17% of judges neither agrees nor disagrees with it. The judges of misdemeanour courts find that there are criteria and standards for promotion of judges other than expertise and performance result (47%), and 58% of judges from all other courts agrees with them. That the process of evaluation and promotion of judges is based on the principles of regard of expertise and performance results is considered by 33% of the judges of misdemeanour courts and 21% of the judges of all other courts.

6. Characteristics of an ideal judge

The question is asked, what the judges are like in Serbia, and what is a preferred judge like, as seen by his/her profession? What qualities he/she should possess and what his work should look like. The following chart (Chart 6.1.) contains the selected statements that refer to the performance and accountability of judges in Serbia.

Chart 6.1. Rate agreement with the following statements related to the performance and accountability of judges (in %)

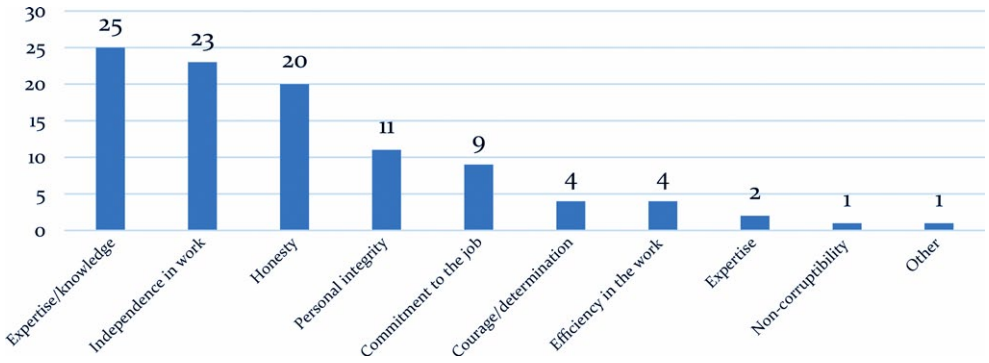


That the election of judges in Serbia is transparent is not considered so by 53% of judges and 26% still finds it true. That the election of judges in Serbia is transparent is not considered as true by 43% of the judges of misdemeanour courts and 57% of the judges of all other courts, while 31% of the judges of misdemeanour courts and 24% of the judges of other courts still consider that the election of judges is transparent. Moreover, 52% of judges consider that judges in Serbia are independent in their work while 25% of judges disagree with that, while 20% of judges neither agrees nor disagrees. In this statement, there is no difference in the responses between the judges working in the courts of different jurisdictions. The regularity perceived is the following – if the judge once felt a pressure when making a decision, greater will be the probability for him/her to consider that there is no independence of judges in their work. In fact, among those who think that judges are independent in their work dominate the judges who did not feel pressure in their work (76% of those who did not feel the pressure as opposed to 24% who felt), and conversely, among those who believe that judges are not independent in their work dominate those judges who felt pressure in their work.

As a positive finding, there is the fact that 54% of judges in Serbia are of the opinion that in their work, courts largely achieve the impartiality and quality of justice. 20% of judges, however, disagree with that and 24% of judges neither agrees nor disagrees with this statement. Besides, 57% of judges consider that judges in Serbia are sufficiently competent to exercise judicial office and 16% of judges consider that their colleagues are not sufficiently competent to exercise this office. With this statement agrees 63% of the judges of misdemeanour courts and 55% of the judges of the courts of other jurisdictions, while 13% of the judges of misdemeanour courts and 17% of the judges of the other courts thinks contrary. Finally, opinions on the issue of regulating accountability of judges are divided. Specifically, 40% of judges consider that the issue of accountability of judges is well regulated, while 29% of judges disagree with them and 25% of judges neither agrees nor disagrees with this statement. Regarding by jurisdictions, 48% of the judges of misdemeanour courts and 38% of judges from other courts considers that the issue of accountability of judges is well regulated, while 24% of the judges of misdemeanour courts, or 31% of the judges of other courts do not agree with them.

Finally, how would a perfect judge, who meets the requirements of the Code of Ethics, look like? The judges were able to name three qualities that they believe a judge who meets the requirements of the Code of Ethics should have. As the respondents did not rank, but merely listed three characteristics of "ideal judge", we presented the summary chart showing the most common answers given by respondents, namely what are the characteristics that judges nominate most often and associate them with the "ideal judge".

Chart 6.2. Characteristics that in your opinion a judge needs to have, to meet the requirements of the Code of Ethics (in %)



The chart 6.2 demonstrates that the opinions of judges are very different and the answers are quite scattered, and that judges have different views about an ideal colleague. Namely, expertise, or knowledge, appears in 25% of responses, and that is the most frequent answer. Slightly less, a total of 23%, has the answer that independence is crucial for the work of a judge, while 20% of responses are related to honesty. 11% of responses refer to the personal integrity, 9% to the commitment to the job, 4% courage and determination or efficiency in the work, 2% that experience is crucial and 1% of responses underline the importance of non–corruptibility of judges.

There are no statistically significant differences in the responses of judges working in the courts of different jurisdictions.

7. High Court Council

The High Court Council (in this chapter: HCC) is an independent and autonomous body that ensures and guarantees independence and autonomy of courts and judges. The composition of the HCC includes the President of the Supreme Court of Cassation, the Minister of Justice and President of the authorized Committee of the National Assembly as members ex officio and eight electoral members appointed by the National Assembly, in accordance with the law. With the State Prosecutorial Council (SPC), HCC is a body of judicial self–government with constitutionally granted competence to be independent and autonomous in order to guarantee the independence of the courts and the judges.

Since its establishment, operations of HCC are followed by numerous negative reviews, including a significant number of national and international stakeholders who pointed to shortcomings in the work of this body. It is therefore very important to analyse how judges assess all relevant aspects of the HCC work.

At the beginning, we will make an overview of the work of the HCC in the previous composition and we will further talk about the election of the new members of the HCC.

7.1. HCC composition from 2011

We will start the chapter by analysing the factors that affected the election of judges to the previous composition of the HCC (from 2011). Judges were offered four different factors – *knowledge and authority of judges, ties – kinship and friendly relations, influence of political parties and various interest groups (tycoons, businessmen*) and were asked to tell us the extent to which these factors influenced the previous composition of the HCC.

The influence is most evident with political parties because more than half of the judges (56%) say that the parties had a considerable or extreme influence on the election of the previous HCC. These results coincide with other research in which the influence of the parties is seen as dominant, and often decisive for the functioning of the institutions. This is above average the opinion of the judges of commercial courts and the Commercial Appellate Court. After the parties come: kinship and friendly relations (44%), various interest groups (37%) and, at least, knowledge

and authority of the judges (18%). At the same time, nearly two-fifths of respondents (38%) claim that the knowledge and authority of judges had little or no impact on the election of judges in previous HCC.

Between one fifth and one third of the surveyed judges did not know or was not able to assess how certain factors influenced the election of judges to the previous composition of the HCC.

If we analyse the answers to these questions through the prism of different types of courts (misdemeanour courts and other courts), we conclude that there is no statistical correlation with the impact of kinship and friendly relations, political parties and various interest groups (tycoons, businessmen). Slightly more significant correlation was recorded only in terms of knowledge and authority as a factor for the election of judges to the previous composition of the HCC: the judges of other courts think, above the average, that this factor had no impact at all (25% vs. average of 22%), while 16% of the judges of misdemeanour courts believe that the knowledge and authority considerably affected the election of judges (as opposed to 13%, which was the average).

Table 7.1. To what extent the election of judges to the previous composition of the HCC (2011) was influenced by… (in %)

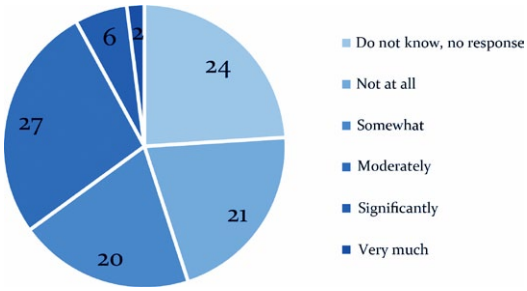
	Do not know, cannot assess	*Not at all*	*Slightly*	*Moderate*	*Considerably*	*Extremely*	*Total*
Knowledge and authority of judges	19	22	16	25	13	5	100
Ties – kinship and friendly relations	27	5	7	17	25	19	100
Influence of political parties	23	4	5	12	24	32	100
Various interest groups (tycoons, businessmen)	33	6	7	17	18	19	100

To what extent previous HCC guaranteed the impartiality of the judiciary and how successfully it managed the judicial system are the two questions that we asked judges next. Every fourth judge did not know or refused to answer the question related to the contribution of the previous composition of the HCC to guaranteeing the impartiality of judges. Most responses are grouped around the option "moderate", while a higher percentage of respondents says that the impact of HCC was small or

that there was no impact at all (41%) than the judges who claim that the HCC contributed considerably or extremely (only 8%).

The judges of other courts above average think that the previous composition of the HCC did not guarantee impartiality of judiciary at all – 25% as opposed the average of 21%.

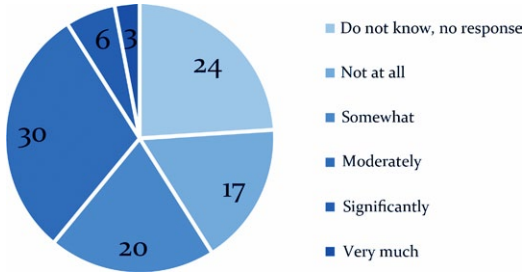
Chart 7.1. To what extent previous HCC (from 2011) guaranteed the impartiality of the judiciary? (in %)



Judges in almost identical way see the role of the previous composition of the HCC in managing the judicial system: large number of undecided (24%) and a higher percentage of dissatisfied (37% of judges says that HCC did not manage the judicial system very successfully) than satisfied (one in eleven judges believes that HCC highly successfully managed the system) with the largest grouping of responses saying that the previous HCC moderately managed the judicial system. There is no significant correlation when we intersect this question with axis: misdemeanour judges – judges of other courts.

The answers to both questions suggest that judges do not recognize the previous composition of the HCC as an important instance for guaranteeing the impartiality of the judiciary and court management system.

Chart 7.2. How successfully did the previous HCC (from 2011) manage the judicial system? (in %)



The part about the work of the previous composition of the HCC we conclude with answers to the questions, how will judges mostly remember the work of the previous composition of the HCC and what that composition (from 2011) mostly cared for. Judges were offered four different elements – *the interests of the judicial profession, interests of political parties, personal interests of the members of the HCC and the interests of various stakeholders* and they were asked to rate on a scale of 1 to 5 ("school scale") to what extent these elements affected the work of the previous composition of the HCC.

Judges assessed that the previous composition of the HCC was mostly concerned with (considerably and extremely) their personal interests (42%) and the interests of political parties (41%), and least concerned with the interests of the judicial profession – 13% of judges says that they were concerned considerably or extremely as opposed to 43% of judges who claims that they dealt with it slightly or not at all. Every third judge thinks that the previous composition of the HCC dealt with the interests of different stakeholders the most.

If we cross–reference the answers depending on the engagement of judges in the misdemeanour or other courts, there is one statistical correlation recorded for the question how the previous composition of the HCC took care of the interests of the judicial profession. The judges of the other courts above the average belong in the group of respondents who say they did not taken care at all (25% vs. 21%), while 11% of the misdemeanour court judges agrees with that.

All these findings correlate with previous conclusions on the work of the previous composition of the HCC that suggest that judges are not very satisfied with the engagement of the previous composition of the HCC and believe that their election and subsequent work was often influenced by factors which were not related with the judicial profession.

Table 7.2. What concerned the previous HCC (from 2011) most in its work? (in %)

	Do not know, cannot assess	*Not at all*	*Slightly*	*Moderate*	*Considerably*	*Extremely*	*Total*
The interests of the judicial profession	19	21	22	25	10	3	100
The interests of political parties	33	4	7	15	22	19	100
Personal interests of the members of HCC	35	4	5	14	23	19	100
The interests of various stakeholders	40	4	7	16	19	14	100

7.2. New composition of HCC in 2016

In this section, we will discuss the election of the new composition of the HCC, since their five–year term began in April 2016, so the research could not include questions about the perception of their work. Therefore, the biggest part of this chapter will be devoted to election procedures. At the same time, high quality, transparent and fair procedures guarantee greater integrity of the HCC as an institution.

Of the total number of judges we interviewed, 14% of them participated in the nomination process for members of the new composition of the HCC. Key motive of the judges to be nominated for the members of the new composition of the HCC is the attainment of personal prestige and status – two fifths of respondents has such an opinion. Judges of the Supreme Court of Cassation, Administrative Court and appellate courts agree above average with this thesis. The second place is for the material interest of the judges: 17% of respondents say that higher salary is the backbone of nomination. The need to improve the functioning of the judicial system is in the third place (14%), while the political influence is at the bottom (6% of judges thinks that politics as a motive lies behind the process of nomination).

No major statistical correlation with judges engaged in misdemeanour or other courts, except that misdemeanour judges above average think that the motive is a higher salary (24% vs. average 17%).

Chart 7.3. Did you participate in the nomination for the members of the new composition of HCC? (in %)

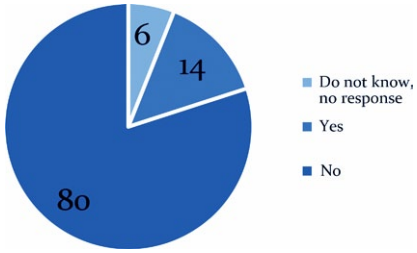
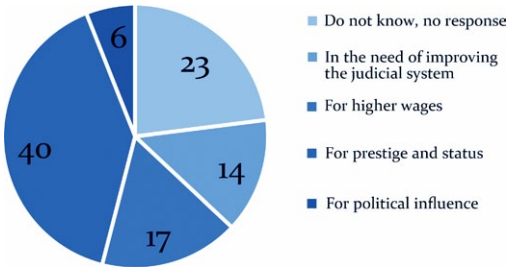


Chart 7.4. Why do judges run for members of the new composition of HCC? (in %)



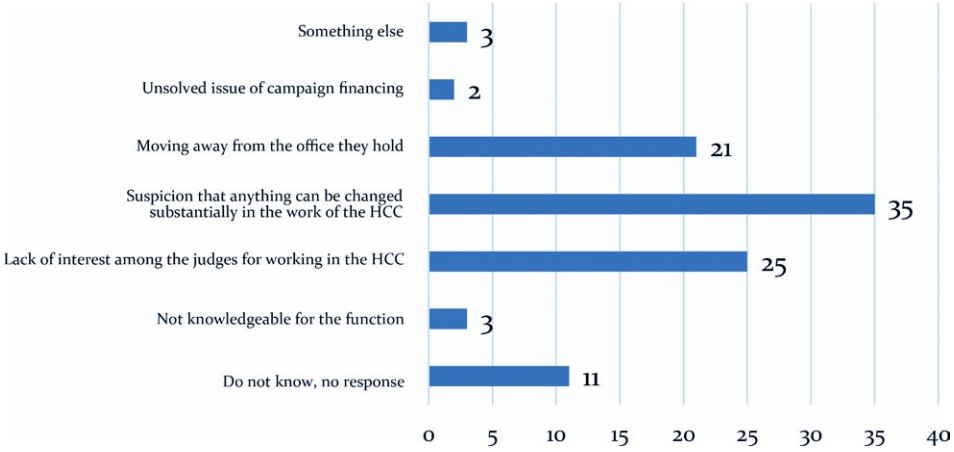
These findings show us that judges continue to show reserve with regard to the motives for the candidacy for the HCC, with the emphasis on personal motives rather than wider, professional ones. In summary, personal motives account for 63%, and no response was 23%, accounting for 14% of the judges that their colleagues think would work on improving the judicial system. It is also interesting that judges believe that the previous composition of the HCC took account of the interests of political parties and was influenced by them, but that judges do not consider that the reason for the nomination is future political impact that members of the HCC would have had (6% of judges believes that political influence is the key in the nomination process).

Essentially the biggest reason why judges are refusing to take part in the candidacy for the new composition of the HCC is suspicion that anything can be changed substantially in the work of the HCC (35%). One in every three judges believes that his/her engagement may affect the changes in the work of the HCC. For the same reason, the judges most likely do not believe in beyond-personal motives of those who were nominated. In second place are the reasons of personal nature, and that is the lack of interest among the judges for this type of engagement – that

is the opinion of every fourth judge. A fifth of judges believe that entering into this process implies moving away from the office they hold, and thus we complete the list of the most important reasons for non-participation in the process of candidacy for the new composition of the HCC. A very small percentage of judges say they are not knowledgeable for that or they stated some other reason (3%) and that they did not solve the issue of campaign financing (2%). One ninth of judges does not know or has no opinion on the issue.

Deviations are only recorded with the lack of interest for work in the HCC where the judges of misdemeanour courts are above the average – 33% as opposed to an average of 25%.

