



ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

Mission to Serbia and Montenegro

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# REPORT ON JUDICIAL REFORM IN SERBIA

RULE OF LAW / HUMAN RIGHTS  
DEPARTMENT

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# INTRODUCTION

The judicial and legal reforms have been assigned as one of the main objectives within the starting process of the global reforms and democratisation of the state. Ever since, relevant government and state bodies, representatives of the judiciary, various international and national government agencies and non-governmental organizations have been involved in the process.

From the moment the Organization for Security and Cooperation in Europe, Mission to Federal Republic of Yugoslavia/Serbia and Montenegro<sup>1</sup> (hereinafter: OMiSaM) was effectively established (March 2001), it has held the assignment (in accordance with the Mandate determined by the OSCE Permanent Council Decision 401 of January 11, 2001 on the establishment of the Mission to the FRY) to provide assistance and advice to all levels of Yugoslav authorities, as well as to interested individuals, groups and organizations, in the field of the rule of law, in comprehensive implementation of legislation in the areas of the Mandate and, primarily, in restructuring and training the judiciary.

Throughout its work, the OMiSaM has performed the basic assessment of the status of the judiciary in Serbia and Montenegro through collecting information from all the relevant governmental and non-governmental (national and international) institutions and organizations involved in the judiciary related issues within Serbia and Montenegro, with a view to develop its initial strategy and objectives. But, apart from that, with various reform processes going on in different fields of the judicial system, the effect of the reforms in the field and the attitude of the common members of the judiciary in Serbia, remains unknown. The lack of accessibility to that kind of information could slow down the process of planning and diminish the quality of the reforms performed.

In order to collect the judicial officials' opinion, the OMiSaM has conducted a poll in two parts. Both parts consisted of questions related to judicial reform (alterations to the legislation, efficiency, education, modernisation, lustration, etc). The first part included the visits to randomly selected courts and prosecutors' offices in 12 towns throughout Serbia. Those towns were Belgrade, Nis, Jagodina, Novi Pazar, Novi Sad, Lazarevac, Valjevo, Uzice, Kragujevac, Kraljevo, Subotica, Novi Becej. During the mentioned visits the talks were held with judges, prosecutors and their deputies on the aforementioned questions. The second part of the poll consisted of mailing the questionnaires subsequently filed by every judge and public prosecutor and deputy public prosecutor in Serbia on anonymous basis.

The overview of the main facts related to the judiciary is followed by a presentation of the results of our research that has been performed through interviews and through the analysis of questionnaires during summer and autumn 2002.

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<sup>1</sup> In accordance with the OSCE PC Decision 533 of 13 February 2003 the title of the Mission has been changed to "OSCE Mission to Serbia and Montenegro"

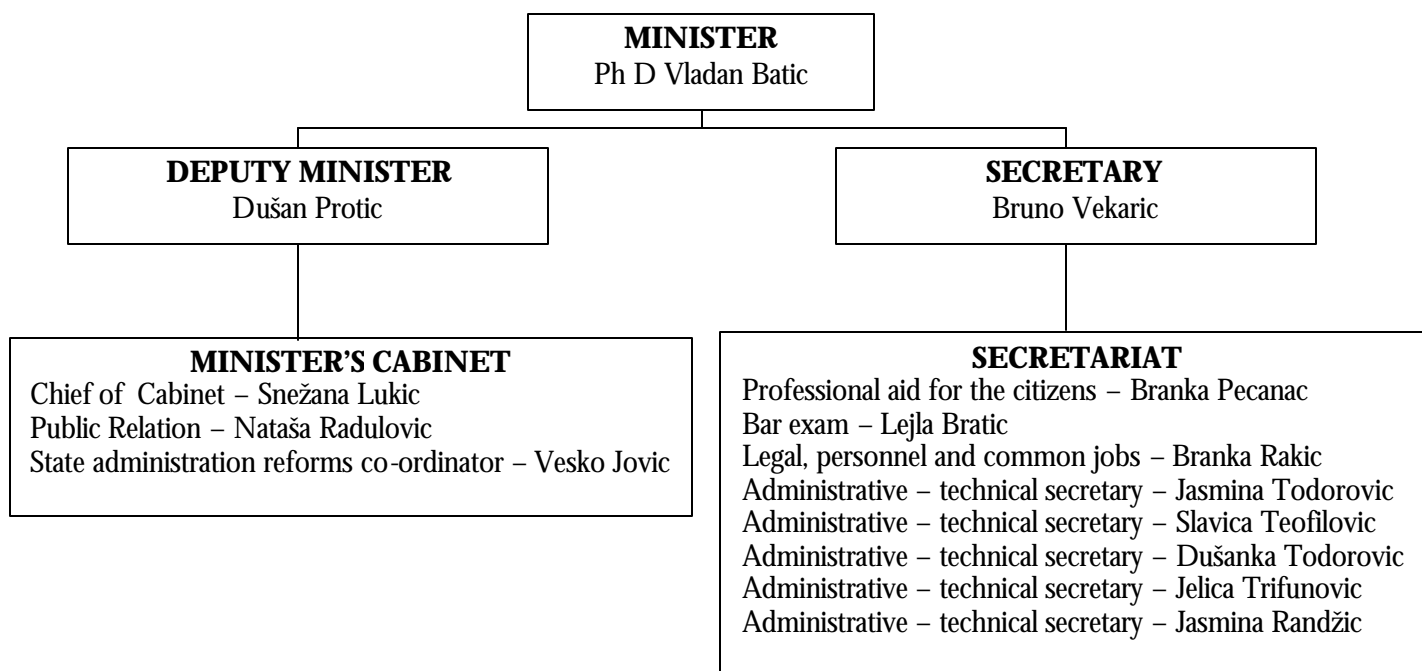
# 1. MAIN PILLARS

## OF THE JUDICIAL REFORM PROCESS IN SERBIA

### 1.1. MINISTRY OF JUSTICE<sup>2</sup>

The Ministry of Justice is competent for state administration activities related to: organisation and work of judicial institutions and prisons, criminal legislation, criminal procedure, international legal aid, inheritance, witness expertise, execution of sanctions, professional education of employees of judicial institutions and prisons, election and ranking issues of members of the judiciary, preparation of legislation on procedure in the Constitutional Court and the legal effect of its decisions, as well as other functions foreseen by the Law<sup>3</sup>.

#### 1.1.1. Structure



<sup>2</sup> Based on Republic of Serbia Ministry of Justices' reports

<sup>3</sup> Article 5, Law on Ministries, Republic of Serbia Official Gazette no: 27/2002, May 23, 2002.

<b>Judiciary and Magistrate Department</b>	<b>Legislation and International Relations Department</b>	<b>Information and Technology Department</b>	<b>Material and Financial Operation Department</b>	<b>Directorate for Execution of Prison Sanctions</b>
<b>Deputy Minister</b>	<b>Deputy Minister</b>	<b>Deputy Minister Dragan Markovic</b>	<b>Deputy Minister</b>	<b>Head of the Directorate Dragan Vulic</b>
<b>Court Surveillance Section</b> Head – Predrag Savic	<b>Legislative Operation Section</b> Head – Jovan Cosic	<b>I. T. and Analysis Bureau</b> Head – Bojan Perovic	<b>Budget Execution Section</b> Head – Milena Lakic	<b>Monitoring Section</b> Head – Ivana Bulatovic
<b>Personnel and Analytical Section</b> Head – Milica Vlašić-Koturovic	<b>Harmonisation of Legislation with EU legislation Unit</b>		<b>Investment Observance and Procurement Unit</b> Head – Zorica Pavic	<b>Bureau for Detainees/Prisoners Rights, Personnel, Financial and Commercial Activities</b> Head – Milenko Radoman
<b>Criminal Section</b> Head – Svetlana Stanivukovic	<b>Project Management Unit</b>			
	<b>International Legal Aid Section</b> Head – Coguric Miroslav			

## 1. 1. 2. Objectives

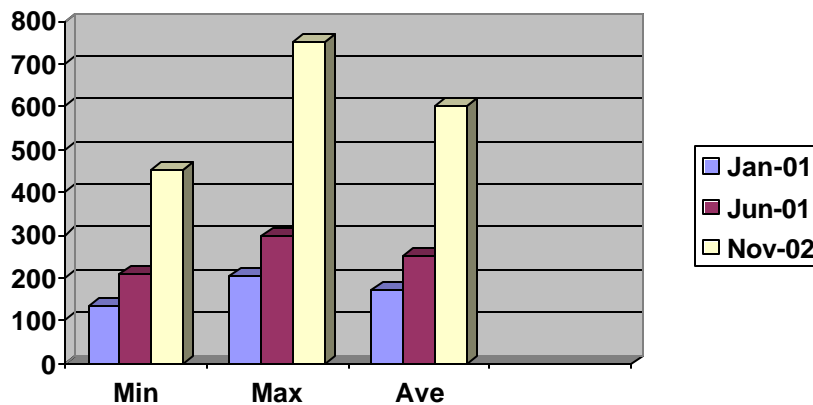
- Judicial reform – preparing and suggesting laws, harmonisation of existing legislation with current regulations in European Union Countries.
- Personnel policies - alteration of the personnel structure within the judiciary
- Personnel training.
- Improvement of the material position of judiciary and administration personnel and improvement of the working conditions.
- Efficiency of the judiciary and administration, based on the principles of the responsibility, professionalism and modern management approach to organisation issues.

### 1. 1.3. Judiciary Salaries

The salaries of judges and public prosecutors in Serbia have been inadequate. The judiciary suffered the risk of losing a substantial part of its personnel to private practice activities as lawyers thus leaving the judiciary devoid of the best officers. Low salaries were an open invitation to corruption, jeopardising independence and impartiality of the judiciary. OMiSaM, supported by the Open Society Institute, UNDP and the Serbian Ministry of Justice, proposed a project on increasing salaries for 100% in order to improve the situation. This project proposal, and the efforts to realise it, together with further influence from the IC, created pressure on the Serbian Government. The Serbian Government (after efforts by the Prime Minister, the Minister of Finance and the Minister of Justice) has increased the salaries of judiciary personnel for 100%.

On 20th February 2002 the Serbian National Assembly (hereinafter: National Assembly) adopted the changes to the Law on Court Fees<sup>4</sup>. The fees have been increased for four to five times. Some of this extra money is to fund salary increases in the judiciary. Also an independent court budget has been established (50%)<sup>5</sup>.

	Minimum	Maximum	Average
January 2001	135 EURO	205 EURO	170 EURO
June 2001	210 EURO	295 EURO	252 EURO
November 2002	450 EURO	750 EURO	600 EURO



<sup>4</sup> "Republic of Serbia Official Gazette", No. 9/2002, 26<sup>th</sup> February 2002

<sup>5</sup> Law on Court Fees

"Article 51.

The collected taxes are a revenue of the budget of the Republic of Serbia. Of the collected taxes, 50% will be used to improve the material status of judges, public prosecutors and deputy public prosecutors - judges' allowance - and for technical equipment for judicial bodies, material expenses and special purposes."

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## 1. 2. HIGH JUDICIAL COUNCIL

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In accordance with the package of laws on judiciary adopted on November 2001, a new institution – the High Judicial Council has been established. This Council has been stipulated as a true guarantee for the independence of the Judiciary and impartiality of the personnel reconstruction of the judiciary during the period of transition.

As the central judicial body, the High Judicial Council has the following powers:

- To determine the court or public prosecutor's office where a judge or prosecutor or deputy prosecutor shall continue his/her office, in case a court or public prosecutor's office has been closed or its jurisdiction transferred to another court or public prosecutor's office.
- To render a decision on the transfer of a judge or public prosecutor to another court/public prosecutor's office.
- To determine remuneration for a judge or public prosecutor or deputy public prosecutor who has been transferred to another court or prosecutor's office.
- To grant up to 8% salary raise for the president of a court or a prosecutor.
- To decide that a public prosecutor should have a base salary equal to that of a judge of the immediately higher court.
- To determine the percentage of base salary increase for the investigative judge, judge, public prosecutor or deputy public prosecutor, who exclusively or predominantly deals with criminal cases in a district court.
- To decide on increasing base salary for a court or public prosecutor's office where vacant posts may not be filled in.
- To propose to the National Assembly to grant benefits in addition to the salary of a judge.
- To announce election of judges, public prosecutors and deputy public prosecutors.
- Obtain information and opinions on the competence and suitability of candidates for judges, public prosecutors or deputy public prosecutors.
- To propose to the National Assembly candidates for judges, public prosecutors and deputy public prosecutors (the Council has the exclusive right to nominate candidates in accordance with the initial law and the proposed amendments, while the amendments of 19 July 2002 envisage that this right is shared with the responsible board of the National Assembly).
- To deal with complaints against the decisions of the High Personnel Council or Republic Public Prosecutor to consider not elected the judge or public prosecutor or deputy public prosecutor who unjustifiably fails to take office within two months of the election.
- To appoint lay judges following the recommendation of the minister in charge of the judiciary.
- To conduct the procedure and render a decision on the reasons leading to termination of office of a lay judge or deputy public prosecutor.
- To determine compensation of expenses and remuneration for lay judges.
- To deal with requests for the exemption of the Republic Public Prosecutor in case of criminal offences or other punishable acts stipulated by the laws of the Republic of Serbia.
- To appoint Acting Republic Public Prosecutor.
- To pronounce the measure of warning or removing from public life (from one month to one year) when dealing with a complaint against a decision establishing that there are reasons for dismissal due to negligence or incompetence.
- To decide on requests for the exemption of the Republic Public Prosecutor in case of criminal offences or other punishable acts stipulated by the laws of the Republic of Serbia, and so long.



REGULATION	FUNCTION	MEMBERS		EXPANDED COMPOSITION	
<b>Initially adopted text - 5<sup>th</sup> November 2001</b>	<b>Proposes:</b> Presidents of Courts, judges and public prosecutors to the National Assembly, <b>Appoints:</b> layman judges and deputy public prosecutors, and perform other duties defined by law	<b>5 Permanent</b>	<b>8 Invited</b>	<b>Members</b> Comprise all invited judge and prosecutor members and all other members, with the exception of the Minister in charge of judiciary and the Republic Prosecutor	<b>Responsibilities</b> Determines tentative criteria for the number of judges, lay judges and court personnel; decides on the transfer of a judge or public prosecutor into another court or prosecutor's office, on certain issues related to remuneration for the members of the judiciary; announces the election of judges, public prosecutors and deputy public prosecutors; obtains information and opinions on the competence and suitability of candidates for judges, public prosecutors and deputy public prosecutors; proposes to the National Assembly candidates for judges, public prosecutors and deputy public prosecutors (exclusive right); appoints lay judges; renders decisions on complaints against decisions of the High Personnel Council or Republic Public Prosecutor to consider not elected the judge or public prosecutor or deputy public prosecutor who unjustifiably fails to take office within two months of the election; determines the reasons leading to termination of office of a lay judge or deputy public prosecutor; decides on requests for the exemption of the Republic Public Prosecutor in case of criminal offences or other punishable acts stipulated by the laws of the Republic of Serbia; appoints Acting Republic Public Prosecutor; pronounce a measure of warning or removing from public life (from one month to one year) when dealing with a complaint against a decision establishing that there are reasons for dismissal due to negligence or incompetence; decides on requests for the exemption of the Republic Public Prosecutor in case of criminal offences or other punishable acts stipulated by the laws of the Republic of Serbia.
		<i>Ex officio:</i> - President of the Supreme Court of Serbia - Republic Prosecutor - Minister in charge of judiciary <i>Elected:</i> - By the Bar Association of Serbia - By the National Assembly	- 6 appointed by the Supreme Court of Serbia amongst judges - 2 appointed by the Republic Prosecutor amongst prosecutors		
<b>Amendments - 19<sup>th</sup> July 2002</b>	<b>Proposes :</b> layman judges, public prosecutors and deputy public prosecutors to the National Assembly, <b>Appoints:</b> judges and performs other duties prescribed by law	<b>5 Permanent</b>	<b>10 Invited</b>	Comprise all invited judge and prosecutor members and all other members	Determines tentative criteria for the number of judges, lay judges and court personnel; decides on the transfer of a judge or public prosecutor into another court or prosecutor's office, on certain issues related to remuneration for the members of the judiciary; announces the election of judges, public prosecutors and deputy public prosecutors; obtains information and opinions on the competence and suitability of candidates for judges, public prosecutors and deputy public prosecutors; proposes to the National Assembly candidates for judges, public prosecutors and deputy public prosecutors; appoints lay judges; renders decisions on complaints against decisions of the High Personnel Council or Republic Public Prosecutor to consider not elected the judge or public prosecutor or deputy public prosecutor who unjustifiably fails to take office within two months of the election; determines the reasons leading to termination of office of a lay judge or deputy public prosecutor; decides on requests for the exemption of the Republic Public Prosecutor in case of criminal offences or other punishable acts stipulated by the laws of the Republic of Serbia; appoints Acting Republic Public Prosecutor; pronounce a measure of warning or removing from public life (from one month to one year) when dealing with a complaint against a decision establishing that there are reasons for dismissal due to negligence or incompetence; decides on requests for the exemption of the Republic Public Prosecutor in case of criminal offences or other punishable acts stipulated by the laws of the Republic of Serbia.
		<i>Ex officio:</i> - President of the Supreme Court of Serbia - Republic Prosecutor - Minister in charge of judiciary <i>Elected:</i> - By the Bar Association of Serbia - By the National Assembly	- 6 appointed by the Supreme Court of Serbia amongst judges - 4 appointed by the Republic Prosecutor amongst prosecutors		
REGULATION	FUNCTION	MEMBERS		EXPANDED COMPOSITION	
<b>New draft amendments</b>	<b>Proposes :</b> Presidents of Courts, Judges, Public Prosecutors and Deputy Public Prosecutors to the National Assembly, <b>Appoints:</b> Layman Judges and performs other duties prescribed by law	<b>Permanent</b>	<b>Invited</b>	Comprise all invited judge and prosecutor members and all other members, with the exception of the Minister in charge of judiciary and the Republic Prosecutor	Determines tentative criteria for the number of judges, lay judges and court personnel; decides on the transfer of a judge or public prosecutor into another court or prosecutor's office, on certain issues related to remuneration for the members of the judiciary; announces the election of judges, public prosecutors and deputy public prosecutors; obtains information and opinions on the competence and suitability of candidates for judges, public prosecutors and deputy public prosecutors; proposes to the National Assembly candidates for judges, public prosecutors and deputy public prosecutors (exclusive right); appoints lay judges; renders decisions on complaints against decisions of the High Personnel Council or Republic Public Prosecutor to consider not elected the judge or public prosecutor or deputy public prosecutor who unjustifiably fails to take office within two months of the election; determines the reasons leading to termination of office of a lay judge or deputy public prosecutor; decides on requests for the exemption of the Republic Public Prosecutor in case of criminal offences or other punishable acts stipulated by the laws of the Republic of Serbia; appoints Acting Republic Public Prosecutor; pronounce a measure of warning or removing from public life (from one month to one year) when dealing with a complaint against a decision establishing that there are reasons for dismissal due to negligence or incompetence; decides on requests for the exemption of the Republic Public Prosecutor in case of criminal offences or other punishable acts stipulated by the laws of the Republic of Serbia.
		<i>Ex officio:</i> - President of the Supreme Court of Serbia - Republic Prosecutor - Minister in charge of judiciary <i>Elected:</i> - By the Bar Association of Serbia - By the National Assembly	- 6 appointed by the Supreme Court of Serbia amongst judges - 4 appointed by the Republic Prosecutor amongst prosecutors		

