



Serbia Judicial Functional Review

Multi-Donor Trust Fund for Justice Sector Support in Serbia

Serbia Judicial Functional Review

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Acronyms and Abbreviations

A2J	Access to Justice
ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
AVP	Automated Case Management System
BEEPS	Business Environment and Enterprise Performance Survey
BPMIS	Budget Planning and Management Information System
CCJE	Consultative Council of European Judges
CCPE	Consultative Council of European Prosecutors
CEPEJ	The European Commission for the Efficiency of Justice
CPC	Criminal Procedure Code
CPT	Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EBRD	European Bank for Reconstruction and Development
EC	European Commission
ECA	Europe and Central Asia
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUR	Euro
FLA	Free Legal Aid
FY	Fiscal Year
GDP	Gross Domestic Product
HJC	High Judicial Council
ICT	Information and Communication Technology
IFMIS	Integrated Financial Management Information System
IMF	International Monetary Fund
IMG	International Management Group
IPSOS	IPSOS Global Market Research
JA	Judicial Academy
JAS	Judges Association of Serbia
LURIS	Software Application for International Legal Assistance
MDTF-JSS	Multi Donor Trust Fund for Justice Sector Support in Serbia, administered by the World Bank
MOJ	Ministry of Justice (formerly the Ministry of Justice and Public Administration, MOJPA)
NBS	National Bank of Serbia
NALED	National Alliance for Local Economic Development
NJRS	National Judicial Reform Strategy
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
PAS	Prosecutors' Association of Serbia
PPO	Public Prosecutor's Office

RPPO	Republic Public Prosecutor's Office
RSD	Serbian Dinar
SAPA	Standardized Software Application for Prison Administration
SAPO	Standardized Application for the Prosecution Organization
SAPS	Standardized Software Application for the Serbian Judiciary
SCC	Supreme Court of Cassation
SIPRES	Software System for the Misdemeanor Courts
SPC	State Prosecutorial Council
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
USAID SPP	USAID Separation of Powers Project
USAID JRGA	USAID Judicial Reform and Government Accountability Project
USD	US Dollars

Acknowledgements

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Objective, Scope & Structure

“The accession process today is more rigorous and comprehensive than in the past. This reflects the evolution of EU policies as well as lessons learned from previous enlargements. (...) The rule of law is now at the heart of the enlargement process. The new approach, endorsed by the Council in December 2011, means that countries need to tackle issues such as judicial reform (...) early in accession negotiations. This maximizes the time countries have to develop a solid track record of reform implementation, thereby ensuring that reforms are deeply rooted and irreversible. This new approach (...) will shape the Commission’s work with the enlargement countries.”

Enlargement Strategy and Main Challenges 2013-2014, European Commission, Brussels, 2013.

1. **This Functional Review presents a comprehensive assessment of the current functioning of Serbia’s judicial system, along with options and recommendations to inform Serbia’s justice reform initiatives in view of the requirements of Chapter 23 of the Acquis Communautaire.** The Functional Review was jointly requested by the European Commission (EC) and Serbian authorities ahead of the commencement of negotiations for Chapter 23 to better inform the negotiation process, and its design and structure were based on extensive consultations with both parties. The Functional Review provides the basis for the Serbian authorities to develop their Chapter 23 Accession Action Plan and to update the existing Action Plan for the implementation of the National Judicial Reform Strategy 2013-2018 (NJRS). In doing so, the Functional Review also presents an objective baseline of current sector performance, which enables Serbia to assess the impact of future justice reform initiatives.
2. **The Functional Review comprises an *external* performance assessment and an *internal* performance assessment.** The external performance assessment (Part 1) examines how well the Serbian judicial system serves its citizens in terms of efficiency, quality, and access to justice services. The internal performance assessment (Part 2) examines the inner workings of the system, and how governance and management, financial and human resources, ICT, and infrastructure are managed for service delivery.¹ The two assessments highlight different aspects of sector performance and should be read together.² The Functional Review does not make assessments of Serbia’s compliance with European law and is not for the purpose of providing legal advice.
3. **The structure of the Functional Review follows the indicators set out in the Performance Framework (matrix at Annex 2), and the content is driven by the relevant European benchmarks, standards and references.** The Performance Framework was developed in close consultation with Serbian and EC authorities, building on European and international best practices for justice sector performance measurement, and specifically tailored to the Serbian context, including the institutional environment, distinctive Chapter 23 challenges, and the prevailing data environment. The Framework’s matrix outlines:
 - a. performance measurement areas (efficiency, quality, access etc.);
 - b. performance indicators, against which assessments are made (indicators correspond to sub-headings throughout the Functional Review Report);
 - c. relevant Chapter 23 references; and
 - d. data sources within the Serbian system.
4. **The Functional Review is sector-wide but focuses primarily on the courts because they are the main vehicle for justice service delivery and the primary institutions of justice in Serbia.** The scope includes all types of services and covers litigious and non-litigious aspects of civil, commercial, administrative, and

¹ The internal performance assessment (Part 2) is similar in structure and methodology to a Justice Sector Public Expenditure Review (JPER) or standard Functional Review.

² For example, some paradoxes of external performance are explained by the internal workings of the system, such as caseloads which is an issue affecting efficiency and management.

criminal justice. The focus is on the actual implementation and day-to-day functioning of the sector institutions that deliver justice to people, rather than the ‘law on the books’. The scope includes other institutions in the sector to the extent that they enable or impede service delivery by the courts, including: the Ministry of Justice (MOJ)³, the High Judicial Council (HJC), the State Prosecutorial Council (SPC), the courts, the Public Prosecutor Offices (PPOs), the Judicial Academy, the Ombudsperson’s Office, the police, prisons, and justice sector professional organizations (such as the Bar, notaries, bailiffs, and mediators).⁴ The Functional Review prioritizes aspects within this scope based on data availability, relevance to the achievement of the *Acquis*, and national policy objectives. The reporting period for the Functional Review was January 1st, 2010, to June 30th, 2014.

5. **A distinct feature of this Review is its emphasis on data and analysis.** Assessments draw on a mix of quantitative and qualitative data, including statistical analysis of case management, finance and human resource data, a multi-stakeholder perception survey, an access to justice survey, process maps, legal analysis, a desk review, focus group discussions, workshops and key informant interviews. For each assessment made in the Functional Review, multiple sources are triangulated to present the most objective and realistic picture as possible.⁵

6. **The recommendations are designed to be actionable and specific with the objective of aligning the performance of the Serbian judiciary with that of EU Member States.** Each recommendation notes how its implementation links to the NJRS Action Plan and Chapter 23 requirements. In each case, a ‘main’ recommendation is highlighted, accompanied by a series of practical next steps to implement it. Each step also notes the institution that would be responsible for taking the recommendation forward, as well as the other institutions whose collaboration is necessary for effective implementation. Timeframes are indicated for each step, from short term (12 months), medium term (2-3 years) and long term (5 years), commencing from October 2014 in order to synchronize with the NJRS Action Plan.

7. **The precise prioritization and sequencing of the implementation of recommendations will be made by the Serbian authorities as part of their Chapter 23 Accession Action Plan.** Even so, the Functional Review Team was requested to provide an overview list of top priorities, on which progress would be essential to improve performance in line with European benchmarks. This is provided in the following section, *Overall Conclusions and Priorities*.

³ Prior to May 2014, the MOJ was the Ministry of Justice and Public Administration (MOJPA). In this report, it will be referred to as the MOJ.

⁴ Where a question arose as to whether a certain issue facing an institution falls within the scope of the Functional Review, the test applied was ‘*whether and how the issue contributes, either directly or indirectly, to the delivery of justice services by the courts in Serbia*’.

⁵ For further discussion of the Functional Review methodology, see **Annex 1**.

Overall Conclusions and Priorities

8. **Overall, Serbia's judicial system performs at a lower standard than that of EU Member States.** In terms of efficiency, the system struggles with a legacy of bureaucracy and red tape. New cases proceed at an improved pace, and several efficiency parameters are within or close to the range currently found among EU Member States. However, courts are clogged with old cases that go unattended. Arcane processes cause delays, and procedural abuses by parties go largely unchecked. The quality of justice services is affected by poorly drafted legislation, inconsistent jurisprudence and high appeal rates. Rudimentary tools to standardize quality in service delivery, such as templates and checklists for routine procedures, do not exist. The judiciary remains marred by perceptions of corruption and undue influence, and while performance in this area is improving, it continues to lag EU Member States and regional neighbors. Access to justice services is constrained by high court and attorney fees, and attorney fees blow out further due to delays and inefficiencies in case processing. Support for indigent court users is inadequate. Access to basic legal information, such as consolidated legislation and lay formats of basic laws, is insufficient. The prospect of alternative dispute resolution holds promise but remains elusive after a series of failed reforms.

9. **In recent years, one could reasonably have expected the judicial system to have performed much better than it has.** Workloads decreased dramatically due to reductions in incoming caseloads and increases in resources, including massive and growing arrears and further appointments of hundreds judges and staff. With lighter workloads and more judges and staff, there lay significant opportunities to improve sector performance. However, these opportunities were not realized.⁶ In the path towards EU accession, the Serbian judicial system can ill afford to miss such opportunities again.

With lighter workloads and more judges and staff, there lay significant opportunities to improve sector performance. However, these opportunities were not realized.

10. **Instead, the sector embarked on successive reforms which have caused much upheaval but produced limited results in terms of performance improvement.** These included two network reorganizations, the dismissal and reappointment of more than 800 judges and prosecutors, massive file transfers, changes in roles and responsibilities between actors, and the passage of ill-conceived laws that have quickly become 'stillborn' and required successive changes. These efforts consumed the energy of stakeholders and generated much work. However, they have done little to alter performance, which remained lackluster. Meanwhile, simpler reforms that could generate higher impact have not been prioritized, such as critical ICT upgrades, continuing training, lay guides, process simplification and managerial support for Court Presidents. Now, the sector craves stability and requires a more measured approach to reform that focuses on practical improvements to services for users.

11. **There is excessive variation across courts in terms of service delivery, which undermines access to justice and uniformity in the application of law.** Several courts perform extremely well against many of the agreed indicators in the Performance Framework, but there are pockets of under-performing courts that reflect poorly on the rest of the sector and fail to deliver the services people need. Workloads are not equitably distributed, leaving some courts are very busy, and others demonstrably less so. Court practices differ across the country in areas of importance for

There are isolated sites of innovation, often in courts outside of Belgrade. However, innovators have rarely been recognized and lessons have not been shared or replicated.

⁶ For example, during the period when more than 600 judges were stood down in a failed 'reappointment' process, clearance rates for most court types and case types remained around 100%. Yet following their return to work by 2013, if workloads among all judges had been maintained, clearance rates should have risen dramatically, resulting in significant backlog reduction. However, this did not occur. Instead, it appears that judges and staff reduced workloads. Clearance rates fell and backlog remained largely unattended.

court users, such as complaints handling and the application of court fee waivers for indigent court users. Progress has been noted in some areas of court management, such as ICT improvements and procedural reforms. However, gains are fragile and have yet to instill changes in behavior among judges, prosecutors, attorneys and court staff. There are isolated sites of innovation in service delivery, often in courts outside of Belgrade, where progress has been made in specific areas, such as backlog reduction, service of process and stakeholder coordination. However, these innovations have been driven by the personal initiative of individuals or with donor support. Innovators have rarely been recognized and the lessons from innovations have not been shared in a systemic way or replicated in other courts. As a result, averages and generalizations about the Serbian judiciary are misleading. The Functional Review thus attempts to document key variations and inconsistencies across the jurisdiction and possible drivers for these.

12. The extraordinary heterogeneity highlights the need for a more consistent and coherent approach to performance management. The sector lacks a framework to measure and manage performance.⁷ Reforms are often initiated in a haphazard manner, without analysis of fiscal or operational impacts, and

The quantity and quality of available data has improved significantly in recent years – the next step will be for leaders to use this data to inform decision making and drive performance.

implementation is rarely monitored. Decision-makers describe how they lurch from crisis to crisis, addressing the symptoms rather than the causes of systemic under-performance, and this is particularly prevalent in human resource and financial management. The fragmentation of governance and management responsibilities stalls progress and dilutes accountability, including in much needed areas such as budget planning, process re-engineering, ICT

investments and infrastructure improvements. In a positive development, the quantity and quality of available data has improved significantly in recent years – the next step will be for leaders to use this data to inform decision making and drive performance.

13. Serbia's judicial sector is not under-resourced, but resources are not allocated effectively nor are they executed efficiently. The overall level of budgetary funding is consistent with EU averages, both on a per capita basis and as a share of GDP. However, budget planning fails to take account of service delivery needs, recent reforms, or Serbia's Chapter 23 accession aspirations. The large wage bill crowds out other expenditures, leaving little room for much-needed investments in training,⁸ ICT, and infrastructure.⁹ Human resources are mismatched with needs – there is an excessive number of judges at the top¹⁰ and low-skilled ancillary staff at the bottom,¹¹ but a 'missing middle' of mid-level specialist staff that will be necessary to support judicial modernization. And despite a huge stock of human resources, there is very little investment in ongoing training and staff development. Resources are not programmed jointly, and there is little coordination, and occasional competition, among fragmented stakeholders responsible for different resources. As a result, sector productivity is low and the judiciary represents poor value-for-money for the State. The judiciary is thus poorly placed to argue for a larger resource envelope, and in the current fiscal environment, budget cuts could be expected. The sector will need to learn to 'do more with less' through better planning and coordination in resource allocation and execution. Without significant changes in these areas, the sector will be incapable of delivering on the many reforms that will be necessary to meet EU accession requirements.