Chart 7.5. Reasons for non-participation of judges in the candidacy for the members of HCC (in %)



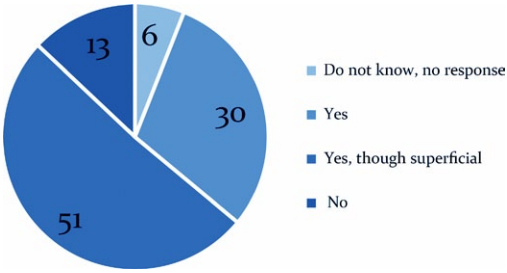
Below we will see to what extent judges were familiar with the candidates for the new composition of HCC, what was the last campaign like and whether there was lobbying for some of them, and, finally, what were the motives for voting for a particular candidate.

Information about the candidates belongs to the circle of cognitive elements of any campaign, and it is very important for the subsequent voting process. The survey data show that nearly one third of judges (30%) had information about the candidates for members of HCC with 51% of the judges claiming they have had only superficial information. On the other hand, there are 13% of interviewed judges that had no information about the candidates for members of the HCC. This suggests that the campaign for elections needs to be more visible. It is interesting

that only judges of the basic courts had above average problems in obtaining information about the candidates. There are no other statistically important correlations.

Data indicate that the majority of judges had certain information about the candidates for members, but also that there is room for a fuller and more complete information about candidates that would be to mutual benefit.

Chart 7.6. Did you have any information about the candidates for members of HCC? (in %)

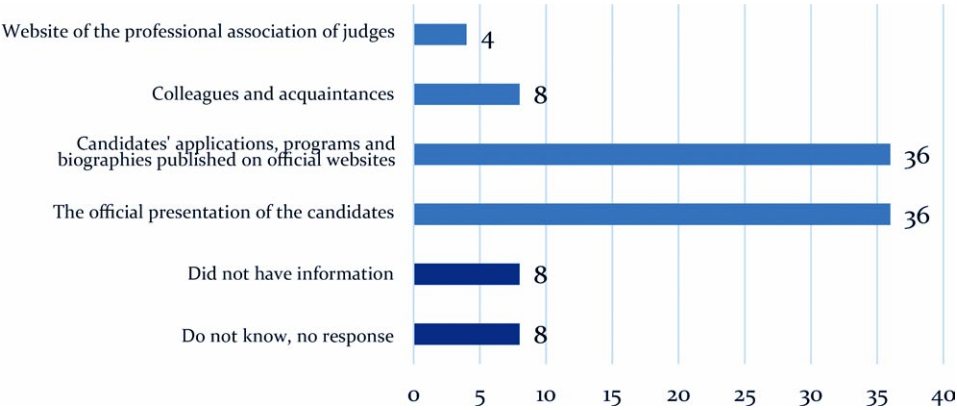


More than two thirds of the interviewed judges were informed in two ways (36% each): from candidates' applications, programs and biographies published on official websites or from the official presentation of the candidates.

A small number of judges was briefed by talking to colleagues and acquaintances (8%) and via the website of the professional association of judges (4%). It is indicative that the judges do not rely too much on direct communication and recommendations of other colleagues/acquaintances even though those are sources that have their trust as an advantage.

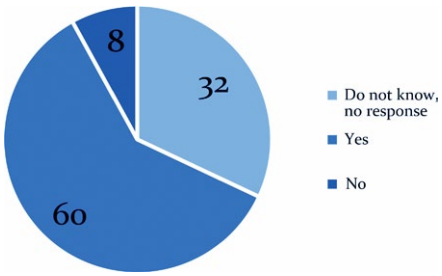
The judges of misdemeanour courts were above average informed through the official presentations of the candidates: this is claimed by 42% of misdemeanour judges, which is 6% more than the average and 8% more than the judges of the other courts.

Chart 7.7. Sources of information about the candidates for members of the HCC (in %)



Judges do not have a dilemma that there has been lobbying for candidates, so 60% of respondents answered affirmatively to this question. One third of judges does not know anything about it or has no opinion, and only 8% of judges confidently say that there was no lobbying. Judges of the other courts think more than average that there had been lobbying (63%).

Chart 7.8. Do you think that there was lobbying for the candidates? (in %)



The question that is logically linked to the previous one is who exercised the lobbying, if the judges are knowledgeable about that. We offered a list of four possible types of impact – *the executive power, relatives and personal interests, interest groups, and informal groups within the judicial profession*, and asked the judges to tell us to what extent they lobbied for specific candidates. According to the survey data, judges believe that most lobbying came from informal groups within the judicial profession (32%); 16% of respondents says that lobbying was done through

a variety of interest groups, while 9% and 8% of judges were of the opinion that there was lobbying by politicians and relatives and personal interest groups respectively. Although judges indicated to a link with political interests for the previous composition of the HCC, lobbying for the new composition of the HCC is noted on the other side, primarily in informal groups within the judicial profession.

We stress that judges of general jurisdiction courts above average think that lobbying comes from informal groups within the judicial profession, 34% versus an average of 32%.

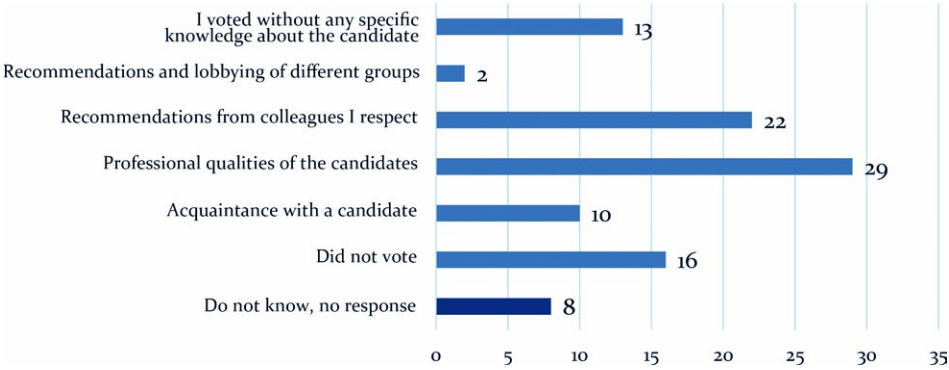
Table 7.3. If you are aware of any lobbying, who exercised it? (in %)

	No	*Yes*	*Total*
Lobbying was exercised by the executive political power	91	9	100
Lobbying originated from interest and relatives	92	8	100
Lobbying was exercised by various interest groups	84	16	100
Lobbying was exercised by informal groups within the judicial profession	68	32	100

Why did the judges vote for their "favourites" or what did predominantly influence them to vote for a particular candidate? The judges put in the first place professional quality of the candidates (29%), but they also highly appreciate recommendations from colleagues who they respect (22%). This means that half of the judges vote at their own discretion and are led by their principles. Afterwards follow the judges who voted without any specific knowledge about the candidate (13%).

Every tenth judge voted because he/she personally knew the candidate whom he voted for, while lobbying for a candidate was the motive for only 2% of the judges. There is no difference with respect to whether we are talking about judges of misdemeanour or other courts.

Chart 7.9. What influenced you to vote for the candidate you decided to vote for? (in %)



This survey segment is concluded with the question about the expectations of the new composition of the HCC concerning the fulfilment of its statutory function. Two–thirds of respondents takes a rational attitude in terms of future expectations from the new composition of the HCC and says that they do not know anything in advance, but that it is necessary to wait to judge their performance. There is 2% more judges (a total of 14%) who doubt the integrity of the members and believe that sooner or later they will succumb to pressures, than the judges who believe in their choice (12%) and say that the candidates won their trust due to their conscience.

The remaining 8% of respondents did not know or did not have a view about this issue.

Chart 7.10. Do you believe that new members of the HCC will conscientiously exercise their office? (in %)

Transparency in the work is one of the basic postulates and principles that must be respected in the functioning of HCC. Therefore, we presented three assertions to judges and asked them to tell us whether they

agree or disagree with them. The assertions should serve to clearly perceive what it is that judges mean under the transparency of work of the HCC and moreover, whether there is room for improvements if such a practice was not (sufficiently) applied.

Two-thirds of judges agrees that transparency of HCC work involves public sessions of HCCs, reasoned decision-making, publication of decisions and publication of the performance report with a small number of "opponents" – 8%. The other two assertions, however, sparked conflicting views. That institutional accountability is established in the work of HCC thinks one quarter of judges, with one-fifth of respondents who disagree and 26% who are indifferent ("neither agree nor disagree"). At the same time, judges expressed reserve about the progress in the domain of transparency in the HCC work, as one third of judges do not agree that the transparency of the HCC work is currently more pronounced, and the impact of legislative and executive power on the work of the HCC is smaller. On the other hand, 23% of judges believe that the situation is better and agrees that transparency of the HCC work is now more pronounced.

Judges of misdemeanour courts above average think that the transparency of the HCC work is now more pronounced, and the impact of legislative and executive power on the work of the HCC is smaller, and that the institutional accountability is established in the work of HCC, but there are no significant deviations.

Table 7.4. Transparency in the work of HCC? (in %)

	Do not know, cannot assess	*Disagree*	*Neither agree nor disagree*	*Agree*	*Total*
Transparency of the HCC work is now more pronounced, and the impact of legislative and executive power on the work of the HCC is smaller	20	33	24	23	100
Transparency of the HCC work implies public sessions of the HCC, reasoned decision–making, publication of decisions and publication of the performance report	11	8	15	66	100
Institutional accountability is established in the work of HCC	28	21	26	25	100

Every election process must ensure fair and honest conditions for those who participate in it and secure conditions for equal treatment in the campaign. The elections should take into account the cognitive component of the campaign so that the participants have sufficient information for a quality electoral decision.

How do judges see the elections for members of the new composition of HCC?

On the most general level, in terms of regularization of the election campaign, the judges were divided in opinion: 31% of the judges say that the campaign is regulated in detail and clearly, compared to 27% of judges who do not agree with that. No statistical differences concerning the misdemeanour judges and judges of other courts.

With the statement that the nomination was free and that nobody was favoured agrees almost two-fifths of the respondents (39%), with 26% of judges who do not agree with that. Judges of misdemeanour courts above average with this assessment: 30% mainly agrees and 19% fully agrees.

In contrast to this result, judges are not satisfied with the information obtained about the work of each candidate, as there are 58% of judges who agree with the statement that before the elections judges should have been adequately informed about the work of each candidate. On that note is the finding that 60% of respondents agrees that before the elections, each candidate should have had the opportunity to present himself/herself with the video material or at public discussions, as opposed to one ninth of judges who think differently.

The remaining five assertions are additionally important because they are directly addressing the issue of electoral procedures and indirectly defining possible directions for their improvement or change.

With the assertion that it is necessary that all judges vote on all candidates from all courts, and not just from his/her base agrees 60% of interviewed judges, with the opposition of 16% of respondents. Misdemeanour court judges above average disagree with this statement – 13% disagrees and 8% mainly disagrees.

Regarding the remaining four claims, on the other hand, there is not much conformity. Namely, that in order to ensure greater confidentiality, voting should have been organized at less polling stations is assessed as a good proposal by slightly more than a third of judges (36%), but at the same time that is opposed by 29% of judges, with a fifth of undecided or indifferent. There is no difference between the responses obtained from the misdemeanour and the other judges. Then, there is almost divided opinion of the judges on the current election of candidates for HCC,

because the percentage of judges who say that the current method of election of candidates is good and adequate almost the same as the percentage of judges who think completely different – 31% versus 28%. Misdemeanour court judges are satisfied with the current model compared with judges of other courts. The situation is similar with the possible introduction of a double-circuit system of voting. Namely, one third of judges today would support such a change, but there are only 3% fewer judges who would be against it. There is no difference in the responses received from misdemeanour judges compared to the other judges. Finally, 39% of judges agree that HCC should enable financing of campaigns while one fifth of judges disagree with that. No statistically significant correlations.

Table 7.5. Election for the member of the HCC (in %)

	Do not know, cannot assess	*Disagree*	*Neither agree nor disagree*	*Agree*	*Total*
Nomination was free and that nobody was favoured – everyone had a chance to be elected	16	26	19	39	100
Before the elections judges should have been adequately informed about the work of each candidate, which was not done	10	16	16	58	100
The election campaign was regulated in detail and clearly	16	27	26	31	100
Before elections each candidate should have had the opportunity to present himself/herself with the video material or at public discussions	11	11	15	63	100
It is necessary that all judges vote on all candidates from all courts, not just from his/her base	11	16	13	60	100
In order to ensure greater confidentiality, voting should have been organized at less polling stations	15	29	20	36	100
Current method of election of candidates is good and adequate	15	28	26	31	100
High Court Council should enable financing of campaigns	20	21	20	39	100
It is necessary to introduce a double-circuit system of voting	19	29	19	33	100

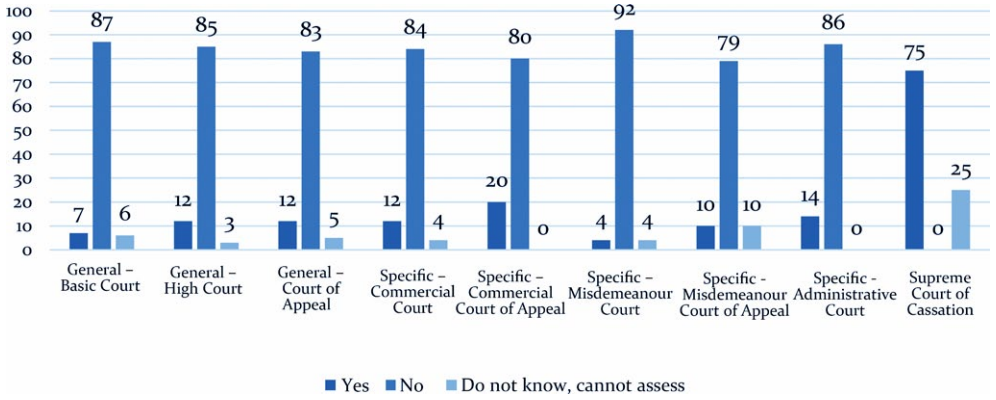
8. Material independence of judges

A separate set of issues in the context of this survey measured the attitude of judges towards the legal provisions on material independence, and their perception of their salaries and on providing financial independence in their work.

The first particularly important finding is the frequency of responses we received to the question "Do you think that you are adequately paid for the work you do?" 87% of judges consider that they are not adequately paid, while 8% thinks that their salaries are satisfactory. Regarding the jurisdiction of the courts, most of those who chose the answer "no" can be found in misdemeanour courts – as much as 92%, while most of those who chose the answer "yes" are among the judges who are employed in the Supreme Court of Cassation – 75%. In the last-mentioned group at the same time not a single answer was noted which would indicate dissatisfaction with the level of salary, given that the remaining 25% of the judges of this court could not/would not express their views. Compared to other courts, larger number of judges who feel that they are adequately paid for their work can be found also in the Commercial Appellate Court – 20% (see chart 8.2).

Chart 8.1. Do you think that you are adequately paid for the work you do? (in %)

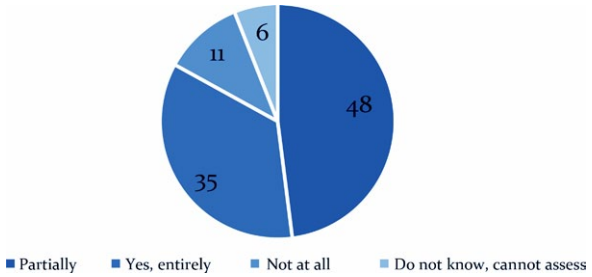
Chart 8.2. Do you think that you are adequately paid for the work you do – by the jurisdiction of the courts? (in %)



That judicial salary represents the "guarantee of independence", as prescribed by the Law, is believed by 11% of the judges, while more than a third considers that this function is fulfilled halfway, or partially. On the other hand, 48% of judges have the opposite view – in this group is the largest number of judges who replied negatively to the previous question (about the adequacy of the salary). In the category of those who believe that the guarantee of the independence is only partially realized with the salary is a larger number of those who consider that they are paid appropriately, with, as will be demonstrated in the further analysis, the attitude that it is necessary to increase the salaries.

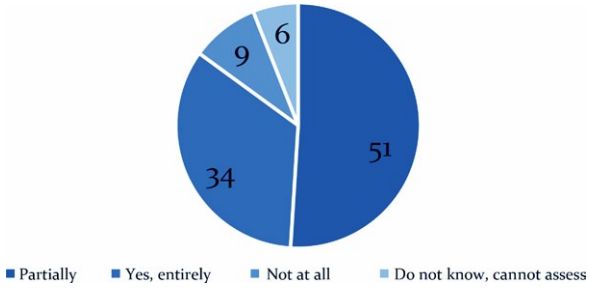
When we look at this result from the perspective of the jurisdiction of the courts, that is, when we segregate responses of the misdemeanour judges from the responses of judges of other courts, we get the following indicators: that judicial salary fully represents the "guarantee of the independence", as provided by the Law on Judges, believes 9% of judges of misdemeanour courts, or 10% of the judges of other courts; that this is happening to a certain extent, i.e. partially, is considered by 32% of judges of misdemeanour courts , or 36% of the judges of other courts; finally, the belief that salary does not guarantee independence is considered by more than half of the judges of misdemeanour courts (52%) and slightly less judges of the other courts (46%).