## 1. 3. COURTS

### 1. 3. 1. Structure

<b>High Judicial Council</b>		
<b>The Supreme Court of Serbia</b>	<b>Grand Personnel Council</b>	
	COURTS OF GENERAL JURISDICTION	SPECIALIZED COURTS
<b>FIRST INSTANCE</b>	MUNICIPAL COURTS (138)	The Administrative Courts
	DISTRICT COURTS (30)	Commercial Courts
<b>SECOND INSTANCE</b>	THE APPELLATE COURTS (4)	The Higher Commercial Court
PRISONS		

### 1. 3. 2. The Number of Court Employees

<b>Court</b>	<b>Judges</b>	<b>Other employees</b>	<b>Layman Judges</b>
<b>Supreme Court of Serbia</b>	77	118	26
<b>District Courts (30)</b>	409	1371	1955
<b>Municipal Courts (138)</b>	1696	6473	7455
<b>High Commercial Court</b>	29	33	180
<b>Commercial Courts (16)</b>	208	708	1065
<b>Total:</b>	2419	8670	10681
<b>TOTAL:</b>	11089		10681

### 1. 3. 3. The High Personnel Council

The High Personnel Council has been established on 31<sup>st</sup> January 2001 within the Supreme Court of Serbia. Until the 27<sup>th</sup> June 2002 it has held eight sessions. During this eight sessions, the HCP has made the following decisions:

In two dismissal procedures, initiated by presidents of the courts, it has decided that there is no ground for the dismissal of those judges in accordance with Article 54 in relation with Article 55 of the Law on Judges. In three dismissal procedures, initiated in June 2003, it has settled on members of the High Personnel Council for the reporting judges in favour of preparation of the report for the High Personnel Council, but the procedure has not been concluded. During June and July 2002 the High Personnel Council has received 44 decisions on starting the procedures for dismissal of judges. Still, the High Personnel Council could reach a decision in these cases since the "Law on

Amendments and Addenda to the Law on Judges”<sup>6</sup> came into effect. A new law has changed the method of appointment of members to the High Personnel Council.<sup>7</sup>

### 1. 3. 4. Case Statistics

#### 1. 3. 4. 1. RECEIVED AND SOLVED CASES FROM OCTOBER 2001 UNTIL JUNE 2002

Number of unsolved cases at the beginning of the reporting period			Totally in work on all materials at the beginning of the reporting period	Cases received during the reporting period	Subject Matter			Totally received in all subject matters during the reporting period	Cases solved during the reporting period			Totally solved in all subject matters during the Reporting period	Remain unsolved at the end of the reporting period			Number of unsolved cases at the end of each month during the reporting period	Totally number of unsolved cases at the end of the prorating period
Criminal	Civil	Administrative			Criminal	Civil	Administrative		Criminal	Civil	Administrative		Criminal	Civil	Administrative		
				Oct. 2001	491	934	418	1843	628	829	560	2017	2752	5764	4090	12606	
				Nov. 2001	479	743	422	1644	634	955	640	2229	2597	5552	3872	12201	
				Dec. 2001	486	698	531	1715	561	774	471	1806	2522	5476	3932	11930	
				Jan/ Feb. 2002	932	1459	919	3310	1060	1552	1031	3643	2394	5383	3820	11597	
				Mar. 2002	555	965	596	2116	446	790	535	1771	2503	5558	3881	11942	
				April 2002	654	900	550	2104	549	778	575	1902	2608	5680	3858	12146	
				May 2002	525	855	527	1907	790	943	506	2239	2343	5592	3879	11814	
				June 2002	499	737	473	1709	576	1036	317	1929	2266	5293	4035	11594	
2890	5660	4323	12782	/	4621	7291	4436	16348	5244	7657	4635	17536					11.594

<sup>6</sup> “Republic of Serbia Official Gazette”, No. 42, 19<sup>th</sup> July 2002.

<sup>7</sup> Report on work of the High Personnel Council, prepared by the President of the HCP, Judge Aleksandar Rankovic and the Registrar of the High Personnel Council, Ms. Milana Pavlovic.

**1. 3. 4. 2. APPEAL PROCEDURE CASES (CASES IN PROCEDURE IN ACCORDANCE WITH ORDINARY JUDICIAL REMEDIES AGAINST DECISIONS OF THE SUPREME COURT OF SERBIA) FROM OCTOBER 2001 TO JUNE 2002**

	Cases received during the fourth quarter of the year 2001	Cases received during the first quarter of the year 2001	Cases received during the second quarter of the year 2001	Total number of cases in procedure including the cases from the previous period	Cases solved during the fourth quarter of the year 2001	Cases solved during the first quarter of the year 2001	Cases solved during the second quarter of the year 2001	Cases that remain unsolved at the end of the second quarter of the year 2002.					
Criminal Matter	2	3	1	23	4			8					
	Confirmed	Abolished	Modified	Confirmed	Abolished	Modified	Confirmed		Abolished	Modified			
	3	1	/	2	/	2							
Administrative Matter	14	16	16	46	14			18					
	Validated	Rejected	Disclaimed	Other ways	Validated	Rejected	Disclaimed		Disclaimed				
	1	3	1	9	/	3	1		7	/	/	/	3
Civil Matter	/	1	/	1	/			/	/			1	

**1. 3. 5. The Judges Association of Serbia**

The Judges Association of Serbia was established in 1997. This organisation has been one of the leading actors in the fight for professional independence of judges during the Milosevic's regime. Currently the Judges Association of Serbia is one of the key actors on ensuring independence to the ongoing judicial reform process.

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## 1. 4. PUBLIC PROSECUTOR'S OFFICES

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### 1. 4. 1. Number of employees in Public Prosecutor's Offices

<b>Public Prosecutors' Office</b>	<b>Public Prosecutors</b>	<b>Deputy Public Prosecutors</b>	<b>Public Prosecutors' Office Staff</b>
<b>Republic Public Prosecutor's Office</b>	1	39	14
<b>District Public Prosecutor's Office</b>	30	188	250
<b>Municipal Public Prosecutor's Office</b>	109	408	449
<b>TOTAL:</b>	140	635	713

### 1. 4. 2. Public Prosecutors Association of Serbia

The Public Prosecutors Association of Serbia was established in October 2001 as the first association of prosecutors in FRY/Serbia and Montenegro, before the adoption of the new Law on Prosecutors (November 2001). The previous Law on Prosecutors did not allow for the existence of such association. The existence of this association is of paramount importance for the independence and efficiency of the judiciary.

The Public Prosecutors Association of Serbia deals with different problems regarding the public prosecutors profession such as prosecution of cases they have little or no previous experience with (war crimes, trafficking in human beings, organised crime, etc.), as well as different problems regarding the ongoing judiciary reform.

## 2. RELEVANT LEGISLATION

### 2. 1. Package of Laws on the Judiciary

- On 5 November 2001 the Serbian National Assembly adopted a package of five laws regulating the judiciary:
  - ◆ The Law on The High Judicial Council;
  - ◆ The Law on Judges;
  - ◆ The Law on the Organisation of Courts;
  - ◆ The Law on Public Prosecutors;
  - ◆ The Law on Seat and Territorial Jurisdiction of Courts and Public Prosecutors' Offices.

The Law on The High Judicial Council entered into force in November 2001, and the other four laws entered into force on 1 January 2002, except for regulations related to jurisdiction of the courts (Law on Organisation of the Courts, Article 21 and 28)<sup>8</sup>. Those regulations were supposed to enter into force on 1<sup>st</sup> October 2002 after the establishment of the Court of Appeal and Administrative Court.

- On 19 July 2002 the National Assembly adopted amendments to the package of laws on the judiciary (proposed by the Democratic Party of Serbia).
- On 5 September 2002 the Supreme Court of Serbia initiated a procedure for assessment of the constitutionality of these amendments before the Constitutional Court of Serbia
- On 19 September 2002 the Constitutional Court of Serbia suspended the implementation of these laws due to the unconstitutionality of the amendments.
- On 13 February 2003 the Constitutional Court of Serbia suspended some provisions of the amended Law on Judges.
- New amendments on the package of laws prepared by the Judicial Reform Council are in the procedure of being adopted.

## 2. 2. Constitutional Review

### 2. 2. 1. Background

“The Belgrade Agreement” for a redefinition of future relations between Serbia and Montenegro was signed on 14 March 2002 in Belgrade.

FRY President Vojislav Kostunica and Deputy FRY Prime Minister Miroljub Labus signed on behalf of Yugoslavia, Serbian Prime Minister Zoran Djindjic for Serbia and Montenegrin President Milo Djukanovic and Prime Minister Filip Vujanovic for Montenegro. The document was also signed by EU Foreign Policy Chief Javier Solana.

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<sup>8</sup> Law on Organization of Courts:  
"Jurisdiction of the Municipal Court

**Article 21**

A municipal court in the first instance will try criminal offences for which the main prescribed punishment is a fine or imprisonment of maximum ten years, unless some of these offences fall under the jurisdiction of another court, and will decide on pleas for termination of a security measure or legal effects of sentencing for criminal offences within its jurisdiction.

A municipal court will try in the first instance civil disputes, unless some of these disputes fall under the jurisdiction of another court, and will conduct execution procedure and special litigation proceedings, which are not within the jurisdiction of another court.

A municipal court will try in the first instance housing disputes; disputes on starting, duration and termination of employment; rights, obligations and responsibilities pursuant to employment; compensation for the damage suffered by a worker during work or related to work; disputes related to solving housing needs pursuant to labour regulations.

The Municipal court will provide legal aid to citizens, international legal aid and perform other tasks prescribed by law.

The Law may provide that only some municipal courts within the territory of the same district court, may act in particular legal matters.

Jurisdiction outside of Court Proceedings

**Article 28**

The Supreme Court of Serbia will determine general legal positions in order to provide uniform application of law by courts; provide opinions on draft laws and other regulations relevant for performance of judicial authority; analyse application of laws and other regulations and work of courts; select the invited members of the High Judicial Council among judges and proposes candidates for one permanent member of the High Judicial Council; determine criteria for evaluation of diligent and successful performance of judge's function; determine the activities that are contrary to the dignity and independence of judges and damaging to the court reputation; determine types and manner of advanced training of judges and perform other tasks prescribed by law."

On 6 December 2002, the joint Serbian and Montenegrin Constitutional Commission unanimously adopted the Constitutional Charter of a new union of the two republics.

The Charter should be ratified by the Serbian and Montenegrin parliaments, after the drafting of the constitutional laws. The Yugoslav parliament will also discuss the Charter.

On 17 January 2003 the joint Constitutional Commission adopted in full legislation to implement the Constitutional Charter of the new state of Serbia and Montenegro.

The Constitutional Charter of the new state of Serbia and Montenegro and the law on its implementation was adopted by the Serbian Parliament in full on 27 January 2003, and adopted in full by the Montenegrin Parliament on 29 January 2003.

## **2. 2. 2. Summary of the new Constitutional Charter**

- The name of the new State Union will be Serbia and Montenegro
- Two members states will be equal - the state of Montenegro and the state of Serbia, together with the Autonomous Provinces of Vojvodina and of Kosovo and Metohija (presently under UN administration in line with the UNSC resolution 1244)
- The territory of Serbia and Montenegro consists of the territories of the member states of Serbia and Montenegro. The border between member states is inviolable, unless mutually agreed otherwise.
- Serbia and Montenegro shall have a common market, and the movement of persons, goods, services and capital between the two states shall be free.
- A citizen of one of the member states is at the same time a citizen of Serbia and Montenegro. Citizens have the same rights in each state of the new union, except the right to vote.
- Serbia and Montenegro will have one common President, Assembly, Council of Ministers, army and court.
- The combined state will not have a capital, but Belgrade is to be the administrative centre, where the seat of Assembly and the Council of Ministers are to be situated, while the Supreme Court will be in Podgorica, Montenegro.
- The Assembly of Serbia and Montenegro (hereinafter: the Assembly) is unicameral and consists of 126 deputies, 91 from Serbia and 35 from Montenegro. The mandate of a deputy is a four-year period.
- In the course of the initial two years after the adoption of the Constitutional Charter deputies shall be elected indirectly in proportion to the representation in the National Assembly of Serbia and the Assembly of Montenegro. In the course of the first elections the deputies shall be elected among the members of the National Assembly of Serbia, Assembly of Montenegro and the Federal Assembly.
- The Assembly elects, from among its deputies, the President and the Vice-President of the Assembly and they cannot be from the same member state.

- Bills will be passed by the Assembly when backed by a majority of the total number of deputies, provided there is a majority of votes from deputies of both member states.

- Upon the suggestion of the President and the Vice-President of the Assembly, the Assembly elects the President of Serbia and Montenegro. The mandate of the President of Serbia and Montenegro is a four-year term. The President of Serbia and Montenegro could not be elected two times repeatedly from the same member state.

- Ratified international treaties and generally accepted rules of international law have priority over the law of Serbia and Montenegro and the law of member states.

- Serbia and Montenegro's representation in international organisations will be rotated from one member-state to the other.

- The FRY property abroad shall be the property of Serbia and Montenegro. The FRY property in the territory of the member states shall be the property of the member states on the basis of the territorial principle.

- The army of Serbia and Montenegro will be under democratic and civil control.

- The conscripts do their military service in the territory of their respective member state whose nationals they are, with the possibility of serving in the territory of the other member state upon their wish. The Conscripts are guaranteed the right to conscientious objection. The authority of the military judicial bodies shall be transferred to the regular ones in accordance with the Law.

- The Court of Serbia and Montenegro will consist of an equal number of judges from each member state, appointed by the Assembly of Serbia and Montenegro at the proposal of the Council of Ministers for the period of six years.

- After three years, the member-states have the right to leave this union of states, provided the decision takes place after a referendum.

- A member-state that takes the advantage of this right does not receive international law subjectivity. In the event of Montenegro leaving Serbia and Montenegro the international documents related to FRY, particularly the Resolution 1244 UNSC, will relate to and be fully valid for Serbia as the successor. In the event that both member states through referendum declare in favour of changing the State status, that is in favour of independence, all disputable issues shall be regulated through a succession procedure, as was the case with the former Yugoslavia.

- The Charter on human and minority rights and civil freedoms, as an integral part of this Charter, shall be adopted according to the procedure and in the mode anticipated for the Constitutional Charter adoption.

