

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

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Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **SERBIA**

### **Responses submitted by:**

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### **1. Would your jurisdiction be described as a common law or civil code jurisdiction?**

Civil code jurisdiction.

### **2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?**

Adversarial system in civil proceedings. Adversarial/hybrid system in criminal proceedings.

### **3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?**

The National Assembly elects judges in their first serving term upon nomination by the High Judicial Council for the 3 year long term. After expiration of initial 3 year long term of first serving judges, The High Judicial Council elects competent judges on a permanent basis.

The judges must be nationals of the Republic of Serbia, must comply with the general requirements for public service employments, must have finished law school and passed the Bar exam with a minimum work experience in legal profession as defined by the law, and must be qualified, competent and worthy of the office.

### **4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?**

There are some specialised courts (commercial courts, administrative courts and magistrates Courts). Commercial courts do not have specialized procedures, only some specialized rules are provided by civil procedure code. Administrative and magistrates courts have specialized procedures set in respective legislations.

### **5. Is arbitration an option and when? If so, what rules are typically used?**

Arbitration may be agreed upon to resolve property disputes and disputes regarding other rights that the concerned parties may freely dispose with, save for the disputes for which an exclusive competence of the court is set out. So far, the most preferred rules were those prescribed by the Rulebook on Foreign Trade Arbitration issued by The Foreign Trade Court of Arbitration (FTCA) of the Chamber of Commerce and Industry of Serbia, but the Rules of Belgrade Arbitration Centre have recently started to be stipulated within arbitration agreements.

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**6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?**

The courts would honor a valid arbitration agreement, unless the parties decide otherwise.

**7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?**

Mediation is not a mandatory part of court proceedings in general.

**8. What is the process for pre-hearing fact discovery (if any)?**

*(a) Are there provisions for mandatory document disclosures?*

There is no obligation for mandatory document disclosures, although in litigation proceedings parties are obliged to submit to the court at the preliminary hearing all documents and evidence in support of the claim, as well as all objects due to be examined by the court.

*(b) Is there provision for oral examinations of the parties or others?*

Yes, but not before the main hearing.

*(c) Are there limits on the length of oral examinations?*

No.

*(d) Are witness statements or summaries to be provided before the hearing?*

As a rule, witnesses who are proposed by the parties at the preliminary hearing are directly examined at the main hearing. However, if parties provide their written statements, those should be submitted before or at the preliminary hearing.

**9. What is the process for pre-hearing expert disclosure (if any)? There are none.**

*(a) Are expert reports or written summaries required to be exchanged?*

In litigation proceedings parties are obliged to submit to the court at the preliminary hearing all documents and evidence in support of the claim, as well as all objects due to be examined by the court.

Witnesses, including expert witnesses (and all other evidence), are proposed/identified at the preliminary hearing. Expert witnesses submit their report to the Court as a submission in a given deadline, but they can also be summoned by the Court to clarify their findings.

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(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

No.

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

No.

### **10. Are there other notable discovery rules?**

None.

### **11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?**

The only form of prehearing conference in civil proceedings is the preliminary hearing, conducted by the judge at least eight days before the main hearing. In the call for a preliminary hearing, the court points out to the parties their duty to present all the facts and propose evidence that can confirm those facts, as well as the duty to propose a time frame for the hearing. The Court also orders parties to submit to the hearing any documents that would serve as proof or evidence in court.

A preliminary hearing is mandatory, except when the court upon receipt of the response to a lawsuit between the parties determines that there are no disputed facts, or if the dispute is simple, urgent, or if it is prescribed by law.

### **12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?**

Under circumstances prescribed by the law it is possible to request issuing a judgment without conducting a hearing. But such a request is not defined as a specific type of motion submitted by the party.

### **13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?**

There is no procedure for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony.

### **14. What is the standard for admissibility of expert evidence?**

Necessary standard is that the expert witness is registered with the Register of court expert witnesses and that he or she is appointed either by the court or by the parties.