Chart 8.3. In your opinion, does judicial salary represent the "guarantee of independence" in accordance with the Law on Judges? (in %)



That the increase of judges' salaries would lead to the full guarantee of independence of judges in their work, fully or partially, believes collectively 84% of respondents. Each eleventh respondent thinks that increase of salaries of judges would not have that effect, while 6% of judges had no opinion on the issue. Segregation of answer to the misdemeanour and other courts shows that variations in the attitudes are slight: 88% of the judges of misdemeanour courts compared to 83% of other judges considers that increase of salary levels would partially or fully lead to the guarantee of the independence of judges and their work, while the opposite opinion has 6 % of misdemeanour judges and 10% of the judges of other courts.

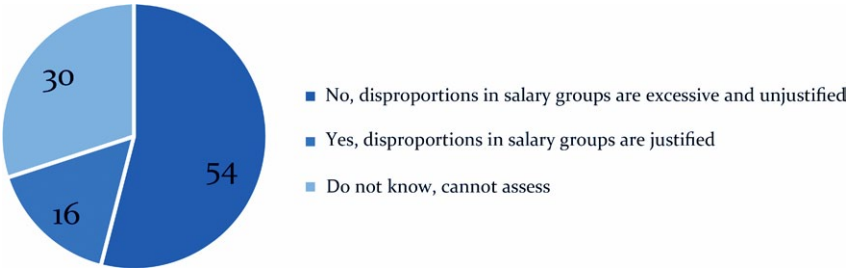
Chart 8.4. Do you believe that the increase of the level of judicial salaries would guarantee the independence of judges and their work? (in %)



On the other hand, the Law on Judges defines coefficients and salary groups for judges, distinguishing between six groups (based on Article 38 and Article 39). More than half of the respondents believe that the disproportions in salary groups are excessive, or unjustified – 54%. As expected, such frequency of responses is affected mostly by the judges who are in

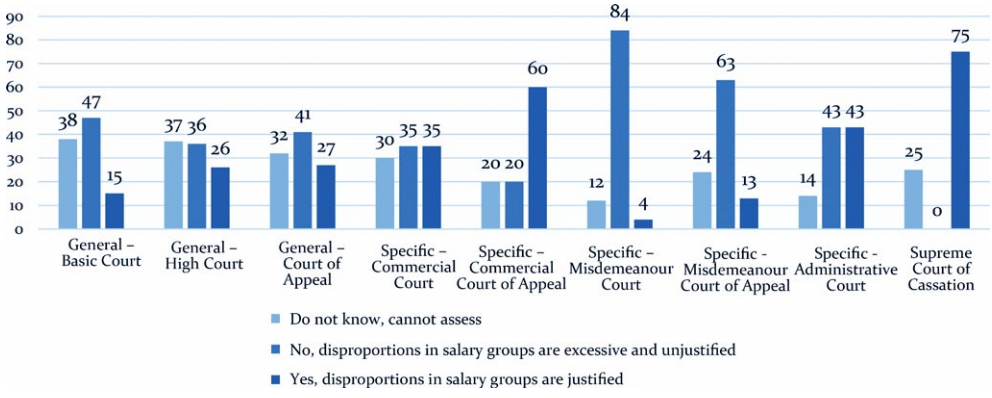
the first three salary groups – judges of misdemeanour, basic, commercial, higher and Misdemeanour Court of Appeal, or the judges who believe they are not adequately paid for their work. On the other hand, it is interesting that slightly less than one third of respondents could not assess whether the differences in salary groups are justified or not.

Chart 8.5. Do you think that the Law on Judges adequately regulates the salary groups and coefficients for judges? (in %)



We sorted these answers also by the jurisdiction of each court, and the responses are shown in the graph below.

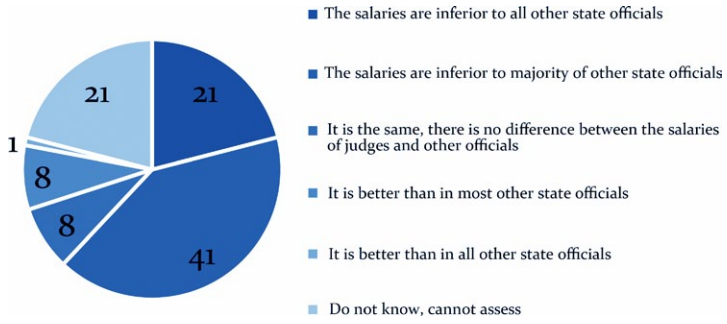
Chart 8.6. Do you think that the Law on Judges adequately regulates the salary groups and coefficients for judges, according to the court's jurisdiction? (in %)



We have asked the judges to try to compare their salaries with the salaries of other state officials. The main finding shows that collectively two-thirds of the judges believe that their salaries are inferior to all or most of government officials (21% and 41%, respectively). Eight percent of respondents believe that there is no difference between the judicial

salaries and those of other state officials, and other 8% thinks that judges have higher salaries compared to most other civil servants. It is interesting that even those judges who believe that they are adequately paid for performing their work, in the highest percentage feel that they are paid less than other state officials are. On the other hand, one percent of judges believe that they have higher salaries in comparison with all other public officials. This response is most likely because the judges are prevented from generating additional income, while no public officials are. In this sense, these findings must be taken with caution, noting that those salaries must be distinguished due to the possibility or impossibility for additional earnings, outside normal working hours. When we categorize responses based on the jurisdiction of the court, or to the answers received from the misdemeanour courts on the one hand, and other courts on the other hand, we get the following results: that the salaries are inferior to all other officials believe 24% of misdemeanour judges and 20% of judges other courts; it is lower than in most other state officials is considered by 47% of misdemeanour judges and 39% of the judges of other courts; that it is the same, namely that there is no difference, believes 5% of misdemeanour judges, and 9% of the judges of other courts; that it is better than in most other state officials is considered by 6% of misdemeanour judges, and 9% of judges of other courts, while 1% in both groups believes that their salaries are better than in all other public officials.

Chart 8.7. Is judicial salary in your opinion better or worse in comparison with the salaries of other state officials? (in %)

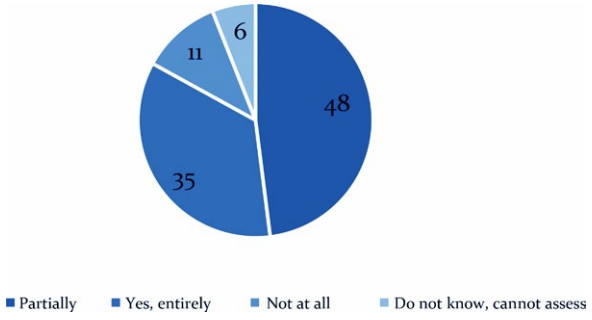


Finally, we asked the judges to state their view on the relationship between the judicial function and other services, jobs and procedures, and whether it is acceptable in their opinion for judges to perform other duties outside of working hours.

A clear majority of respondents believe that the performance of other activities outside of work is acceptable, but under two conditions: (1) if they are related to the legal profession – 19%, and (2) if in this case are not in conflict of interest, regardless of whether jobs are related to legal profession or not – 35%. An additional 2% of judges considers that dealing with other jobs for judges outside of working hours is allowed in any case, regardless of whether they are related to the legal profession or not. Collectively, we can say that for 56% of judges it is acceptable to engage in other activities outside working hours, while 38% believes that judges should not do anything except their work (the remaining 6% are undecided, or took no position).

Judges who believe that they are not adequately paid, or that their salaries cannot fully guarantee their independence are to a greater extent in favour of performing other jobs outside of working hours. Other regularities were not observed, nor were the deviations regarding the jurisdiction of the courts.

Chart 8.8. In your opinion, is it acceptable that a judge performs other jobs outside working hours? (in %)



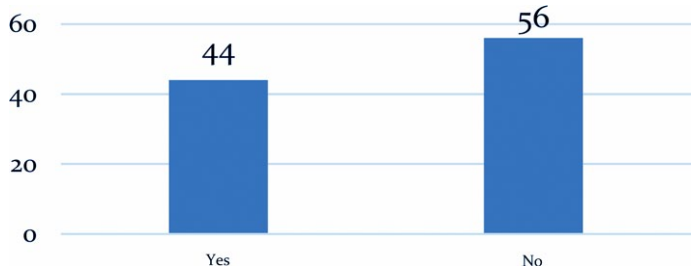
9. Political, economic and other pressures/impacts on the work of judges

A special battery of questions referred to the measurement of: (1) the frequency and form of exercising pressures on judges, (2) the familiarity of judges with protection mechanisms, (3) attitude towards the steps to be undertaken in order to reduce political influence on the courts and (4) attitude towards foreign influence on the legal system of Serbia.

9.1. The frequency and form of exercising pressure on judges

One of the most important findings of this survey is presented in chart 9 .1. – 44% of the judges felt pressure to adopt certain decisions in their work. This information is worrying, since it points to a kind of ignorance of judges about ways how to protect themselves from this kind of illicit pressures.

Chart 9.1. Have you ever felt a pressure in your work to make certain decisions? (in %)

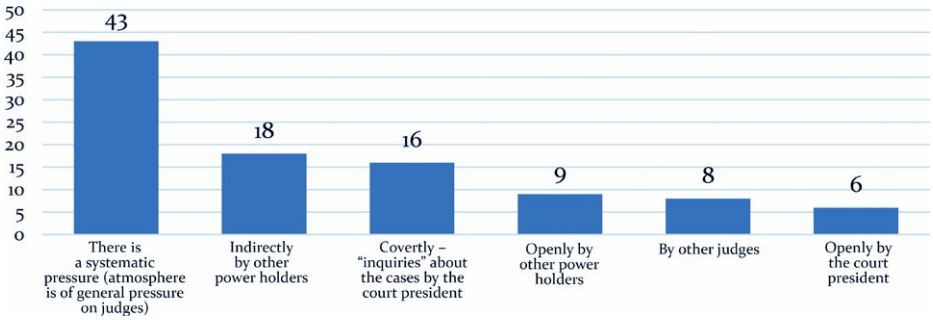


In order to gain a proper insight into the scope and types of pressures that judges experienced in their work, the graph below shows the frequencies for each of the offered answers. In interpreting these findings, one should bear in mind that **they apply only to judges who indicated that at some point they felt the pressure, that is, those 44%.**

Therefore, among the judges who were exposed to pressure, most of them consider that the atmosphere in the courts is of general or systematic pressure – 43%. By other power holders, the pressure was felt collectively by 27% of the judges – 18% indirectly and 9% openly, while a smaller percentage of judges was under pressure by the president of the court – collectively 22%, of which 16% covertly, or as inquiries about the cases by the court president, and 6% openly, or directly. Finally, 8% of

judges were exposed to pressure to adopt certain decisions by their colleagues, or other judges. No difference was observed in the views of judges with respect to the jurisdiction of the court in which they work.

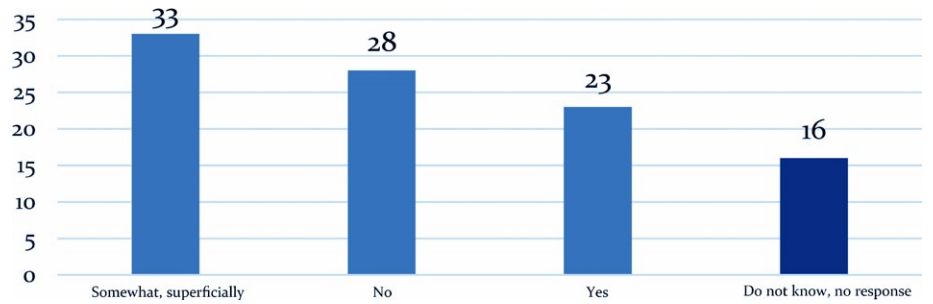
Chart 9.2. If you felt a pressure in your work, in which form was it? (in %)



9.2. Familiarity with the mechanisms for the protection of judges from the pressures/impacts and their use

Judges, in accordance with the legal provisions, in order to preserve their independence and autonomy in the work may join in professional associations (Article 7). On the other hand, they can use other mechanisms of protection in case they are exposed to pressures that are illicit and improper, such as addressing the High Court Council. However, the survey results show that judges are not sufficiently familiar with the mechanisms available to them: one third assesses their knowledge of these protection mechanisms as superficial, slightly less than a quarter believes that they know them well, while 28% of the judges says that they do not know these mechanisms.

Chart 9.3. Are you familiar with the mechanism of safeguarding against political or any other influence/pressure on your work? (in %)

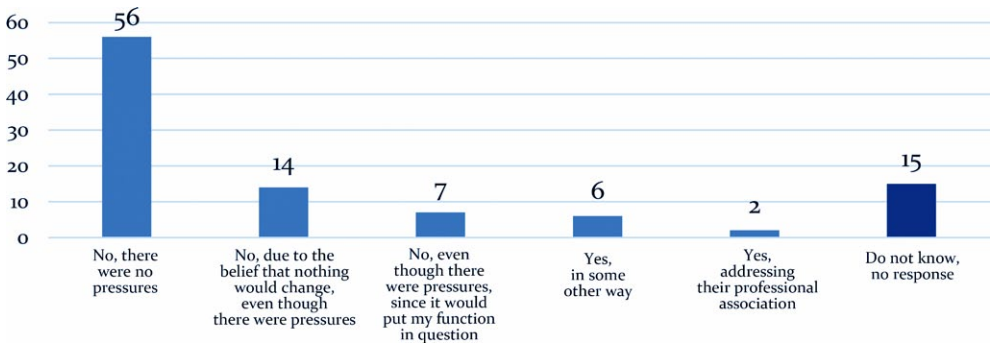


Classification of answers to this question by the judges of misdemeanour courts and other courts provided very small differences in the views. The answer to this question did not have 18% of judges of misdemeanour courts, or 16% of the judges of other courts; that they are familiar with protection mechanisms believes 19% of judges of misdemeanour courts and 24% of judges of other courts, that they know these mechanisms to an extent or superficially is considered by 30% of the judges of misdemeanour courts and 34% of the judges of other courts, while 32% of misdemeanour judges and 26% of judges who are employed in other courts do not know the mechanisms.

What is especially important is the fact that more than a fifth of judges who felt a pressure in their work refused to use some of the available methods to protect the independence and autonomy of the work. 14% has not done that due to the belief that nothing would change, or that the desired effect would not be achieved. Out of fear that such an action would negatively reflect on their job or function, seven per cent of judges has not used the mechanisms of protection, although they believed that there has been basis for this. Finally, 8% of the judges who have taken part in the survey took some measures in order to protect from undue pressure and influence, namely 2% by addressing their professional association, and 6% in some other way.

Interestingly, no significant regularity was observed by cross-referencing this finding with data concerning the jurisdiction of the court, years of service, years of performing judicial function, and so on.

Chart 9.4. If you are familiar with the mechanisms of protection, have you used them already? (in %)



9.3. Attitudes of judges towards the steps to be undertaken to identify and reduce political influence on the work of judges

We presented to judges five proposals, as means to identify and reduce political interference on the work of judges (assertions in Table 9.1.) and asked them to express their agreement or disagreement with them.

Most judges agreed with the assertion that in order to identify and decrease the political influence, it is necessary to *regulate the behaviour of holders of legislative and executive power in commenting on court decisions* – the introduction of appropriate rules and codes of conduct for MPs, members of the Government and other authorities. Compliance with this proposal is expressed by 88% of the judges, while only 3% was against.

According to the degree of compliance, in second place is *the introduction of clear procedures for public reactions of the High Court Council in cases of political interference in the court*, which is supported by 86% of the judges, and not supported by two percent.

Efficient processing of the violations of the presumption of innocence by the media, government bodies, individuals and all other entities, is a good step towards the detection and reduction of the impact on the work of judges, according to the opinion of 82% of respondents. Unlike the previous two assertions, which have identical percentage of agreement and disagreement in both groups of judges – judges of misdemeanour and other courts, in this case we find a bit more misdemeanour judges who disagree with the need for efficient processing of violations of the presumption of innocence (4%), in comparison to the judges of other courts (2%). In addition, there is a difference found in agreement with this assertion (mainly and in full) – 79% of the judges of misdemeanour courts compared to 83% of the judges of other courts.