- Retroactivity of the laws and other acts issued by the institutions of Serbia and Montenegro is prohibited, except for certain provisions of the Law that can be made retroactive if it is required by the public interest established in the process of law enactment.



## 3. JUDICIAL REFORM COUNCIL

The Serbian Government has established a Council for the ongoing Judicial Reform as an advisory body. Decision on Establishing the Judicial Reform Council (See Annex I) has been published in the "Official Gazette of the Republic of Serbia" No: 3/2002 on 28 January 2002.

The Council shall:

- Analyse the situation in the judiciary by examining personnel, material and space requirements for the work of courts and propose measures for rectifying observed problems;
- Define priority goals and activities for realisation thereof;
- Formulate projects aimed at promoting and modernising the functioning of the judiciary;
- Propose modes of advanced training for holders of judicial office;
- Make assessment of funds required for effective functioning of the judiciary;
- Co-operate with the media on judiciary relevant issues;
- Initiate passing and amending regulations in the field of the judiciary;
- Co-operate with international development agencies and associations of citizens in the field of judiciary.

The Minister of Justice, Ph. D. Vladan Batic, chairs the Council. The Council has 14 other national members and six international members.

Until now, eight meetings of the Judicial Reform Council have been held (9 April, 12 April, 19 April, 5 September, 9 October, 9 December 2002, 6 February 2003 and 11 February 2003).

At the fifth meeting held on 9 October 2002 Judicial Reform Council adopted a Strategy for Judicial Reform in Serbia. This is a project on performing comprehensive judicial reform that includes the Ministry of Justice, Judiciary Officers, NGO's, international organizations, expert groups, faculties, institutes, expert consultants, etc.

## 4. EDUCATION<sup>9</sup>

### 4.1. Overall

Before the beginning of the process of judicial reforms, the only possibility of training for the judiciary officers have been rare Consultation Seminars with only problematic issues from the daily practice as subjects.

At the beginning of the reform process, training of judges and prosecutors was performed through different training programmes, seminars and workshops prepared by NGO's and international organizations.

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<sup>9</sup> Report on Education of the Members of the Judiciary, prepared by Natasa Rasic, Director of the JTC

In October 2001, ABA/CEELI in co-operation with the Judges Association of Serbia organised a pilot-program named "Law School" for judged with less than three years of practice/working experience. Those were training courses of procedural law: criminal procedure course named "From Criminal Charge to Judgement" and civil procedure school named "From Complaint to Judgement". The first five course have been organised in District Courts in Belgrade, Novi Sad, Nis, Kragujevac and Zajecar. Because of the high importance of these subjects the lectures have been attended (other than by judges and prosecutors) as well by professional associates and trainees. Lecturers have been primarily experienced supreme court judges and occasionally district court judges. The majority of the lecturers have been trained through "training for trainers" programmes organised by ABA/CEELI as well. Because of the high interest of judges, this pilot program has been developed during 2002 in additional 20 training courses (10 for criminal and 10 for civil procedural law): from 9 February until 14 July 2002.

Since 18 May 2002, the responsibility for the organisation of these training courses has been transferred from the Judges Association to the Judicial Training Centre. Approximately 500 young judges and professional associates have attended these lessons.

A local NGO – Belgrade Centre for Human Rights organised consecutive courses on human rights for judges and professional associates: General Courses on International Standards and Practice of the European Court for Human Rights and Specialized Courses on separate subjects. These courses lasted nine days each and have been organised during 2001 and 2002.

Belgrade Centre for Human Rights organised as well General Human Rights Training Courses on a regional level, for judges from Croatia, BiH, Serbia and Montenegro. Regional training courses have been held in different countries, seeking for necessary exchange of comparative experiences among colleagues within the region.

Specialized training courses of the duration of five days were held on the following topics: The Right to Fair Trial, Deliberation of Discrimination, Freedom of Expression.

The Humanitarian Law Centre has organised a specialised serial of four session courses on international humanitarian law for 10 judges and 10 prosecutors: War Crimes Trials – International Criminal Tribunal for the former Yugoslavia (ICTY) Procedure and Practice: Organisational Structure, Role of the Prosecutor, First and Second Instance Procedure, Role of Defence Councils, Execution of Sentences, Elements of Crime, Elements of the Criminal Offence Execution, International and National Conflict, Command Responsibility, etc.

The Centre for Advanced Legal Studies has organised, from November 2001 until July 2002, a series of seminars for district court judges on media law (The State of Media Law in Serbia, Freedom of Expression, Principles of Public Information, Right on Reply, Correction and Denial of Information, etc).

Medical Law courses have been held between March and July 2002. (State of Medical Law, Diagnosis Mistakes, Non-providing of Urgently Needed Medical Support, Responsibility of Doctors, False Doctors, Legal and Moral issues, etc)

Commercial courts have organised, with financial support from USAID, through consultant institutions Booze, Allen & Hamilton during 2001 and Price Waterhouse Coopers in 2002, a serial of seminars, round table meetings and workshops on different subjects of interest for judges of those courts. (From November 2001 until April 2002).

## 4. 2. Judicial Training Centre

### 4. 2. 1. Establishment of the Centre

There is a broad consensus of the main pillars of the judicial reform process that training of the judiciary is the necessary starting point for the continuation of reforms. The establishment of a strong national centre for training is the best tool to ensure a appropriate training capacity adapted to the needs of judges and prosecutors.

The OMiSaM co-ordinated the preparation phase for the establishment of the Centre for Continuous Education of Judges and Prosecutors - Judicial Training Centre (JTC). UNDP prepared a project proposal for JTC operation, supported by the Governments of the Netherlands and Sweden. Finally on 6<sup>th</sup> December 2001, the Agreement on Establishment of the JTC was signed by the Minister of Justice, Ph. D. Vladan Batic, on behalf of the Government of the Republic of Serbia, and Judge Omer Hadziomerovic, President of the Executive Board on behalf of the Judges Association of Serbia. On 5<sup>th</sup> February 2002, the JTC has been registered with the Belgrade Commercial Court as Institution in accordance with the Law on Public Services. <sup>4</sup>

### 4. 2. 2. The Main bodies of the JTC:

The Executive Board is the highest supervisory/administrative body of the JTC and its members are: the President of the Supreme Court of Serbia, Mrs. Leposava Karamarkovic as President of the Executive Board; Deputy Minister of Justice, Mr. Dusan Protic; the Republic's Public Prosecutor Mr. Sinisa Simic, Registrar of the Ministry of Justice, Mr. Bruno Vekaric, Supreme Court of Serbia Judges Ms. Vida Petrovic-Skero and Mr. Zoran Ivosevic; Judge Sonja Brkic, President of the Novi Sad District Court; Judge Gordana Mihajlovic, President of the Belgrade Second Municipality Court; Judge Ante Boskovic, President of the Obrenovac Municipality Court and Ms. Ljiljana Vukovic as a representative of the JTC Staff.

The Advisory Board has met for the first time on 19 June 2002 and it will continue working with following members: Natasa Rasic, Director of the JTC; Judge Christer Karphammar, Program Adviser, UNDP; Mr. Dusan Protic, Deputy Minister of Justice; Mr. Bruno Vekaric, Secretary of the Ministry of Justice; Ms. Leposava Karamarkovic, President of the Supreme Court of Serbia, Mr. Sinisa Simic, Public Prosecutor of Serbia; Mr. Dusan Simic, Prosecutors' Association of Serbia, President; Mr. Omer Hadziomerovic, Association of Judges of Serbia, President; Ms. Milena Savatic, Justice; Royal Netherlands Embassy Representatives; Embassy of Sweden Representatives; Fund for Open Society Representative; UNDP Representatives; Council of Europe Representative; OMiSaM Representatives; ICTY Representative; ABA CEELI Representatives; UNHCHR Representatives; Price Waterhouse Coopers Representatives; EAR Representatives; World Bank Representatives; Natasa Kandic, Humanitarian Law Centre, Executive Director; Prof. Vladimir Vodinelic, Director of the Centre for Advanced Legal Studies; Ms. Vesna Petrovic, Belgrade Centre for Human Rights, Head of the Cabinet of the Minister of Foreign Affairs; Prof. Vojin Dimitrijevic, Director of the Belgrade Centre for Human Rights.

The Programme Council has to verify each training programme; its members are: Supreme Court Judge, Ms. Milena Savatic as a President of the Programme Council; Prof. Vojin Dimitrijevic;

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<sup>4</sup> "Republic of Serbia Official Gazette", No: 42/91 and 71/94

Supreme Court Judge, Ms. Dragica Marjanovic; Uzice District Public Prosecutor, Mr. Milenko Mandic; Novi Sad District Court Judge, Ms. Dragica Jeremic; Belgrade First Municipality Public Prosecutor, Mr. Goran Ilic and Senior Scientific Associate to the Institute of the Comparative Justice, Ms. Natasa Mrvic-Petrovic.

# JUDGES AND PROSECUTORS OPINION

IN RESPECT TO THE JUDICIAL REFORM PROCESS IN SERBIA

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## 5. 1. VISITS – INTERVIEWS

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In late August and September 2002 OMiSaM RoL/HR Department officers have visited ten towns in Serbia and interviewed judges and prosecutors in municipality and district courts and prosecutor's offices (approximately 150 judges and 70 public prosecutors).

Judges and prosecutors were asked about their opinion regarding different aspects of the judicial reform from October 2000 to date. Among a number different aspects of the judicial reform, interviewed judges and prosecutors were predominantly concerned on following issues: Legislative changes (Criminal Procedure Law, Criminal Law, Civil Procedure Law); Penal Policy, Co-operation with the police forces; Advanced and continuous professional education; Technical equipment and modernisation.

### ***DISCLAIMER:***

The opinions expressed hereby are not the OMiSaM official position, but a summary of the responses obtained by the OMiSaM from judges and prosecutors. The opinions presented reflect a majority of the opinions of judges and prosecutors to whom OMiSaM had access, and do not necessarily represent the complete range of opinions of the judges and prosecutors.

### **5. 1. 1. Legislative Changes**

#### **5.1.1.1. PACKAGE OF FIVE LAWS ON JUDICIARY**

##### **5.1.1.1.1. Role of The High Judicial Council**

The majority of judges and prosecutors agreed that the package of five laws on judiciary from November 2001, have upgraded the status of judges and prosecutors. However, they were exceptionally dissatisfied with the amendments of those regulations that have been adopted in July 2002.

They have highlighted the importance of the fact that package of laws on judiciary has determined the establishment of the High Judicial Council - a professional, independent body with a function to propose judges, public prosecutors, deputy public prosecutors to the National Assembly and appoints lay judges. This on one hand guarantees the independence of the judiciary and provides

for the influence of members of the judiciary and other eminent jurists in decisions of relevance for the judiciary, whilst, on the other hand influence of political parties on election of holders of judicial office is inhibited.

Unfortunately, the process of the improvement of the position of the judiciary has been interrupted by adoption of amendments on the package of laws on judiciary in July 2002. The scope of powers of the High Judicial Council has been narrowed. In the Law on High Judicial Council, this body has been exclusively entitled to propose candidates for presidents of the courts, judges and public prosecutors to the National Assembly. However, with this amendment, in case that the National Assembly does not elect any candidate nominated by the High Judicial Council, the competent body of the National Assembly (Judicial and Administrative Committee) nominates other/their candidates to the National Assembly. Only then, if any of these candidates were not elected, the High Judicial Council would repeat the whole election procedure. Bearing in mind that this Committee is composed of politicians, the whole election procedure is reintroduced (as it was before October 2000). Thus, the National Assembly is always in position to reject candidate nominated by the High Judicial Council and to appoint the ones who are nominated by the Committee, thus once again enabling influence of politics over election of judges and public prosecutors.

They also object that the competence of announcing the vacancy for the position of the president of the court and on providing the competent committee of the National Assembly with information and opinion (including his personal opinion) concerning candidates for the president of the court, was transferred to the Ministry of Justice.

#### **5.1.1.1.2. Election of the members of the High personnel council**

Judges and Public Prosecutors were also dissatisfied with the election of the members of the High Personnel Council in accordance with those amendments (from July 2002), since instead of the initial procedure of election by the General Session of the Supreme Court, all nine members of the High Personnel Council will be elected by National Assembly in accordance with the proposal made by High Judicial Council. Members of the judiciary have impression that a judicial body - body of the Supreme Court has become a body of the legislative power - body of the National Assembly.

The Supreme Court of Serbia, upon the initiative of many courts in Serbia, has started the procedure of constitutionality of some amendments of the package on laws of judiciary, before the Constitutional Court of Serbia. One of the most criticised changes, among the others, was the one that determined that presidents of the court are not allowed to perform judge's duty while they are performing function of the president of the court. This provision is declared as unconstitutional by the Constitutional Court of Serbia in February, 2003. Also, according to the July amendments, the authority to initiate procedure for dismissal of the court president was also given to the Minister of Justice. In the initial text only president of the court, president of the higher court and President of the Supreme Court were entitled to initiate this procedure.

The interviewed members of judiciary have been also bothered with the provision that regulates the determination of reasons for termination of function of the president of the court. The procedure for dismissal of the president of the court is the same as for the judges. According to the Law on Judges (adopted in November 2001), the competent body determining the retirement years of service, or reasons for termination of function of the president of the court, was the High Personnel Council.

However, with amendments from July 2002 this competence was transferred to the Judicial and Administrative Committee of the National Assembly. The National Assembly shall decide on termination of function of the president of the court, and that decision will be published in the

"Official Gazette of the Republic of Serbia". If the decision on the request for termination of the duty of the court president has not been made within one month, it shall be considered that his/her function is terminated after the expiration of one month from the date of filing the request, which shall be published in the "Official Gazette of the Republic of Serbia". In all other cases the function of the court president shall be terminated on the day specified in the decision of the National Assembly. President of the court may appeal on the decision of the National Assembly to the Constitutional Court within fifteen days from publishing of the decision in the "Official Gazette of the Republic of Serbia". The president of the court who wants to terminate his/her function shall file a request in writing to the competent body of the National Assembly, which afterwards sends the request to the National Assembly.

### **5.1.1.1.3. Courts of Appeal**

Speaking about the provisions that regulates the establishment of the Courts of Appeal as a second instance courts, many judges and prosecutors stated that the implementation of these provisions might face technical problems. Namely, financial resources are not provided until now. Furthermore, some court activities would be more expensive, because each Court of Appeal covers a vast geographical area.

## **5.1.1.2. CRIMINAL PROCEDURAL CODE**

### **5.1.1.2.1. The New Role of the Public Prosecutor**

Majority of judges and prosecutors consider that new role of the public prosecutor, given by the new Criminal Procedure Code, represents an improvement of the criminal procedure. The leading role of the public prosecutor in the pre-investigatory procedure represents a foundation for the enhancement of the cooperation among prosecutors and the police forces, but many of them have emphasized that the public prosecutor should be given greater authority while conducting the pre-investigatory procedure.

### **5.1.1.2.2. The New Kinds of Criminal Procedures**

The establishment of two new kinds of criminal procedures such as: Proceedings for the Issuance of a Penal Order and Guilty Plea Proceedings has been welcomed by judges and prosecutors. Although, these kind of procedures were applied in practice only in several courts, judges and prosecutors deem that these innovations would make criminal procedure faster and prevent undue delay. Furthermore, it would reduce the cost of the criminal procedure.

Both judges and prosecutors believe that the fact that a defence counsel may represent the defendant at any stage of the proceedings is a good solution. Nevertheless, two criticisms were given. First, it was stressed that in practice it often happened that the defence counsels are not attending the hearing if they are not paid. Second, prosecutors believe that presence of prosecutors gives enough guarantees for fair proceeding with fully respect of human rights<sup>5</sup>. Therefore, in accordance of the

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<sup>5</sup> Article 6.3.c. of The European Convention on Human Rights, Rome 4<sup>th</sup> November 1950 states:

".....

3. Everyone charged with a criminal offence has the following minimum rights:

.....

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ....."

*(footnote continued)*

statement of prosecutors, the provision that the defendant's statement that is taken during the pre-investigatory phase (without presence of his defence counsel) should be exempted from the case files and can not be used as evidence in criminal proceedings, leads to disparagement of prosecutors.

Most of judges and prosecutors agreed that the new Criminal Procedure Law is positive but too ambitious in relation with the available funds for the implementation, so that can represent a problem. For example, the provision that regulates the possibility of surveillance and tapping of telephone and other conversations by other technical means as well as optical recording, cannot be applied for the reason that the police does not have a proper equipment. There is also lack of professionals who are educated to operate with this kind of modern equipment.

One of the most often weakness of this Law that has been pointed out is that it does not foresee the possibility of conducting a hearing at the request of another court. that complicates and prolongs the criminal procedure.

Also, it is stated that with the new Law, the defendant has an privileged procedural position in relation with the procedural position of the injured party, whose rights remains unprotected.