⁷ The Functional Review team developed the Performance Framework (at **Annex 2**) together with stakeholders for the purpose of the Review. That framework could be adapted by local stakeholders to serve as an ongoing tool for performance management. See Recommendation 1 and next steps.

⁸ Despite a huge stock of human resources, there is very little investment in ongoing training and staff development, even in basic areas such as training on the rollout of new laws or the use of case management systems.

⁹ The sector is also accumulating massive and growing arrears, largely due to a lack of financial planning and poor commitment control. Meanwhile, disbursements are low in much-needed areas of capital investment.

¹⁰ Serbia has one of the highest judge-to-population ratios in Europe, notwithstanding falling caseloads and the transfer of several functions from courts to external actors.

¹¹ Serbia has high staff-to-judge ratio compared with EU Member States, as well as a large scaffolding of temporary staff, contractors and volunteers.

14. **Looking ahead, a series of tough decisions will be required to align the sector's performance with EU benchmarks.** Serbia is entering the negotiation phase for Chapter 23 with a sound knowledge base. With the requisite commitment and will, alignment with EU levels of performance is achievable in the longer term. The Functional Review provides a comprehensive set of recommendations that are administratively and financially feasible, and which align with the NJRS goals and Chapter 23 accession requirements.

Serbia is entering the negotiation phase for Chapter 23 with a sound knowledge base.

15. **Just as the challenges analyzed in the Functional Review are inter-related, the recommendations are mutually reinforcing.** Serbian authorities can take comfort in that, at this current stage of development, they need not trade off one performance dimension against the other. Improvements in efficiency would yield higher quality of services and vice-versa, and improvement in either would improve access to justice. However, the implementation of recommendations would require a level of coordination among stakeholders that has yet to be demonstrated.

16. **Of the many findings and recommendations outlined in the Report, the Functional Review team suggests that leaders focus on the following seven priorities which can set the Serbian judiciary on a critical path to performance improvement.** Without significant progress in these seven priority areas, the sector will likely be unable to achieve the kind of transformation that would be necessary to align performance with that of EU Member States.

- a. **Develop a performance framework that tracks the performance of courts and PPOs against a targeted list of key performance indicators.** The Performance Framework Matrix (at Annex 2) could provide a starting point for selecting a targeted list of indicators to drive performance. To reduce excessive variation and lack of uniformity, efforts should focus on lifting the performance of the worst-performing courts to the current average, while rewarding high-performing courts. Court Presidents and Heads of PPOs should be required to monitor and report periodically on their performance against a small number of key performance indicators, and onerous reporting in other areas could be reduced. The SCC and RPPO can play a motivational role with courts and PPOs respectively, by recognizing fast-improvers and high-performers through non-financial awards and by showcasing their work. They could also facilitate more intensive dialogue among their respective managers (Courts Presidents, Heads of Departments, Court Managers, Heads of PPOs etc.) to exchange good practices and apply lessons in the course of addressing key performance challenges. User satisfaction will be an important aspect of performance measurement, so the Councils should prepare to conduct user surveys in the medium term. (See Recommendations 1 and 26 and next steps.)
- b. **Ensure that courts use the full functionality of their case management systems to improve consistency of practice and support evidence-based decision-making.**¹² Some courts are already using most of the functionality available to them and have seen first-hand the benefits in terms of performance improvement. The SCC could issue instructions to require consistency in practice across all courts. Court staff should be required to enter case data into relevant fields and scan documents to the maximum extent possible. All courts should be required to allocate cases using the existing random case assignment functionality and report on instances when overriding the algorithm was necessary. Scheduling of hearings should be done electronically. With a more consistent approach to case management, Court Presidents could monitor results in their courts through periodic managerial reports, including Ageing Lists. To support courts in meeting these requirements, training would be necessary for Court Presidents, judges and court staff on the functionalities and benefits of systems, in addition to ICT literacy courses. For its part, the MOJ should fund increases in server capacity and

¹² This applies to all case management systems, including AVP (which operates in Basic, Higher and Commercial Courts) and SAPS (which operates in Appellate and Administrative Courts and the SCC). The same could apply to SAPO (for PPOs) and SIPRES (for Misdemeanor Courts) and SAPA (for prisons), once their rollout has been completed.

critical upgrades to existing systems so that relevant data fields are mandatory and managerial reports are easy to produce. (See Recommendations 6, 25, 49 and next steps.)

- c. **Develop a comprehensive continuing training program for judges, prosecutors and court staff.** Despite the massive stock of human resources, the sector invests too little in training and staff development. The Judicial Academy could spearhead the initiative to boost the capacity of the sector's existing human resources and become the hub for learning across the sector. The Academy could start by rebalancing its existing resources (i.e. reducing the budget for initial training activities and increasing the budget for continuing training) and shifting the work programs of its staff more towards continuing training activities. A training needs assessment should be conducted as a priority. Based on it, a comprehensive program of training for judges, prosecutors and court staff could be launched, covering both substantive topics and practical skills, with a particular emphasis on aligning the judiciary with European practice. Tailored trainings should be provided to meet the specific needs of key actors, including Court Presidents, Heads of PPOs, court secretaries and advisors. (See Recommendation 38 and next steps.)
- d. **Reform procedural laws to simplify the service of process, and start simplifying business processes.** Service of process is currently a severe bottleneck in case processing across all court types and case types. This could be eased by reducing the number of services that are required in each case and creating a presumption of continual service after the first service. Internal procedures in courts could also be streamlined, applying lessons from the Subotica Basic Court. The MOJ could work closely with courts to analyze options for improving the modality of delivery and incentivizing the performance of servers, applying lessons from the Novi Sad Misdemeanor Court, the Uzice Basic Court and the Vrsac Basic Court. This will likely involve either amending MOUs with the Postal Service or moving away from the Postal Service altogether. Data on frequency, success rates and costs should be collected and monitored. Training should be provided to support judges, court staff and process servers to ensure effective implementation of a simplified system for service of process. Following reform in this bottleneck, simplification and streamlining of other business processes could reduce red tape in courts and PPOs. In the meantime, user checklists could be developed to assist court users to navigate procedures, applying lessons from the Vrsac Basic Court. (See Recommendations 8, 27 and next steps.)
- e. **Eliminate the backlog of old utility bill enforcement cases.** Mass resolution of backlogged enforcement cases in Basic Courts is unlikely to change service delivery in real terms because most cases are inactive and enforcement involves little judicial work. However, resolution will be necessary as Serbia embarks on the Chapter 23 process. Clearing the desks of around 1.7 million pending enforcement cases would also signal a fresh start for many courts. This would likely boost morale and dramatically improve Serbia's performance metrics among EU comparator countries. Basic Courts should dedicate more staff and effort to working through the enforcement backlog, applying lessons from the Vrsac Basic Court's evidence-based approach. They should also identify all available opportunities to purge old inactive utility bill cases, applying lessons from Belgrade First Basic Court's experience with Infostan. Meanwhile, Basic and Higher Courts should analyze the backlog of non-enforcement cases using comprehensive Ageing Lists and prioritize the resolution of those cases. Close monitoring and ongoing support from the SCC will continue to be required. Recognition by the SCC of high-performers may also motivate Basic Courts to complete the task. (See Recommendation 2 and next steps)
- f. **Develop a more realistic budget within the existing resource envelope.** As the resource envelope is highly unlikely to increase in the tight fiscal environment, performance improvement will require that the sector 'does more with less'. Sector leaders in the HJC, SCC, MOJ, SPC and RPPO could coordinate the preparation of future annual work plans and negotiate trade-offs within the existing resource envelope to prioritize expenditures that boost productivity and performance (such as training, ICT upgrades, process re-engineering and procedural efficiency reforms) and forego expenditures in other areas. Leaders should clarify responsibilities for capital and current expenditure to overcome paralysis and low disbursement in those areas. The HJC and SPC will require technical assistance and some software to assume their functions. For example as a priority, the SPC and HJC should automate their financial management functions to enable greater flexibility in mid-year reallocations of resources for courts and PPOs. The MOJ, together with the HJC and SPC, should develop a plan to reduce arrears over

time, including through better sector coordination and greater commitment control in individual courts and PPOs. (See Recommendations 32, 33, 34 and next steps.)

- g. ***Adjust the resource mix over time by gradually reducing the wage bill and increasing investments in productivity and innovation.*** The HJC should freeze judicial appointments, as the judiciary already has an over-supply of permanent judges, particularly in light of falling trends in incoming cases, shrinking mandates for courts and European benchmarks. The HJC can gradually reduce the number of judges by not replacing retiring judges and promoting judges from within the system where needs arise.¹³ For its part, the MOJ should maintain the recruitment freeze on staff positions, phase out the 'shadow workforce' of temporary staff and volunteers, and implement a staff reduction program, focused on low-skilled ancillary staff, including registry staff in verification roles. With the savings, the Council and the courts should invest in mid-level technical staff with specialized skills (ICT, research, analysis, court management etc.) to support the creation a modern administration capable of delivering to European standards. The sector also has significant needs for infrastructure improvements and ICT upgrades. The MOJ could start by conducting ICT and infrastructure stock takes and building capacity within its Investment Department. In exchange for progress in the implementation of other Functional Review recommendations, donors may be willing to contribute funds in support of the implementation of this plan. Adjusting the resource mix will require a coordinated approach by sector leaders and the approval of the MOF but it is critical to re-shaping the structure of the judiciary to drive performance. (See Recommendation 24, 25, 35 and next steps.)

¹³ Once appointed permanently, judges cannot generally be removed and may not be transferred without their consent, and they generate high costs, including salaries, allowances, accompanying staff, etc.

Summary of Main Findings and Recommendations

External Performance: Efficiency, Quality and Accessibility of Justice Services

17. **The delivery of justice services in Serbia is constrained by a combination of efficiency, quality, and access challenges.** From the users' perspective, court and attorney fees are expensive, and the process is long, frustrating, and subject to various vagaries and abuses. By the end, the users may secure a judgment in their favor but still struggle to see it enforced. The service delivery challenges are thus inter-related and mutually reinforcing.

18. **Below is a summary of the main findings and recommendations related to the external performance of the judicial system in Serbia,** as measured against the indicators and European benchmarks outlined in the Performance Framework agreed among stakeholders.

i. In Context: Assessing Performance in Light of Caseloads and Workloads

19. **Court performance should be measured in light of the demand for court services including the quantity and nature of cases, workloads, and changes in those factors over time.**

20. **Demand for court services in Serbia is weaker than EU averages.** When measured relative to population, Serbian courts receive around 13.8 incoming cases per 100 inhabitants, which is slightly lower than the EU average. Meanwhile, Serbia has nearly double the ratio of judges-to-population than the EU average, with over 39 judges per 100,000 inhabitants. As a result, the incoming caseloads per judge in Serbia are approximately half the EU average¹⁴ and are also lower than most EU11 Member States and regional neighbors.

Incoming caseloads per judge in Serbia are approximately half the EU average and are lower than most EU11 Member States and regional neighbors.

21. **Caseload figures in Serbia are also highly inflated.** Many matters are counted as a 'case' that would not be considered as such in other systems.¹⁵ Much of the caseload is composed of cases requiring little judicial work, such as enforcement cases, with a number twice as high as the EU average, and a large number of old inactive cases. Caseload inflation can result in misleading statements about the real demand pressures facing the judiciary. Once case numbers are sifted and further analyzed, judicial workloads appear to be modest.

¹⁴ According to the CEPEJ, in Serbia in 2012, the judiciary received on average 350 incoming cases per judge, whereas the EU average was 840. A more conservative EU average, which removes certain outliers, is 453 incoming cases per judge, approximately 30 percent higher than in Serbia.

¹⁵ For example, a criminal investigation counts as one case, then the ensuing trial counts as a separate case. If the decision is appealed, the appeal is a separate case, and if the appeal results in a re-trial then that too counts as a separate case. If the criminal trial raises an issue of compensation to the victim, then the compensation aspects is a separate civil case.

22. **Caseloads are distributed unevenly among courts and without any clear pattern.** Some small courts are extremely busy, whilst larger ones are less so. Higher Courts and Appeals Courts receive a comparatively small caseload on average. A series of painful reforms and court re-organizations have done little to address the uneven caseload distribution.

Some small courts in Serbia are extremely busy, whilst larger ones are less so.

23. **Demand for court services is also falling significantly.** Declines are most apparent in Basic and Commercial Courts where the number of incoming cases fell by over one-third and one-half respectively from 2010 to 2013. The decline is likely attributable to the transfer of judicial functions to other private or public actors and the decrease in affordability of court services. As a result, workloads are falling and the average incoming caseloads of judges across the system declined by one-third from 2010 to 2013.

24. **Even so, judges, prosecutors and staff throughout the system report feeling busy and overburdened with work.** The reasons lie in the systemic problems in the way the system operates that undermine external and internal performance, and not in the numbers of judges, staff, or cases. Therefore it is the systemic problems, and their possible solutions, which are the focus of this Review.