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**15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?**

Yes, the court has to appoint its own experts unless there is no court expert registered for a specific area of expertise. In that case it is possible to appoint an expert, who is not registered as court expert.

**16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?**

Yes it does, attorney client privilege is established by the Professional Ethics Code issued by the Bar Association of Serbia.

Furthermore, according to civil procedure code a witness in civil proceedings may withhold a testimony:

- 1) pertaining to the fact that a party confided to the witness and the witness being his attorney;
- 2) pertaining to the fact that a party or other person confided to the witness as a religious confessor;
- 3) pertaining to the fact that the witness learned information in the capacity of legal counsel, physician, or exercising other professional activities or duties, if an explicit obligation exists to protect the confidentiality of information obtained through performing these professional activities or duties.

A witness in civil proceedings may withhold an answer to particular questions if important reasons exist, especially if by answering it would bring disgrace, or would incur significant damage to his property, or would subject himself or certain relatives (its lineal relatives to any degree and collateral relatives up to the third degree conclusively, its spouse or extra matrimonial partner or in-law relatives up to the second degree conclusively, even if marriage was divorced, as well as its guardian or protégé, adoptive parent or an adopted child) to criminal prosecution.

The documents prepared in anticipation of litigation and settlement discussions could be deemed protected under conditions prescribed by the Law on Business Secret.

**17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?**

Privileged information are protected under conditions prescribed by the Law on Business Secret. Furthermore, third parties cannot access the court files except under conditions prescribed in the law.

**18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?**

The court would have jurisdiction to rule on potential privilege disputes.

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### **19. Briefly describe the trial process?**

(a) *Are there opening submissions, in what form and of what length?*

No. However, in criminal proceedings opening submission in oral form, without specified duration, have been recently introduced.

(b) *What is the order of presentation of witnesses?*

The order of presentation of proposed witnesses lies within the discretion of the judge.

(c) *Who conducts examination and in what order?*

The judge conducts examination of the witnesses first followed by the claimant and then by the respondent.

(d) *What is the process for closing submissions?*

Closing submissions/speeches in civil proceedings are quite short in practice. However in criminal proceedings they are more substantive and longer.

### **20. Please identify any other notable trial procedures.**

None.

### **21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?**

In civil proceedings, each party shall present facts and propose evidence to support its claim or contest the allegations and evidence of the opposing party. The court shall decide on the facts established as proven, on the basis of conscientious and meticulous assessment of each particular piece and all the evidence together, as well as to the outcome of the whole proceedings.

In criminal proceedings, the burden of proof lies with the prosecutor/plaintiff. The court assesses the evidence examined and considered of importance for rendering a decision at its discretion. The court may base its judgment, or ruling corresponding to a judgment, only on facts, of whose certainty it is convinced.

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**22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?**

All types of damages are recoverable. There are several types of damages as defined in court practice and legal theory and they are as follows: material and immaterial damages, actual damages and lost profits, direct and indirect damages, positive and negative interest, concrete and abstract damages, predictable and unpredictable damages, current, future and possible damages.

**23. If punitive damages are available, what is the threshold for recovery, and range of awards?**

Punitive damages are not envisaged in the Serbian legal system.

**24. Are there time limits for bringing claims? Responding to claims? Please describe.**

Yes, the substantial provisions of the Serbian law provide general and specific statutes of limitation (10 years or three years etc.). In some legal matters, there are also specific time limits (set by law or by judge) for lodging the claims.

Responding to claims is limited in civil proceedings to 30 days following receipt of the legal action.