Judges have commonly protested against their obligation to make verdicts with detailed description and to explain every single activity they undertake during the criminal proceedings.

### **5.1.1.3. Criminal Law (Federal and republican)**

There have been a substantive amount of critics related to both criminal laws. First of all, that those laws do not response to the current needs. Provisions of these laws are not precise and clear enough and therefore give a lot of space for manipulation.

There are many of laws dealing with those issues, but they are not harmonised and many provisions are overlapping. There was a suggestion to compile all those legislative documents in one criminal law.

### **5.1.1.4. Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime**

The new Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime has been assessed as decent, although some of interviewed members of judiciary believe that the adoption of this law is redundant.

### **5.1.1.5. Sentencing Policy**

The interviewed judges and prosecutors have emphasised that a number of criminal cases have increased and that this is an obvious signal that the sentencing policy should be more rigid. In the other hand, they have underlined that sentencing policy must be in correlation with the level of criminality, but it must not be part of the political campaign.

Almost all of them have been of the same opinion that the current sentencing policy is excessively mild and that the penalties have approached the minimum. Sentence policy is not harmonised, and there are huge differences among courts, which is inadmissible to the majority of judges.

Moreover, number of suspended sentences remains very large, apart from the fact that the practice has shown that they have not a lot of weight – especially because of the lack of adequate evidence of the convict's behaviour during the probation period.

#### **5.1.1.6. Co-operation with the police**

Most of judges and prosecutors have expressed their dissatisfaction of their cooperation with the police. As a reason for this damaged collaboration with the police, a number of them are blaming limited professional knowledge and inadequate equipment of the police. They are usually illustrating it with an example that the police habitually are not informing the public prosecutors on initiation of the procedure then referring the case directly to the investigative judge, bypassing the prosecutor's office.

Furthermore, the equipment is very poor and not proper. Very often, the police does not have the basic means of work..

#### **5.1.1.7. Civil Procedure Law**

Civil Procedure Law has been one among the most criticised regulations. Regarding to the opinion of the interviewed members of judiciary adoption of a new Civil Procedure Law, which will respond to actual needs is imperative.

The main problem in this law is provisions on subpoena. That problem should be solved, because the current law leaves a lot of space for misuse, which leads to procrastination of the procedure.

The civil procedure should be regulated in different manner than the currently applicable law regulates it. Many civil cases should be solved before it comes in front of the court. Namely, the mediation procedure should be incorporated in the new civil procedure law. Although some judges criticised it, in general, law experts considered that it is a good solution. However, mediation would be discussed later in the separate section.

When we speak about the Civil Procedure Law, one of the problems that arises is also the fact that under this law, the court is required to instruct the ignorant party and assist such party in procedural actions. In the opinion of judges, this provision puts the court in a situation of being at the same time an advisory body and an adjudicating body. Thus a court advise the party on how to, for example, prepare its written complaint and then adjudicate the same case. This brings in to issue objectivity in passing of sentence.

Also, according the present law, the court must by itself collect certain evidence and determine the existence and accuracy of submitted evidence. Having in mind that the proceedings under civil law are such that the party itself initiates the proceedings, it would then be illogical to oblige the court to provide evidence. This actually prolongs the whole process.

The new law should comprise provisions that regulate that parties must present all evidence they have in their complaint and in the beginning of the lawsuit. In this manner, there should be some time limit to allow parties to present their evidence. In additional it should be allowed to present new evidence in the appeal only exceptionally.

Also, provisions that determine the exclusion of judge should be more precise because these provisions are misuse very often.



### **5. 1. 2. Education**

In general, judges and prosecutors are not satisfied with the quality and organization of the existing seminars. The lecturers on these seminars are always the same (mostly from the Supreme Court of Serbia and from the District Court of Belgrade). Therefore, many judges and prosecutors are resentful. They consider that judges and prosecutors from various District Courts and Prosecutor offices are competent to give lectures as well.

Within District Courts, many of courts are organising seminars on local level, which are of better qualitative. These seminars discuss current issues and problems, and the work is conducted in smaller groups which has shown itself to be better and more practical. Many judges and prosecutors have shown a good will to spread these activities in cooperation with other court.

It was pointed out that judges and prosecutors need some special training in Labour Law and Commercial Offences since they often are unable (because of lack of necessary, minimum level of knowledge) to follow the expert witness testimony nor to control their work. They need education regarding computer skills as well.

### **5. 1. 3. Technical support / Modernisation**

In general, technical support to the courts and prosecutors offices is very poor. Although a few courts and prosecutors offices have computers and one District court has a telephone exchange, most of courts and prosecutors offices still do not have computers, typing machines are too old and there is no enough offices.

Additionally, a main concern raise is the lack of judicial/legal literature. Judges, prosecutors and other professional staff of the courts and prosecutors' offices are not able to obtain neither new literature nor sufficient number of copies. They do not have enough funds for professional literature.

### **5. 1. 4. Mediation**

As it was mentioned above, although some judges criticised the mediation, the majority believes that it can speed up the work of courts and reduce a workload.

In accordance with the agreement between the Supreme Court of Serbia and presidents of all District Courts of Serbia, the "week of mediation" was held in Municipality Courts of Serbia, during September 2002. Judges and prosecutors were complaining that they did not get any concrete instructions for the implementation of the mediation procedure. They were just informed about "week of mediation" through the bulletin of the Supreme Court.

During our research, we have interviewed some judges who already initiated the mediation procedure within their courts. The impressions about the mediation procedure are very positive.

Retired judges of district courts conducted the process of mediation. Judges stressed that this kind of help is very useful. The experience of the older colleagues is valuable. Some of cases were solved in the first week of mediation, for some of them by the time the next hearing is scheduled, and some of them will be resolved in the regular litigation.

The hearings were scheduled for the cases, which were older than three years. During the process of mediation, in the courtroom were present parties, their attorneys and the mediator. The acting

judge was not allowed to participate or to observe the mediation. After the mediation, if the parties reached the settlement, the acting judge was called to make a settlement in writing between parties. If the settlement was not achieved, the mediator was not allowed to inform the acting judge about the mediation. Because the fact that the acting judges were not allowed to be informed about the process of mediation in their cases, some mediators did not find useful to make a report about mediation.

Mediators have been very satisfied with the results of the first week of mediation. They did not have any objections on the lawyer's work. On contrary, the lawyers were ready to help their clients to achieve the agreement.

### **5. 1. 5. General Complaints**

All judges pointed out that they are burdened with an enormous number of cases. Also, measuring of the efficiency of the judges through the number of completed cases in a given month was found to be unacceptable.

There is no unified position of judges when asked about the cooperation between Municipal and District courts. Judges were complying that the instructions of District courts are not precise.

Many judges were complaining about the cooperation with the Supreme Court of Serbia as well. They stressed that the Supreme Court of Serbia very often, takes a stand about some issue too late, or it does not announce on time the changes in its stands. Furthermore, sometimes the Supreme Court changes their stands too often, which leads to legal insecurity.

Many complaints relate to the behaviour of the clients, attorneys and forensic experts. Very often clients are uneducated and rude. They do not switch off their mobile telephones during the trials, they talk without permission of a judge, etc. Furthermore, many lawyers are not professional at all. They come to the court unprepared for the trials.

It was clearly mentioned that there is a need to regulate the work of the forensic experts. The majority of legal expert states that many court experts are not qualified to perform their duties. Moreover, corruption of court experts remains a concern, leading to different expertise being delivered by two court experts on the same issue.

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## 5. 2. QUESTIONNAIRE RESEARCH

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### 5. 2. 1. Introduction

In the context of the second part of the poll, the OMiSaM prepared and distributed the questionnaires to all municipal and district courts and prosecutor's offices throughout Serbia, with the aim to identify the key problems that judges and public prosecutors encounter in their practical work.

The main idea was to collect and obtain relevant information and answers from the judiciary, since they have the advocate role in the judicial reform process in Serbia.

In that light, these questionnaires, filled out on anonymous basis, should show an objective perception of the judges and prosecutors, with accent on laws and problematic provisions, objective obstacles, relations with higher courts/prosecutor's offices, necessary and desirable education and other problems that they face in daily practice.

### 5. 2. 2. Methodology

In order to collect relevant information, OMiSaM distributed questionnaires to 15 District Courts, 105 Municipal Courts, 15 District Public Prosecutor's Office and 95 Municipal Public Prosecutor's Offices. OMiSaM compiled 239 answers that have returned from the courts, and 99 returned from prosecutor offices. Only a very small number decided to fill out the questionnaire.

#### **The questionnaire for judges consisted of the following questions:**

1. How long do you work?
2. What are your current types of cases?
3. How many new cases (monthly)?
4. Which new Law/Amendment (from October 2000 till present) would you like to distinguish as the most important?
5. What particular provision?
6. Is there any provision that interfered with your practical work?
7. How many proceedings do you hold currently?
8. How many cases that lasted more than 2 years?
9. How many decisions were confirmed, changed or abolished by a higher instance, during the previous month?
10. Do you have any remark/comment in relation with those higher instance decisions?
11. Did all higher instance decisions contain clear and concrete instruction about further proceedings?
12. Do you think that some of the laws in force need to be abolished, repealed or amended?
13. Do you need any advanced training? What additional topics should be included in the training?
14. Did you attend educational seminars? How many during the last 2 years?
15. What did you find most useful in the seminars? Was it helpful to you in your practical work?
16. What is the best way to improve your work?

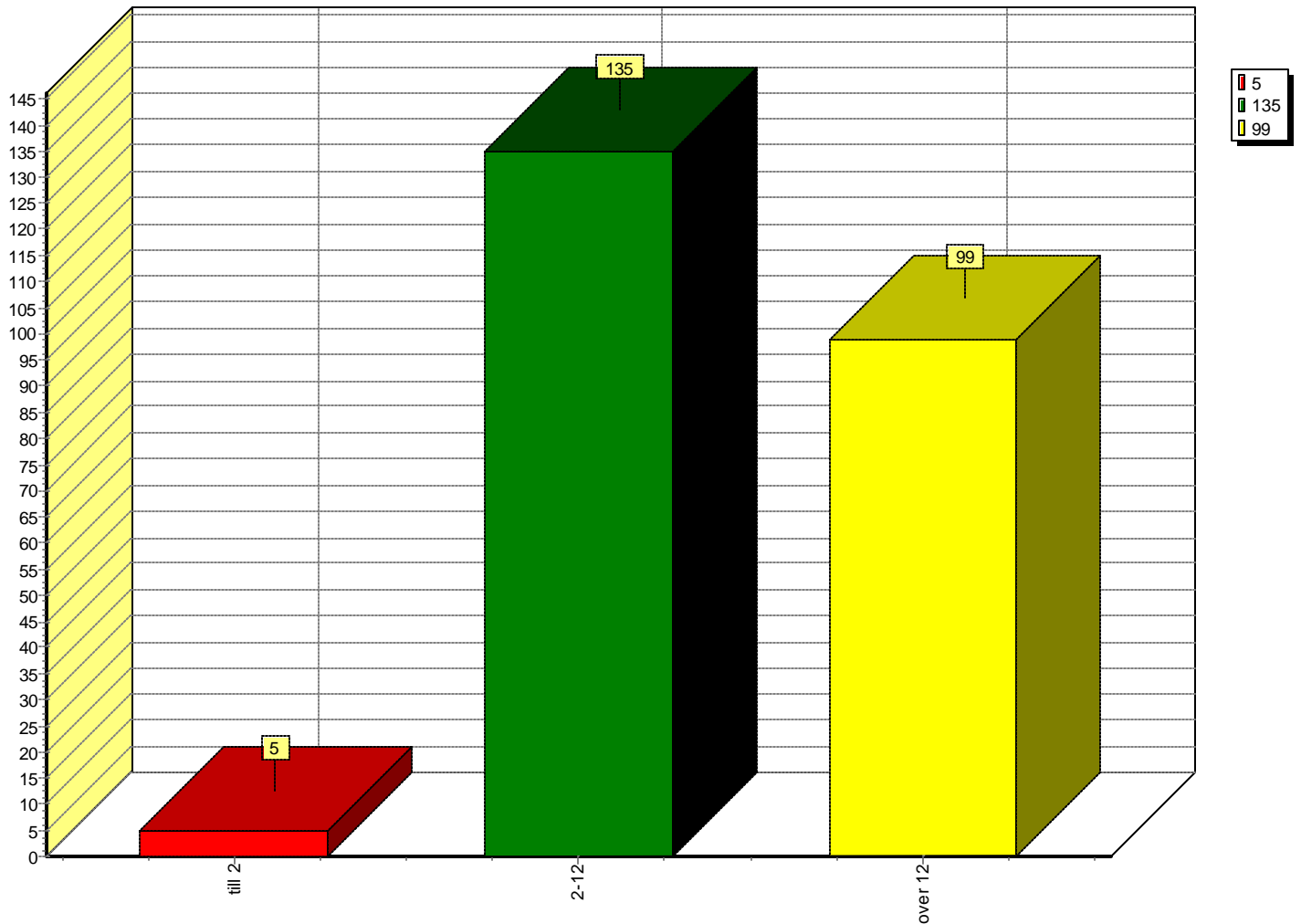
**The questionnaire for prosecutors consisted of the following questions:**

1. How long do you work?
2. What are your current types of cases?
3. How many new cases (monthly)?
4. Which new Law/Amendment (from October 2000 till present) would you like to distinguish as a most important?
5. What particular provision?
6. Is there any provision that interfered with your practice work?
7. How many proceedings do you hold currently?
8. How many cases that lasted more than 2 years?
9. How many cases did you initiate with an indictment during a previous month?
10. How many cases did you withdraw during the aforesaid period?
11. How many cases did you lead, that finished with the conviction, in the previous month?
12. What are the most important problems that you are dealing with, in your practice?
13. Can you evaluate cooperation with the investigative judge and the police?
14. Do you think that some of the laws in force need to be abolished, repealed or amend?
15. Do you need any advanced training? In what field?
16. Did you attend educational seminars? How many in the last 2 years?
17. How do you evaluate the quality of lectures? Have they been of help in your practical work?
18. What is the best way to improve your work?

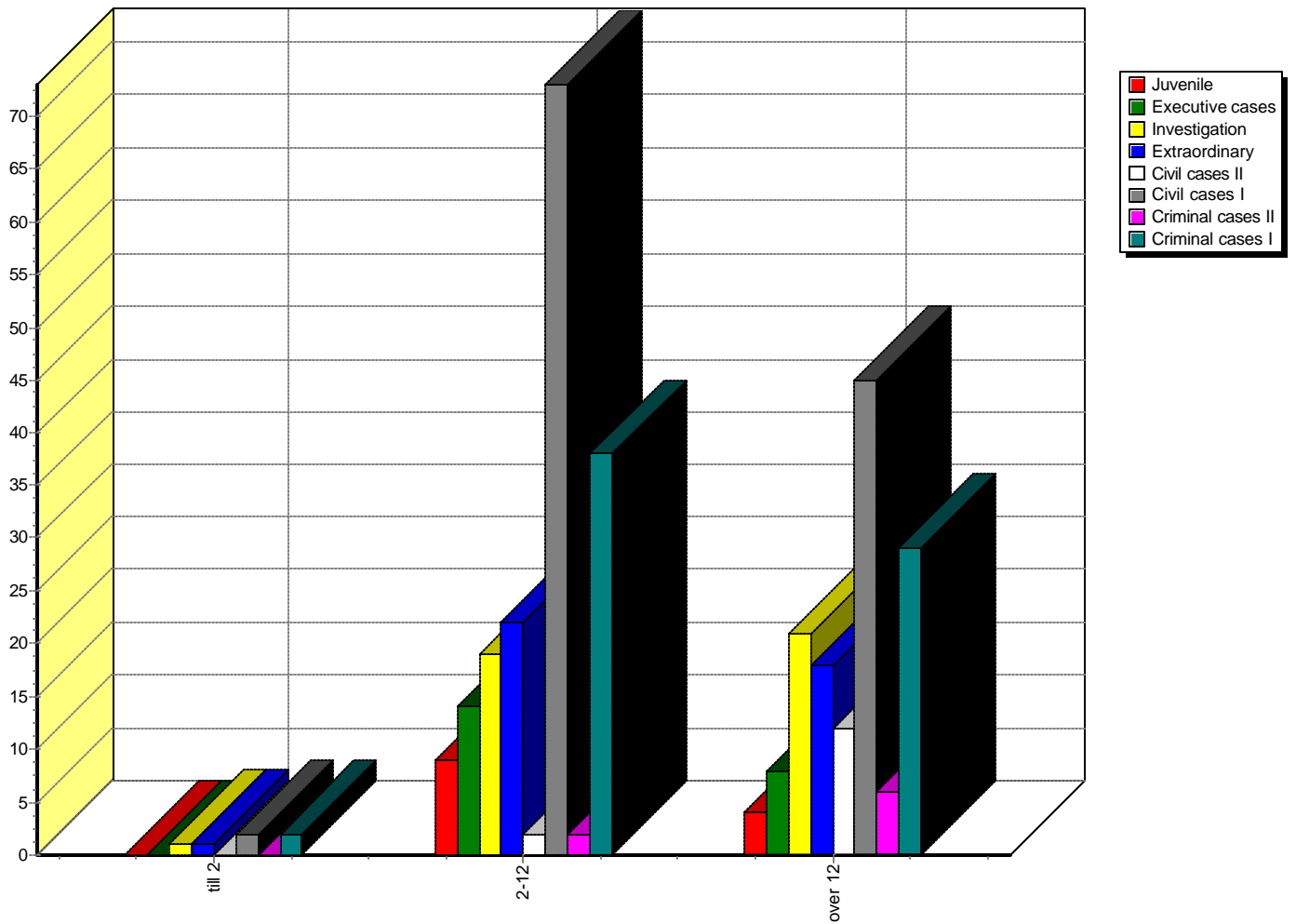
Chapter A will be devoted to the answers that we obtained from judges, and Chapter B summarises the prosecutor's answers.