Average caseloads declined by one-third from 2010 to 2013.

a. Efficiency in Justice Service Delivery

i. Main Findings

25. **System efficiency is a significant challenge facing the Serbian judiciary but is improving in some areas.**

26. **Production and productivity in courts has improved over the last three years, but more should be done to address pockets of under-performance.** Clearance rates

If the output of the worst performing courts could be lifted to the current average, productivity would be in line with performance in EU11 countries.

rose and are currently in line with EU averages, but this success is due largely to declines in incoming cases, and given the amount of resources they could have been higher.¹⁶ There is significant variation across courts, but few courts produced a less-than-100 percent clearance rate by 2013. The average case dispositions per

judge are in the acceptable range but vary markedly by court type and court location.¹⁷ Average case dispositions per judge have declined in the last two years in Basic, Commercial, and Misdemeanor Courts, again to due to a reduction in incoming cases and an increasing number of judges. It appears that judges generally dispose of about the same number of cases that they receive – whether that figure is big or small – without much impact on case backlogs. Many courts resolve fewer cases per judge than could be reasonably expected, and many judges resolve fewer cases than their colleagues. If the output of the worst performing courts could be lifted to the current average, productivity would be in line with performance in EU11 countries. Judges across Serbia would then have more time to contribute to other important functions that support the attainment of Chapter 23 standards, including training.

27. **In terms of timeliness of case processing at first instance, the picture is also mixed but improving.** Serbia's pending stock of unresolved cases per 100 inhabitants is high in comparison to EU averages, although this is improving for civil and commercial cases. Congestion rates remain high at around 1.41 and are particularly high in Basic, Commercial, and Misdemeanor Courts. On average, new cases proceed through the system relatively smoothly: as a result the average age of resolved cases is relatively young across all case types. However, backlogs persist because old cases remain 'stuck' and many inactive cases remain on the books. Although the case management systems are capable of producing Ageing Lists of Unresolved Cases, they are not routinely produced and so Court Presidents do not generally analyze them. This is unfortunate because Ageing Lists are perhaps the most useful tool available to track timeliness in case processing. The Functional Review developed an Ageing List for the purpose of this report, and it highlights an alarming number of cases that remain pending after three, five, and even ten years. These old cases are unlikely to meet the timeliness requirements of the European Convention on Human Rights (ECHR) and they thus require particular attention. The time to disposition of resolved cases in days varies markedly by case and court type. The time to case disposition is short in Higher Courts (98 days) but long in Basic Courts (736 days). In civil and commercial litigation, Serbia's time to case disposition is reasonable and in line with EU averages. Whereas in enforcement cases, timeliness is intractably long and far worse than elsewhere in Europe. Unsurprisingly, user perceptions of timeliness remain negative, and the long duration of cases frustrate court users. Furthermore, data on the timeliness of first instance proceedings does not reflect the full user experience, as appeal rates are high and the 'recycling' of cases through re-trials is too common, and this further prolongs the ultimate resolution of disputes for the parties.

¹⁶ For example, the judiciary maintained average clearance rates over 100% across most court types and case types during the period when more than 800 judges and prosecutors were absent from work during the failed re-appointment process. Their gradual return to work by 2013 should have significantly boosted clearance rates that year. Combined with falling incoming cases, clearance rates in 2013 could have increased dramatically. Instead, clearance rates remained about the same, and actually fell in all Higher, Appellate, Commercial and Misdemeanor Courts. This suggests that there is much capacity within the system to do more to tackle caseloads.

¹⁷ For example, the Higher Courts currently produce fewer dispositions per judge than the SCC, and judges in the busier Basic Courts dispose of three times the number of cases than their colleagues in the least busy Basic Courts.

28. **Effective enforcement underpins the justice system, and on this indicator Serbia lags far behind EU Member States.** Enforcement cases comprise much of the backlog and cause most of the congestion and delays in courts. Enforcement departments within courts are often poorly staffed and exhibit low morale. Much of the problem relates to unpaid utility bills, which make up around 80% of the enforcement caseload.¹⁸ While recent reforms will ensure that many new monetary enforcement cases, including utility bill cases, are now channeled to private enforcement agents instead of to courts, an d ongoing monitoring of this profession will be required to ensure their effectiveness in dealing with these cases. Meanwhile, the elimination of the existing backlog of old enforcement cases in courts will require specific measures.¹⁹ On a positive note, remedies are available. Mass resolution (purging) of cases has proven successful at the Belgrade First Basic Court, and this experience could be replicated in other courts. Targeted evidence-based approaches have also shown some promise in the Vrsac Basic Court. By contrast, enforcement cases that do not relate to utility bills, such as the enforcement of court judgments, proceed relatively smoothly, though there remains room for improvement.

The successful mass resolution of enforcement cases in the Belgrade First Basic Court could be replicated in other Basic Courts.

29. **A range of procedural inefficiencies cause frustration among court users and practitioners and contribute to delays.** Service of process is required at each step of the process, and unnecessary delays here cause a ricochet effect through the system. Avoiding service of process is relatively easy; on average at least 57% of attempts at service of process fail. Stakeholders are unanimous that the Postal Service is ineffective and it has little incentive to improve whilst it charges the courts per attempt of service. Related cases are rarely joined (and even claims and counter-claims are not routinely joined) resulting in duplication. However, judges are unlikely to change that behavior and join cases more often whilst ever they are monitored on the raw quantity of their resolved cases. Time management in courts is often poor. Hearings are held only in the mornings, despite a lack of courtrooms. Some courts use existing case management software to schedule hearings, while others rely on manual diaries which are less reliable and more time-consuming than their modern equivalents. Routinely, there is a long delay in scheduling the first hearing in a case and an average three-month time lag between hearings. Case processing practices are outdated, including disjointed hearings and the manual exchange of case information. Case files get misplaced and take a long time to transfer from one court to another. Preparatory departments have shown some promise, but many courts have been slow to establish them, often due to lack of space or reluctance on the part of judges to part with 'their' assistants.²⁰ Hearings are often cancelled or adjourned because of the non-appearance of prisoners, attorneys or expert witnesses: this is often due to poor coordination between courts and critical service providers, which is exacerbated by the growing arrears owed to these providers. An excessive number of hearings do not contribute to resolution of the case, suggesting that judges are not using their powers to actively manage their cases. For their part, attorneys perpetuate procedural inefficiency in the courts, and they have little incentive to change behavior whilst ever they are paid per hearing.

In Serbia, avoiding service of process is relatively easy: on average at least 57% of attempts at service of process fail.

¹⁸ At the end of 2013, around 2 million enforcement cases remained unresolved in the Basic Courts, of which around 1.7 million related to unpaid utilities bills.

¹⁹ Some have suggested that private enforcement agents should also be allocated old enforcement cases, but the Functional Review advises against this.

²⁰ Preparatory departments are designed for medium and larger sized courts, where judicial assistants and court staff work together in a pool to ensure that procedural requirements are met and that cases are ready for hearing.

30. **Procedural abuses by litigants often go unmanaged, as do frivolous claims and appeals.** Trial judges fail to exercise their powers to curtail abuses due to a range of factors, including fear that their decisions may be overturned by appellate courts, their close relationships with attorneys, as well as a general dynamic of torpor within courts. In some areas however, stronger procedural laws, including tougher sanctions, as well as greater clarity from appellate jurisdictions, may assist judges to be more proactive in case management.

Preparatory departments have shown some promise, but many courts have been slow to establish them.

31. **Efficiency in the delivery of prosecution services is also a concern, but a lack of data inhibits more detailed analysis in the Functional Review.** The prosecution service is also undergoing profound change in the transition to a prosecution-led adversarial system under the new Criminal Procedure Code (CPC). The transfer of more than 38,000 investigation cases from Basic Courts to PPOs reduced inventory in the courts but created a new backlog for prosecutors, which they are struggling to process. New obligations have also expanded their scope of works, and they are ill-equipped to deal with these. Work processes require review to adapt to this new environment.

32. **Meanwhile, the efficiency of administrative services²¹ is high and improving, but unfortunately many of these functions will soon be taken from courts.** The time required to complete verification tasks has reduced by one-third from 2009 to 2013, and in at least half of all cases, verification can be completed at one location within a half-hour. User satisfaction is often over 70% and has increased on most aspects between 2009 and 2013. Perceptions of the conduct and competence of staff has also improved. Nevertheless as part of a controversial reform to create private notary services, these tasks are scheduled to be transferred in 2015 from courts to private notaries. It is unclear what problem this aspect of the reforms is seeking to solve, given high existing levels of satisfaction with verification services. If courts were to be able to compete with notaries for basic verification tasks, they would be well-placed to provide good value-for-money services. If courts do lose these functions, significant staff reductions should be expected to follow.

ii. Recommendations and Next Steps

Recommendation 1:

Strengthen performance management in courts by recognizing and rewarding higher-performing courts and implementing performance improvement plans for under-performing courts. Intensify dialogue between courts to exchange good practices and experiences through a more intensive program of meetings, workshops and colloquia.²² Lifting under-performers to the current average would considerably improve efficiency and consistency of practice, and bring Serbia's performance closer in line with that of EU Member States. These recommendations can be implemented at relatively low cost, using the Performance Framework indicators (at **Annex 2**) as an initial reference.

- ✓ Establish a department in the SCC to analyze court performance issues, using the Functional Review and the Performance Framework as a foundation. (SCC – short term)
- ✓ Select a targeted number of indicators that drive court performance and monitor these across all courts. (SCC – short term and ongoing)
- ✓ Acknowledge performance improvements and innovations by showcasing their work at regular symposia and through non-financial rewards of recognition (e.g. Court Staff/President of the Year, Best Performing Court of the Year, Most Improved Court of the Year; Innovator of the Year etc.). (HJC with MOJ – short term)

²¹ This includes verification of documents and related services provided by courts.

²² This recommendation aligns with NJRS Strategic Measure 5.1.2.3: Undertaking of regular periodical efficiency analyses of the judicial network using improved methodology; Strategic Measure 5.1.2.4: Adjusting of the judicial network to the needs, pursuant to the results received from periodical analyses; Strategic Measure 5.1.2.5: Undertaking of correctional measures on the level of individual Courts and PPOs with the goal of improving efficiency of the network of Courts and PPOs as a whole.

- ✓ Disseminate individual and institutional good practices and innovations through workshops and colloquia among Court Presidents and heads of departments within courts. (SCC with HJC – medium term)
- ✓ Carry out targeted interventions aimed at assisting those courts facing severe performance challenges to rise to the current averages. (SCC – medium term)

Recommendation 2:

Prioritize the implementation of the SCC Backlog Reduction Strategy, targeting in particular the utility bill enforcement backlog through analysis and a coordinated package of incentives.²³ Develop Ageing Lists as a key tool for managing timeliness and backlog reduction, and monitor the progress of each court. This builds on the work already underway by the Backlog Reduction Working Group. Results here would help bring Serbia's efficiency in line with that of EU Member States. Moderate funds may be needed for staff overtime to address the backlogs. The initial recommendations can be implemented at relatively low cost, although technical assistance may be required for some items.

- ✓ Accelerate the backlog reduction program and adopt the measures proposed in the Best Practice Guide to prevent the recurrence of backlogs. (HJC, SCC – short term and ongoing)
- ✓ Monitor prosecutorial investigations to prevent the accumulation of an investigative backlog. (SPC and RPPO – short term and ongoing)
- ✓ Analyze why the Infostan approach to withdraw inactive utility bill cases was so effective, replicate lessons learned with other utility companies. (SCC liaising with MOF, MOE, Utilities – short term)
- ✓ Establish taskforces in those courts most affected by utility bill backlogs. Re-allocate sufficient staff, particularly judicial assistants, from other departments to these taskforces, and provide them sufficient ICT equipment and software. Court Presidents should provide the necessary leadership and managerial support to enable them to succeed. Develop a comprehensive Ageing List of enforcement cases, and create ambitious yet realistic targets. Closely monitor the results of taskforces and report regularly to the relevant Working Group. Recognize good performers through evaluation, promotion and non-financial recognition and awards. (SCC – short term and ongoing)
- ✓ Create incentives to overcome the stigma that enforcement work is unattractive, such as giving 'bonus points' for the resolution of enforcement cases in productivity norms or considering backlog reduction efforts in evaluation and promotion processes. (HJC, SCC – short term)
- ✓ Analyze the non-enforcement backlog with a comprehensive Ageing List. Require that Courts report routinely on resolution of old cases. (SCC – short term)

Recommendation 3:

Monitor the implementation of recent reforms introducing private enforcement agents, including workloads, costs, quality and efficiency of service delivery, and integrity.

- ✓ Analyze data on the use of enforcement agents to assess their effectiveness and impact on court performance. (MOJ, SCC – short term, ongoing)
- ✓ Create an internal panel of the Chamber of Bailiffs to process complaints against enforcement agents as a first tier. Incorporate remedial training as a potential sanction for agents. Disseminate information regarding avenues for complaint against enforcement agents. (MOJ, Chamber, JA – medium term)
- ✓ Conduct a comparative analysis of the cost of enforcement services (including deposits, reimbursable expenses, and fees) in other European jurisdictions, and analyze models and affordability. Consider reducing the enforcement deposit and better regulating reimbursable expenses for enforcement agents. (MOJ – short term)

²³ This recommendation aligns with NJRS Strategic Guideline 5.3.6: Design and implementation of unified backlog-clearance program while respecting equalization of the number of cases per judge, establishing a system of on-going horizontal transfer and relocation of judges and public prosecutors, in accordance with the constitution and with adequate stimulation, and efficient monitoring of the of the program implementation.