We noticed a slightly lower level of agreement (77%) with the implementation of a mechanism of *statistical monitoring of the number and structure of decisions adopted in proceedings conducted for illicit commenting on judicial decisions.*

Finally, the smallest number of judges (but still more than two-thirds – 69%) believes that it is important to *perform periodically the training of judges on the European standards relating to respect of judicial decisions.*

Table 9.1. In order to identify and reduce the political interference in the work of judges, should we…

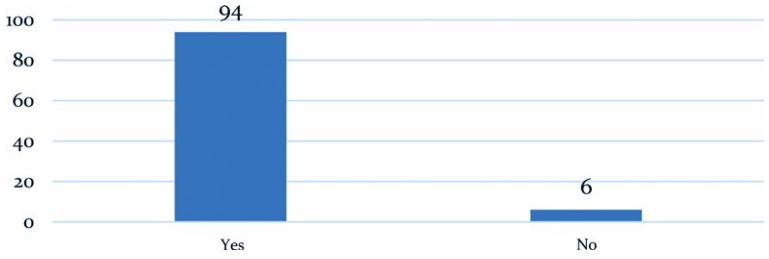
	Disagree	*Neither agree nor disagree*	*Agree*
Perform periodically training of judges on the European standards relating to respect of judicial decisions	11	14	69
Introduce clear procedures for public reactions of the High Court Council in cases of political interference in the court	2	7	86
Efficiently process the cases of violations of the presumption of innocence	3	9	82
Statistically monitor the number and structure of decisions adopted in proceedings conducted for illicit commenting on judicial decisions	3	12	77
Adequately regulate the behaviour of holders of legislative and executive power in commenting on court decisions (Code of conduct for MPs, members of the Government)	3	5	88

** The answer "I do not know, I cannot assess" makes the difference for up to 100% within each assertion*

9.4. The attitude of judges towards the influence of foreign factors

The last set of questions, in the chapter relating to the impacts and pressures on the work of judges, measured the attitude of judges towards the influence of foreign factors on the judicial system in Serbia – whether they think it exists; if so, in which form it most frequently occurs and what is their attitude towards it – whether they mind it or not.

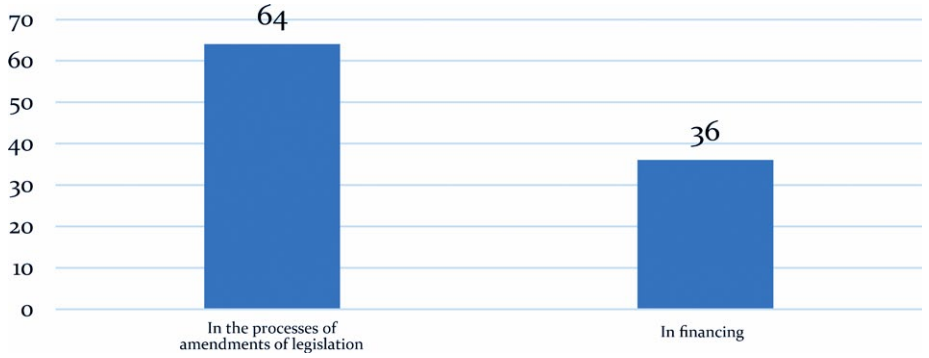
Chart 9.5. Do you think that there is an influence of foreign factor in the Serbian judicial system? (in %)



Even 94% of judges consider that the influence of foreign factor exists, a fact that is as important as it is interesting. In the interpretation of this finding it must be borne in mind that the assessment of the impact of foreign factor is a subjective question, and that it might not have a negative connotation – the possibility that some of the respondents believe that this kind of impact is positive and desirable must be allowed.

About two-thirds of judges (64%) who believe that in the Serbian judicial system is present influence of foreign factors, find it is the most common in the processes of amendments of legislation (53% of the judges of misdemeanour courts and 58% of the judges of other courts), while just over a third (36%) believes that this kind of influence is most evident in the financing (37% of the judges of misdemeanour courts and 31% of the judges of the other courts).

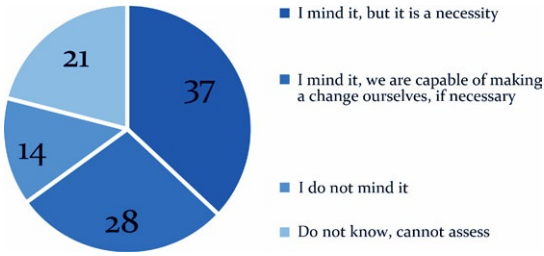
Chart 9.6. In which form is the influence of foreign factors in the judicial system of Serbia present? (in %)



Each seventh judge has no problem with foreign influence on the judicial system of Serbia, i.e. 14% of them. On the other hand, collectively 65% of respondents say that they mind foreign influence, of which the majority believes that it is still a necessity (37%). Strong quarter (28%) of the judges believes the opposite – that there is the ability for changes, if necessary, to be implemented without outside influence. Identical is the percentage of judges from misdemeanour, or from other courts, who do not mind the foreign influence on the legal system – 14% each. Certain difference is noticeable in the percentage of judges who believe that judges are themselves capable of carrying out the changes – there are somewhat more judges of other courts who share this belief compared

with judges of misdemeanour courts – 29% compared to 24%. That it is considered inevitable thinks 44% of misdemeanour judges and 35% of the judges of other courts.

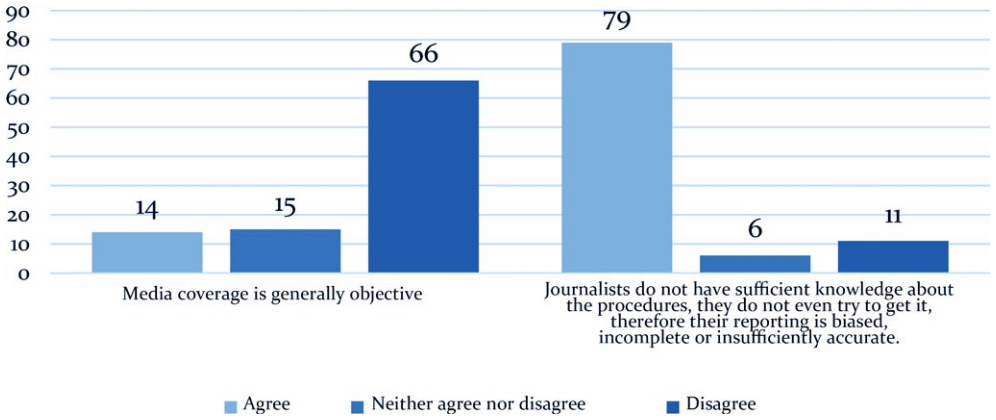
Chart 9.7. What is your attitude towards the foreign influence on the legal system of Serbia? (in %)



10. Media coverage of court proceedings

The aim of this separate group of questions was to examine the attitude judges have towards the media/journalists.

Chart 10.1. Evaluate media coverage of court proceedings (in %)



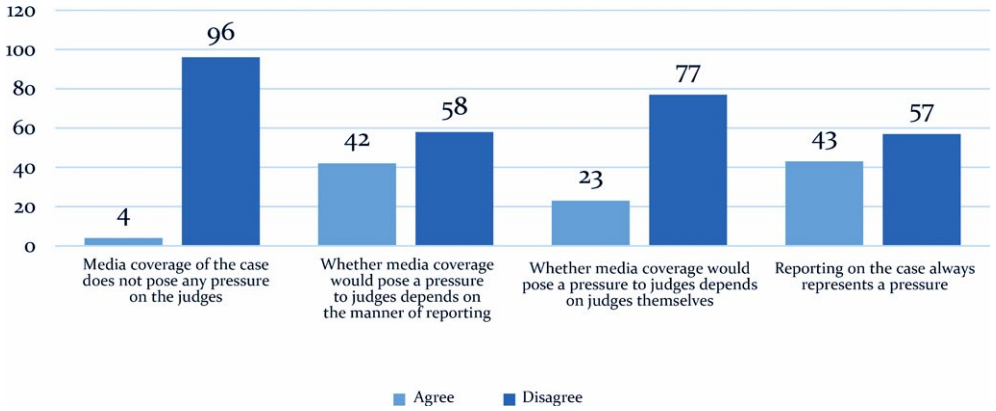
The first important finding relates to the consent of two thirds of the judges that media coverage is generally not objective, with the opposition of 14% of the judges, who consider that coverage is generally objective. At the same time, almost four-fifths of judges (79%) shares the belief that journalists do not have sufficient knowledge about the procedures, but that they do not even try to get it, which is why their reporting is biased, incomplete or insufficiently accurate.

These beliefs are practically, with one exception, uniformly distributed in the courts of all jurisdictions, and there is no significant difference in relation to the number of years of service or the number of years in the judicial function of the respondents. Therefore, when it comes to the objectivity of media coverage of court proceedings, a higher number of misdemeanour judges compared to other judges consider that it partly or completely exists – 19% compared to 12%, and similar difference was observed in the opposite view – that it largely or completely does not exist – 59% versus 69%. There is practically the same number in both groups of judges of the undecided and those who did not know how to answer to this question. The difference in responses between judges of misdemeanour courts and judges of other courts is significantly lower when it comes to the second argument (journalists do not have sufficient knowledge about the procedures, but they do not even try to get it, which

is why their reporting is biased, incomplete or insufficiently accurate): 78% of misdemeanour judges agrees with this and 80% of the judges of other courts, while 11% of the first and 12% of the other ones disagrees.

The survey also measured whether and in what circumstances the media reporting represents a pressure on judges.

Chart 10.2. Do the judges perceive the manner of media coverage of court proceedings as a pressure? (in %)



That media coverage of the case does not pose any pressure on the judges is agreed by 4% of respondents, while 96% disagrees with this statement. Almost twice as many judges consider that feeling of pressure (due to media coverage) depends on the manner of reporting and not on the judges, which is expected – 42% compared to 23%. On the other hand, a large number of respondents, 58%, believe that the claim that the manner of reporting influences whether the judges feel the pressure is not acceptable – this is actually a case with the judges who believe that reporting on the case always represents a pressure to the judge.

The following table lists the four assertions pertaining to the relationship between the media, the judiciary and other state organs, of which the first three relate to concrete steps that might and/or should be taken, and the last represents the conclusion about the work of competent bodies in the case of unauthorized media coverage. The judges determined their attitude towards each of these statements on a scale of one to five (with one representing "strongly disagree" and five "strongly agree"). In order to facilitate visibility the answers "strongly disagree" and "mostly disagree" are grouped in the table in the category *does not agree*, while the category *agrees* represents the sum of responses "mostly agree" and

"strongly agree". In addition, assertions are sorted by the degree of agreement or by the plausibility among the respondents.

The largest number of judges, 89% agrees that it is necessary to implement *media education in order to respect European standards and internal regulations in the area of reporting on court proceedings*. The degree of disagreement with this assertion is extremely small – only 3%.

Approximately the same number of judges considers that *prior to the valid termination of the proceedings the media should be allowed to release only the information concerning the course of the proceeding, and not comment on the decisions and report on comments* – 85%, with a slightly higher number of judges who disagree – 9%. Here we find a slightly higher percentage of agreement among judges whose job is in misdemeanour courts (87%), compared to those of other courts (83%).

That it is necessary to amend the Police Code of Ethics, in the part referring to the accountability of the police officers for unauthorized disclosure of the information to the media about the pending procedures, considers two thirds of judges, or 66%.

Finally, with the assertion that *the competent authorities take measures to prosecute efficiently media that with their manner of reporting violate the presumption of innocence and threaten the independence of the judiciary* agrees only one third of judges. This is the only assertion in this set of questions in which there is higher degree of disagreement in relation to the agreement – 45% in relation to 33%.

By cross-referencing the responses to these assertions with the jurisdiction of the courts in which judges are working, no significant discrepancies were obtained.

Table 10.1. Assess your own agreement with the following statements (u %)

	Disagree	*Neither agree nor disagree*	*Agree*
For the media to respect European standards and internal regulations in the area of reporting on court proceedings, it is necessary to implement its education	3	6	89
Prior to the valid termination of the proceedings, the media should be allowed to release only the information concerning the course of the proceeding, and not comment on the decisions and report on comments	9	5	85
The Police Code of Ethics, in the part referring to the accountability of police officers for unauthorized disclosure of information to the media on the pending proceedings or planned investigations, should be amended	6	13	66
Competent authorities take measures to prosecute efficiently the media that with their manner of reporting violate the presumption of innocence and threaten the independence of the judiciary	45	14	33

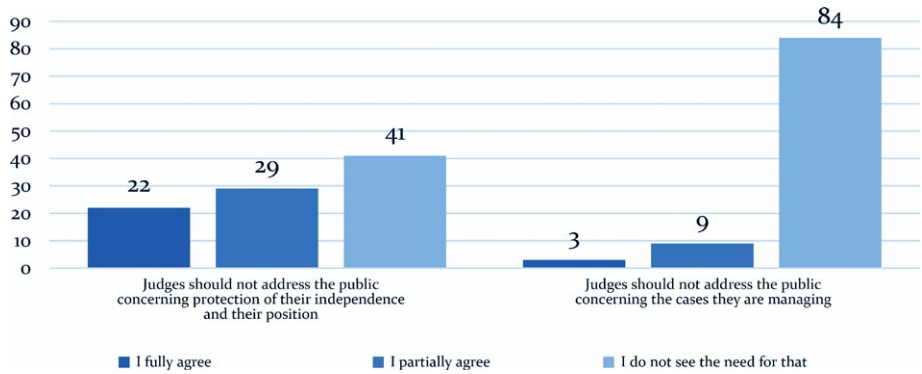
** The answer "I do not know, I cannot assess" makes the difference for up to 100% within each assertion*

11. Informing the public about the work of courts

Besides analysing the views of the judges on the established mechanisms for addressing the public and their use, the survey examined the attitude of judges towards their address to the public regarding the protection of their independence and concerning the cases they are managing. The results showed that more than half of the judges (51%) approve addressing of judges to the public in connection with the protection of their independence and their position – 22% fully and 29% partially. Smaller number of judges does not see the need for this, while 8% of judges has no opinion on this issue, and chose the answer "I do not know, I cannot assess".

On the other hand, that judges should not address the public concerning the cases they are managing is the opinion of 84% of respondents. At the same time, such a high degree of agreement with the limitation of judges' address to the public concerning the cases seems reasonable in the context of practice, which in many countries makes it impossible to judge to appear in public in this way, for many reasons: the impartiality of judges would not be questioned; in order to protect the right to a fair trial of the parties in the proceedings; and to protect the independence of the courts, which are not bound to report/inform anyone about their decisions (in any other way than in the reasoning for their decisions). Seven times fewer respondents – 12%, has the opposite belief, of which 3% has totally firm view on this issue.

Chart 11.1. Do you support the idea that judges may turn to the public regarding the protection of their independence/position and concerning the cases they are acting upon? (in %)



Courts' communication with the public is at a satisfactory level for more than a third of respondents, or 34%. Slightly larger number of

judges, 39%, believes that the first step is set, or that the communication has still not sufficiently developed, or that they do not communicate sufficiently, while 11% of judges consider that the courts do not communicate with public at all. Concerning the instances of courts, satisfaction with the communication is shown in the chart below. It is important to note here that the graph does not show the Commercial Court of Appeal, the Supreme Court of Cassation and the Administrative Court (special jurisdictions), as these courts did not complete statistically sufficient number of responses to this question.

Chart 11.2. Do courts sufficiently communicate with the public? (in %)

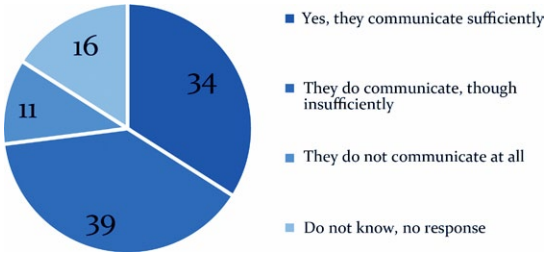
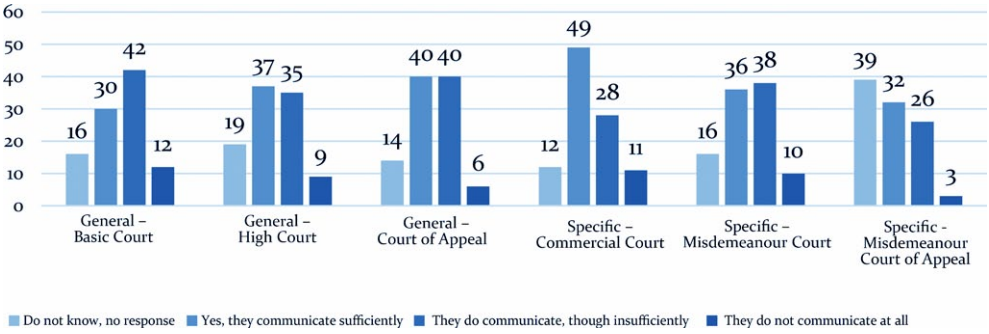
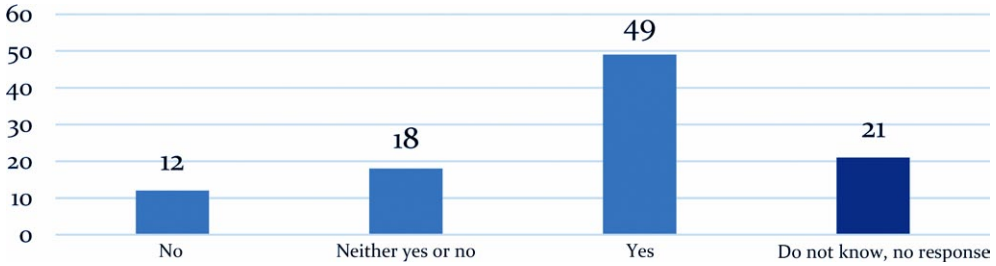


Chart 11.3. Do courts sufficiently communicate with the public, per courts (in %)



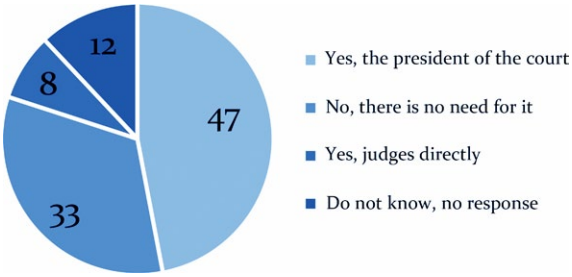
When it comes to spokespersons, or persons who are authorized to communicate with the media and the public on behalf of the court, a little less than half of the judges is satisfied with the way in which they perform their job (49%). About 18% of respondents is undecided in terms of the way in which these persons perform their work, while every eighth respondent believes that spokespersons do not perform the function in a satisfactory manner – 12%.