## 5. 2. 3. Chapter A - JUDGES

### 5. 2. 3. 1. Professional Practice



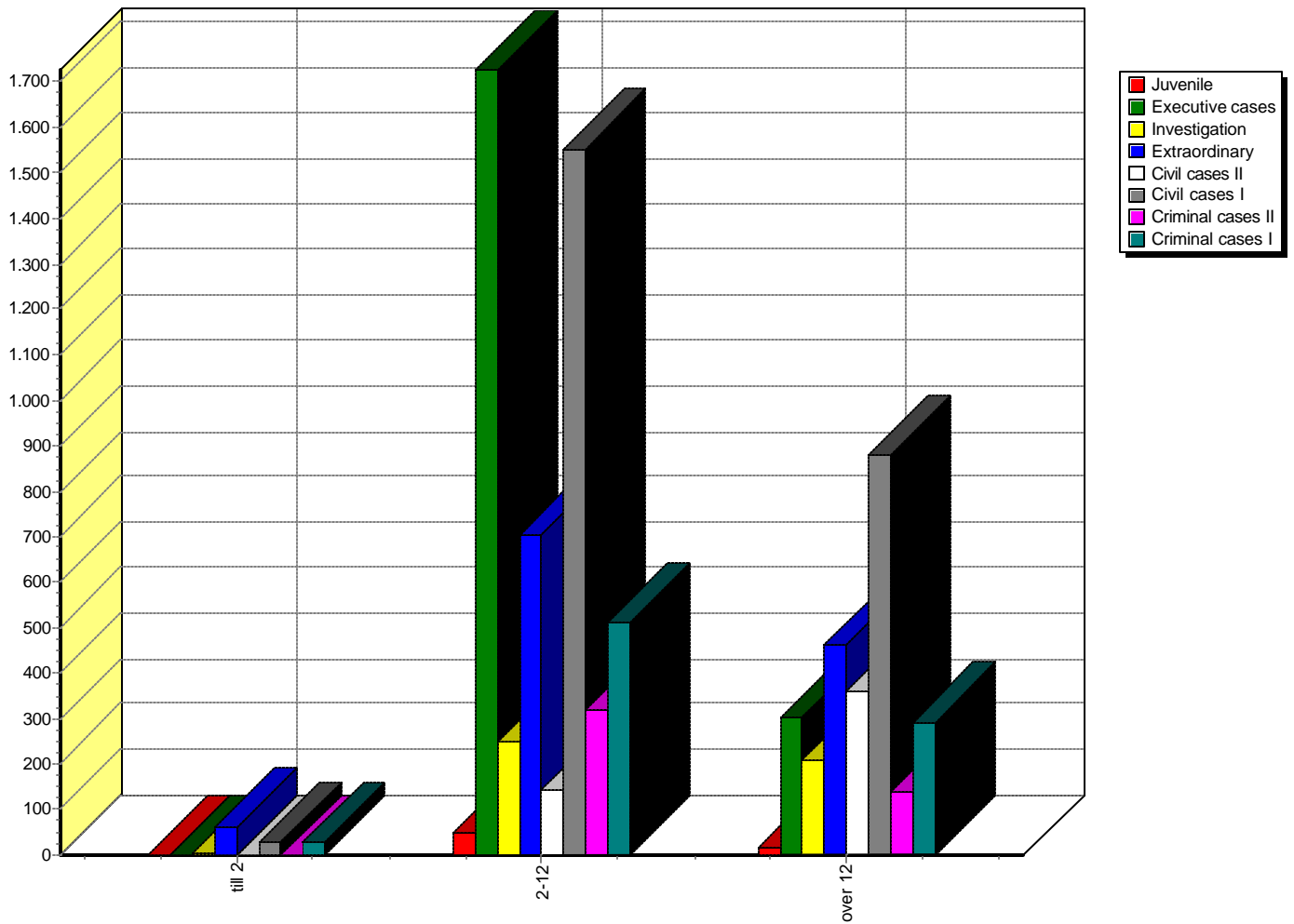
This chart shows the basic structure of the examined judges, namely the length of their professional experience. We can see that the questionnaires were predominately filled out by judges, working in a span from 2 to 12 years .



### Types of cases:

(statistics in accordance with 239 of examined judges)

- Criminal cases in the first instance - 69;
- Criminal cases in the second instance - 8;
- Investigation cases - 41;
- Juvenile cases- 13;
- Civil cases in a first instance - 120;
- Civil cases in a second instance - 14;
- Extra judicial proceedings - 41;
- Executive proceedings - 22;



In accordance with the monthly workload of cases and in line with working experience, the situation is as follows:

- **Criminal cases (first instance):**

- till 2 years – 28 cases;
- from 2 to 12 years – 512 cases;
- over 12 years – 291 cases;

- **Criminal cases (second instance):**

- till 2 years – 0 cases;
- from 2 to 12 – 320 cases;
- over 12 years – 140 cases;

- **Investigation:**

- a) till 2 years – 0 cases;
- b) from 2 to 12 – 141 cases;
- c) over 12 years – 357 cases;

- **Juvenile:**

- a) till 2 years – 0 cases;
- b) from 2 to 12 – 48 cases;
- c) over 12 years – 18 cases;

- **Civil cases (first instance):**

- a) till 2 years – 29 cases;
- b) from 2 to 12 years – 1553 cases;
- c) over 12 years – 880 cases;

- **Civil cases (second instance):**

- a) till 2 years – 0 cases;
- b) from 2 to 12 years – 141 cases;
- c) over 12 years – 357 cases;

- **Extra judicial proceedings:**

- a) till 2 years – 60 cases;
- b) from 2 to 12 years – 705 cases;
- c) over 12 years – 462 cases;

- **Executive proceedings:**

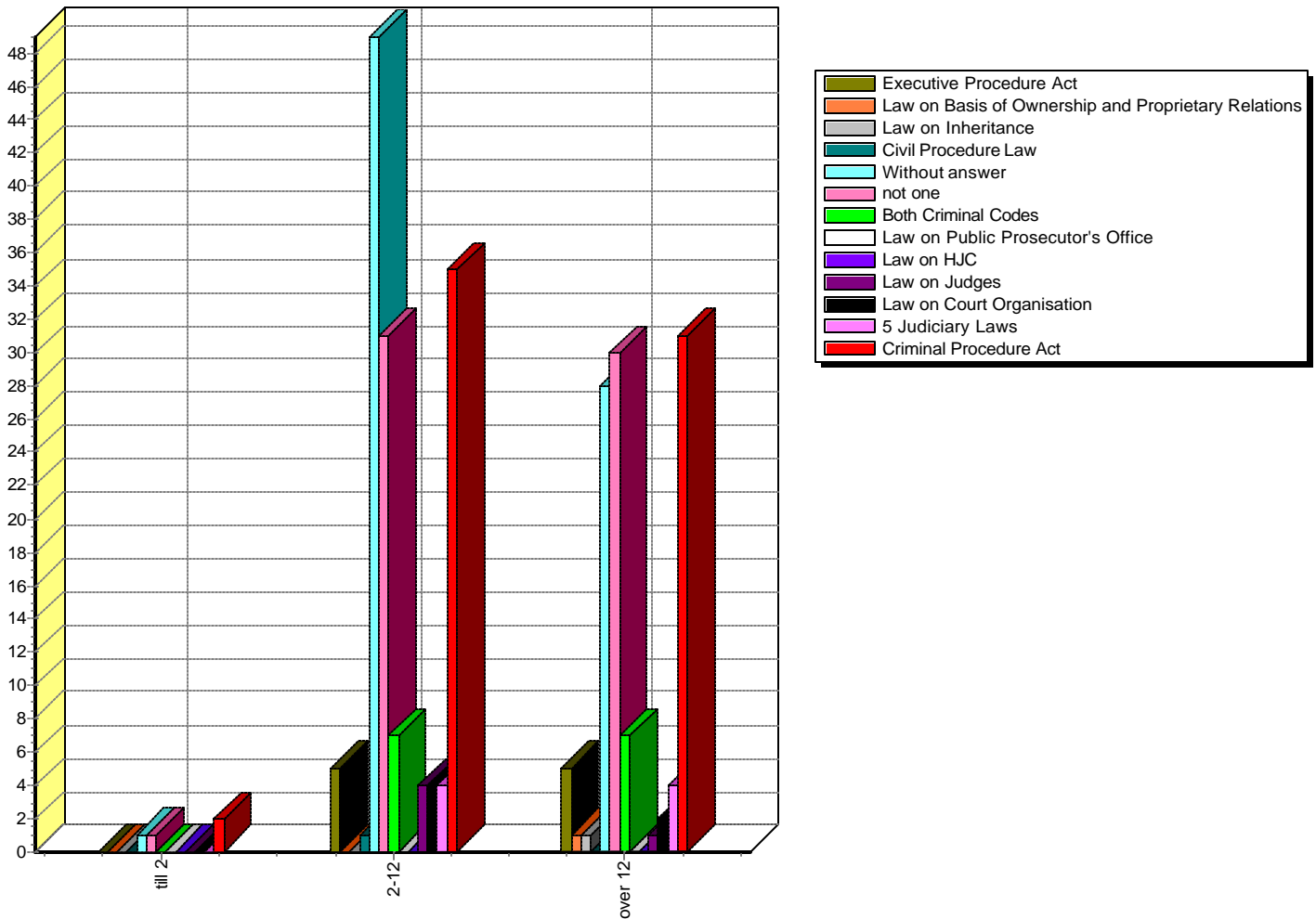
- a) till 2 years – 0 cases;
- b) from 2 to 12 years – 1726 cases;
- c) over 12 years – 302 cases;

**A monthly income of cases, in total:**

- Criminal cases I – 831;
- Criminal cases II – 460;
- Civil cases I – 2462;
- Civil cases II – 498;
- Extraordinary cases – 1227;
- Investigation – 465;
- Executive cases – 2028;
- Juvenile cases – 66.



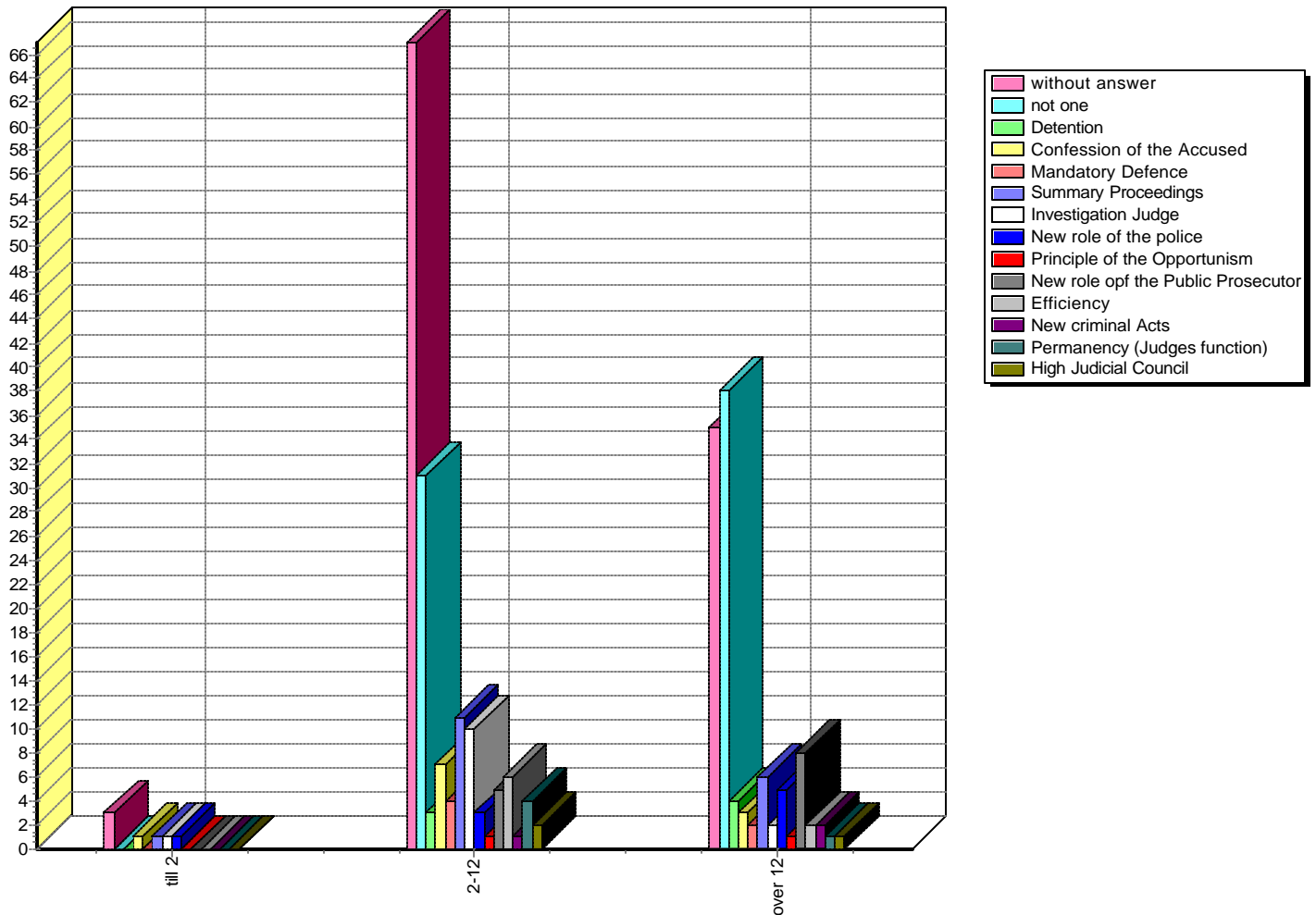
### 5. 2. 3. 2. Judicial Attitude on Legislative Changes



Regarding the fourth question, namely which new Law/Amendment (from October 2000 till present) they would like to distinguish as the most important opinions differ.

Most of the polled, 62.82 %, did not answer at all, or in their opinion, there were no new Laws/Amendments that brought changes for the good.

Contrary, there were a lot of answers that distinguished the new Criminal Proceedings Code and changes in the Criminal Codes, as good and important legislative solutions.



**Judges emphasised following Laws and provisions as good ones:**

- Law on Judges, provision that regulates permanency of a judge function;
- The idea and the role of High Judicial Council (before Amendments and Addenda from July 2002);

**Criminal Code of the Republic of Serbia**

- New criminal offences;
- More rigid penal policy;

**Criminal Proceedings Code:**

- Proceeding Efficiency;
- New conducting role of public prosecutors;
- Principle of opportunism;
- Changes within the police authorities;

- New role of the investigation judge;
- Article 71, regulating Mandatory Defence;
- Article 141-147, that are related to Detention;
- Article 236, regulating that the State Attorney may decide to postpone prosecution for criminal offences punishable by a fine or imprisonment for a term up to three years, if the suspect accepts some measures prescribed by the Law;
- Article 327 regulating the confession of the accused at the trial as an evidence;
- Article 433, related to summary proceedings;
- Proceedings for the imposition of criminal sanctions without holding a trial and on that account Judges emphasised Article 449, regulating Proceedings for the Issuance of a Penal Order;
- Article 455, regulating the admission of guilt of a defendant or suspect in the presence of a defence counsel, unreservedly to an investigating judge or a police authority, and when his confession is supported by other evidence collected in the course of investigation, the State Attorney may, immediately after the investigation is completed and at the latest within a term of eight days, in the indictment preferred, propose a separate public hearing before the investigating judge be scheduled instead of a trial, at which a judgement may be rendered after the interrogation of the parties and upon an explicit agreement of the defendant.

It is important to notice that almost all answers regarding judicial attitude on legislative changes for the good were undivided.

Judges pointed out identical provisions of the Criminal Proceedings Act as solutions that help them in their practical work, even if they work in different courts in Serbia.