- ✓ Introduce caps on the number of outstanding cases per enforcement agent and avoid assigning additional cases if performance standards are not met. (MOJ, Chamber – medium term)
- ✓ Amend the location from where enforcement agents are appointed from the creditor's territory to either the creditor's territory or the territory where the debtor is registered to ease logistical constraints on enforcement. (MOJ – short term)

Recommendation 4:

Establish preparatory departments in all medium and large sized courts. Monitor their results and exchange experiences.²⁴ Judges, court staff, and practicing attorneys acknowledged these departments would be useful, particularly for ensuring that cases are ready for hearing, but the lack of staff or commitment to the process hindered the implementation. Departments can be established in the short term, while evaluating the results will require more time. The cost is moderate with the potential for substantially improved efficiency.

- ✓ Establish preparatory departments in those medium and larger courts that lack them. Collect baseline data on time to disposition and procedural efficiency, and monitor results. (SCC, MOJ – short term)
- ✓ Disseminate information about results to all courts and recognize good performance. (SCC, MOJ – medium term)

Recommendation 5:

Develop and monitor performance statistics in PPOs.²⁵ Monitoring the workload, via electronic means wherever possible, should be done in the short term for low cost, while making changes to correct problems will follow, with costs depending on what correction actions are taken.

- ✓ Design more detailed and disaggregated performance statistics for PPOs. (RPPO – short term)
- ✓ Monitor performance statistics in PPOs to prevent backlog from accumulating, and recognize good performers. (SPC, RPPO – medium term)

Recommendation 6:

Collect and analyze data on procedural efficiency to inform future reforms.²⁶ **Provide practical training to support the rollout of recent procedural amendments. Adjust productivity norms to encourage judges to join related cases.** The CCJE calls for judges to control the timetable and duration of proceedings, from the outset and throughout the legal proceedings. These recommendations can be accomplished in the short term at relatively low cost.

- ✓ Require staff to enter data into existing fields in case management software (AVP and SAPS). Provide training to staff on consistent data entry. Generate regular analytic reports and monitor results. (SCC, Courts, ICT providers – short term. See also ICT Management section)
- ✓ Create new fields in AVP and SAPS, focusing on data needs relating to timeliness, procedural efficiency, and prevention of procedural abuse. (MOJ – short term)
- ✓ Provide training to lower and higher court judges and judicial assistants on issues affecting procedural efficiency, including training to judges on their recently-enhanced powers to manage cases. (HJC, SCC, JA – medium term)

²⁴ This recommendation aligns with NJRS Strategic Guideline 5.3.6: Design and implementation of unified backlog-clearance program while respecting equalization of the number of cases per judge, establishing a system of on-going horizontal transfer and relocation of judges and public prosecutors, in accordance with the constitution and with adequate stimulation, and efficient monitoring of the of the program implementation.

²⁵ This recommendation aligns with NJRS Strategic Measure 4.2.1.2: Introduction of a centralized data collection and processing system in all PPOs.

²⁶ This recommendation aligns with NJRS Strategic Goal 5.2: Establishing of e-justice; Strategic Guideline 5.3.2: Amendments to the normative framework in a manner that would contribute to the reduction of the duration of court proceedings; Strategic Measure 5.3.3.4: Mandatory education of administrative – technical staff and regulation of the issue of competence in the field of their education; Strategic Measure 4.2.1.3: Conducting trainings for employees in courts and PPOs for working with the centralized data collection and processing system.

- ✓ Where variations in procedural efficiency exist between Courts, analyze and convene colloquia between courts to share experiences. (SCC – medium term)
- ✓ Analyze the extent of appeals, and procedural abuses; identify causes and develop possible sanctions.²⁷ (SCC – medium term)

Recommendation 7:

Tighten scheduling practices for court hearings, including by conducting hearings throughout the day and fully utilizing case management software functionality. Collect and monitor data on scheduling patterns, such as reasons for adjournments, to inform future reforms.²⁸ Most of these changes could be made in the short term for little cost.

- ✓ To maximize the use of limited courtroom facilities, schedule hearings throughout the day, except in extraordinary circumstances. (SCC/Courts – short term)
- ✓ Collect and analyze data on cancelled and adjourned hearings and the reasons for them. (SCC/Courts – short term)
- ✓ Require that judges close each hearing by setting the next hearing date within a standardized timeframe, with only limited exceptions. (SCC/Courts – short term)
- ✓ Require that all courts use existing case management software to electronically schedule court hearings. Provide training as necessary. (SCC, JA, MOJ – medium term)

Recommendation 8:

Reduce the requirements for service of process and reconsider arrangements for the delivery of service, applying lessons from some Basic and Misdemeanor Courts.²⁹ Most of these steps can be taken in the short term at low cost.

- ✓ Monitor the implementation of recent procedural amendments which attempt to close loopholes on service of process. Collect and monitor data on service of process, including attempts and costs, and identify sources of variations. (MOJ, SCC, Courts – short term)
- ✓ Re-negotiate the MOJ's outdated MOU with the Postal Service and pay only for successful service (modelling the experience from Uzice Basic Court). Increase training and awareness among postal officers of their requirements and the sanctions for abuse. Create a plan to monitor results and to report on changes. (MOJ – short term)
- ✓ Work with Courts to build flexibility into their budgets so that they can innovate, for example by contracting with private couriers (like Sloboda which delivered an inexpensive and successful solution in the Novi Sad Misdemeanor Court), or delivery men, as occurs in the Vrsac Basic Court. (HJC, MOJ – medium term)
- ✓ Provide training to judges on new rules and encourage them to take a proactive approach to managing service of process. (SCC, JA – medium term)
- ✓ Amend procedural laws to create a presumption of continual service after the first service of process, with the onus on the party to notify the Court of any change of address, along with sanctions for non-compliance. (MOJ, HJC – medium term)

²⁷ This aligns with CCJE Opinion No. 6 (2004), which indicates provision should be made for sanctioning abuse of court procedure.

²⁸ This recommendation aligns with NJRS Strategic Guideline 5.3.4: Infrastructural investments in courts and prosecution facilities targeted at tackling the lack of courtrooms and prosecutorial cabinets, thereby increasing the number of trial days per judge, reducing the time between the two hearings and significantly expediting the investigative proceedings.

²⁹ This recommendation aligns with NJRS Strategic Guideline 5.3.2: Amendments to the normative framework in a manner that would contribute to the reduction of the duration of court proceedings.

b. Quality of Services Delivered

33. **As outlined in the Performance Framework, the quality of service delivery covers a range of dimensions ranging from quality of legislation to quality in case processing, decision-making, and appeals.** The integrity of the system is also a dimension of quality in the eyes of users. Poor quality has significant implications for efficiency of service delivery as well as for the access to justice services.

i. Main Findings

34. **The poor quality of legislation in Serbia causes a range of problems for the courts.** Lack of precision in legislative drafting creates ambiguity which is then exploited by parties. Overlapping and conflicting laws cause inconsistency of practice, while gaps in the law leave judges with little guidance. In all, 21 percent of judges and 19 percent of lawyers report poor quality legislation as the main reason for the poor quality of court services. Only 13 percent of judges and prosecutors considered Serbian laws to be fair and objective.

35. **Deficiencies in the policymaking and legislative process perpetuate these problems.** There has been a proliferation of new legislation in recent years, often developed without policy analysis, and with limited analysis or buy-in from the stakeholders responsible for their implementation. Ad hoc working groups are convened by the MOJ to consider and draft each new law, and their organizational methods are haphazard. There are too many working groups, and the deliberative process is time-consuming without producing the requisite quality of drafts. Working groups tend to debate concepts rather than conduct analysis based on policy criteria, and they tend not to rely on data to inform decision-making. They do not sufficiently consider the financial and operational implications of proposed legislation, as evidenced by a lack of policy analyses or fiscal impact analyses. Consultation processes are perfunctory. Legislation is routinely passed by the National Assembly under emergency procedures.

36. **Following the enactment of new legislation, there has been limited outreach and training to embed new behaviors.** In recent years, many laws have been ‘stillborn’, unable to be effectively

Many laws have been ‘stillborn’, unable to be effectively implemented and requiring a new working group to start over again. This has created a constant and unproductive ‘churn’ of reform.

implemented and requiring a new working group to start over again. This creates a constant and unproductive ‘churn’ of reform. Professionals have little time to apply the new legislation before they are revised. Many judges stall their decisions or continue to apply old legislation while waiting for appellate courts to provide guidance on new legislation. There is also evidence of reform fatigue, which is concerning at the outset of the Chapter 23 process.

Legislative reform will continue through the accession process, but the quality of the working group process should be enhanced to prevent the Chapter 23 accreditation process from becoming a merely box-ticking exercise.

37. **When disputes arise, the application of the law is inconsistent across the country.** More than 80 percent of judges, prosecutors and lawyers express concerns about inconsistent or selective interpretation of laws and inconsistent jurisprudence. Process Maps highlight that the ‘law in practice’ differs from the ‘law on the books’ in certain cases and at certain locations.

38. **Current arrangements for case processing present several challenges in terms of quality.** The

More than 80 percent of judges, prosecutors and lawyers express concerns about inconsistent or selective interpretation of laws and inconsistent jurisprudence.

system lacks a standardized approach to routine aspects of case processing. There are no checklists, standardized forms or templates for routine aspects of case processing, nor is there a consistent approach to drafting routine documents, such as legal submissions, orders, or judgments. Meanwhile, there are few examples of

specialized case processing for the types of cases that often warrant a tailored approach. Certain types of cases, such as small claims, complex fraud and gender-based violence, can tend to get ‘stuck’ in the system because they lack specialized case processing practices.

39. **In criminal cases, the quality of decision-making by judges and prosecutors varies.** Some innovations are showing promise, including the use by prosecutors of deferred prosecution³⁰ and plea bargaining. In deferred prosecution cases, arrangements to implement and monitor sanctions remain weak, causing prosecutors to rely disproportionately on cash payments as sanctions rather than more proactive rehabilitative measures, such as community work or psycho-social treatment. Monitoring is also inconsistently applied across the territory, largely due to the limited geographic reach of the Commissioner, undermining the principle of equality before the law. Plea bargaining procedures could be simplified by giving greater autonomy to Deputy Prosecutors. Sentencing appears inconsistent, and many stakeholders report that it is overly lenient, and prosecutors could play a more constructive role in compiling data on sentencing practices and trends and recommending sentences accordingly. Alternative sanctions could be strengthened by supporting the arrangements for implementing and monitoring sanctions. Alternative sanctions should be particularly encouraged in Misdemeanor Courts, where deferred prosecution and plea bargaining do not occur and the prospects for rehabilitation for minor offenses are high.

Monitoring of deferred prosecution and alternative sanctions is inconsistently applied across the territory, largely due to the limited geographic reach of the Commissioner. This undermines the principle of equality before the law.

40. **More broadly, the Serbian judicial system struggles to fully comply with ECHR requirements, as evidenced by the large caseloads in Strasbourg.** Non-compliance tends to be found in a limited number of case types, highlighting specific problems relating to inconsistent application of the law and non-enforcement of the final decisions against state-owned enterprises. It thus appears that the bulk of Serbia’s non-compliance relates to financial complaints against public entities, rather than structural problems in the judicial system. Friendly settlements offer some solution here. In an attempt to comply with the ECHR right to trial within a reasonable time, recent procedural reforms now enable parties to pursue a separate cause of action for delayed proceedings. These reforms are well-intentioned but run a high risk of producing unintended, or even perverse, consequences. Their implementation should be monitored closely and adjustments may be required.

41. **The appeals system is at the heart of Serbia’s problems in terms of quality of decision-making.** Appeal rates are very high on average, as are reversal rates³¹ on appeal. Rates also vary markedly across court types, case types, and court locations. Without plausible explanation, some courts exhibit appeal rates and reversal rates that are double those of the court adjacent to it. Appeals from Basic Courts to Higher Courts (known as small appellation) are not well monitored in the system and, upon analysis, are particularly alarming. The perceived unfairness of the system, combined with its lack of uniformity and consistency, encourages court users to appeal. Attorney incentives may also play a hand in driving up appeals. At the same time, levels of trust in the appellate system among court users are low. On a positive note, recent procedural amendments to reduce successive appeals (known as the ‘recycling’ of cases) seem to be working. Nonetheless, appellate judges (notwithstanding their lighter caseloads) continue to remand cases back to the lower jurisdiction for re-trial more often than they are required to, rather than substituting their own judgment. Excessive remands duplicate workloads, inflate case numbers and perpetuate inconsistent practices by failing to provide adequate guidance to lower courts. The SCC plans to improve uniformity in the application of the law through a range of measures, including

Without plausible explanation, some courts exhibit appeal rates and reversal rates that are double those of the court adjacent to it.

³⁰ Deferred prosecution is commonly referred to in Serbia as ‘opportunity cases’.

³¹ Reversal rates are commonly referred to in Serbia as ‘abolishment rates’.