Chart 11.4. Are you satisfied with the way your court spokesperson represents the court to the public/media? (in %)



We asked the judges whether they consider that besides the spokesperson, another person should represent the court in the public. One third of judges consider that there is no need for it, while slightly less than half believes that this should be the presidents of the courts (47%), whereas this view is shared by more judges of the misdemeanour courts in relation to the judges of other courts – 52% compared to 45%. An additional 8% of respondents think that judges should directly address the public, which collectively represents 55% of the judges who share the belief that it takes extra "channels" to improve communication with the public.

Chart 11.5. Do you think that, besides the spokesperson, another person should represent your court to the public? (in %)



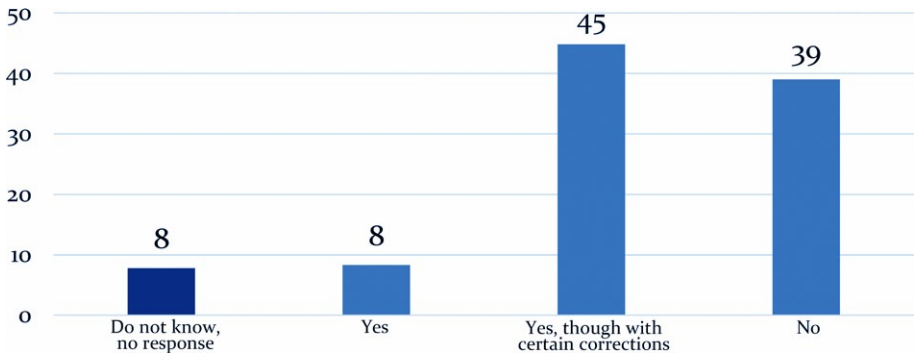
12. Organization of the court system

This section of the survey deals with the analysis of some elements that are important for the organization and functioning of the court system. This primarily refers to (1) the existing court network, recognizing its shortcomings and ways it should be changed; (2) funding of courts and ways to improve this segment; (3) the duration of court proceedings and (4) the role of president of the courts in the existing system.

12.1. The court network

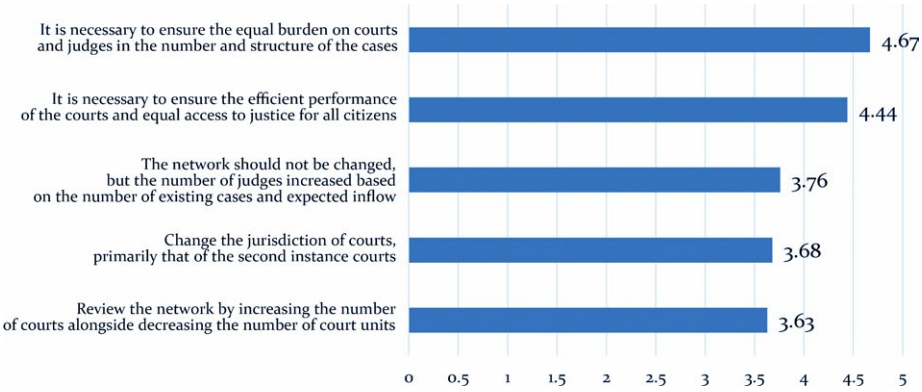
A large number of judges has significant objections to the established network of courts, but their evaluation is not extremely negative bearing in mind that the most (45%) of the judges finds that the status of the court network can be repaired and upgraded. Almost two fifths (39%) of the judges considers the existing network inadequate while under one tenth (8%) of them is satisfied with the territorial organization of the courts.

Chart 12.1. In your opinion, is the existing court network adequate? (in %)



Bearing in mind the objections to the existing court network, we offered to the respondents five assertions concerning the way in which the court network could be improved. Based on the obtained answers we formed the average rating for each of the given assertions. Respondents were able to give answers in the five–point scale of dis/agreement, and then an average rating was made according to the model of school grading.

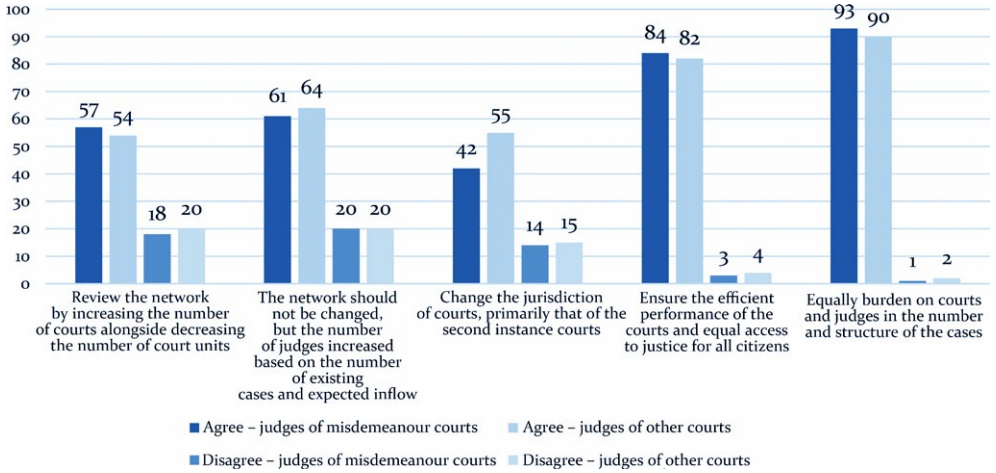
Chart 12.2. How to improve the court network? (in %)



All proposed models and improvements got a high consent of the respondents. It is important to say that these proposals are not excluding, that some are intertwined, and that some of them are in part mutually conditioned. The formation of such group of questions still enables to be seen what could be the priority in the set of steps needed to be implemented. The highest agreement, or support from the respondents, received the assertion indicating that it is necessary to ensure the equal burden on courts and judges in the number and structure of the cases. Immediately after that one, by the extent of agreement comes the assertion that it is necessary to ensure the efficient performance of the courts and equal access to justice for all citizens. Both claims have an extremely high level of agreement of almost all respondents.

The graph below shows the agreement and disagreement of judges of misdemeanour courts and judges of the courts of other jurisdictions with each of the stated assertions tested in the survey. As is evident, among judges assigned to these two large groups there were no significant differences in the opinions.

Chart 12.3. How to improve the network of courts – agreeing and disagreeing of misdemeanour judges and judges of other courts, in u %

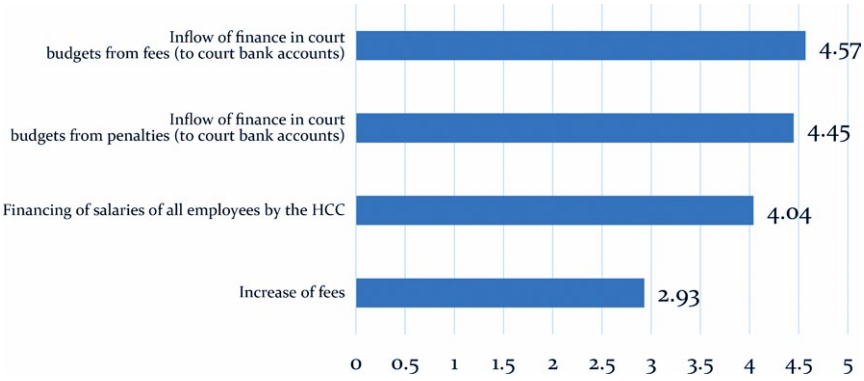


12.2. Funding of courts

Given the importance of funding of each system, including the court one, a special part of the survey is related to the measurement of the views of the respondents regarding the manner in which it is possible and/or necessary to improve the system of funding of courts.

Four assertions were proposed to judges, with which they could agree or not, as in previous assessments, an average value of dis/agreement was created for each of the stated assertions. Below–average consent received the idea about the way to improve the funding of the courts by increasing the amount of fees paid in court dealings (this result was largely influenced by the judges who are not employees of the misdemeanour courts, given that 41% of them rejects this claim, compared with 25% of judges of misdemeanour courts). In contrast to the low agreement with the idea of increasing fees, the remaining funding models for courts received a high or extremely high consent of the respondents. Thus, the financing of salaries of all employees by the HCC received average score of 4, while the models of inflow of finance in court budgets from the penalties and fees was rated with very high grades 4.45 and 4.57.

Chart 12.4. How to improve the funding of the courts? (in %)



With a proposal that all collected fees flow into budgets, or the accounts of the courts, agrees equal number of judges from both groups of courts – misdemeanour and others, while slightly higher difference in views is detected with the inflow of penalties in court budgets, i.e. to their accounts. With this assertion disagree 8% of misdemeanour judges and so does two times less judges of other courts – 4%, while 76% of judges from the first group agrees with it and 84% of judges from the second one.

Having in mind that it is necessary to make priorities, respondents we offered to select of only one of the proposed solutions. In the distribution of answers, half of the respondents who think that it is most important that the income from fees flows exclusively to the budgets of the courts stood out, while one fourth stressed as a priority inflow of revenues from penalties to the budgets of courts.

What is interesting is the difference that can be noticed in the selection of priority solutions in order to improve the system of financing (the exception is a proposal for increased fees, agreed by 8% of the judges of this group). The proposal of the inflow of all collected fess to the budget of the courts is supported by 25% of judges of misdemeanour courts, which is more than two times less in relation to the percentage of judges from other courts – 56 %. At the same time, the ratio is reversed regarding the proposal for inflow of all collected penalties to the budgets of the courts, which is supported by 55% of judges of misdemeanour courts and 15% of judges of other courts. Minor difference was noted in the proposal for the funding of salaries of all employees by the High Court Council, with which 12% of judges of misdemeanour courts agree and 21% of judges of other courts.

Graph 12.5. How to improve the funding of courts – differentiating responses (in %)

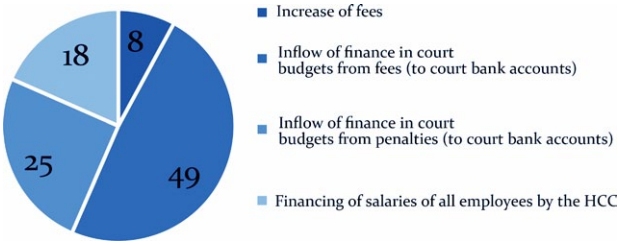
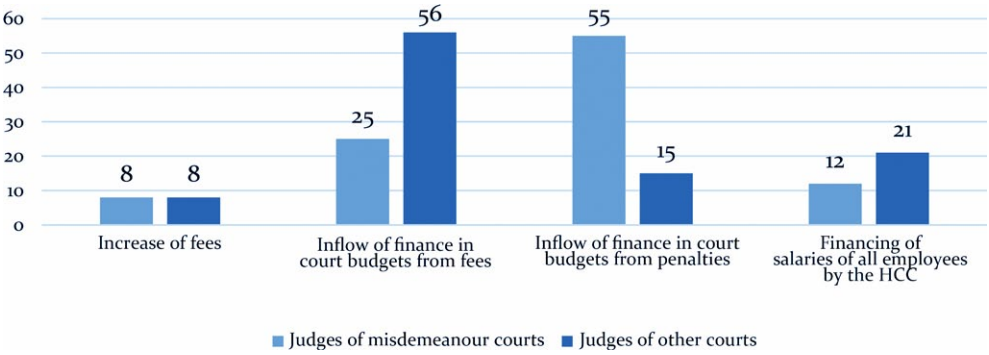


Chart 12.6. How to improve the funding of courts – differentiating responses, by court jurisdiction (in %)



12.3. Duration of proceedings

When it comes to the duration of court proceedings the respondents were faced with several assertions with which they could dis/agree to a greater or lesser extent. Based on their responses, we created average grades that indicate to what extent some of these views receive or do not receive their support.

Two answers stand out, and the respondents feel that they mostly affect the duration of court proceedings. According to the statements of judges, proceedings take a long time because the judges are burdened with large caseload and there is high level of consent about that, as the average score is 4.4.

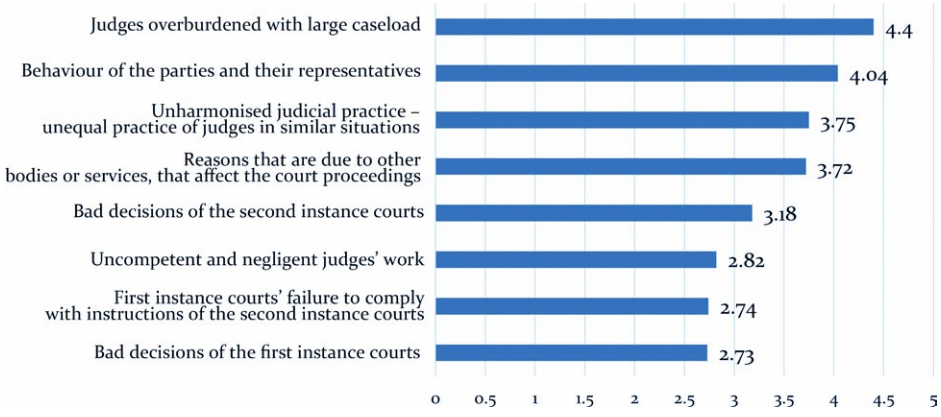
Besides overloading with cases, respondents believe that the behaviour of the parties and their representatives is another factor of importance and, as such, affects the duration of court proceedings. The prob-

lem of unharmonised judicial practice, i.e. unequal practice of judges in similar situations is third in order of importance. A special chapter of this survey is dedicated to this problem.

It is interesting that a significant number of respondents believe that one of the reasons for the long duration of court proceedings are bad decisions of the second instance courts. As expected, the frequency of such responses is mostly influenced by judges working in the first instance or the judges of misdemeanour and basic courts.

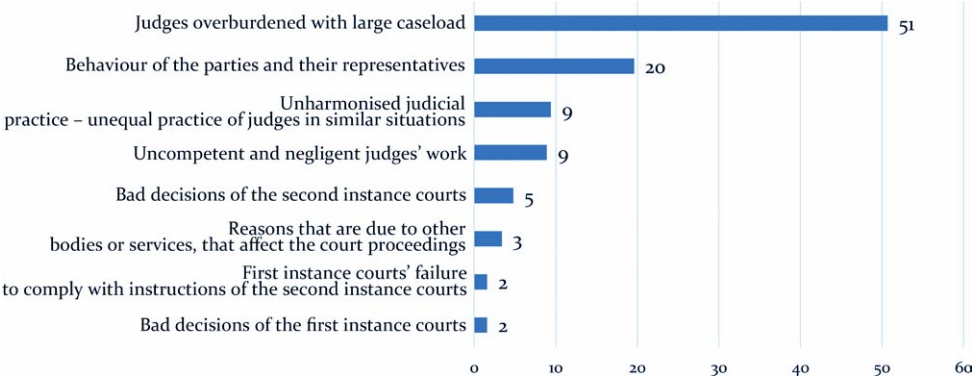
As for the other subjective reasons (knowledge and behaviour of judges), the majority of respondents are not inclined to search here for the reasons for duration of court proceedings. So the bad decisions of *the first instance courts* are the least reason for the duration of court proceedings (average 2.73), followed by failure to comply with instructions of the second instance courts (2.74) as well as negligent and incompetent work (2.82).