**As bad legislative solutions judges mainly pointed out at the following:**

**Criminal Proceedings Act:**

- Too much protection of the accused in relation to the injured person, who is totally unprotected;
- Article 246, prescribes the following: "In the course of the investigation, the investigating judge may entrust the performance of particular investigative actions, except the interrogation of a suspect, to the investigating judge of the court within whose jurisdictional territory these actions need be undertaken".  
Judges held the opinion that this regulation that prohibits them of entrusting the interrogation of a suspect to the other investigative judge, interfered in the performance of their work.
- Article 251, mandatory presence of the State Attorney to the interrogation of the defendant, undesirable since State Attorney's are overburdened.
- Very bad working equipment, and in that light, new solutions within the Law do not follow real conditions.

**Criminal Codes:**

- State precisely new Criminal Laws, especially Criminal Acts in relation with Organised Crime, Criminal Acts that regulates corruption, Criminal Acts in relation with Economic Crime.

Regarding the question on whether they think some Laws in force should be abolished, repealed or amended and why, 239 of polled judges answered the following:

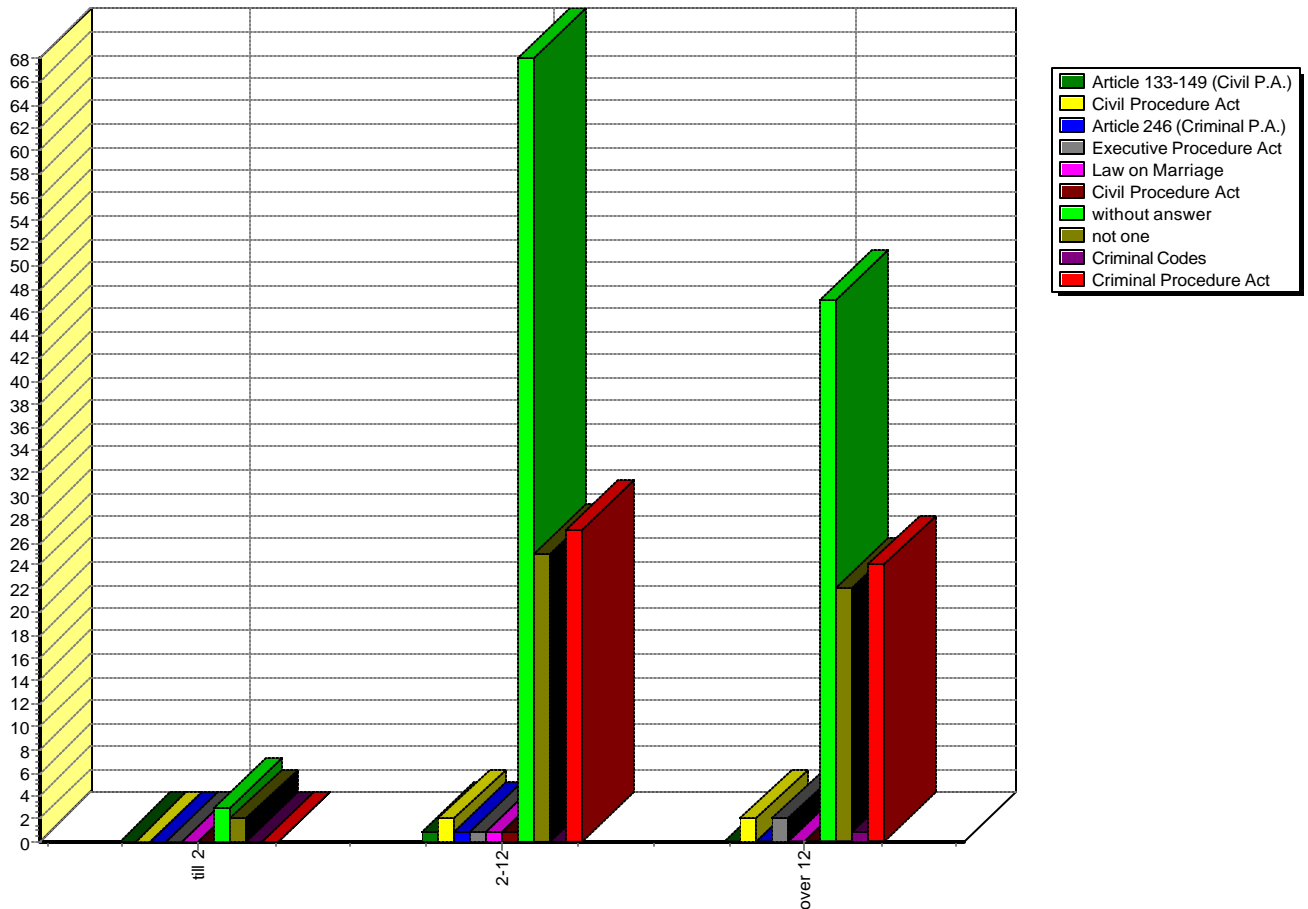
**Civil Proceedings Act** - all of the polled judges agreed that all provisions within this Act are very exploited and outdated. Judges stressed that this Act needs to urgent harmonisation with the current circumstances. Also, provisions must be more simplified and precisely stated.

Judges stressed that some provisions of this Law directly fall into lengthening cases and abuse of justice.

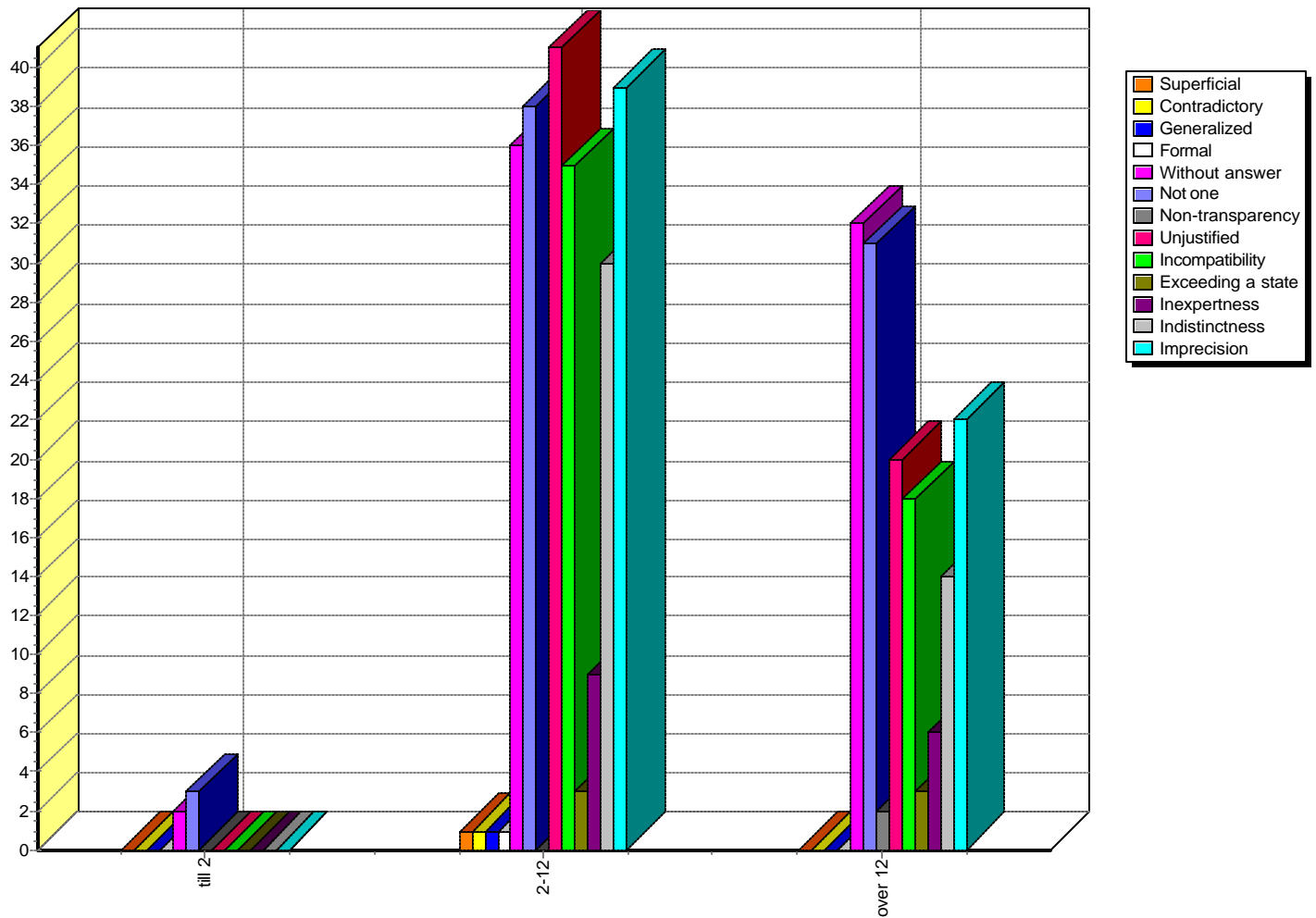
- In that light, judges emphasised that in relation with judgement, explanation of the sentences needs to be shorter.
- Judges accentuated that they face problems because parties do not provide evidences on time. The Law must regulate such issues.
- Some of the worst provisions within this Law are those that regulate delivery (Article 133-149). These provisions leave a lot of space for abuse, leading to procrastination of the proceedings.

**Criminal Proceedings Code** - 47 of the polled judges think that the accuracy of provisions of this Code should be increased. Also, this Code needs to be harmonised with current and possible situations, and penal policy should be more rigid.

Judges retain that the following Laws need urgent revision (beside the aforesaid): RS Criminal Code, Law on Executive Proceedings, Law on Extraordinary Proceedings, Labour Law, Law on Obligations, Law on Basis Ownership and Proprietary Relations, Law on Residence, Law on Inheritance and Law on Marriage and Family Relations.



### 5. 2. 3. 3. Relation with a higher instances

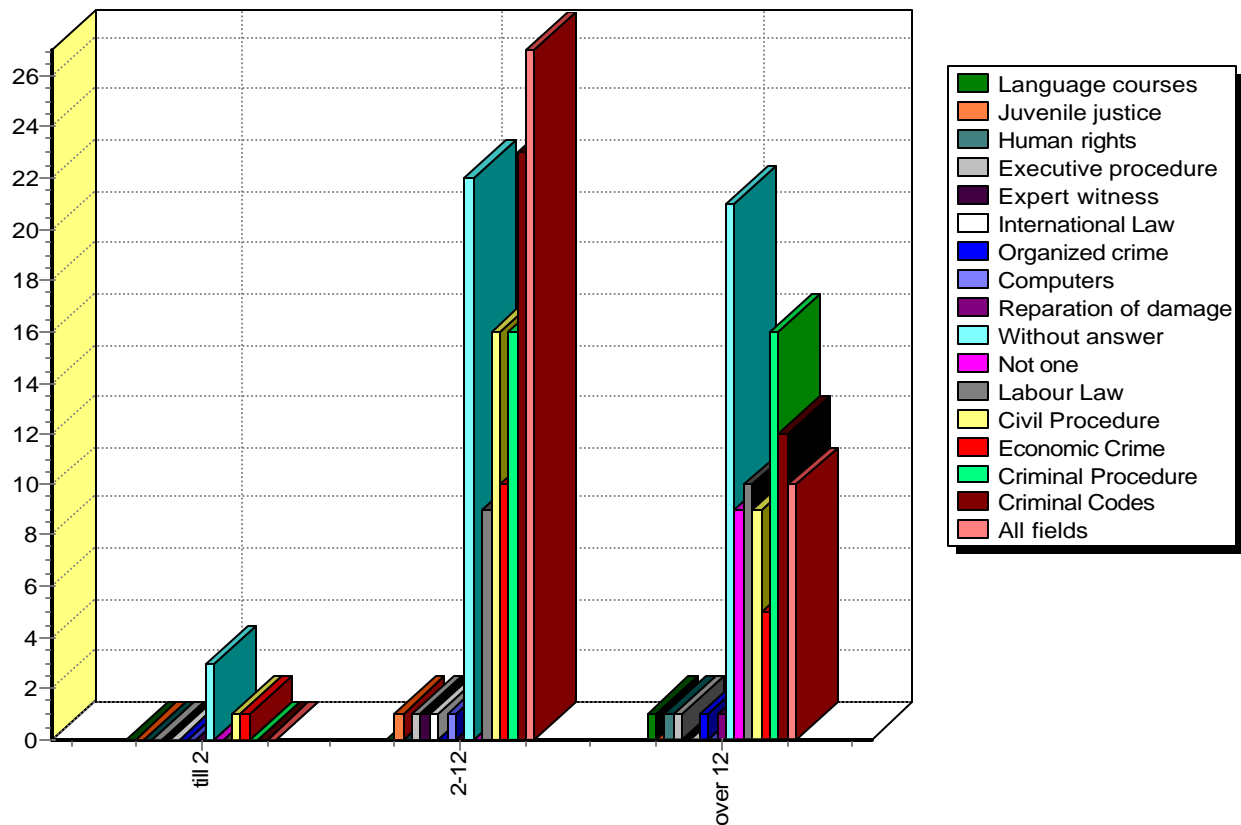


In relation to the question whether they have any remarks on directions and decisions of higher instances regarding decisions of judges, most of the polled judges (40%) retain that directions are imprecise, indistinct and unintelligible, incompatible and non-coordinated within mutual professional opinions and decisions. Some of them (20%) retain that directions are superficial, formal and generalized. The rest of them do not have remarks, or did not answer.

Regarding the question if decisions of higher instances contain any directions, judges gave 115 positive answers, 29 negative answers, while 59 of judges answered that decisions mainly contain directions, and 36 judges did not answer.

Furthermore, related to the question whether aforesaid directions are concrete and clear, 59 judges answered positively, 79 answered negatively, while 65 retain that directions are mainly clear and concrete, and 36 of them did not answer at all.

### 5. 2. 3. 4. Training



Most polled judges did not attend any training course, due to a lack of funds in the court budget for this type of training.

Judges are willing to attend training courses in relation to the following fields: Criminal Proceedings and Criminal Codes, Criminal Offence, Organised Crime, Juvenile Justice, Civil Proceedings, Human Rights, Labour Law, Executive Proceedings.

It is an alarming fact that judges predominantly answered they need additional education in Organised crime and Economic Crime fields, because criminal acts in these fields are on the increase.

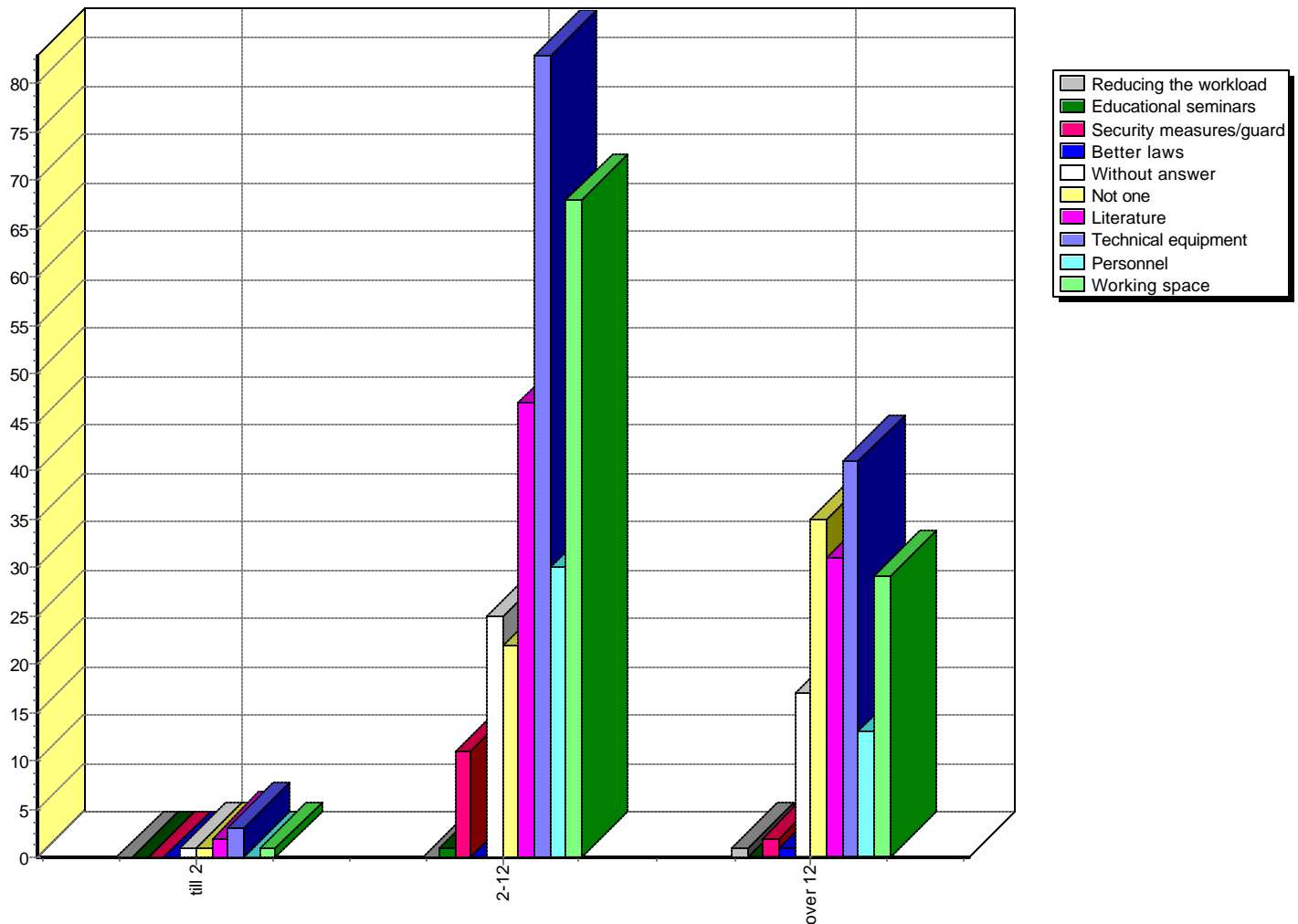
Secondly, they pointed out it would be desirable to learn more in detail about possible questions in relation to expert witness reports.