**25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?**

Jurisdiction of courts is established following the mandatory rules determining the real competence of the court. The parties cannot opt or change the real competence of the courts. However, the territorial jurisdiction could be changed by the parties unless there is exclusive competence of the court or there are certain limitations prescribed by the law. Civil Procedure Law stipulates that if in a foreign country civil action may be brought against a citizen of the Republic of Serbia before a court which, would not have territorial jurisdiction to adjudicate the civil matter concerned, equal jurisdiction shall apply in disputes against citizens of that foreign country before a national court. Criminal Procedure Code, on the other side, prescribes that if a person has committed criminal offences both in the Republic of Serbia and abroad, the court which is competent for the criminal offence committed in the Republic of Serbia has jurisdiction.

The Serbian law does not recognize "more convenient forum" as a legal institute. Thus, the defendant cannot request it.

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**26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.**

Yes, it is possible to bring third parties into the proceedings under conditions prescribed by the law (such persons are defined as "co-litigants", "interveners" etc.).

**27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).**

Yes, it is a loser pays costs system, but the judge has certain discretion in that respect. The amounts are calculated following the Bar Tariff.

**28. Are contingency fees allowed?**

Yes, if the attorney and client agree on it.

**29. Is third party funding of claims permitted? Under what circumstances?**

This is not regulated and not explicitly prohibited.

**30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?**

Yes, it is allowed. In civil proceedings the following circumstances should be met:

- 1) If they constitute a legal relationship as regards the subject of the dispute, or their rights or obligations ensue from the equal facts and legal grounds.
- 2) If the subject of the dispute are complaints or obligations of equal type, founded on the substantially equal facts and legal grounds, and if a particular court has subject matter and territorial jurisdiction over each claim and every respondent.
- 3) If stipulated specifically by law

The law does not specify any type of claims allowing multiparty actions.

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**31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?**

Yes, it can. It is regulated by the Consumer Protection Law and other relevant laws.

**32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?**

It is hard to say as it depends on the type of proceedings and the relevant court (e.g. commercial matters conducted before the Commercial Courts are faster than civil proceedings before common courts).

The number of evidence which needs to be reviewed in a trial usually strongly impacts the duration of the proceedings.

**33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?**

Yes, it is available. Judges of the second instance courts rule upon the appeals, usually without scheduling hearings. The judges are appointed in a regular procedure as described under question 3 above. The judges must be nationals of the Republic of Serbia, must comply with the general requirements for public service employments, must have finished law school and passed the Bar exam with a minimum work experience in legal profession as defined by the law, and must be qualified, competent and worthy of the office.

**34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?**

No.

**35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?**

All case documentation must be presented in hard copies.



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**36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?**

In practice, one lawyer usually handles the case throughout the proceedings but the party may appoint additional lawyer(s) or may change/replace his lawyer(s). There is no solicitor/barrister distinction.

**37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?**

There is a legal institute in Serbian law similar to contributory negligence. However, the fault assessment is usually in the judge's discretion. It is possible that tortfeasors are joint and severally liable for damages, and it is correct that a plaintiff's negligence shall reduce or eliminate liability of defendants in the litigation.

**38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?**

Any court document has to be delivered according to formal procedure (i.e. Hague Convention.) That includes complaints by (among others) the Ministry of Justice, the Ministry of Foreign Affairs, the embassy/consulate of a foreign country in the Republic of Serbia, other competent authorities of a foreign country etc. However, the formal procedure could be avoided if a party in a proceeding accepts informal means of delivery.

**39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)**

This is regulated under the rules of international legal assistance.

**40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.**

None.

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**41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?**

There has been numerous criticism of the newly introduced adversarial system in criminal proceedings with a public prosecutor on the one hand and the defendant on the other. With the diminished role of the judge in the proceeding and more responsibility on the parties, it is believed that the playing field between these two parties is not leveled and that the position of the defendant, without professional expertise and lack of resources (unlike that of the public prosecutor) is much more difficult.

**42. Are there legislative efforts under way that address any of the litigation practices in your country?**

Many important laws were introduced in the period of 2009-2010, during the "reform of the judiciary system" (Civil procedure code, Law on Enforcement and Security etc.). There have been continuous efforts to introduce a new civil code for some time.