Chart 12.7. Duration of court proceedings (in %)



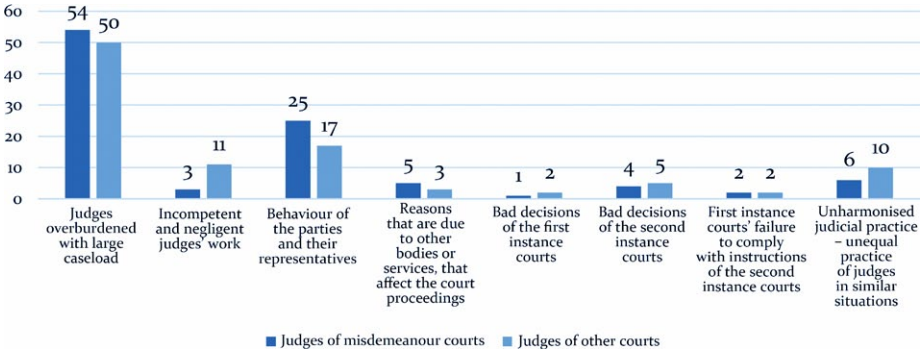
When we asked respondents to single out one factor that mostly affects the length of the proceedings, things have changed a little. In fact, the top three places are still unchanged: overburdened with the number and complexity of caseload, the conduct of the parties and their representatives and unequal application of law/unequal practice of judges in similar situations. However, it is interesting that a significant number of judges as the next most important reason indicate the blame of their colleagues, or their negligent and unprofessional work.

Chart 12.8. What mostly affects the length of court proceedings (in %)



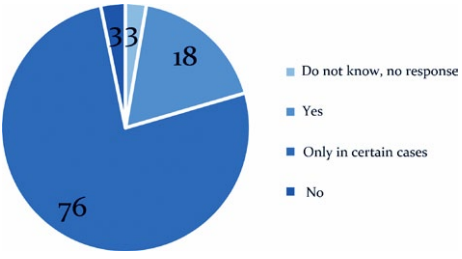
The graph below shows the difference in the views of the misdemeanour judges and judges of other courts.

Chart 12.9. What mostly affects the length of court proceedings, by the jurisdiction of the court (in %)



That the issue is not definitive when it comes to the duration of the court proceedings shows the fact that respondents do not find that the issue is systemically set up. Thus, 76% of respondents find that only some cases last long, while 18% believes that all cases or the entire system takes too long.

Chart 12.10. Are the court proceedings lasting too long? (in %)



One of the factors that influence the duration of the process is the norms and the process of change that is happening there. Therefore, we gave respondents the opportunity to express their views on the quality of legislation and of its character due to frequent changes. Over half of respondents believe that our laws are partly unclear, while over a quarter of them find that our laws are clear but mutually incompatible. Less than a tenth of respondents see no problem in Serbian norms, while only 3% of them believe that the laws are completely unclear (Chart 12.11). We did not observe a difference in the views of judges in relation to the jurisdiction of the court in which they work.

On the other hand, frequent legislative changes have been noticed as a serious burden in court proceedings. Thus, collectively 70% of the respondents (49% exceptionally and 21% a lot) sees it as a significant problem, while it is mediocre for 20% of respondents. Those that have no problems with the changes largely or at all make in total only 8% (see Chart 12.12).

Chart 12.11. How do you assess the quality of procedural and substantive laws applied by courts? (in %)

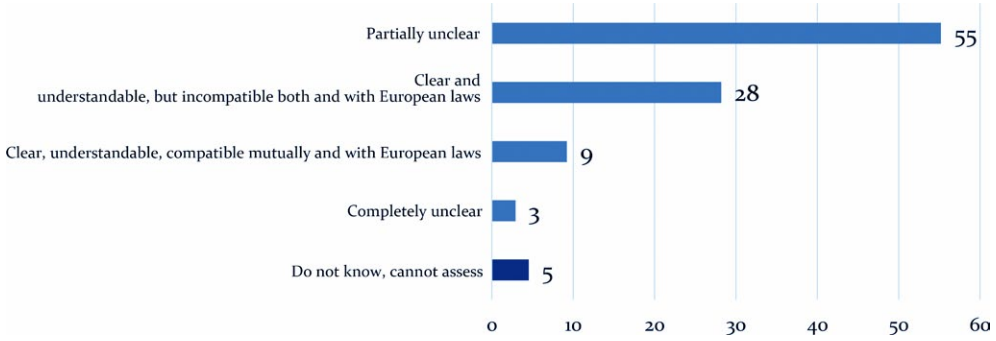
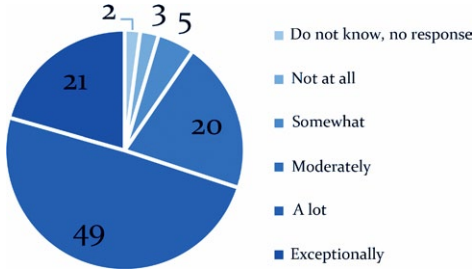


Chart 12.12. How frequent law amendments affect their implementation? (in %)



12.4. The role of court presidents

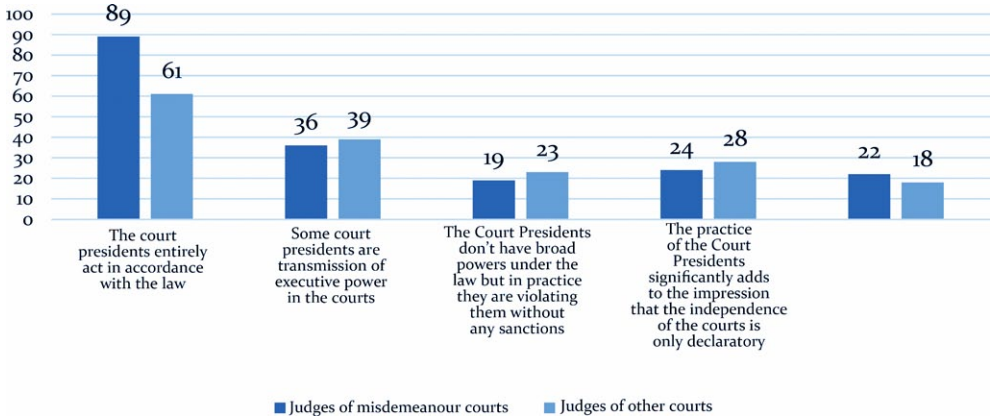
Most respondents had no serious criticism of the work of the court presidents. Therefore, slightly less than two–thirds of respondents agree with the opinion that court presidents act in accordance with the law (63%), while 9% of respondents do not agree with this statement. On the other hand, with a negative statement that presidents do not comply with the law agrees only slightly more than a fifth of the total number of respondents. The respondents are more critical when it comes to the relationship of the President with the executive power. Thus, almost two–fifths of respondents found that, some but not all court presidents are transmission of executive power in the judiciary. This is supported by a smaller percentage (27%) of those who believe that the presidents are declarative and that the executive power is dominant.

Table 12.1. Views associated with court presidents (in %)

	Disagree	*Neither agree nor disagree*	*Agree*
The court presidents entirely act in accordance with the law	9	16	63
Some court presidents are transmission of executive power in the courts	21	20	38
The Court Presidents don't have broad powers under the law but in practice they are violating them without any sanctions	34	24	22
The practice of the Court Presidents significantly adds to the impression that the independence of the courts is only declaratory	35	22	27
The role of the Court President should be taken by the administrative court council	50	15	19

The views of judges of misdemeanour courts and judges belonging to the courts of other jurisdictions about these assertions are shown in Chart 12.13.

Chart 12.13. Views associated with the Court Presidents, according to the court jurisdiction (in %)

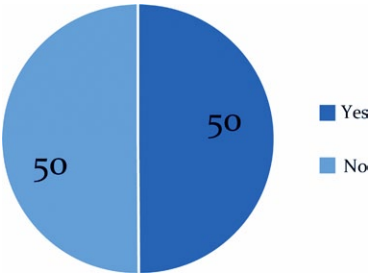


13. The role of the associations of judges

This part of the chapter deals with the activities of judges in the context of professional associations of judges, measuring their knowledge about associations, their perception and reasons for participation or non-participation in them. The results from the implementation of this survey have shown us that judges are divided when it comes to involvement in professional associations of judges. Of all respondents, half of the judges is a member of an association of judges, while the other half replied that they are not members of any association.

Misdemeanour judges are in a much greater extent members of professional associations – 73% of them compared to 42% of the judges of the other courts.

Chart 13.1. Are you a member of a professional association? (in %)



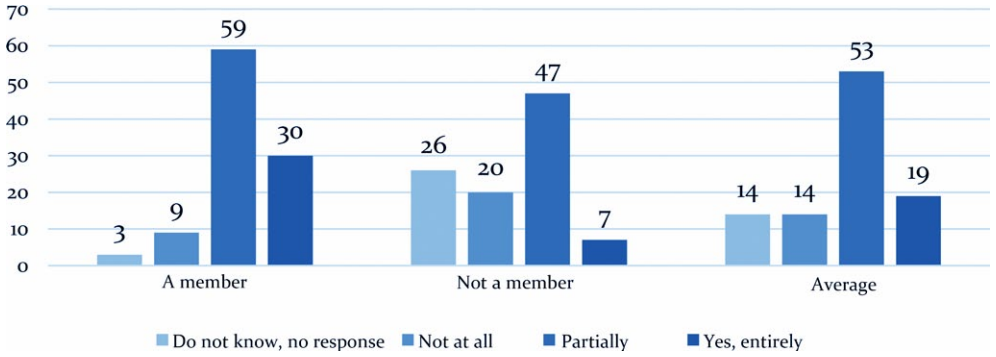
It seemed important to examine how the professional associations deal with issues that are essential for the position of the judges. By cross – referencing the questions, "*Are you a member of a professional association*?" and "*Do you believe that professional associations are dealing with issues that are essential for the position of judges*?" we got the following results.

More than half of the interviewed judges believe that professional associations partly succeeded in providing a better position for judges – 53%. By cross referencing the above two questions we get a result of 59% of the surveyed members of the association who are partially satisfied, and 47% of the surveyed judges who are not members of the association and who are also partially satisfied. 19% of respondents told us that the professional associations fully address issues that are of great significance for the position of judge. By cross referencing we got the result that 30% of judges who are members of the associations believes that the associations fully deal with issues of great importance to the status of judges,

while 7% of judges who are not members of any association says that the tasks of the associations are completely fulfilled, i.e. those concerning the protection of the status of judges.

When we add up the answers of those who are partially satisfied to the answers of those who are completely satisfied, we get a result of 72% of the interviewed judges who have a positive attitude towards the work of professional associations. On the other hand, in the minority, we have a tie with those who have told us that the associations did not do anything in terms of improving their position – 14%, (of this amount, by cross referencing we get the result of 3% of the interviewed judges that are members of associations and 26% of judges who are not members of the association) and those who are left without answers (14%).

Chart 13.2. "Are you a member of a professional association?" and "Do you believe that the professional associations deal with issues that are essential for the position of judges?"



When we categorise the answers to this question by jurisdictions of the courts, or the judges of misdemeanour courts and judges of other courts, we get the following results: that the professional associations do not address issues that are essential for the position of judges is considered by 13% of judges of misdemeanour courts and 15% of other judges; that they do it partially believes 61% of the judges of misdemeanour courts, and half of the judges of other courts, and that they fully comply with this function believes 16% of judges of misdemeanour courts and 19% of other judges.

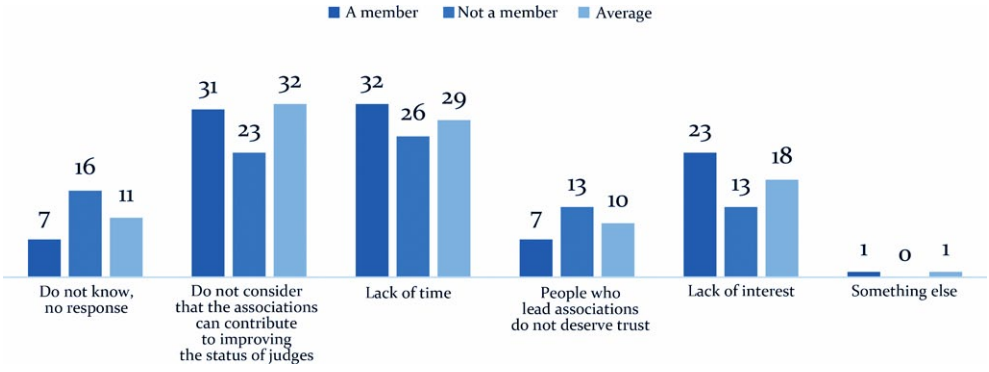
We offered judges the possibility to opt for only one key reason why a small number of judges actively participate in the work of professional associations. Approximately one third of respondents (32 %) told us that *they do not believe that associations could contribute to improving the sta-*

tus of judges, suggesting that these associations are not sufficiently strong and influential to be able to make a significant change in the judicial profession. 29% of interviewed judges responded that *they have no time for active participation in the association* and we are talking mostly about those judges who agree with the statement that judges are not evenly burdened by the allocation (complexity and age) of cases. These two responses were indicated as equally important by both misdemeanour judges and judges of other courts.

Indifference of judges is the third most important reason for the passive attitude towards associations and it is represented by a little less than a fifth of judges, or 18% on average (21% of all judges of misdemeanour courts and 17% of all other judges). By cross referencing we get the result of 23% of the judges who are members of associations who believe that judges are not interested to work in associations, as opposed to 13% of the judges who are not members of any association and consider that the lack of interest is one of the reasons why judges are not members of any association.

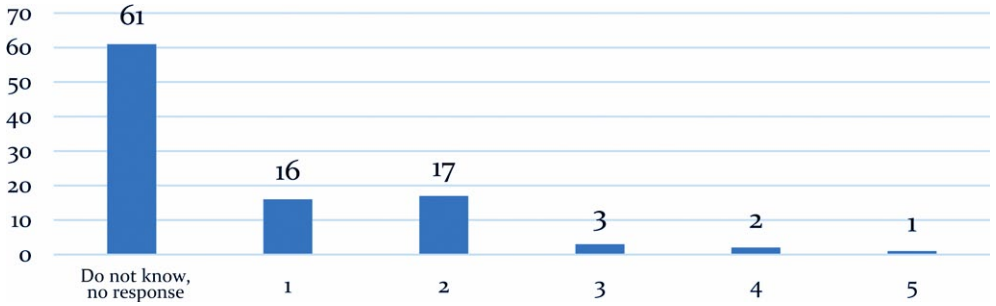
Finally, each tenth judge (10%) thinks that *people who lead associations do not deserve trust*, which results in judges not wanting to participate in the work of these associations (8% of all judges of misdemeanour courts and 11% of other judges). From this average (10%), by cross–referencing we got that 7% of the surveyed members of the associations says they had no confidence in the people who lead the associations, while 13% of surveyed judges who are not members says they had no confidence in the people who lead the associations.

Chart 13.3. What are, in your opinion, the key reasons for the small number of judges who actively participate in the work of professional associations? (in %)



A significant indicator is that more than half of the surveyed judges, or about two-thirds of respondents (61%) did not know or could not estimate the exact number of associations of judges that are active in their work. 71% of the misdemeanour court judges does not know or cannot answer this question, as opposed to 59% of the judges of other courts. This question is formulated as "open," meaning that the respondents did not have the answers offered but that they had to write down the answers themselves. Results show that 16% of judges considers that at the moment there is only one professional association of judges functioning (for this answer opted 4% of misdemeanour judges versus 21% of the judges of other courts), 17% of them considers that there are two active ones (21% misdemeanour judges and 16% of other courts), and the answers "3", "4" and "5" indicated collectively six percent of judges. It should be noted that the largest number of judges stated Judges' Association of Serbia as the association that is active to their knowledge.

Chart 13.4. To the best of your knowledge, how many professional associations of judges are there? (in %)

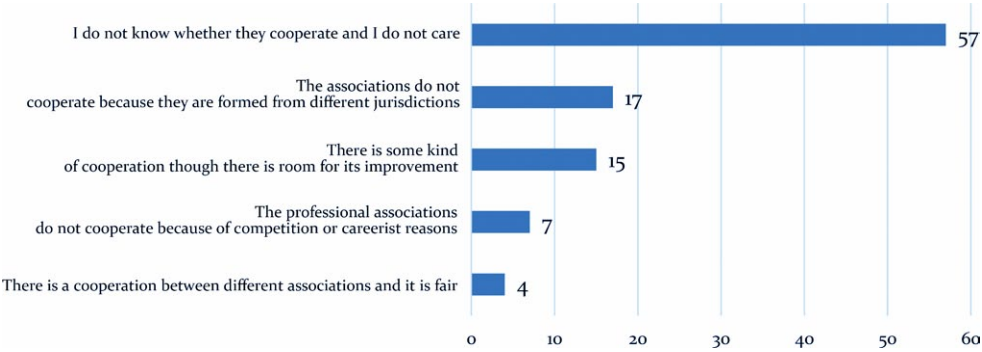


We have asked judges whether they think that there is cooperation among the various professional associations (question referred only to those respondents who indicated that there are more than one professional associations of judges) and we got very similar answers: more than half of respondents could not answer this question (57% and 39% respectively, of all misdemeanour courts and 65% of all judges of other courts), while cumulatively 19% of judges considers that there is some kind of cooperation, of which 15% thinks that it can be improved, and 4% that it is at a satisfactory level, or that it is extremely fair.