Judges also pointed out that they would like to attend Language and Computer courses.

Furthermore, 78 of the polled judges answered that the seminars they attended were helpful for them, 61 of them answered that seminars helped them partially. However, 27 gave negative answers on this question. Nine of polled judges answered that they do not need any training, while 46 of them did not answer to this question.

Most of the polled judges think that educational seminars could help them to exchange opinions, and to coordinate and harmonize attitudes on problematic legal matters.

### 5. 2. 3. 5. Improvement of the Working Conditions

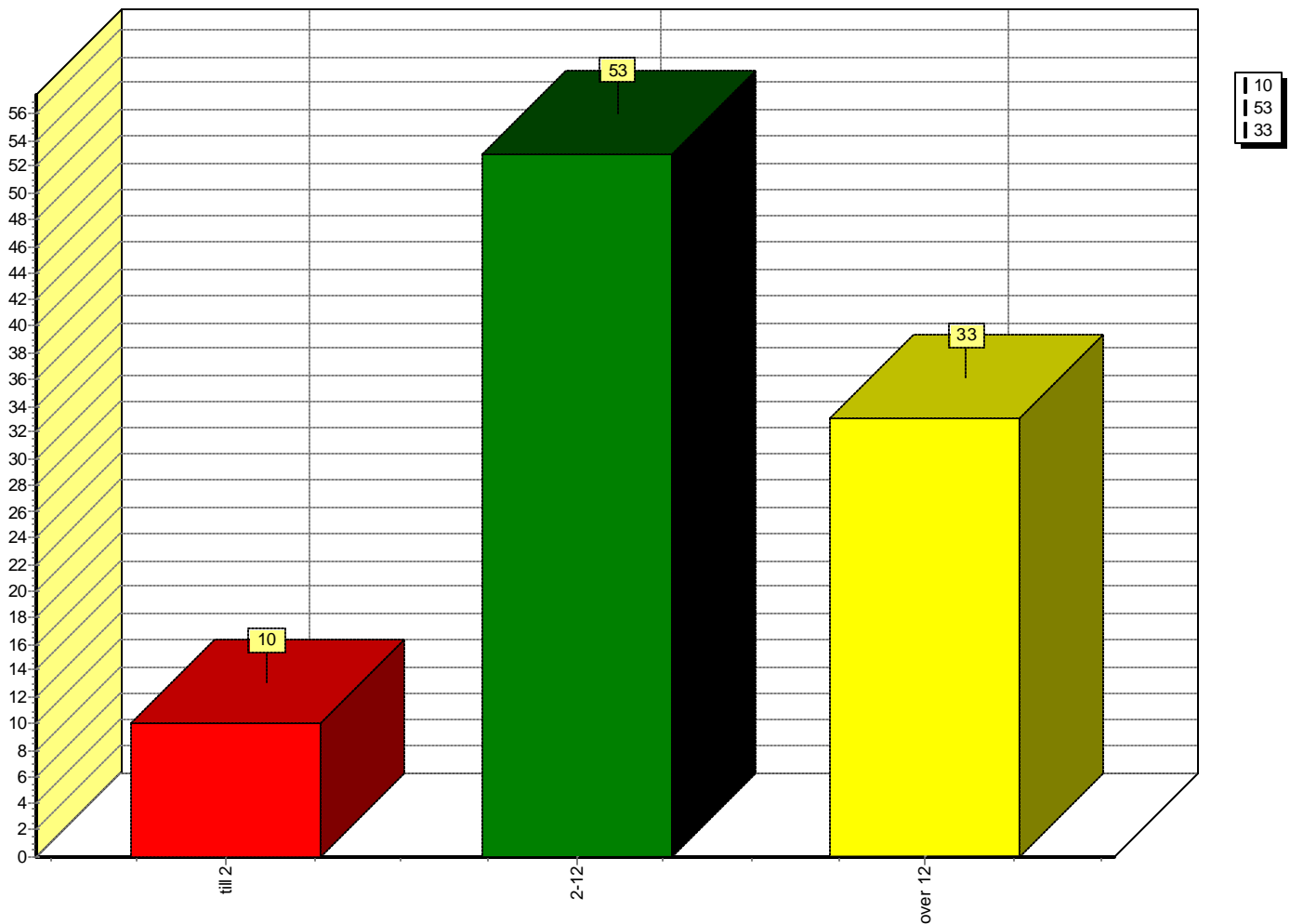


In relation with the working conditions of judges, one of the questions that judges pointed out was what kind of help would improve their work. 239 polled judges answered as follows:

1. Improvement of their working space/rooms - 98;
2. Better technical equipment - 127;
3. Better quality of personnel staff / new positions - 43;
4. Better professional literature - 80;
5. Better security measures -50;
6. More often educational /additional seminar -37;
7. Reducing judges workload -7;
8. Without answer - 58.

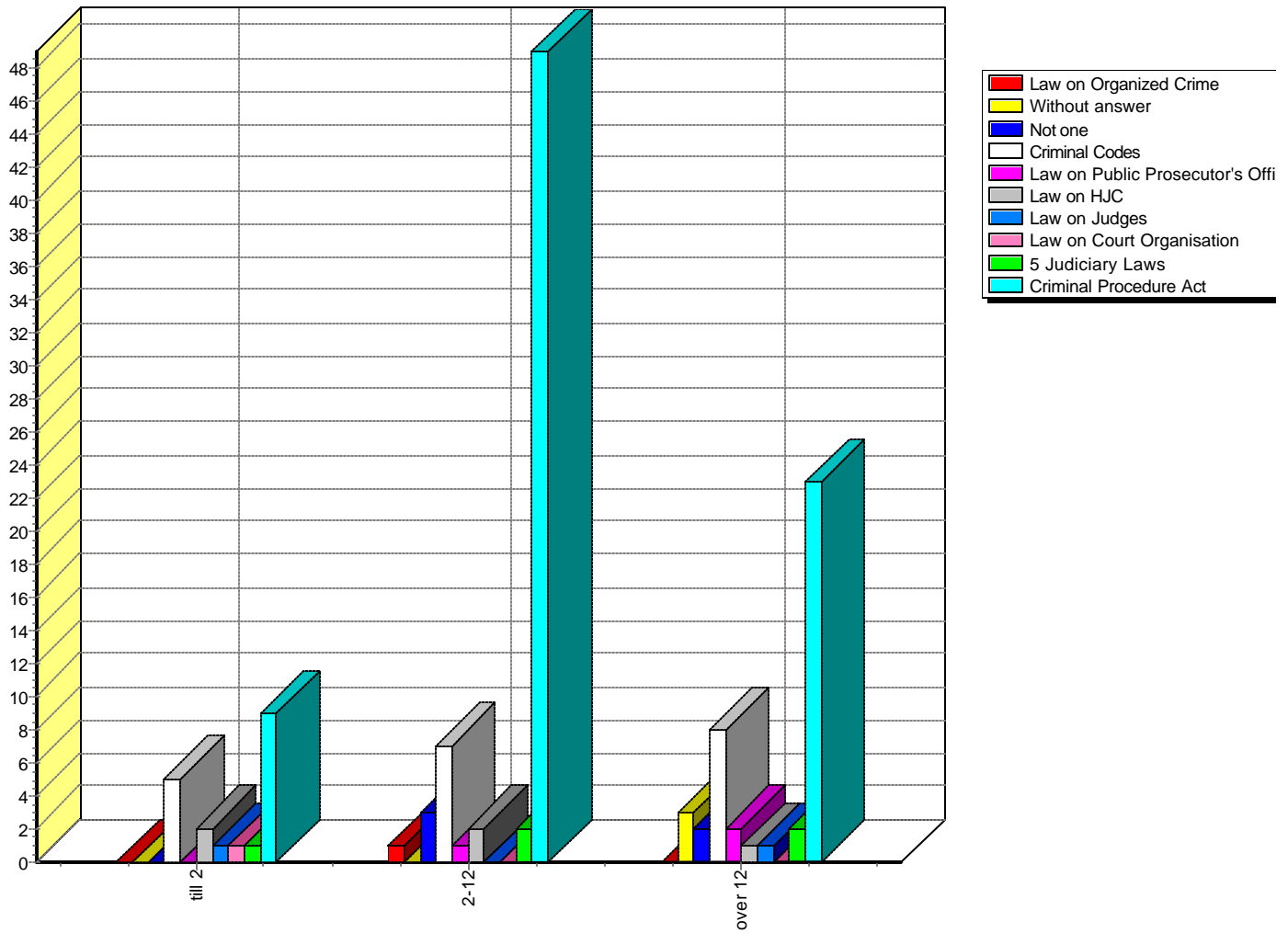
## 5. 2. 4. Chapter B - PUBLIC PROSECUTORS

### 5. 2. 4. 1. Professional Practice



This chart shows the basic structure of polled Public prosecutors as to professional experience. We can see that prosecutors who filled out the questionnaire were predominately those with two to 12 years of working experience.





Most of the polled prosecutors - 81, were of the opinion that the new Criminal Proceedings Act brought improvement within their work. 20 of the polled prosecutors had the same opinion regarding changes within both Criminal Codes.

16 prosecutors retain that the first package of judiciary laws was a good solution for the judiciary.

A very small number of them retain that none of the new Laws/Amendments (from October 2000 till present) need to be distinguished as important, because there period for the implementation of those Laws was short.

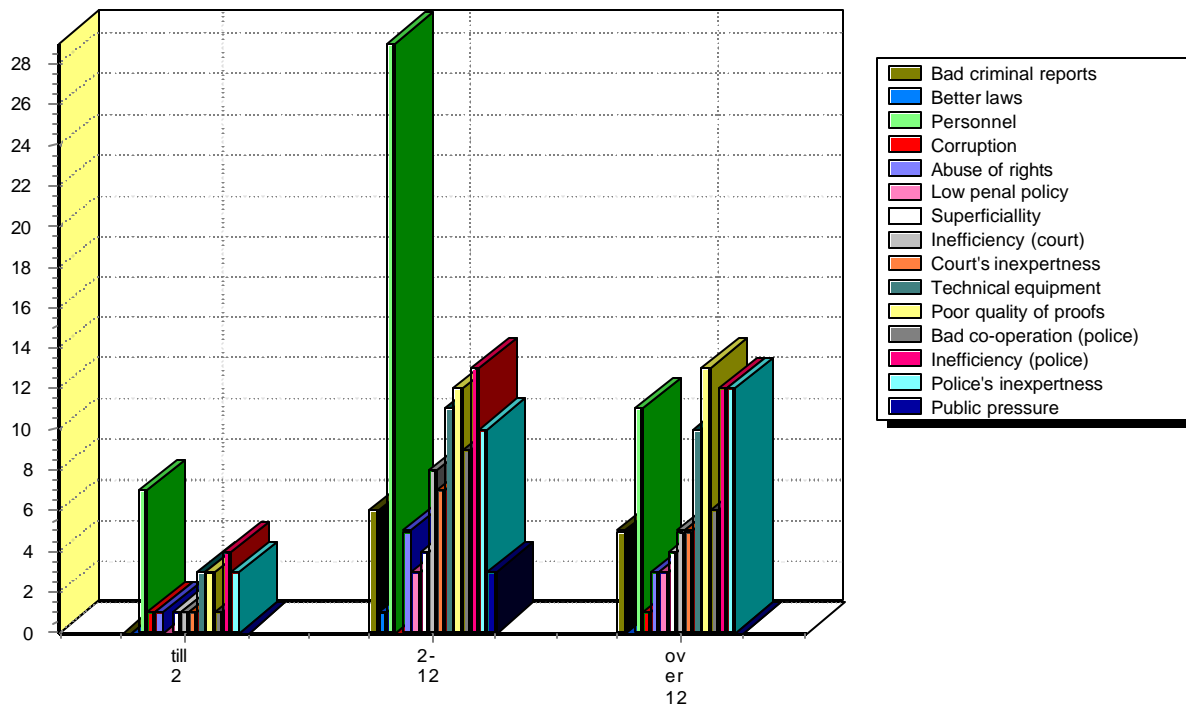
In relation to good legal solutions within the Criminal Proceedings Act opinions are as follows:

- Proceedings efficiency;
- New leading role of public prosecutor;
- Article 71, regulating Mandatory Defence;
- Articles 96-109 regulating Examination of Witnesses;
- Article 226, paragraph 9, which regulates that if the suspect in the presence of the defence counsel agrees to give a statement, the police authority will interrogate him. The record made on this interrogation will not be separated from the files and may be used as evidence in criminal proceedings;
- Article 327, regulating use of the confession of the accused at the trial as an evidence;
- Article 433, in relation to the summary proceedings;
- Proceedings for the imposition of criminal sanctions without holding a trial and in that light Judges emphasised Article 449, that regulates Proceedings for the Issuance of a Penal Order;
- Article 455, regulating the admission of guilt of a defendant or suspect in the presence of a defence counsel, unreservedly to an investigative judge or police authority, and when his confession is supported by other evidence collected in the course of investigation, the State Attorney may, immediately after the investigation is completed and at the latest within a term of eight days, in the indictment preferred, propose a separate public hearing before the investigating judge to be scheduled instead of a trial, at which a judgement may be rendered after the interrogation of the parties and upon an explicit agreement of the defendant.

In relation to provisions that interfered with their practical work, prosecutors pointed out the following provisions of the Criminal Proceedings Code:

- New role of the Public Prosecutor without adequate means;
- There is no clear responsibility (sanction prescribed by this Law) of other State organs – police, if they did not act upon prosecutor's instructions, or they acted in an unprofessional and ineffective manner.
- There are incomplete and indistinct attitudes in regard to the implementation of the principle of opportunism;
- Provisions that regulate detention and terms within detention;
- Article 75, paragraph 2, which gave authority to a defence counsel to communicate verbally and in confidence with the suspect deprived of liberty even before he has been interrogated, as well as with the defendant who is detained. Before the first interrogation and in the course of investigation, this communication may be supervised only by observation and not by listening. Prosecutors retain that this provision directly helps the suspect to avoid criminal responsibility.
- Article 236, which regulates that the State Attorney may decide to postpone prosecution for criminal offences punishable by a fine or imprisonment for a term up to three years, if the suspect accepts some measures prescribe by the Law. Regarding this Article, Prosecutors emphasised that there is no clear explanation about the form for postponing the prosecution.
- Article 246, which regulates that in the course of the investigation, the investigating judge may not entrust the interrogation of a suspect, to the investigating judge of the court within whose jurisdictional territory these actions need to be undertaken.