Certification Commissions. These efforts should be prioritized and augmented with a suite of basic quality-enhancing measures, which together could reduce appeal rates over time.

42. Meanwhile, corruption remains a challenge for the Serbian judiciary. Serbia lags EU Member States

In addition to paying bribes, around 19 percent of users report ‘pulling strings’ to influence the courts.

and neighboring countries on all comparative indices of perceived corruption in the judiciary. Court users admit that they engage in corruption to advance their cases.³² Bribery of court staff appears to be more common than bribery of judges, who likely rely on more subtle means. In addition to bribes, around 19 percent of users

report ‘pulling strings’ to influence the courts. Such informal means are more often used to affect the procedure rather than the outcome, suggesting that improvements in transparency and efficiency in case processing would reduce opportunities for malfeasance. Gift-giving is also common and goes largely unchecked. Surveys indicate that the perceived prevalence of corruption is declining across the system. However, in Misdemeanor Courts, public trust and confidence is falling.

43. Perceptions of judicial independence in Serbia remain low. A significant portion of judges (25

25 percent of judges, 33 percent of prosecutors and 56 percent of lawyers report that the Serbian judicial system is not independent.

percent) and prosecutors (33 percent) report that the judicial system is not independent, compared with 50 percent for the public and business sector, and 56 percent of lawyers. The same view is reflected in Serbia’s poor rankings in terms of judicial independence on a range of global indices. Notably, perceptions of judicial

independence have worsened since 2009, which reduces the credibility of the system and users’ trust and confidence in it.

ii. Recommendations and Next Steps

Recommendation 9:

Improve the organizational methods of Working Groups that develop draft policy and legislation relating to the judiciary. Require that working groups identify policy objectives and options, analyze fiscal and operational impacts of policy options, and prepare detailed implementation plans for the rollout of reforms.³³

- ✓ Ensure standard terms of reference for working groups, with accompanying checklists for Chairs of working groups. Ensure that working groups articulate precise policy objectives and criteria. (MOJ – short term)
- ✓ Require that working groups analyze the causes for previous policy failures using system data, surveys and assessments of gaps between the ‘law on the books’ and the ‘law in practice’. Require that all working groups conduct fiscal analyses and operational analyses of proposed reforms and policy options. Base recommendations on evidence. Ensure that draft legislation recommended by each working group includes an estimated breakdown of the costs of implementation. (MOJ – short term)
- ✓ Ensure that each working group includes a specialist in legal drafting to ensure consistency and completeness of draft legislation. Conduct training on legislative drafting and interpretation. (MOJ, JA – medium term)
- ✓ Prepare implementation plans for the dissemination and rollout of new legislation and policy, and engage the Judicial Academy to deliver comprehensive training on new legislation for judges, prosecutors and court staff. (MOJ, JA – short term)

³² Around 10 percent of court users report that a bribe was solicited when they had dealings with a court. Figures on reported corruption are expected to be significantly under-stated.

³³ This recommendation aligns with NJRS Strategic Guideline 1.3.3: Analysis of the results of implementation of the ‘judicial laws’ and amending them pursuant to the results of the analysis; Strategic Guideline 1.3.4: Analysis of the results of implementation of substantial and procedural laws (Criminal Procedure Code, Civil Procedure Code, Law on Enforcement and Security, etc.).

- ✓ Disseminate information about reforms through the media and on the websites of courts and the MOJ to inform citizens and court users. (MOJ, SCC – short term)

Recommendation 10:

Implement basic quality-enhancing measures. Standardize formats for routine procedures in Courts, including through the development of templates and checklists.³⁴ The CCJE recommends that simplified and standardized formats for documents be adopted to initiate and proceed with court actions.³⁵ Initial forms can be created in the short term at relatively low cost. Training can be incorporated into existing programs.

- ✓ Develop and require courts to use standardized templates and forms for routine procedures and processes, applying lessons from the Vrsac Basic Court. (SCC – medium term)
- ✓ Provide training on their use to judges, prosecutors, and court staff to enhance consistency in case processing. (SCC, JA – medium term)
- ✓ Disseminate to court users and legal professionals. (SCC – medium term)

Recommendation 11:

Develop pilots in Misdemeanor, Basic and Higher Courts for specialized case processing departments, including a specialized small claims department in Basic Courts with streamlined procedures.³⁶ These recommendations can be implemented in the medium term for relatively low cost.

- ✓ Assess the feasibility of establishing small claims departments inside Basic Courts. If successful, start with a number of pilot Courts, and monitor results. Support departments with incentives, such as awards and recognition or consideration in evaluation or promotion, to attract high-quality judges and staff. Develop streamlined procedures and lay guides that could be followed by self-represented litigants. (MOJ, HJC, SCC – short term and ongoing)
- ✓ Create a working group to identify what kinds of cases could benefit from specialized case processing, including for example tax and customs cases in Misdemeanor Courts and gender-based violence and fraud in Basic and Higher Courts. Analyze lessons learned from the Commercial Courts. (MOJ, HJC – medium term)
- ✓ Develop pilot programs in Courts to test the efficacy of specialized proceedings. Monitor results. (MOJ, HJC – medium term)

Recommendation 12:

Implement and augment existing SCC plans to promote uniformity and clarity of court decisions.³⁷ This would enhance quality and perceived fairness in line with CCJE and the Magna Carta of Judges' recommendations for improved quality, accessibility, and clarity of decision-making. Consolidating cases are for the short term while other items are for the medium term. All recommendations require relatively minimal cost.

- ✓ Provide guidance and training to judges at both first-instance and appellate levels on how to join related cases. (SCC, JA – short term)
- ✓ Develop a more standardized approach to judgment writing and train judges on how to apply this approach. (SCC, JA – medium term)
- ✓ Establish a series of colloquia between Court Presidents to discuss emerging issues in law and practice. (SCC – short term)

³⁴ This recommendation aligns with NJRS Strategic Guideline 2.7.4: Improve the judgment drafting methodology and achieve uniformity in this area (through initial and continuous training at the Judicial Academy).

³⁵ See CCJE Opinion No. 6 (2004) on fair trial within a reasonable time.

³⁶ This recommendation aligns with NJRS Strategic Guideline 2.4.1: Changes in the normative framework related to the special character of the right to natural judge in cases of specialization and the possibility of derogation from the automatic case assignment when program for solving case backlog is applied.

³⁷ This recommendation aligns with NJRS Strategic objective 2.7: Uniformity of case law.

- ✓ Establish forums of institutional court users at the local level of each Basic Court (police, prosecution, social welfare, lawyers etc.). Meet periodically to ensure effective coordination of cases (applying lessons from the Zrenjanin Basic Court). (SCC – short term)
- ✓ Collect sentencing data by Court and offense; compare across case types and court locations. Provide training to reduce variations in sentencing practices. (SCC – medium term)
- ✓ Compile sentencing tables as a reference guide for prosecutors when developing submissions. Update and elaborate data periodically. (RPPO – medium term)
- ✓ Develop bench books on substantive areas of law topics. (HJC, JA – long term)

Recommendation 13:

Improve statistical reporting of appeals (including data relating to decisions confirmed, amended or remanded back to the lower court). Combine analysis of the results with a package of training and incentives for courts and judges to promote quality in decision-making.³⁸ The COE recommends that steps should be taken to deter the abuse of post-judgment legal remedies. Improved enforcement will discourage appeals by reducing incentives for attorneys and/or parties to delay final judgment.³⁹ Recommendations can be pursued in the medium term at relatively low cost.

- ✓ Align statistical data on appeals from Basic Court decisions to enable tracking of small and large appellations and analyze variations. Link the Courts' case management systems to allow cases to be tracked through all appeals, related cases and closure. (SCC, MOJ – medium term)
- ✓ Consider the appeal record of individual judges and prosecutors in the evaluation and promotion process. (HJC, SPC – medium term)
- ✓ Adjust the productivity norms of appellate judges to reward those who replace a lower court decision with their own judgment rather than remand it back to the lower court for retrial. Provide training to appellate judges on the implementation of recent procedural reforms requiring judges to amend decisions at the second appeal. (SCC, JA – medium term)
- ✓ Prepare and deliver training on issues that drive up appeals, including issues of concern under the ECHR⁴⁰. (SCC, JA – short term)
- ✓ Agree to friendly settlements between the state and parties in mass resolution of cases before the European Court of Human Rights. (MOJ – medium term)

Recommendation 14:

Develop a high-profile campaign to enhance quality and combat corruption in administrative services in Courts, including the development and monitoring of integrity plans.⁴¹ Creating integrity plans, standards, and a task force can occur in the short term, with other recommendations in the medium term, all at relatively low cost. Monitoring, training, and public awareness should be an on-going process.⁴²

- ✓ Prepare and deliver training for judges, assistants and court staff on the purpose and content of court integrity plans. Develop integrity plans for all courts and PPOs. Disseminate existing rules on gift giving and provide relevant training. (ACA with HJC, Courts, PPOs – short term)
- ✓ Create a task force to consider performance and integrity improvements in Misdemeanor Courts for which public trust and confidence has been reduced significantly since 2009 and which impact large numbers of litigants. (SCC – short term)

³⁸ This recommendation aligns with NJRS Strategic Guideline 2.7.1: Improvement of the normative framework in order to regulate the harmonization of court decisions and more precisely define the role of the Supreme Court of Cassation in this area, as well as to fully ensure harmonization with the decisions of the European Court of Human Rights and practice of other relevant international institutions.

³⁹ Committee of Ministers Recommendation No. R (84) 5, Principle 7.

⁴⁰ This recommendation aligns with NJRS Strategic Guideline 2.7.3: Monitoring case law of the European court of human rights and other relevant international institutions, ensuring that their decisions are analyzed, organized and publicly available; Strategic Guideline 3.2.3: Further improvement of the initial training program at the judicial academy; Strategic Guideline 4.1.3: Amendments to the normative framework in terms of civil liability of the judicial office holders.

⁴¹ This recommendation aligns with NJRS Strategic Guideline 2.1.1: Monitoring of the implementation of integrity plans in judiciary which are fully adapted to the judicial system and their improvement.

⁴² See also Governance and Management recommendations.

- ✓ Continue to conduct periodic surveys focusing on court user experiences of corruption. Strengthen the survey methodology and expand the survey to provide more detailed and robust findings to inform future anti-corruption reforms within the judiciary. (Courts, ACA – medium term)
- ✓ Target interventions to deal with the most commonly reported forms of corruption, such as petty bribery of court staff. (HJC, SCC, MOJ – medium term)
- ✓ Develop public relations information on the websites and in brochures at the courts regarding the law and policy on gift giving. (HJC, SPC – short term)

Recommendation 15:

Enhance the capacity of the system to implement and oversee alternatives to prosecution in all locations to ensure equal treatment of defendants across Serbia.⁴³ Recommendations can be accomplished by the medium term. Adding staff and enhancing SAPO will require moderate costs, while the other efforts are relatively inexpensive.

- ✓ Consider how recently-enacted Misdemeanor Orders could be used to impose alternative sanctions other than fines. Provide training for Misdemeanor Court judges on the use of alternative sanctions. (Misdemeanor Courts – short term)
- ✓ Expand the number of Offices of the Commissioner to all 26 Higher Court regions to oversee the implementation of deferred prosecutions. Add support staff in Commissioner's offices to enable monitoring of fulfillment of the terms of deferred prosecution cases, particularly in rehabilitative sanctions, such as treatment and community service. (Office of the Commissioner; RPPO – short to medium term)
- ✓ Streamline the plea bargaining process by providing more autonomy to Deputy Prosecutors to offer plea bargains for cases meeting criteria set by the RPPO. (RPPO – medium term)
- ✓ Design and deliver a training program for Deputy Prosecutors on the processing of plea bargaining and deferred prosecution cases. (RPPO, JA – medium term)
- ✓ Expand the use of alternative sanctions, particularly in misdemeanor cases. (Misdemeanor Courts, Office of the Commissioner – medium term)
- ✓ Collect data from PPOs on deferred prosecution and plea bargains, and any concerns or bottlenecks. Issue additional instructions on deferred prosecution and encourage more proactive rehabilitative efforts. (RPPO – medium term)
- ✓ Add data collection concerning deferred prosecution and plea bargains to the prosecutors' automated system (SAPO): include number of deferrals and pleas offered, the criminal offense, location, and reasons for any rejections by courts of offered plea bargains. (RPPO – medium term)

⁴³ This recommendation aligns with NJRS Strategic Guideline 5.3.1: Wider implementation of the simplified procedural forms and institutes such as plea bargaining, implementation of the principle of opportunity in criminal prosecution and directing parties towards alternative dispute resolution methods (such as mediation) whenever allowed by legislative framework.

c. Access to Justice Services

i. Main Findings

44. **Lack of affordability is the most serious barrier to access to justice services in Serbia.** Court and attorney costs represent a significant proportion of average income in Serbia. Pursuing even a simple case is unaffordable for many. Citizens do their best to avoid the courts: nearly 63% of the general public reported that, if they had a dispute which they thought should be settled in the court, they would decide against pursuing it; and fear of costs was the most common deterrent. Over half of recent court users surveyed considered the court-related costs in their particular case to have been excessive. The schedules for court and attorney fees are also quite complex, so court users struggle to estimate likely costs.⁴⁴

45. **Lack of affordability of justice services also causes a drag on the business climate.** Over one-third of businesses with recent experience in court cases reported that the court system is a great obstacle for their basic business operations, and an additional 30 percent reported that courts are a moderate obstacle. Businesses also report that the courts are becoming increasingly inaccessible to them due to high court and attorney fees. Small businesses face particularly challenges in navigating the court system, including high costs, cumbersome processes, lengthy delays, inadequate enforcement, and constantly changing legislation.