That associations do not cooperate because they are formed from different jurisdictions, so they therefore have different interests, thinks 17% of the surveyed judges, while 7% of judges consider that the professional

associations do not cooperate because of competition or careerist reasons. It is important to indicate that judges of misdemeanour courts to a greater extent, compared to the judges of other courts, find that the associations do not cooperate because they are formed for courts of different jurisdictions, and that their interests differ – 36% compared to 9%.

Chart 13.5. Do you believe that there is cooperation between various professional associations and how do you evaluate it? (in %)



We asked the judges to assess whether, in their opinion, there should be several professional associations of judges with the same objective. Slightly more than a dozen surveyed judges (14%) believe that this is necessary, while 35% has the opposite view. Finally, that it is necessary that there are more associations, but depending on their objective, told us 28% of judges. 23% did not answer this question. Replies of the misdemeanour judges and judges of other courts regarding the need for more professional associations are shown in the Chart 13.7.

Chart 13.6. In your opinion, is there a need for several professional associations of judges with the same objectives? (in %)

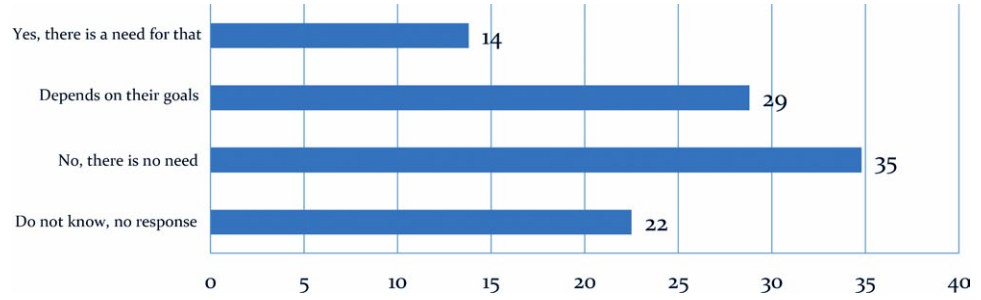
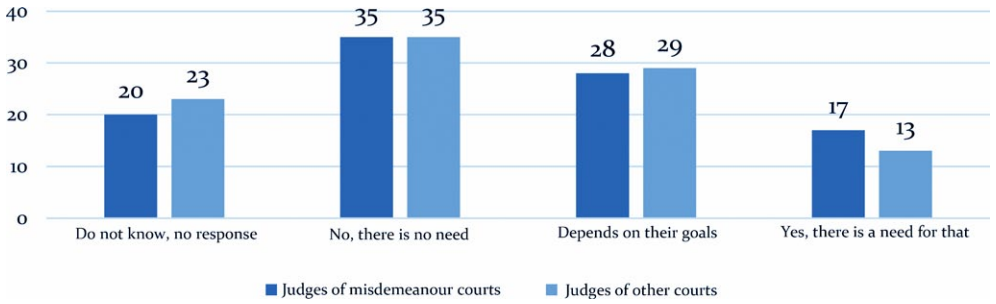


Chart 13.7. In your opinion, is there a need for several professional associations of judges with the same objectives, according to the court's jurisdiction (in %)



When we asked judges whether they thought the associations they are members of have the opportunity to do something regarding the protection of their interests, we received colourful results. It is interesting that a significantly smaller number of judges in this case chose a response that he/she is not a member of any association (32%), but this can be explained by the higher frequency response "I do not know, no answer." At the same time, a third of judges believe that associations are able to protect them (32%), but that the problem lays in other factors that need to be removed. Each ninth respondent, a total of 11%, considers that these associations do not have the capacity adequate to protect the interests of judges. A positive attitude on this issue expressed 14% of judges. Differences in attitudes of judges from different courts are shown in the chart 13.9.

Chart 13.8. Do you think that association you are a member of has the ability to do something to protect the interests of judges? (in %)

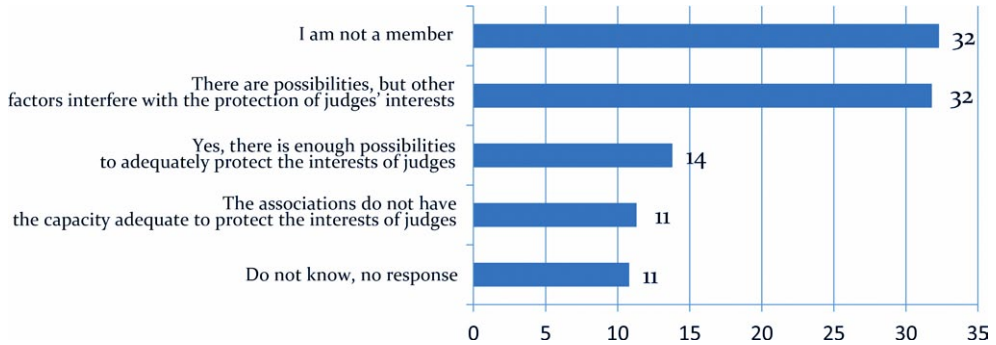
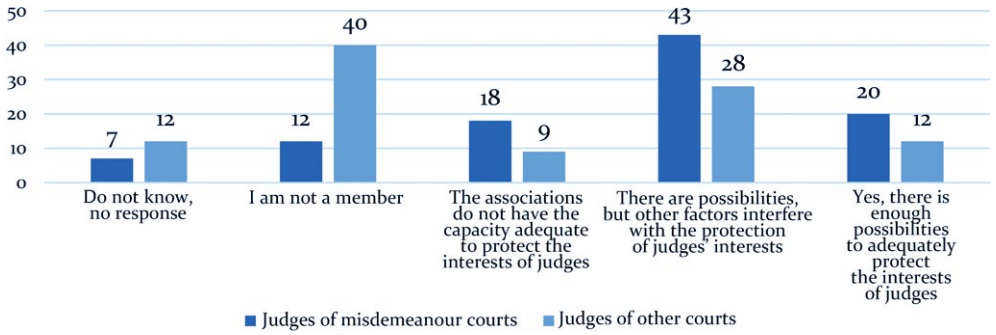


Chart 13.9. Do you think that association you are a member of has the ability to do something to protect the interests of judges, according to the court's jurisdiction (in %)



The question that is closely related to the previous one refers to the assessment of the current achievement in protecting the interests of judges, by the association whose members are the interviewed judges.

Chart 13.10. Did the association you are member of, or which the largest number of your colleagues from the court are members of, do enough to protect the interests of judges? (in %)

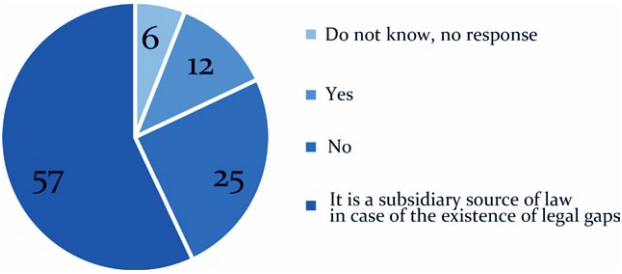
Completely negative view (answer "not doing anything") has each eighth respondent, or 12% of judges (17% of the total number of misdemeanour judges and 11% of other judges), while slightly milder argument ("done very little") selected 17% of respondents (23% of misdemeanour judges and 15% of others), which collectively makes 29% of the judges dissatisfied with their associations. However, there is a predominant number of judges who believe that the associations did something or a lot to protect the interests of judges – a total of 41% (39% of the total number of misdemeanour judges and 32% of the total number of other judges).

14. Equal application of law (case law)

Given the importance of uniform application of law in the function of legal certainty, as a component of the legal system, a particular set of issues refer to the assessment of its significance and importance by the judges.

The first important finding is that the majority of judges in Serbia still do not consider court decisions and case law as the source of law in our legal system – chart 14.1.

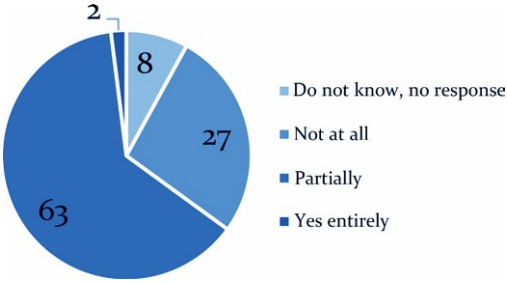
Chart 14.1. In your opinion, does the court decision in our system represent a source of law? (in %)



88% of respondents believes that the case law is not a source of law, of which 57% says that its role is to fill legal gaps, and only a quarter (25%) negates the role of source of law to the case law, while there is half less of those who claim the opposite (12%). Every twentieth judges had no opinion on this matter.

The judges consider that the application of law in Serbia is not completely uniform – graph 14.2. Slightly less than two-thirds of respondents (63%) believe that the application of law in our country is partly uniform, while there are 2% of those who claim that it is completely uniform.

Chart 14.2. In your opinion, is the application of law in the Republic of Serbia uniform? (in %)



Slightly more than one quarter of the surveyed judges (27%) believes that the uniformity of law is at a very low level. 8% of judges did not give an answer to this question. Regardless of the jurisdiction of the courts from which respondents come, the prevailing view is that there was no systematic work on the harmonization of case law, but that the uniformity is present only partially, not completely.

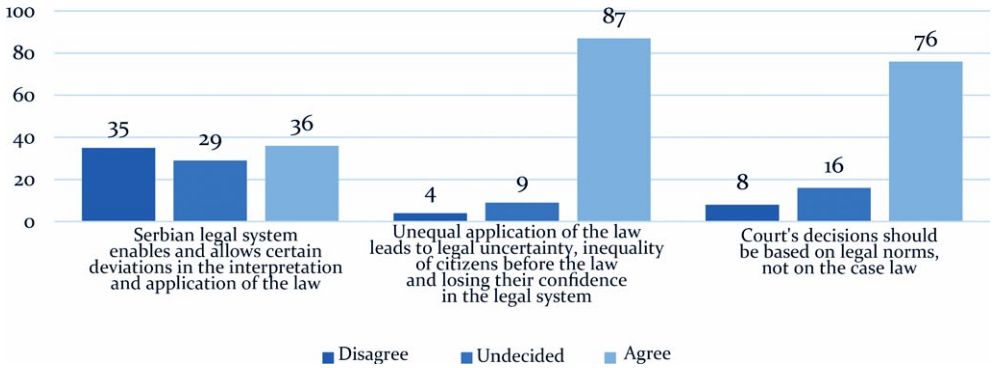
Among the judges of all courts, which were included in the survey, there is a higher percentage of those who claim that the case law is not uniform at all (27%) than those who think that the case law is fully harmonized (2%).

The dilemmas that judges in Serbia have about the uniform case law can best be seen through the (dis)agreement with the assertions listed in chart 14.3.

We find an equal number of judges who agree and those who disagree with the assertion that Serbian legal system enables and allows certain deviations in the application and interpretation of the law. Slightly more than one-third of respondents agree with this assertion (36%), while there is almost identical percentage of those who are opposed to this assertion (35%).

Contrary to this claim, which relates to the interpretation and application of the law, which initiated the divided views among judges, with the other two there were no doubts. The judges almost entirely (87%) agree with the fact that the *unequal application of the law leads to legal uncertainty, inequality of citizens before the law and losing their confidence in the legal system*. Three-quarters of judges (76%) agrees that *the court's decisions should be based on legal norms, not on the case law*, which confirms previous finding that the institute of case law in our legal system is not a source of law.

Chart 14.3. To what extent do you agree or disagree with the assertions relating to the case law and application of the law? (in %)



High consensus of (dis)agreement with the above assertions is reached among the judges, regardless of the jurisdiction of the court to which they belong.

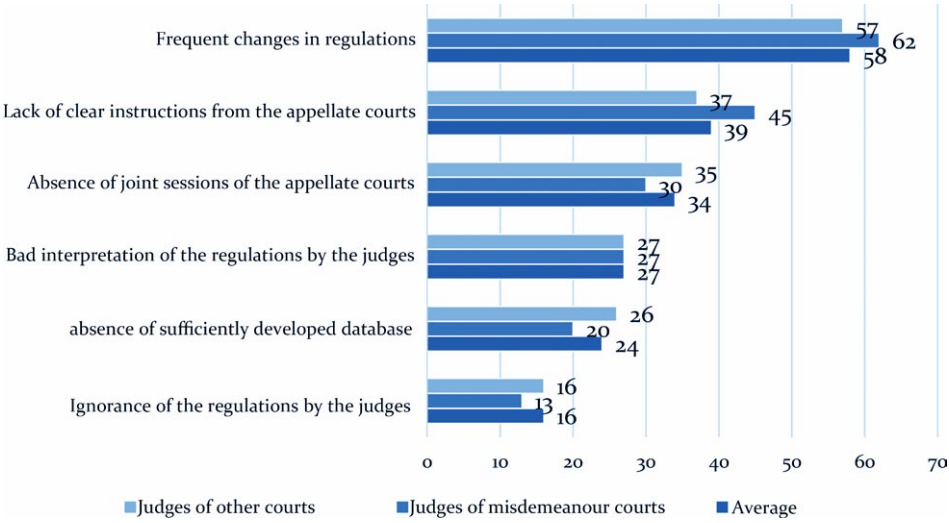
In order to ascertain the causes of uneven application of law in Serbia, we offered judges the opportunity to choose three of the six potential causes that are most frequently mentioned as the reason for non-uniformity of application of law – chart 14.4.

The key cause of uneven application of the law, according to the opinion of 58% of the judges is frequent changes in legal regulations. Follows the lack of clear guidelines for which 39% of the judges blames the appellate courts, while another third (34%) of judges sees the cause again in the appellate courts, but this time in the absence of their joint sessions.

One quarter of respondents uneven application of the law interprets with the absence of sufficiently developed database of court decisions and sentences, and more than two-fifths (in summary 43%) claims that the cause of this phenomenon is the ignorance or bad interpretation of the regulations by the judges.

Among the above-mentioned 43%, we find most of those respondents who inconsistency of application of law associate with the *incorrect* interpretation of the regulations by a judge, while the rest believe that a part of judges *knows insufficiently well the regulations* that should be applied in their decision-making.

Chart 14.4. Key reasons for the existence of inconsistent application of the law (in %)



When we take into account the jurisdiction of the courts from which come the judges who participated in the survey, the key difference in views can be seen in terms of *frequent changes in regulations,* which is considered by 62% of misdemeanour judges as the main reason of the inconsistent application of the law, while the percentage of judges coming from other courts is slightly lower, and amounts to 58%. Somewhat bigger difference occurs when it comes to the *lack of clear instructions from the appellate courts*, which is considered the cause of inconsistent application of the law by 45% of the judges of misdemeanour courts and 37% of their colleagues from other courts. Judges who do not fall into the category of misdemeanour judges, to a somewhat greater extent find that insufficiently developed database is an important cause of the problem of inconsistency, as opposed to 20% of the judges who come from the ranks of misdemeanour judges who agree with that.

Although only one-quarter of respondents on average believes that the lack of a complete database is the main cause of inconsistent case law in Serbia, 91% of judges agrees that the inconsistent application of the law could be resolved crown with the formation of a comprehensive, regularly updated and available to all judges database of court decisions and sentences. Only 2% of the interviewed judge does not support this idea.

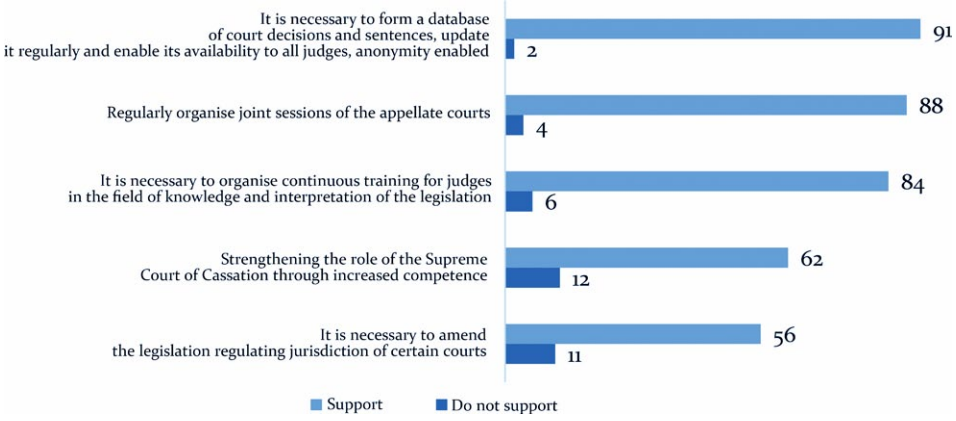
Generally, there is a high degree of agreement of judges with solutions that could contribute to the regulation of the inconsistent application of the law, mentioned in the chart 14.5. Besides the formation of a database of court decisions and sentences, which is supported by 91% of judges, 88% of judges agrees that regular joint sessions of the appellate courts would significantly contribute to the harmonization and improvement of the case law.