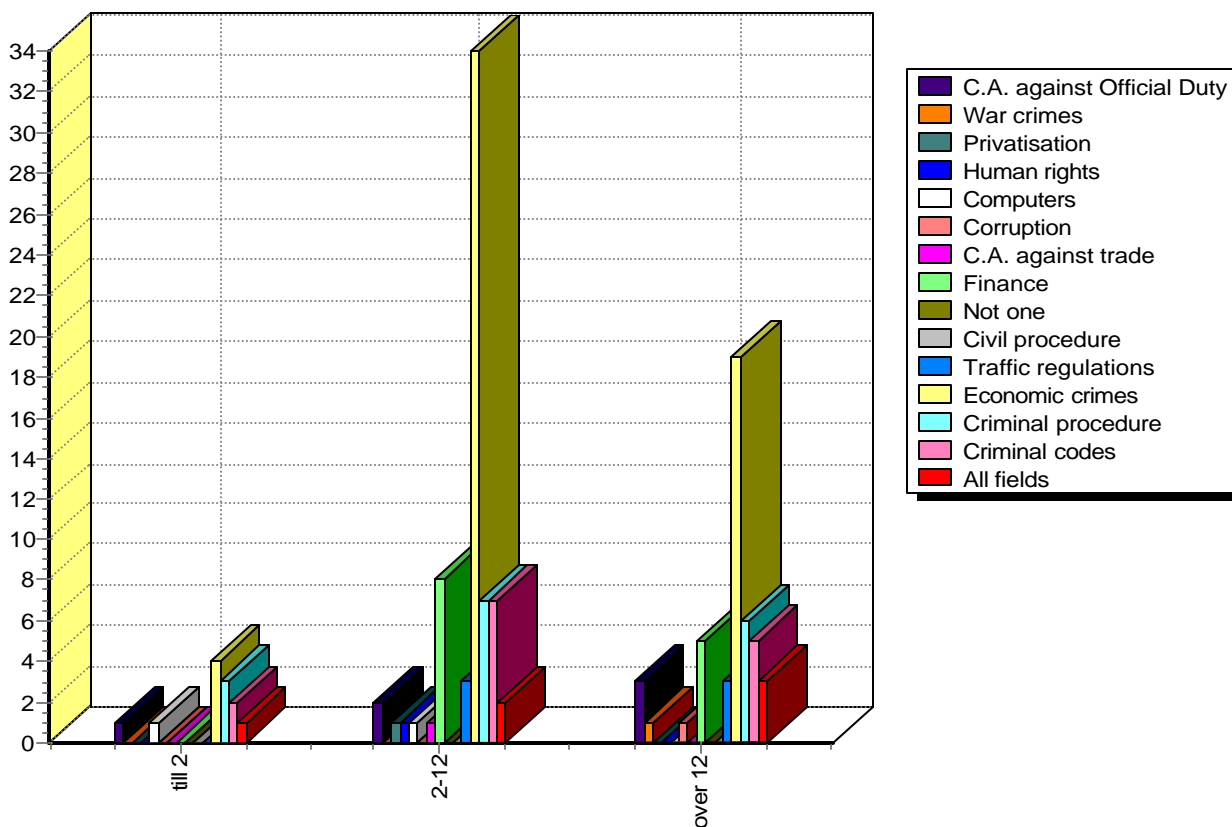
### 5. 2. 4. 3. The Most Important Problems in Their Work



In order to identify the key problems in prosecutors' work, one of the questions was about the most important shortages and obstacles they face in practice:

1. Most of them retain that they face a lot of problems with organs in pre-investigative proceedings: crime reports they receive from the police are poor, incomplete, unprofessional; the quality of evidence is very poor; cooperation is only formal; the police do not know what are their powers and authorities in pre-investigatory proceedings. Beside all that, very poor technical equipment contributes to their inefficiency.  
To the contrary, some of them answered that co-operation with the police is very good.  
A small number of answers was related to unprofessional and superficial work of the investigative judges (they do not request a pretrial detention upon prosecutors request, despite the fact that there is ground for detention; they authorise the police to carry out the judicial view, even on occasion where there is criminal offence punishable by imprisonment for a term of five years and more).
2. Prosecutors pointed out that abuse of rights committed by the accused and their defenders, as well as poor professional knowledge and corruption of expert witnesses in the process, bear a negative influence on their work.
3. They also face problems with technical equipment needed in their work, as well as lack of vehicles (needed for judicial views).
4. New competences of prosecutors in regard to conducting pre-trial proceedings, also the huge scope of their activities in relation to their presence at judicial views, the trials, as well as processing the high number of cases and their daily working duties, request more prosecutors and deputies.
5. Other problems are related to the shortage of personnel that assists them in their work – recording secretaries and security guards. At the same time, lack of workspace is also mentioned as an additional problem.

## 5. 2. 4. 4. Training



In the previous two years, almost one third of the polled prosecutors did not attend any educational seminar. In the aforesaid period of time, the rest of prosecutors attended an average of two seminars.

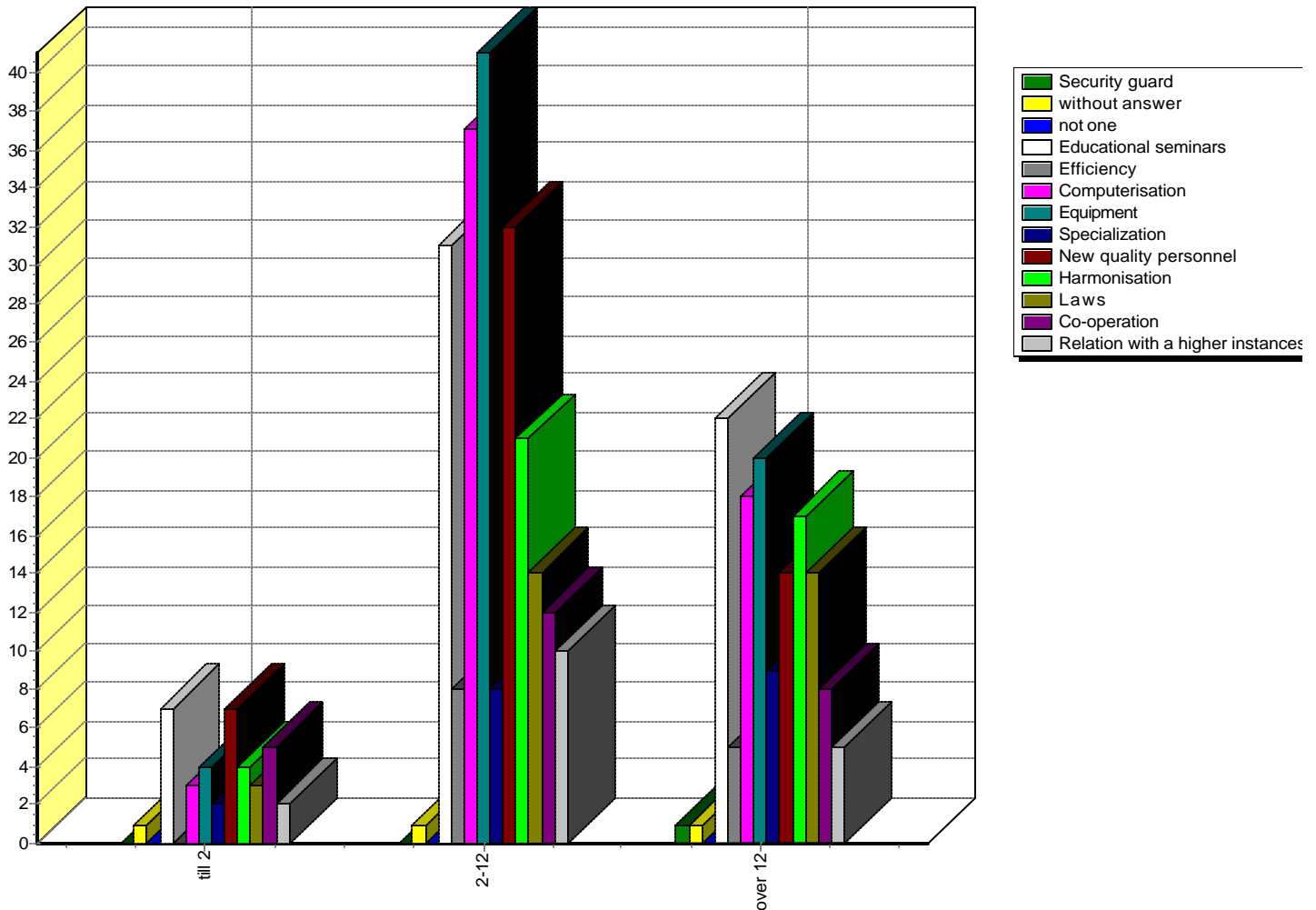
Among them, 40 retain that those seminars helped them in practice, because they provided them with an opportunity to exchange opinions, coordinate and harmonise attitudes regarding some problematic legal areas and questions with other colleagues.

However, 9 of the polled prosecutors gave an opposite answer. 18 polled prosecutors answered that educational seminars they attended were only of partial help for them.

Most prosecutors are interested to learn more and attend educational seminars in the following fields: Economic Crime, Criminal Proceedings and both Criminal Codes, Organised Crime, War Crimes, Commercial Law, Abuse of Power, Economy and Finance Crimes, Human Rights and International Standards.

Prosecutors emphasised they would like to attend language and information technology courses.

## 5. 2. 4. 5. Improvement of Working Conditions



This chart shows the answers of polled prosecutors in regard to possible improvements to their working conditions, as follows:

- Improvement of cooperation with a higher prosecutor office – 17;
- Better cooperation with the police – 25;
- Revision of Laws – 31;
- Harmonisation of attitudes and expert opinions – 42;
- The admission of new, more qualified personnel – 53;
- Specialisation in specific areas – 19;
- Improvement of working equipment – 65;
- Computerisation – 58;
- Training courses – 60.

## 6. Annexes

### Annex I: Decision on Establishing of the Judicial Reform Council

Pursuant to Article 26, par. 2 of the Law on the Government of the Republic of Serbia ("Official Gazette RS, No. 5/91 and 45/93), the Republic of Serbia Government passes the

#### **DECISION On Establishing the Judicial Reform Council**

1. The Judicial reform Council is hereby established, as an expert advisory body of the Republic of Serbia Government.
2. The Council shall:
  - Analyse the situation in the judiciary by examining personnel, material and space conditions for the work of courts and propose measures for rectifying observed problems;
  - Define priority goals and activities for their realization;
  - Formulate projects aimed at advancing and modernizing the operation of the judiciary;
  - Propose modes of advanced training for holders of judicial office;
  - Make assessment of funds required for effective functioning of the judiciary;
  - Cooperate with the media on issues relevant to the judiciary;
  - Initiate passing and amending regulations in the field of the judiciary;
  - Cooperate with international development agencies and associations of citizens in the filed of judiciary.
3. The following are appointed to the Council
  - As president:  
Ph. D. Vladan Batic, Minister of Justice and Local self-government,
  - As members:  
Rajna Andric, president Bar Association of Serbia; Dr. Slobodan Vucetic, judge Constitutional Court of Serbia, Prof. Ph. D. Momcilo Grubac, judge of the Federal Constitutional Court; Dr. Zoran Ivosevic, Deputy President of the Supreme Court of Serbia; Lepasava Karamarkovic, President of the Supreme Court of Serbia; Prof. Ph. D. Gaso Knezevic, Minister of Education and Sports; Dr. Tamas Korhec, Province Secretary for National Minority Rights, Administration and Ordinances; Prof. Ph. D. Vladan Milic, Dean of the Belgrade Law School; Prof. Ph. D. Vesna Rakic-Vodinelic, Director of the Comparative Law Institute; Dusan Simic, President of the Prosecutors Association of Serbia; Sinisa Simic, Republic's Public Prosecutor; Sead Spahovic, Republic's Attorney General; Omer Hadziomerovic, President of the Management Board of the Judges Association of Serbia; Prof. Ph. D. Dragor Hiber, President of the National Assembly Committee for Judiciary and Administration;
4. The following shall participate in the work of the Council:

Christer Karphammar, OMiSaM Advisor for Legal Reforms; John Phillips, Co-ordinator of the Rule of Law Program ABACEELI; Ph. D. Nadja Cuk, Political-legal Advisor to the Council of Europe; Nikolas Marcoux, Director EAR programme; Thomas Kerscher, UNDP Representative; Sonja Licht, Director of the Fund for Open Society. The Council shall cooperate with republic bodies and organizations in its work. The Council may request information from state bodies necessary for formulating projects. The Council may, in the course of its work, engage expert, professional and other organizations. The Ministry of Justice and Local self-government shall perform secretarial tasks for the Council.

5. This Decision shall be published in the “Official gazette of the Republic of Serbia”.

**Annex II: Project: Strategy for Judicial Reform in Serbia - Fragment**

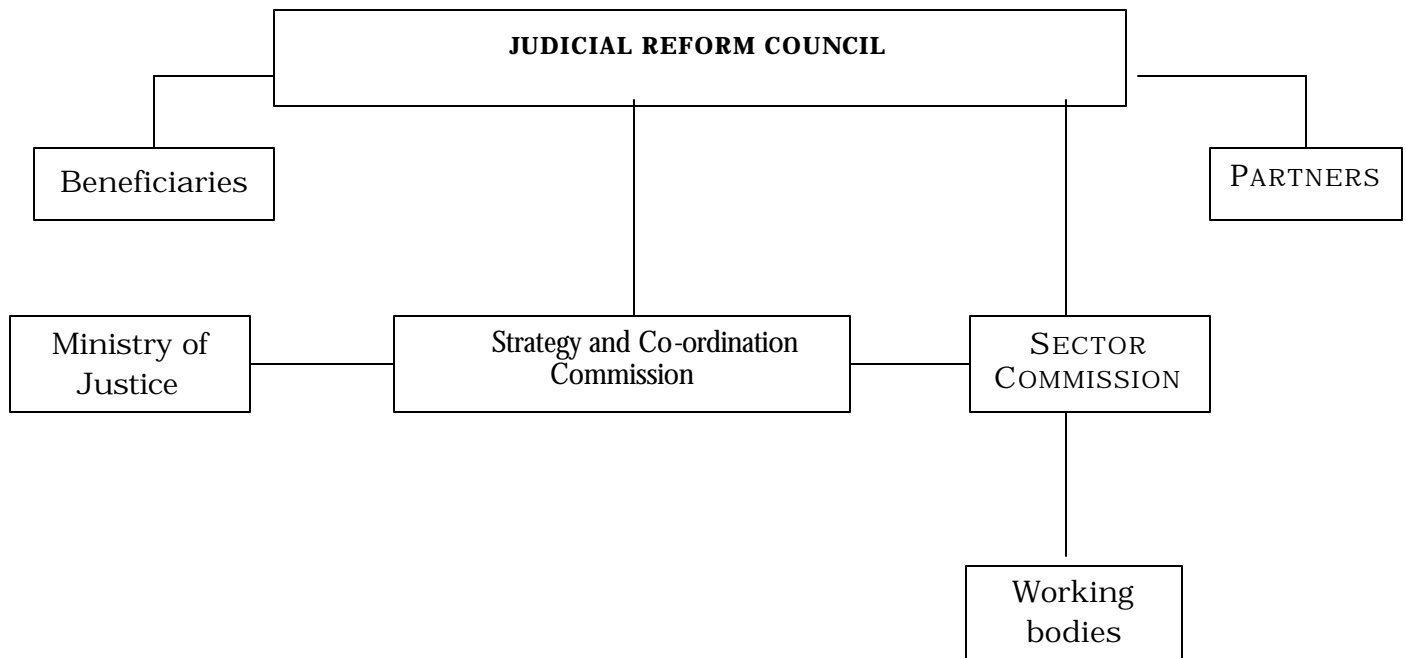
**Project Manager:** Judicial Reform Council of the Government of Serbia (JRC)

**Implementing Agencies:** The Ministry of Justice of Serbia (MJ), Strategy and Co-ordination Commission of the Judicial Reform Council (SCC), Sector Commissions of the Judicial Reform Council (SC)

**Working Bodies (WB):** Expert groups, faculties, institutes, NGOs, expert consultants, the Judicial Centre

**Partners (P):** Donor group

**Beneficiaries (B):** Judicial bodies, Ministry of Justice, the media, NGOs, citizens



## PRINCIPLES OF STRATEGY

OBJECTIVES	ACTIVITIES	IMPLEMENTING BODIES	TIME LIMITS
Develop the Strategic Project for Judicial Reform	Development of the project, definition of organisation, planning of methodology	Judicial Reform Council and the Commission of the Council	End of September 2002
Constitutional law	Preparation of draft constitutional provisions relating to the principles and organisation of the judiciary and constitutional courts	Sector Commission and Working Bodies	End of November 2002
Organisational law	Legislative reforms, court administration reform, judicial administration reforms, improvement of material and technical conditions of the judicial bodies, proposal for a new system of financing of the courts and other judicial bodies	Sector Commission and Working Bodies	Mid- 2003
Procedural law	Drafting of procedural laws and related by-laws	Sector Commission and Working Bodies	End of 2003
Judicial professions	Introduction of new and improvement of existing judicial professions through legal and other regulations, training for certain judicial professions, establishment of the code of ethics	Judicial Reform Council, Sector Commission, Working Bodies and Ministry of Justice	End of 2003
Relation between the judiciary and citizens	Promotion of human rights (especially implementation of Articles 5 and 6 of the European Convention on Human Rights), law awareness-raising, free legal aid to underprivileged citizens, definition of standards related to court premises and holders of judicial functions	Judicial Reform Council, Ministry of Justice, Sector Commission and Working Bodies	September 2003



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## ACKNOWLEDGEMENTS

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The Rule of Law/Human Rights Department of the OSCE Mission to Serbia and Montenegro wishes to thank all the judges, public prosecutors and deputy public prosecutors for their kind support in preparing this report. In addition to this, the OMiSaM is also grateful the Ministry of Justice of the Republic of Serbia, the Supreme Court of the Republic of Serbia, Republican Public Prosecutors' Office, Judicial Training Centre, and all the other international and national organizations for their significant contributions in preparation of the Report.