46. **On further examination however, it is not absolute costs to users but perceived value for money which undermines access to justice.** Although court users complain about costs (and non-users report that costs deter them), the Multi-Stakeholder Justice Survey found that recent court users who were satisfied with the quality of services delivered were far less likely to consider the costs to be excessive.⁴⁵ These data therefore suggest that improvements in quality and efficiency in service delivery could improve access to justice, by increasing the perceived value for money for potential court users, while also improving user

Over one-third of businesses with recent court experience reported that the court system is a great obstacle for their basic business operations. An additional 30 percent reported that courts are a moderate obstacle.

satisfaction.

47. **Attorneys play an important role in helping court users to navigate the system, but their fee structure is out of step with European practice and creates perverse incentives which undermine access to justice and efficiency and quality and service delivery.**⁴⁶ Self-represented litigants struggle to proceed alone

The Attorney Fee Schedule is highly inflated and out of step with European practice.

without lay formats, checklists or practical guides, and unsurprisingly therefore, they are less likely to succeed. Attorneys are paid per hearing or motion, which encourages protracted litigation. Fees are awarded based on a prescribed Attorney Fee

Schedule, which prohibits from charging less than 50 percent of the rates prescribed. This arrangement is out of step with European practice.⁴⁷ Serbia's prescribed fees are also highly inflated and unrealistic, and in practice many attorneys charge less than the mandatory minimum because rates are beyond user willingness to pay. State-appointed attorneys (known as ex-officio attorneys) may be appointed for indigent clients but there are concerns regarding the mechanism for their selection and a lack of quality control.

⁴⁴ There is also a cap on court fees, which distorts incentives by encouraging court users to pursue unmeritorious claims in high-value cases.

⁴⁵ 75 percent of court users who reported low quality of services also reported that the costs were excessive; while the 29 percent of court users who reported that quality was high did not consider the costs to be excessive.

⁴⁶ 71 percent of citizens with court experience found attorney-related costs to be one of the most insurmountable barriers to access to the judicial system.

⁴⁷ The European Court of Justice has held that mandatory minimum fees violate the EC Treaty. Further, 42 of the 47 countries monitored by the CEPEJ allow free negotiation between lawyers and clients.

48. **A court fee waiver is available for indigent court users but its implementation is haphazard, resulting in inconsistent access to justice for the indigent.** There is very limited understanding among the public of the court fee waiver program. There are no guidelines or standardized forms for judges who grant a waiver and their decisions go unmonitored. Stakeholders report that some Court Presidents informally discourage their judges from waiving fees, as fees are a source of revenue for courts. Waivers may improve access to justice in some areas but without data its impact cannot be monitored.

49. **Legal aid programs are provided by an incomplete patchwork of services across the country.** Municipal Legal Aid Centers cover around one-third of the country and around one-half of Serbia's total population. Yet, most citizens are unaware of any free legal services that might be provided in their municipality.

50. **Reforms are currently underway to expand legal aid in line with EU practice by providing both 'primary legal aid' (legal information and preliminary advice) and 'secondary' (legal representation) to the poor and certain vulnerable groups.** While the aims of the reform are admirable, there remains a high risk that these laws, like other reforms in recent years, will become 'stillborn' if fiscal and operational implications are not carefully planned or if implementation arrangements are weak. Despite several years of deliberation in working groups, there remain some concerns with the latest draft of the law. The current draft creates a bias in favor of secondary legal aid, to be provided predominantly by attorneys, while doing little to encourage primary legal aid, which would be provided by CSOs, municipal legal aid centers, and law faculties. Yet, the efficient delivery of primary legal services is likely to have the greatest benefit in terms of increasing access to justice for the largest numbers of Serbian citizens and could be delivered at much lower unit costs. It will be important to ensure that primary legal aid is adequately funded and delivered consistently throughout the country. Meanwhile, proposals for secondary legal aid could be considered more cautiously. A Fee Schedule will also need to be developed for the compensation of service providers for both primary and secondary aid. Based on previous analysis, the fees for these services should be far lower than the current Attorney Fee Schedule.⁴⁸ Quality assurance mechanisms will also be required and this is another area of high implementation risk.

There remains a high risk that the Free Legal Aid law, like other reforms in recent years, will become 'stillborn' if fiscal and operational implications are not carefully planned or if implementation arrangements are weak.

51. **Recent legislative amendments seek to promote mediation but there are significant implementation challenges.** Due in large part to previously failed reforms, there is limited awareness of mediation among judges, attorneys, court staff, and court users. Among those who are aware of mediation services, few report it to be a useful means of dispute resolution. A significant outreach initiative to potential court users will be required, along with intensive training for judges, prosecutors, lawyers, and court staff. Further incentives should be built in to the institutional framework to encourage the use of mediation and integrate it into the court system.

⁴⁸ Further analysis will be required to ensure that service delivery arrangements provide sufficient incentive for high-quality service delivery without inflating costs or creating distortions in the market.

52. **Awareness of law and practice is limited, even among professionals.** Judges, prosecutors, and lawyers struggle to conduct research and keep abreast of new legislation, cases, procedures, and practices. Before 2014, the only legal databases with consolidated legislation were maintained by private companies on paid subscription basis. Few courts publish their court decisions, so access to these even among judges is very limited. On a positive note, the Official Gazette recently launched a free online database, and this should improve access to legislation. Efforts to raise awareness and build the capacity among professionals to conduct legal research could reap significant rewards in terms of consistency of practice across the jurisdiction.

In Serbia, continuous changes in legislation and scarce outreach of reforms combine to prevent the public from understanding their rights and obligations, or how to uphold them in court.

53. **Among the public, awareness of law and practice is even more limited.** Continuous changes in legislation and scarce outreach of reforms combine to prevent the public from understanding their rights and obligations, or how to uphold them in court. Businesses report that access to laws – and frequent changes in legislation and regulations – causes uncertainty that affects their business operations. A significant injection of outreach and awareness-raising of legal reforms among the public, particularly among potential court users, is required. Existing court users also struggle to access information related to their own case. Examples exist in Croatia and elsewhere of court portals which could be applied in Serbia to enable court users to access information related to their case in a manner consistent with privacy laws.

54. **Women experience the judicial system differently from men in a few ways.** Women report more than men that justice services are inaccessible. More often than men, women find attorney fees to be cost-prohibitive. Women are also more likely to experience barriers to access to justice and inefficiencies in justice service delivery because they are more likely to be parties to certain types of cases, such as custody disputes and gender-based violence, which exhibit specific problems relating to procedural abuse and delay.

55. **Equality of access for vulnerable groups poses specific challenges.** The majority of citizens surveyed reported that the judiciary is equally accessible regardless of age, socio-economic status, nationality, disability, and language. However, those citizens who are over 60 years of age, live in rural areas or have the least amount of education find the judicial system particularly inaccessible, suggesting that targeted interventions are warranted. Individuals with intellectual and mental health disabilities experience serious disadvantage through the process by which they are deprived of their legal capacity. Members of the Roma community, refugees and internally displaced persons also report low awareness of their rights, as well as concerns regarding fair treatment before the courts. For these groups, there is a case for strengthening the dissemination of information to relevant CSOs and community leaders about the functioning of the judiciary and basic legal rights. The experience of the LGBT community is slightly different: though they appear more than the abovementioned groups to be aware of their legal rights, they remain deterred from filing cases due to fear of reprisal and perceived discrimination.

ii. Recommendations and Next Steps

Recommendation 16:

Simplify the court fee structure to enable users to estimate likely costs. Remove the cap on court fees. Standardize the court fee waiver process, and collect and analyze data on court fee waivers.⁴⁹

Implementation of this recommendation will align with EU standards and good international practice.⁵⁰ The initial steps can be made in the short term for little to moderate costs.

- ✓ Simplify the court fee structure to enhance understanding of likely court costs. Remove the cap of 80,000 RSD on court fees and remove court fees for criminal cases initiated by a private party. (MOJ – medium term)
- ✓ Provide lay formats of information online and in paper brochures about the foreseeable costs and duration of proceedings to enable potential court users to better estimate the costs of their case. (MOJ – medium term)
- ✓ Adopt and disseminate standards for granting fee waivers, and create a standardized fee waiver application form and decision form for use by all courts. (MOJ, SCC – short term)
- ✓ Require staff to enter data on fee waiver requests and decisions in existing fields in AVP. Over time, monitor data fee waivers to encourage compliance with standards. (MOJ, courts – short term)

Recommendation 17:

Remove the Attorney Fee Schedule to enable competition in the market for legal services. Develop a more cost-effective Attorney Fee Schedule to apply only for legal services to the state (e.g., legal aid services and ex-officio attorney appointments). Consider moving away from a pay-per-hearing model.⁵¹ The CCJE advises that remuneration of attorneys should not be fixed in a way that encourages needless procedural steps.⁵² The European Court of Justice has held that mandatory minimum fees violate the EC Treaty. In 42 countries monitored by the CEPEJ, lawyers' remuneration is freely negotiated.⁵³ Some steps will entail low to moderate costs but they would likely be more than offset by savings in moving from per-hearing payment for court-appointed attorney.

- ✓ Remove the Attorney Fee Schedule and allow attorneys to negotiate their fees freely with clients. Develop a lower Attorney Fee Schedule for legal services provided to the state (see below), which could also apply as the schedule for awarding costs. (MOJ – medium term)
- ✓ Periodically update Bar Association lists to inform the process of selecting ex-officio attorneys, and provide lists to all relevant stakeholders. Clarify the appointment process and re-instate/establish Bar Association hotlines for attorney referrals. Provide parties with information on how to make a complaint about an ex-officio attorney. (MOJ, Bar Associations – short term)
- ✓ Require court staff to enter data on ex-officio attorney appointments into existing AVP fields. Monitor the use of ex-officio attorney appointments by case type, outcome, appeal rate and time to disposition. Compare with data where attorneys were not appointed ex-officio. Over time, use data to inform future reforms of ex-officio appointments. (MOJ, Bar Association – short to medium term)
- ✓ Provide parties with information on how to make a complaint about an ex-officio attorney. Strengthen quality control mechanisms for ex-officio attorneys. (Courts, Bar Associations – long term)
- ✓ Consider whether the mandatory appointment of ex-officio attorneys in certain cases (known as mandatory defense) should be broadened. (MOJ – long term)

⁴⁹ This recommendation aligns with NJRS Strategic Guideline: 2.5.2 Defining the criteria for determining the poverty threshold (in order to abolish or reduce court fees and reduce pecuniary fines in criminal and misdemeanor cases).

⁵⁰ See *Measures for the Effective Implementation of The Bangalore Principles of Judicial Conduct*, adopted by the Judicial Integrity Group, undated.

⁵¹ This recommendation aligns with NJRS Strategic Guideline 2.5.1; Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

⁵² This aligns with CCJE Opinion No. 6 (2004) on fair trial within a reasonable time.

⁵³ See *CEPEJ Evaluation Report, 2014* (based on 2012 data). Only Cyprus, Germany, Slovenia and UK-Northern Ireland prevent free negotiation of rates.

Recommendation 18:

Prioritize the passage of an adequately funded, cost-effective Free Legal Aid law that expands the pool of service providers and limits State costs.⁵⁴ International standards establish the right to counsel to protect fundamental rights, and the ECHR calls for state-supported defense for indigent parties when the interest of justice demands it. The law should be passed as a priority, and rollout can occur in the medium term. Potential significant costs can be contained by following these recommendations:

- ✓ Prioritize passage of the draft Free Legal Aid Law. Ensure that the operational and fiscal implications of the draft law are adequately addressed. Cost and provide funding for primary legal aid services and ensure its coverage across the territory. Secure funding to implement any expanded mandates provided in the law. (MOJ, MOF – short term)
- ✓ Develop an Attorney Fee Schedule for the reimbursement of providers of primary and secondary legal aid. Consider a payment mechanism whereby clients receive vouchers for legal aid services and can choose their own provider. (MOJ – short term)
- ✓ Task a Working Group within the MOJ to plan and oversee the rollout of the new law and draft regulations. Provide training to service providers. Establish the proposed quality control mechanism and relevant protocols. (MOJ – medium term)
- ✓ Provide easy-to-read information about court processes in pamphlets and on the web, including guidance on assessing court and attorney fees, and how to make a complaint against attorneys. (MOJ – medium term)
- ✓ Disseminate information to the public about the availability of legal aid services. (MOJ – medium term)
- ✓ Collect and analyze data on the use of legal aid by the public, including the most common case types, the workloads of service providers and the levels of satisfaction of users. (MOJ – medium term)

Recommendation 19:

Improve services for self-represented litigants, including simple forms and checklists for court users, and lay brochures and guides of basic laws and procedures.⁵⁵ Improved information can enable litigants to proceed smoothly through the system without an attorney, thus improving access to justice, as well as efficiency in the delivery of services.

