



Guiding Questions for Focus Area: **Access to Justice**

National legal framework

1. How is the access to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?

International treaties ratified by the republic of Serbia:

- International Covenant on Civil and Political Rights (ratified in 1971: „Official gazette“, No. 7/71)
- Convention for the Protection of Human Rights and Fundamental Freedoms (ratified in 2003: („Official gazette – International treaties“, No. 9/2003, 5/2005, 7/2005 – correction)

National legislation:

- **Constitution of the republic of Serbia** ("Official gazette", No. 98/2006) stipulates that everyone is entitled to legal assistance through services provided by attorneys and legal assistance services that may be established by municipal administrations.
- Extra-judicial settlement has become available under the auspices of the **Law on Protection of the Right to a Trial Within a Reasonable Time** (Official gazette" No. 40/2015) and stipulated by the guidelines¹ issued in 2018 by the Public Attorney's Office, Supreme Cassation Court, High Council of Judges, Ministry of Justice and the Judicial Academy

Availability

2. What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country? Are there alternative dispute settlement mechanisms available?

There are 66 courts of general jurisdiction (“basic courts”) on the territory of the Republic of Serbia, 25 higher courts, 4 appellate courts, 44 magistrate courts, three appellate magistrate courts and three administrative courts. These courts cover the territory of the Republic of Serbia through being situated in different municipalities and covering neighbouring municipalities in cases when those do not have a court established at their territory. However, all these courts are situated in urban centres and are therefore not equally available or accessible to older persons living in urban, rural or remote areas.

The existing mechanism related to extra-judicial settlement was introduced due to a high number of cases in which the right to a trial in a reasonable time was breached (for example, there were

¹ <http://www.up.sud.rs/uploads/useruploads/Documents/Uputstvo-vansudsko-poravnanje-sudjenje-u-razumnom-roku.pdf>

5,545 lawsuit in 2017 alone related to breaches of this right) and currently all courts in Serbia are supposed to promote the option of extra-judicial settlement in applicable cases.

Accessibility

3. What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?

Financial expenses related to different processes in accessing justice systems are identified as frequent barrier for many Serbian citizens – 63% of the polled citizens from general population say that they will try to avoid going to court if they can due to prohibitively high costs. More than half of those who have gone through court proceedings consider the incurred costs as excessive.² Furthermore, the pricing of court and attorney fees is very complicated and it is difficult to assess what the real costs will be in advance.³ The attorney fees are especially problematic as they are not aligned to the practices in the European Union and incentivize the attorneys to prolong the proceedings as much as possible while at the same time going against the regulation in defining their prices in order to ensure they meet the price level their clients are ready to pay.⁴

For these and other reasons, the **Strategy of Development of the System of Free of Charge Legal Assistance in the Republic of Serbia** was adopted in 2014. („Official gazette“, No. 74/2010).

Criminal Law of the Republic of Serbia ("Official gazette", No. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016), **Civil Procedure Act of the Republic of Serbia** ("Official gazette", No. 72/2011, 49/2013 – Constitutional Court decision, 74/2013 - Constitutional Court decision, 55/2014 and 87/2018) and the **Law on General Administrative Procedure** ("Official gazette", No. 18/2016 and 95/2018) all stipulate that, depending on the conditions and the financial capacity of the person, either an attorney may be appointed to them to represent them in the court of law free of charge, or they may be partially or entirely freed of financial costs related to the judicial procedure. None of these documents explicitly mention older persons.

The Law on Free of Charge Legal Assistance ("Official gazette", No. 87/2018) developed in the framework of the abovementioned Strategy of Development of the System of Free of Charge Legal Assistance in the Republic of Serbia stipulates who and under which conditions is eligible for legal assistance provided free of charge and this assistance includes different types: legal advice, assistance in writing official documents, representation in court and defense in court. The providers of free of charge legal assistance may be attorneys or professional lawyers acting through legal service offices established by municipal administrations. The law stipulates eligible parties as those who are either receiving financial social welfare assistance or who do not qualify for it but may qualify for it if having to pay for the legal assistance. The Law additionally stipulates several more categories of eligible parties and therein explicitly mentions older persons admitted into residential care without their consent as eligible by default.