In addition, 84% of judges in Serbia is committed to continuous training in the field of knowledge and interpretation of the current legislation, which would lead to a reduction in inconsistent application of the law, ignorance and incorrect interpretation of the legislation.

Strengthening the role of the Supreme Court of Cassation through increased competence is the solution to the problem of inconsistent application of the law for 62% judges on average. Among respondents who advocate for higher competence of the Supreme Court of Cassation are increasingly present judges whose area of work does not include misdemeanours. More than two thirds of the judges of other courts (67%) are committed to increasing the competence of the Court of Cassation, compared to 47% of the judges coming from the ranks of misdemeanour courts and Misdemeanour Court of Appeal.

In addition to the training of judges, advocated by the survey participants, particular attention should be paid to the future allocation of cases among judges, which is considered by one part of the respondents as insufficiently well designed.

Chart 14.5. How to solve the problem of inconsistent application of the law, the views of judges (in %)



In the table 14.6. we noted the assertions concerning the issue of allocation of court cases and the attitude, (dis)agreement, of the judges toward them.

Table 14.6. Attitude of judges towards the issue of allocation of court cases (in %)

Allocation of court cases	*Do not know, cannot assess*	*Disagree*	*Agree*
The allocation of court cases is done according to the applicable Court Rules of Procedure	18	11	71
The allocation of certain cases, especially those exposed to political or other interest ("sensitive") is often influenced by the Court President	34	48	18
The allocation of cases is such that judges are not evenly burdened by the caseload (complexity and age)	21	28	51
In order to apply the principle of automatic case allocation (random allocation), it is necessary to introduce electronic case management i.e. find a technical solution so that the allocation system is not subject to manipulation	15	6	79
In order to respect the right to a natural judge (random case allocation) it is necessary to introduce control over the manner of allocation by a special body of the High Court Council, the supervision to be carried out continuously and ascertain whether the irregularities are removed	23	19	58
For a uniform and equitable burden of judges by the caseloads, it is necessary to introduce a weighting program, according to the complexity, duration and severity of cases	18	6	76

Among the respondents we find 71% of those who affirm that the allocation of cases is done according to the applicable Court Rules of Procedure while on the other hand more than half of respondents (51%) believe that, regardless of the Rules of Procedure, judges are not evenly burdened with the caseload (complexity and age.

Therefore, among half of the judges there is certain scepticism that some of their colleagues are more or less burdened than the others, and that this is an objective problem to be solved.

This doubt is most prominent among the judges of the appellate courts (general jurisdiction), where 70% of respondents agree that there is no consistent allocation of cases among colleagues.

Among the judges of the other courts agreeing/disagreeing with this assertion does not deviate significantly from the average mentioned in the table.

On the other hand, slightly more than one quarter of the surveyed judges (28%) believes that there is equal and fair allocation of cases among their colleagues, and one-fifth did not want to give their view on this issue.

In order to improve the current situation regarding the allocation of cases among judges, respondents felt that the weighting program should be introduced that would in the allocation of cases take account of factors such as: the *complexity, duration and gravity of the case*. With the introduction of weights agrees slightly more than three–quarters of judges in Serbia (76%).

Besides weighting of cases, judges are advocating for reducing the influence of "human factor" in the further allocation of cases, so that 79% of respondents advocates for electronic case management so that the allocation system would not be subject to further manipulation.

Besides the electronic system of allocation, 58% of judges consider that the establishment of a special body of the High Court Council, which would exercise control over the method of distribution and remove potential irregularities, would lead to the improvement of the system for allocation of court cases.

15. Attitude of judges towards the judicial reform

The largest percentage of judges (46%) agrees that judicial reform was necessary, while one-third of respondents (34%) disagree with this statement – Table 15.1. Support for the judicial reform is somewhat more pronounced among the judges of misdemeanour courts with 51% of respondents who agree that reform was necessary. Contrary to the judges of misdemeanour courts, the percentage of judges from the courts of other jurisdictions who believe that the reform of 2009 was necessary amounts to 44%.

Although we recorded a relatively small difference between those judges who believe that judicial reform was necessary and those who were against it, within both of these groups of respondents there are much more of those who do not agree with the fact that the judicial reform of 2009 was well conducted. Almost two thirds of respondents (63%) believe that the reform was not implemented in the right way as opposed to 13% of the judges who support the results of the reform of 2009. No fourth judge can give an answer to the question.

Table 15.1. The attitudes of judges towards the judicial reform of 2009 (in %)

Attitudes of judges towards the judicial reform of 2009	*Do not know, cannot assess*	*Disagree*	*Agree*
Reform was necessary	20	34	46
Reform was well–conducted	24	63	13
Reform was necessary, but it should have been implemented not through the general reappointment but by establishing individual responsibility of judges who did not perform well	13	6	81
Reform should have been implemented by changing the system, not by changing people	22	13	65

The consensus among the judges was recorded with regard to the view that the reform should be have been implemented, but not through general reappointment of judges but by establishing individual responsibility of judges who did not perform well. With the determination of the individual liability of judges disagrees 6% of judges, 13% cannot assess, while the remaining 81% observes that the individual responsibility should have been one of the basis of the judicial reform.

Most judges considers that people in the judiciary were not the key problem, so that 65% of respondents confirms that the reform should have been intended for the system, not the people in the system. On the other hand, the percentage of 13% of respondents who do not agree with this statement correlates with the percentage of those who believe that the 2009 judicial reform was well implemented.

Table 15.2. Attitudes of judges towards the key issues that judicial reform needed to solve (in %)

Attitudes of judges towards the key issues that judicial reform needed to solve	*Do not know, cannot assess*	*Disagree*	*Agree*
Judges who have been restored in the judicial system on the basis of Decision of the Constitutional Court do not work in the same conditions as their colleagues	30	50	20
Manner in which the court network is set up is not adequate	32	16	52
Courts have considerable backlog of old cases	30	18	52
Courts do not act within a reasonable time	32	30	28
Regulations are applied inconsistently	27	19	54
Judges and courts are not burdened evenly after the reform	17	9	74
Basic courts formed after 2010 do not have sufficient resources for work	29	7	64
Political influence on the judiciary still exists	12	36	52

Table 15.2. presents problems that judges consider the judicial reform should solve. The biggest concern among the surveyed judges at this point causes the uneven workload of courts. Three out of four surveyed judges agree that the judges and the courts are not burdened evenly after the judicial reform in 2009. In addition to the workload, the judges and the courts are faced with insufficient resources for their work. Almost two thirds of respondents (64%) believe that basic courts that were established after 2010 have insufficient human and material resources for work. The percentage of respondents who come from misdemeanour courts, and who believe that basic courts established after 2010 have insufficient resources for work is 50%. On the other hand, among the judg-

es who come from the courts of other jurisdiction 68% believes that the newly established courts are not sufficiently enabled to work.

More than half of respondents advocates for the resolution through reform of the following issues faced by the courts: *inconsistency in the application of legislation; the backlog of cases suppressing the work of the courts; inadequate court network*.

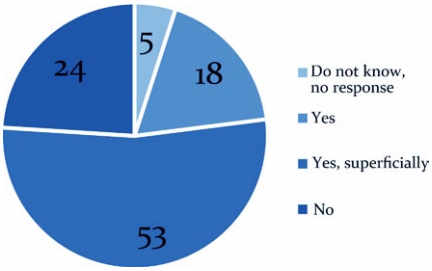
With the assertion that the courts do not act consistently agrees 54% of respondents, while there are only 19% of those who consider it incorrect. We find similar percentages when it comes to claims that the courts have considerable backlog of cases, and that the court network is not set up adequately. In both cases, 52% of respondents agree with the assertions, while the percentage of those who oppose in the first case is 18% and in the other on 16%. The percentage of respondents who come from misdemeanour courts, and who consider that there are in the courts considerable number of pending cases is 43% , which is significantly less than the average and compared to the percentage of judges from other courts who agree with this statement, which is 55%. The difference in the views between the judges of misdemeanour courts and judges of other courts is also found in the assertion that the courts do not act in a reasonable time. Somewhat more than two fifths of judges from the courts of general and other jurisdiction (42%) agree with this assertion. Among the judges of misdemeanour courts, the percentage of respondents who agree that the courts do not act in a reasonable time is 29%.

As a special problem, which is not linked directly with the logistics, material and human resources of the courts, we highlight the political influence on the judiciary for which 52% of the judges argues that it is still present. The finding, according to which more than half of the judges in Serbia claims that their work is subject to political influence is certainly worrying. On the other hand, slightly more than one third of judges claim that there is no political pressure. Among the judges in Serbia, therefore, there is a prevailing opinion about the necessity of reform, which would solve the problems listed in Table 15.2.

To what extent judges in Serbia are really familiar with the contents of Chapter 23 and the National Judicial Reform Strategy, which will largely create the future of Serbian justice? The shortest answer to this question would be insufficiently – graphs 15.1. and 15.2.

Slightly more than half of the judges (53%) claims to be superficially familiar with the contents of Chapter 23, less than one-fifth (18%) categorically claims to know its contents, and one-quarter (24%) admits lack of knowledge about its contents – chart 15.1.

Chart 15.1. Are you familiar with the contents of Chapter 23? (in %)

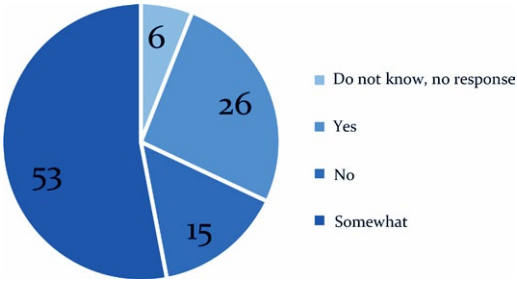


The situation is similar in terms of knowledge of principles and priorities (objectives) of the National Judicial Reform Strategy for the period 2013-2018 – graph 15.2.

Certain percentage of respondents, as in the case of familiarity with the contents of Chapter 23, claims to have some information about the National Judicial Reform Strategy – 53%.

However, when it comes to those respondents who claim to possess or do not possess knowledge about the strategy, the situation is slightly better, and knowledge of the contents of the Strategy is at slightly higher level compared to the knowledge of the contents of Chapter 23. Just over one–quarter of the surveyed judges (26%) claims to know the principles and priorities of the Strategy versus 15% of those who say they are not familiar with them.

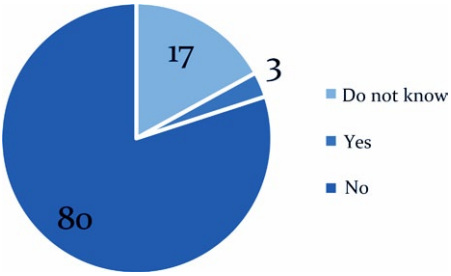
Chart 15.2. Are you familiar with the principles and priorities (objectives) of the National Judicial Reform Strategy for the period 2013-2018? (in %)



In both cases, each twentieth respondent cannot determine the level of knowledge of the contents of the two documents, which are of importance for the future of the judiciary in the country.

Participation of judges in formulating the National Judicial Reform Strategy in Serbia remains questionable, because most judges argue that they were not consulted in this process, and that the overall reform strategy was created without them.

Chart 15.3. Do you think that judges were involved in an appropriate manner in the process of judicial reform? (in %)



In the survey, we find 3% of respondents who consider that judges were adequately involved in the process of judicial reform, and 80% of those who deny it – graphs 15.3. When we add to 80% of respondents who claim that the judges were not adequately included in the process of judicial reform, another 17% of those who do not know and cannot assess what their role and the role of their colleagues really were in the reform process, we get 97% of respondents who believe that judges were not adequately involved in the creation of the judicial reform in Serbia.

Chart 15.4. Did you personally take part in the process of judicial reform? (in %)

We are getting similar findings when we ask survey participants about their personal involvement in the process of judicial reform – chart 15.4.

Most respondents, 97% of them, have confirmed that they were not consulted in the process of judicial reform and that they personally did not have any part in the creation of the National Judicial Reform Strategy. Against this majority stand 3% of the judges who have confirmed their participation in the future judicial reform in our country. It is important to stress that these findings do not differ or statistically insignificantly differ among the respondents, depending on the jurisdiction of the court to which they belong.

RECOMMENDATIONS
FOR STRENGTHENING CITIZENS' TRUST IN THE JUDICIARY

INDEPENDENCE AND IMPARTIALITY

- Judicial reform to be planned and implemented by agreed and applicable changes of the system, rather than changing the people
- Stabilize the judicial system by:
  - abandoning the practice of frequent and inconsistent changes in regulations, especially in ways that are noncompliant with the continental legal system, where legal system of Serbia traditionally belongs to
  - securing conditions for their implementation before the adoption of regulations
  - providing mutual and inherent compliance of regulations, along with respecting the opinions of experts during their drafting
  - basing the judicial decisions on the correct application and interpretation of rules
- Expand the existing guarantees of the independence of the judiciary and judges within the existing constitutional framework, without waiting for constitutional amendments
- Improve material position of all the employees in the judiciary, particularly bearing in mind that judge's salary is a material guarantee of his/her independence, as well as the fact that judges are prohibited to engage in other work or activities, except judicial ones
- Secure independent judicial budget system by transferring financial powers exclusively to the High Court Council
- Strengthen the capacity of the High Court Council as a guarantor of the independence of judges and courts, by:
  - providing for the adequate representation of judges - changing the composition; credibility of the members by voting of all

judges for representatives of each electoral base; secrecy of the vote – voting at one of up to four polling stations (in the seats of appellate courts); standardized election; visibility of the campaign for the election of members of the High Court Council
  - institute the duty of the High Court Council to act and accountability for failing to react, in cases of political influence and pressure on judges
  - ensure that the High Court Council is responsible for managing the entire judicial system, including all employees in the judiciary
- Provide for a mechanism for entering the judiciary through the free and equal access (keep the system of training and mentoring of judges combined with the initial training, together with the capacity building of the Academy)
- Secure a system of election and promotion according to clear criteria and comparable standards for the evaluation of their achievement (which will determine the fulfillment of minimum criteria and enable ranking of candidates) and make them visible to everyone, both the candidates and professional public
- The quality of the proceedings and judicial decisions set as a priority objective, with reasonable efficiency in practice; in this respect:
  - with the adequate method of evaluation of judges' performance (Rules on evaluation and Court Rules of Procedure), remove the internal pressure of judicial authority on judges to focus their work on the adoption of a large number of decisions in the shortest possible time, which prevents good quality decision
  - prescribe minimum standards regarding working conditions for judges in terms of:
- material and technical equipment (working space, technical supply),
- adequate number of judges and court staff,
- balanced workload of judges by way of uniform allocation of cases according to the complexity and caseload, which should be provided and ensured by the amendments to the Court Rules of Procedure
- consistent workload of courts, requiring amendments to the so-called court network.

- Provide training and specialization for judges, under the same conditions for all areas of the law and all the areas of importance for the application of the law, as well as for judicial advisers, trainees and other staff, and to this end:
  - set up clear criteria for transparent election of trainers, mentors and members of the committees of the Judicial Academy
  - evaluate commitment to professional training and its results
- Review the Rules on evaluation of judges' performance, so that they are not based solely on statistics but to enable to detect weaknesses of a particular judge, and to that effect establish the relation to the continuous training (Academy) for their elimination
- Ensure objective, complete and accurate media reporting (statutory obligation) on issues related to judicial proceedings, judicial decisions and the judiciary in general.

ACCOUNTABILITY AND ETHICS

- Strengthen the awareness of judges on:
  - all aspects of their accountabilities (especially ethical and professional), and to this end establish a body that would provide advisory opinions, taking into account that a disciplinary offense arises from disciplinary, not ethical accountability
  - their duty to be at all times impartial and fair
- Encourage and thereupon evaluate judges, to
  - understand the broader social events
  - follow ethical principles as guidelines in their behavior, with an advisory opinion of a separate independent body within the judiciary
  - take a leading role in the identification, development and implementation of the principles of judicial ethics, and the work of Ethics Committee
- Starting from the European standard that efficiency means making good quality decisions within a reasonable time after the fair consideration of the matters in dispute, encourage judges to promote their knowledge and skills for solving disputes with due care, in timely manner and corroborate their decisions with clear and complete reasons

- Improve the system of accountability of judges and disciplinary proceedings by:
  - preventing abuse of initiating and conducting disciplinary proceedings
  - initiating disciplinary proceedings only if expressly prescribed and unfounded violation of judicial duty occurs
  - ensuring judge's right to a fair trial and the right to challenge the decision and sanction before an independent tribunal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