- ✓ Create fields in AVP to collect data the number of self-represented litigants, their case types, outcomes and times to disposition. Require that staff enter data. Over time, use the data to design more targeted interventions to support self-represented litigants. (MOJ – short term)
- ✓ Building on lessons from Vrsac Basic Court, develop checklists of routine processes for court users and disseminate widely. (Courts – short term)
- ✓ Develop lay information packs for case types that are (or could be) most commonly pursued without an attorney, including guides, flow charts and infographics (MOJ – medium term)
- ✓ Develop/improve registries of allied professionals, such as enforcement agents, mediators and private notaries, to include expertise, geographic area, clear fee descriptions, complaint procedures, and disciplinary actions initiated or fines levied against an individual. Include in the bailiff registry a calculator for assessing likely bailiff fees (similar to the court fee calculator). (MOJ, Chamber of Bailiffs – short term)

⁵⁴ This recommendation aligns with NJRS Strategic Guideline 2.5.1: Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

⁵⁵ This recommendation aligns with NJRS Strategic Guideline 2.5.1: Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

Recommendation 20:

Operationalize the new Mediation Law, create incentives for court users and practitioners to opt for mediation, and monitor the results. Conduct intensive training among professionals on mediation and disseminate information to potential court users.⁵⁶ The CCJE recognizes the critical role of judges and lawyers for consensual settlements.⁵⁷ EU Member States are required to ensure training and quality of mediators and mediation confidentiality. While some steps can be taken soon, this is a large undertaking requiring considerable time, money, and political will to accomplish. In order to encourage mediation, the remuneration structure for attorneys will need to be changed from one based on fees paid for hearings to one based on legal services and case resolution.

- ✓ Develop quality standards for mediators and a certified mediator registry. (MOJ – short term)
- ✓ Raise public awareness of mediation through websites, brochures, and public service announcements. Introduce a Mediation Self-Help Test, applying lessons from the Netherlands, so that parties can determine whether mediation would benefit them. (MOJ – short term)
- ✓ Establish a formal Court-annexed mediation program in all Basic and Higher Courts and standards for determining which cases are appropriate for mediation.⁵⁸ Strengthen mediation confidentiality requirements, requiring that judges serving as mediators cannot serve as trial judge in the same case and providing trial judges only with confirmation that mediation was unsuccessful rather than the reasons no settlement was reached. (MOJ, HJC – medium term)
- ✓ Provide incentives to potential users of mediation, including:
 - Lawyers: provide subsidized, tiered training to familiarize attorneys with mediation and those lawyers who decide to become mediators. Require mediators who received subsidized training to provide a specified number of free mediations. Introduce a system of co-mediation and mentoring to enhance mediator skills. (MOJ, Bar Associations – medium term)
 - Judges: develop training and printed materials for Court Presidents and judges about the advantages and mechanics of mediation. Count dispositions achieved through mediation as part of the individual judges' workload. (HJC, JA – medium term)
 - Public: introduce legal aid for mediation⁵⁹ and provide a temporary financial stimulus via free mediation hours. Set fees for mediation at less than court litigation fees, reflecting likely lower court costs than through standard litigation. Reduce the mediation fee in small claims cases to bring it more in line with court fees for these cases. (MOJ – medium term)
- ✓ Create an effective mediation case referral and management system, including: a) criteria for selecting cases; b) procedures for selecting a mediator; c) statistical monitoring and reporting; and d) coordinating activities between the court, litigants and mediators. (HJC – medium term)

Recommendation 21:

Make important cases, consolidated legislation, and information about open and disposed cases freely accessible online.⁶⁰ Implementing this recommendation will advance several CCJE goals.⁶¹ Most of these efforts can be accomplished in the medium term for low to moderate costs.

⁵⁶ This recommendation aligns with NJRS Strategic Guideline 2.5.3: establishment of an efficient and sustainable system of dispute resolution through mediation, by improving the normative framework and conducting the procedure of standardization and accreditation of initial and specialized training program for mediators, as well as by promoting the alternative methods of dispute resolution. Establishment of the register of licensed mediators in accordance with predefined criteria.

⁵⁷ CCJE Opinions No. 6 (2004) and 16 (2013). See also, De Pala, Giuseppe and Mary B. Trevor, eds., *EU Mediation Law and Practice*, Oxford University Press, 2012.

⁵⁸ For example, civil matters, divorce and/or custody cases, and victim-offender mediation in juvenile cases.

⁵⁹ Fourteen EU Member States offer legal aid for cases in mediation. See *CEPEJ Final Evaluation Report 2014* (based on 2012 data), Table 8.2.

⁶⁰ This recommendation aligns with NJRS Strategic Guideline 2.9.2: improving the transparency of work of the judiciary by establishing public relations offices, info-desks and comprehensive websites.

⁶¹ CCJE, Opinion 14 (2011), 'Justice and Information Technologies (ICT)'; Opinion 6 (2004) on Fair Trial Within a Reasonable Time. See also the Magna Carta of Judges (Fundamental Principles) on Access to Justice.

- ✓ Provide public information about court processes via court websites and brochures and using radio and television public access channels. Start with information about misdemeanor case process for which citizens indicate that the least information is available and the highest demand for information exists. (MOJ, HJC – short term)
- ✓ Publish consolidated legislation online free of charge. For the most commonly-used legislation, provide annotated commentaries. (National Assembly, Official Gazette – medium term)
- ✓ Ensure that parties in pending cases can access the basic registry and scheduling information about their case on the web portal, applying lessons learned from Croatia. (HJC, MOJ – medium term)
- ✓ As discussed further in the ICT resource section, develop common standards on which appellate decisions should be uploaded to searchable public websites. (MOJ, SCC – medium term)

Recommendation 22: Develop lay formats of legal information specifically aimed at reaching vulnerable groups.⁶² CEPEJ reports 17 EU Member States provide special information to ethnic minorities in line with CCJE recommendations⁶³ supporting steps to strengthen the public perception of impartiality of judges⁶⁴ Further, providing information to designated groups can be made in the short to medium term for low cost.

- ✓ Develop lay formats of legal information specifically tailored for vulnerable groups, including less educated court users, Roma and internally displaced persons. (HJC – short term)
- ✓ Develop court materials including websites in languages other than Serbian consistent with European standards for providing information in other languages. (MOJ – medium term)
- ✓ Organize training programs in non-discrimination and equal treatment for judges and court staff. (HJC, JA – medium term)
- ✓ Consider the feasibility of establishing a victim of crime service, applying lessons from EU Member States. (MOJ – medium term)
- ✓ Conduct a public campaign to raise awareness on the role of, and right to, a court appointed interpreter. (MOJ – long term)

⁶² This recommendation aligns with NJRS Strategic Guideline 2.5.6: Improvement of the normative framework on the basis of results of assessment related to the access to justice of vulnerable and marginalized groups.

⁶³ Opinion 7 (2005) on Justice and Society.

⁶⁴ CEPEJ *Final Evaluation Report*, 2014 (based on 2012 data), page 86.

Internal Performance: Governance and Management of Resources for Service Delivery

56. Below is a summary of the main findings and recommendations related to the inner workings of the judicial system in Serbia, as measured against the indicators and European benchmarks outlined in the Performance Framework agreed among stakeholders.

a. Governance and Management

i. Main Findings

57. **Effective management of the judicial system is hindered by difficulties in measuring system performance.** Data are scattered across fragmented information systems with gaps, overlaps, and inconsistencies. Data **collection** tends to be manual, which absorbs a lot of time and staff resources and is prone to errors. Reports are not often tailored to management needs, and so do not adequately inform decision-making. Analytical capacity across the sector is inadequate, and so the foundation for management decisions remains weak. There is not a single management entity in the system able to substantiate how the system actually performs or use data to identify areas for performance improvement. The system lacks a unified vision of what good performance should look like, or a performance framework around which stakeholders unite to set goals and targets. As a result, it is very difficult for the system to manage for results.

There is not a single management entity in the Serbian justice system able to substantiate how the system actually performs or use data to identify areas for performance improvement.

58. **Effectiveness in strategic management is limited.** The adoption of the NJRS 2013-2018 and its Action Plan represents a significant milestone for the Serbian judiciary. Their content is comprehensive, and progress is being made against several milestones. However, the Action Plan may be overly ambitious and it will be difficult to implement effectively within the five-year timeframe. The NJRS also focuses heavily on enacting legislation more than ensuring the effective implementation of existing and new legislation to change behavior on the ground. Yet the latter is the more important task and it requires an organizational and managerial approach more than a legal one. The NJRS and Action Plan also lack a clear focus on how reforms will affect court users, who should be the ultimate beneficiaries of the reforms. A Strategy Implementation Commission exists, but lacks a work plan and a secretariat and is not driving reform implementation. In the resulting vacuum, it is not clear among the many fragmented stakeholders who is leading the system's reform effort or driving for performance improvement. At this rate, at best by 2018 Serbia may have enacted relevant legislation but behaviors will not have changed and performance will not have improved on the ground.

59. **A range of key governance and management functions are currently being transferred between various bodies.** In the past, these functions were almost entirely entrusted to the MOJ. In the somewhat poorly sequenced and inconsistently implemented transition towards more responsibility for the HJC and SPC, some fragmentation, overlaps and redundancies have occurred and impeded the effective management of system performance. Moving towards the full transition of responsibilities, it will be essential to adequately prepare the Councils for their new functions by the end of 2015.

It will be essential to adequately prepare the Councils for their new functions by the end of 2015.

60. Limited management capacity in the Councils hinders their ability to meet the challenges ahead.

Each Council has established an organizational plan and taken steps to implement it. Each is able to administer only their most basic requirements. The Administrative Office of the HJC is already sizeable, but many positions are held by junior clerical staff and lawyers who see their roles in narrow terms. The Councils lack managerial capacities to drive performance improvements across the sector. For example, neither institution currently has a system to evaluate or re-engineer work processes, even though such work will be critical to improving system productivity.

61. The internal organization within courts needs to be improved if the system is to reach and sustain higher levels of performance.

To date, the Councils have undertaken little work to assess whether the internal organization of each court or PPO is optimal. No analysis has been conducted on how organizational variations affect productivity or other aspects of performance. The Councils do not carry out process re-engineering to produce high-quality outputs more rapidly, with less effort, and at lower costs. The Court Book of Rules provides extensive guidance, but it is outmoded. Current efforts to update the Book of Rules are focused narrowly on the minimum requirements to comply with the new procedural codes, suggesting that reformers are yet to appreciate the significant benefits to be reaped by simplifying and modernizing processes. Individual Court Presidents use their own systems based on personal initiative or with the support of donors. A simple case-weighting system would assist to equalize caseloads and manage workloads, but much can be done in the meantime through effective monitoring of data from existing systems.

62. Inside each court, the managerial abilities of Court Presidents are pivotal to success.

Greater use of managerial reports from the various case management systems, in particular the analysis of Ageing Lists, would assist greatly.

Stakeholders report that the performance of an individual court depends largely on its Court President's enthusiasm and willingness to address management issues. However, most Court Presidents have received no training on management and few incentives exist to encourage a modern and proactive approach to management. Courts lack specialized staff to assist in management tasks and often lack basic management tools. Greater use of managerial reports from the various case management systems, in

particular the analysis of Ageing Lists, would assist greatly. The higher performing Court Presidents each seem to have cultivated in an ad hoc manner a small managerial team of skilled mid-level professionals who support him/her to run the court. This model seems to work well and could be replicated. Court Presidents also rarely meet with each other – they could benefit greatly from colloquia aimed at sharing information, generating ideas and replicating innovations.

To enable this transformation, the resource mix must favor spending on ICT, infrastructure, training and innovation, while reducing spending on the large wage bill, particularly on judges and low-skilled ancillary staff.

63. A core task for governance and management bodies is to ensure the appropriate mix of system resources to enable performance.

In Serbia, neither the MOJ nor the Councils have developed the capacity to consider and program resources jointly. This has led to a resource mix that is currently inadequate to bring the system in compliance with EU accession requirements. Continued fragmentation exacerbates this challenge resulting in suboptimal coordination and management of resources, as well as resource planning. When there is a common view, it reveals a strong

bias toward adding judges and assistants, while the provision for much-needed provision for other resources is not sufficiently prioritized. To enable transformation, the resource mix must favor spending on ICT, infrastructure, training and innovation, while reducing spending on the large wage bill, particularly on judges and low-skilled ancillary staff. This will require a series of calibrated decisions by the governance and management bodies.

64. **The mechanisms to govern integrity and conflicts of interest are not fully able to address a perceived lack of integrity in the judicial system.** Serbia's random case assignment technology works well to reduce predictability in the assignment of individual cases to specific judges. However, not all courts use the functionality, and those Court Presidents who do use it overrule the system relatively frequently. There is no corresponding technology for allocating files randomly within PPOs. Integrity Plans have been prepared only for some parts of the judiciary. Formal rules on gift-giving to judges, prosecutors, and staff are clear. Yet gift-giving remains prevalent. Complaints are numerous, but grievance redress is scarce. Lessons learned from complaints do not systematically feed these into reform processes.

ii. Recommendations and Next Steps

Recommendation 23:

Clearly define the governance structure, organization and goals of the Councils and enhance their management capacities to carry out their current responsibilities and prepare for the transition of additional functions.⁶⁵ Because of the short time remaining before the scheduled transfer of these functions on 1 January 2016, many of the recommendations will require prompt implementation. Costs for these items are relatively low, with ongoing costs if a General Manager is hired.