² <https://www.mdtfjss.org.rs/data/pub/sjfr/sr/Funkcionalna-analiza-pravosudja-u-Srbiji.pdf>

³ Ibid.

⁴ Ibid.

As for security, **Court Rules of Procedure** ("Official gazette", no. 110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015 – corr., 39/2016, 56/2016, 77/2016, 16/2018, 78/2018 and 43/2019) stipulate security measures for all participants of judicial procedure, which includes citizens.

4. What are the existing provisions to guarantee legal assistance for older persons?

As specified above, the Constitution of the republic of Serbia stipulates two separate forms of legal assistance for citizens: lawyer services as well as legal assistance services that may be established by municipal administration.

As listed in the previous reply, there are three legislative acts that specify availability of legal assistance to eligible persons that, depending on several conditions may be provided free of charge or at a lower price, and a separate Law on Free of Charge Legal Assistance that specifies conditions under which person may qualify for free of charge legal assistance. Older persons are only explicitly mentioned in the later one, in a specific situation where they are residing in a residential care institution without providing consent and this makes them automatically eligible for free of charge legal assistance. Of course, they are also eligible if they fulfil conditions described above, related to their financial status but this has to be documented.

5. What are specific challenges encountered by older persons in accessing justice and remedy in your country?

The general problem is low level of awareness of and knowledge about the rights and entitlements stipulated by national and international legislation. This is compounded by generally complex and long judicial procedures in a majority of court cases. According to the data provided by the Supreme Cassation Court, at the end of 2018 there were 1,701,580 pending cases in the Serbian court system with approximately 195,000 of those ongoing for more than a decade.⁵ There are different reasons for long and protracted court cases. According to the poll done among judges and attorneys in 2013, the leading cause is obstruction by one of the parties in the case, followed by gaps in legislation, mistakes made by the court or its staff, objective lack of court capacity and omissions made by one of the parties.⁶ It is also emphasized that in as many as 57% of the cases, the protraction is due to unsuccessful summons of one of the parties to the court hearing. There are also criticisms related to time management of the courts with hearings only being scheduled in the morning hours, as well as the management of data.⁷ There are measures being taken to improve the efficacy of the courts due to the EU Accession process (as well as, to a smaller extent, a number of cases in the European Court of Human Rights related to the length of proceedings – 35 judgments between 1957 and 2017), such as – where possible – delegating cases to the authorized civilian enforcement officers, so the average duration of a court case in Serbia is shortening, going from 534 days in 2012 to 277 in 2017⁸.

⁵ <https://www.vk.sud.rs/sites/default/files/attachments/KNJIGA%20-%20OPSTA%20NADLEZNOST%20-%20KONACNA.pdf>

⁶ <https://advokatbeograd.net/advokat-beograd/trajanje-sudskog-spora-advokat-beograd.html>

⁷ <https://www.mdtfjss.org.rs/data/pub/sjfr/sr/Funkcionalna-analiza-pravosudja-u-Srbiji.pdf>

⁸ <https://www.021.rs/story/BBC/219043/Koliko-traju-sudjenja-u-Srbiji-Pravda-prespora-ali-dostizna.html>

The criticism related to provision of free of charge legal assistance includes the fact that approval for this assistance has to be given by municipal administration and that courts are not authorized to provide such approval which adds more administrative and bureaucratic work to what is already a complicated administrative process, especially for older persons who may meet obstacles in providing all necessary paperwork.

Persons over 60, persons with lower education level and persons living in rural areas in general perceive services of the judicial system to be less accessible to them.⁹

There are also practices that hurt different groups in the population of older persons that may be part of the mentality and are based on prejudice. One of those is that in terms of exercising the right to inheritance, older women are much more likely to pass all property on to their children upon the death of their spouse than older men are. Likewise, there is a very specific procedure stipulated by law on how a person's legal capacity may be partially or fully denied in the court of law, but case studies have shown that in cases of older persons, this procedure is not always fully followed (e.g. the judge never interviewed the person whose legal capacity is being taken away).¹⁰

6. What good practices are available in terms of ensuring equal and effective access to justice and remedy for older persons?

The Serbian Ombudsman has in late 2018 stated that one quarter of all official complaints sent to the Ombudsman's office is related to excessive length of court proceedings, abuse of authority in the court proceedings and non-enforcement of court judgments.¹¹

Likewise, Commissioner for Protection of Equality is authorized to act upon complaints submitted by citizens and inform the complainant about his or her rights and possibilities to initiate a court procedure or another protection measure, including the reconciliation procedure, as well as to file offence reports against discrimination acts prohibited by the antidiscrimination regulations. The Commissioner is also authorized to file complaints for protection from discrimination, with approval of the discriminated person.¹²

In 2018 Association of the Unions of Military Pensioners offered free of charge legal assistance to any older person willing to sue the Serbian Government due to reduction in pensions introduced as one of the austerity measures in 2014.¹³ 22 Attorney offices joined this initiative and as of January 2018, more than 80,000 pensioners have applied to the National Pension Fund.¹⁴

⁹ <https://www.mdtfjss.org.rs/data/pub/sjfr/sr/Funkcionalna-analiza-pravosudja-u-Srbiji.pdf>

¹⁰ <https://www.redcross.org.rs/media/1671/introduction-to-ageing-and-human-rights-of-elder-people-1.pdf>

¹¹ <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-25-10-19-19/5980-gr-d-ni-s-z-l-zb-g-izvrshi-lj-suds-ih-i-izvrshnih-dlu-z-sh-i-ni-gr-d-n-z-r-n-p-sh-lic-z-dn-vni-lis-d-n-s>

¹² <http://ravnopravnost.gov.rs/en/background-information/>

¹³ <https://www.021.rs/story/Info/Srbija/180560/Besplatna-pravna-pomoc-za-sve-penzionere-koji-zele-da-tuze-drzavu.html>

¹⁴ <http://www.021.rs/story/Info/Srbija/180297/Vise-od-80000-zahteva-za-povracaj-penzija.html>

Equality and non-discrimination

7. What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with others, including age-appropriate procedures in all administrative and legal proceedings?

As mentioned above, the Law on Free of Charge Legal Assistance has an explicit stipulation where older persons residing in a residential care institution without providing consent are automatically eligible for free of charge legal assistance. Additionally, the same Law stipulates that persons undergoing proceedings related to regaining or being deprived of legal capacity are also automatically entitled to free of charge legal assistance. In many cases such persons are older persons suffering from dementia – with or without a diagnosis. This provides a layer of protection for older persons who have up to now been exposed to different potential risks and fraudulent practices related to their property or finances.

8. Please specify existing public policies and awareness-raising and capacity building programmes established for all justice system personnel to address the negative impacts of ageism and age discrimination in justice system.

N/A

Accountability

9. How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals.

The legislation regulating¹⁵ the work of judges and stipulates their independence and impartiality includes the **Constitution of the Republic of Serbia**, the **Law on Regulation of Courts** ("Official gazette", No. 116/2008, 104/2009, 101/2010, 31/2011 – other law, 78/2011 - other law, 101/2011, 101/2013, 106/2015, 40/2015 - other law, 13/2016, 108/2016, 113/2017, 65/2018 – decision of the Constitutional Court, 87/2018 and 88/2018 - decision of the Constitutional Court) and the **Law on Judges** ("Official gazette", No. 116/2008, 58/2009 - decision of the Constitutional Court, 104/2009, 101/2010, 8/2012 - decision of the Constitutional Court, 121/2012, 124/2012 - decision of the Constitutional Court, 101/2013, 111/2014 - decision of the Constitutional Court, 117/2014, 40/2015, 63/2015 - decision of the Constitutional Court, 106/2015, 63/2016 - decision of the Constitutional Court and 47/2017). There are no specific mentions of older persons or older age in either of these acts.

The main act that prohibits discrimination of persons on the basis of their age is the **Law on Prohibition of Discrimination** ("Official gazette", No. 22/2009) that explicitly states (paragraph 23) that discrimination based on one's age is prohibited and that old(er) persons are entitled to, inter alia, using "other public services" which includes the court of law and other services related to justice.

National Ombudsman and Commissioner for Protection of Equality are both authorized to act upon complaints of citizens in cases of breaches of human rights and being targeted by discrimination. This may include barriers that older persons encounter in access to justice.

¹⁵ <http://www.ns.ap.sud.rs/index.php/srl/sudska-vlast/2010-03-18-09-59-53>