- ✓ Complete the Councils' definitions of their working arrangements and internal rules; create subcommittees or other means of allocating members' responsibilities. (HJC, SPC – short term)
- ✓ Amend the Constitution and relevant legislation in line with Venice Commission and CCJE recommendations to enshrine Council and court independence, including regarding appointments and promotions within the judicial system.⁶⁶ In doing so, consider also amending rules on retiring the Council en masse every five years, replacing them with rotational elections that assist the retention of corporate memory and momentum. (MOJ, HJC, SPC, Assembly – medium term)
- ✓ Consider adding a General Manager to each Council to provide managerial oversight, based on a job description that requires prior management experience. (HJC, SPC – medium term)

Recommendation 24:

Create an ongoing strategic and operational planning function in the judiciary to collect and analyze data and plan process improvements.⁶⁷ The CCJE specifies that the goal of data collection should be to evaluate justice in its wider context,⁶⁸ and the design of data collection procedures, evaluation of results, their dissemination as feedback, monitoring, and follow-up procedures should reside in an independent institution within the judiciary.⁶⁹ Most of these recommendations should be completed in the short term to prepare for transfer of responsibilities from the MOJ. The data gathering and reporting, strategic and operational planning functions will develop over the medium term. The creation of capacity to fulfill these functions will require ongoing and potentially expensive staff costs.

- ✓ Define the Strategy Implementation Commission's work plan. (Commission – short term)
- ✓ Adapt the Functional Review's Performance Framework into a streamlined dashboard-style framework to monitor system performance, with a small number (maximum of 10) of key

⁶⁵ This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences; Strategic Guideline 1.3.1: Strengthening of professional capacity of the HJC and SPC for the analysis of the results of the reform (hiring of experts of suitable profiles in administrative offices, development of data collection system, training of the members of the HJC and SPC in the field of analytics, statistics and strategic planning).

⁶⁶ See for example CCJE Opinion 10 (2007), which states that '*[p]rospective members of the Council for the Judiciary, whether judges or non judges, should not be active politicians, members of parliament, the executive or the administration. This means that neither the Head of the State, if he/she is the head of the government, nor any minister can be a member of the Council for the Judiciary. Each state should enact specific legal rules in this area.*'

⁶⁷ This recommendation aligns with NJRS Strategic Goal 1.3: Strengthening of analytical capacities for strategic planning in the HJC and SPC.

⁶⁸ I.e., including the interactions of the judiciary with judges and lawyers, justice and police etc.

⁶⁹ See CCJE Opinion No. 6 (2004).

performance indicators most likely to drive performance enhancements. (Commission, MOJ – medium term)

- ✓ Consider revising the NJRS Action Plan to increase the focus on the effective rollout and implementation of a smaller number of reforms most likely to improve system performance from the perspective of court users. Identify measurable targets. Monitor and document results, especially in the efficiency area. (MOJ, HJC, SPC, Commission – short term)
- ✓ Require all institutions to provide brief and frequent updates on progress against targets. Communicate to stakeholders the baseline results, initiatives and changes in outcomes. (SCC, HJC, SPC – short term)

Recommendation 25:

Bolster the sector's capacity to systematically analyze workloads and determine the efficient resource mix to achieve policy objectives.⁷⁰ Adopt a simple case weighting methodology.⁷¹ Adding judges and staff to address performance issues is ineffective without a more rigorous evaluation of system needs. These activities should begin in the short term and would be ongoing.

- ✓ Analyze existing caseloads based on managerial reports in the case management systems. Transfer files from busier courts to neighboring less busy courts, when appropriate and preferably during the early phases of case processing. (SCC – medium term)
- ✓ Collect and analyze data about when and why random case assignments are overruled. Supplement data from random case assignments with analytic reports from case management systems to equalize the distribution of caseloads by case type and age. (HJC, SCC – short term)
- ✓ Finalize a simplified case weighting methodology, applying lessons from the USAID SPP pilot. (HJC, SCC – medium term)
- ✓ Refine the weighting of cases over time to continually improve the allocation of resources to meet needs (HJC – long term)
- ✓ Create a planning, analytic, and statistics unit within each Council, with skilled staff who are capable of collecting and analyzing data about court performance. Task this unit to undertake planning and policy analysis functions focusing on the key performance areas. (HJC, SPC – short term)
- ✓ Work with budget and management staff to consider and evaluate relative costs/benefits of proposals, analyze trends, develop 'what-if' scenarios and assess optimum resource mix. Provide advice to management on reform proposals. (HJC, SPC – medium term)

Recommendation 26:

Supplement statistics from the automated systems with periodic user surveys.⁷² This is a best practice noted by the EC, CEPEJ and the International Framework for Court Excellence and an important source of information for the judicial system. This measure is not inherently costly although some technical assistance may be needed to develop remedies and programs.

- ✓ Develop a court user survey, building on lessons from the Multi-Stakeholder Justice Survey. Finance the surveys through the HJC and SPC budgets. (HJC, SPC – medium term)

⁷⁰ This recommendation aligns with NJRS Strategic Goal 1.3 Strengthening of analytical capacities for strategic planning in the HJC and SPC; Strategic Measure 1.3.1.2: Strengthening of the capacities of the HJC and SPC in the field of strategic planning and analytics.

⁷¹ This recommendation aligns with NJRS Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes); Strategic Guideline 5.1.1: Establishment of an efficient system of allocation of judges based on the principle of equalization of the number of cases per judge, as well as on additional criteria taken into consideration in the process of establishing the new court network; respect of the principle that a judge can be transferred only in the court of the same rank which is overtaking competences from the abolished court; introduction of the system of permanent transfer and reallocation of judges (on voluntary basis in accordance with the constitution and with adequate stimulation) with particular regard to the reintegration of judges who returned office after decision of the Constitutional Court of Serbia in 2012; termination of an office of public prosecutor only if the public prosecutor's office was abolished.

⁷² This recommendation aligns with NJRS Strategic Measure 2.1.3.2: Regular surveys are conducted in order to identify unethical conduct of judges/public prosecutors in cooperation with other institutions.

- ✓ Conduct periodic open and/or focus group discussions with users at the local level. Develop exit questionnaires for court users. Consider results in the formulation of policies. (HJC – medium term)

Recommendation 27:

Re-engineer and streamline administrative processes in the courts and PPOs.⁷³ Re-engineering can result in more efficient and effective remedies for users, and reduced burden on judges and staff without sacrificing quality. Some tasks should be short term, but the overall effort will be ongoing. Once the analytical unit is established, ongoing costs will be minimal.

- ✓ Expand significantly the initiative to revise the Court Book of Rules. Identify opportunities to re-engineer and streamline processes, not only to align with recent legislative reforms but more broadly to improve efficiency and quality of processes. (MOJ – medium term)
- ✓ Establish a working group (comprising business process experts, judges and staff) to consider areas where re-engineering of processes would provide the greatest benefit. (HJC, Courts – short term)
- ✓ Facilitate colloquia for Court Presidents to discuss attempts to innovate processes, to share challenges and lessons and replications. (HJC, SPC in collaboration with MOJ, Court Presidents for local meetings – short term)

Recommendation 28:

Reduce opportunities for conflicts of interest to arise. Fully implement the plan of the Complaints Handling Working Group and strengthen dissemination.⁷⁴ Offering avenues for court users to complain can be made quickly, with analysis in the medium term. There will be moderate costs for creating the web presence.

- ✓ Require that all Court Presidents use the existing random case assignment software in allocating cases. Require Court Presidents to report on instances when the random assignment is overruled, including the rationale for each decision. Monitor reports. (SCC – short term)
- ✓ Create fields in AVP to collect data on the exclusions and exemptions of relevant persons (i.e. judges, prosecutors, lay judges, expert witnesses etc.) from cases. Require that court staff enter data on exclusions and exemptions and that Court Presidents monitor trends. (HJC/SCC – medium term)
- ✓ Conduct a large-scale public information campaign to enhance public education on the scope and methods of both complaint and disciplinary procedures. (HJC – short term)
- ✓ Link the outcome of complaints processes to evaluation, discipline and promotion systems for judges and prosecutors. (HJC, SPC – medium term)
- ✓ Provide training for Court Presidents on their key role in complaints handling. Enforce disciplinary proceedings against Court Presidents who do not address complaints lodged or implement findings made. (HJC – medium term)

⁷³ This recommendation aligns with NJRS Strategic Guideline 5.3.3: Relieving the burden on judges in terms of administrative and technical task, which take a significant portion of their time, by reassigning them to the administrative and technical staff and judicial assistants by ensuring uniformity of administrative and technical procedures through the adoption of the relevant rules of procedure enhancing judiciary integrity.

⁷⁴ This recommendation aligns with NJRS Strategic Guideline 4.2.2: Establishment of a uniform system for the collection, processing and analysis of complaints and petitions relating to the work of judicial office holders.

Recommendation 29:

Disseminate information about system performance to target audiences. Improving public awareness would enhance public trust and confidence, combat persistent negative reports about the judiciary and demonstrate improvements in service delivery in line with Chapter 23.⁷⁵ Costs are relatively low.

- ✓ Improve analytic content of SCC Annual Reports and include summaries in lay formats. Accompany Annual Reports with downloadable spreadsheets of system data for the benefit of analysts and researchers. Maintain email distribution lists for more frequent updates of progress. (SCC, HJC – medium term)
- ✓ Provide more detailed and disaggregated data in the annual reports of the prosecution service. (RPPO – medium term)
- ✓ Develop a communication strategy to explain the role and work of the judiciary and the implementation of the NJRS, to address the perception gap between the general public and court users. (MOJ – short term)
- ✓ Provide summary updates of recent reforms and their implications for court users and inform target audiences of proposed reforms using lay formats. (MOJ, Councils, SCC – medium term)

⁷⁵ This recommendation aligns with NJRS Strategic Guideline 2.9.1: Promoting the results of the courts and PPOs, regular reporting on the work of the judiciary, readiness to respond to media requests, as well as promotion of the activities of the MOJ through the strategy for communication with the media/public; Strategic Guideline 2.9.2; Improving the transparency of work of the judiciary by establishing public relations offices, info-desks and comprehensive websites.

b. Financial Management

i. Main Findings

65. **The judicial system in Serbia is not under-resourced, measured on either a per capita basis or as a share of GDP.** In 2012, court expenditure was 0.66 percent of GDP, which is higher than any EU Member State monitored by the CEPEJ. Prosecution expenditure was 0.11 percent, which is slightly lower than the EU average.

66. **Any increase in the judicial budget is highly unlikely in the medium to long term.** Serbia faces a tight fiscal environment, characterized by a double-dip recession, high and growing public debt. The Serbian Government recognizes the need to find savings, including by reducing the wage bill and rightsizing the public sector. It would be difficult for the sector to argue for more resources, particularly given the low levels of efficiency and effectiveness in the use of existing resources. Budget cuts may be expected, and the sector may need to 'do more with less', including by funding innovations via savings identified within the resource envelope.

In 2012, court expenditure represented 0.66 percent of GDP, which is higher than any EU Member State monitored by the CEPEJ.

67. **The courts are partly funded by court fees, and this poses some opportunities and some significant risks.**⁷⁶ In 2013, the courts collected 10.22 billion RSD in fees.⁷⁷ However, collection rates are low, and courts manage to collection only around one-third of the fees due. The courts are not well equipped to play the role of a collection agency, as they lack the legal tools to pursue delinquent debtors⁷⁸ and lack the technical capacity to dedicate to fee collection. More concerning, court fee revenue is declining, and will soon decline rapidly.⁷⁹ With the imminent transfer of verification services from courts to private notaries, court fees can be expected to decline by as much as 30 percent by next year.⁸⁰

68. **Budget planning and resource allocation are not linked to service delivery needs.** Rather, it is based on historical allocations of inputs, which are adjusted rarely in reaction to extraordinary events, such as the reorganization of the court network or emergencies that may disrupt judicial work. Resource allocation is not based on any caseload forecast, performance targets, or objective norms, and the resource allocation mechanism does not provide the courts and the prosecution service with the incentives or opportunities to improve cost-effectiveness.

Courts manage to collection only around one-third of court fees due.

69. **The resource mix favors personnel over all else.** The large wage bill crowds out other expenditures, including in much-needed areas such as training, ICT and infrastructure. From 2010 to 2013, less than 2.5 percent of the court system's budget was spent on capital investments, which is about half the EU average. Given the pressing need for widespread ICT and infrastructure upgrades, a more significant investment is warranted. However, disbursements on capital projects are slow due to limited

From 2010 to 2013, less than 2.5 percent of the court system's budget was spent on capital investments, which is about half the EU average.

⁷⁶ It is estimated that nearly 43 percent of the total budget of the courts came from court fees. *Draft Comparative Court Budgeting Analysis*, June, 2013, 'Case Study – Court Budgeting Practices in Serbia', World Bank, page 12.

⁷⁷ The Treasury allocates 40 percent of all collected court fees to the HJC and 20 percent to the MOJ. The rest is deposited into general consolidated revenue and used for unrelated purposes.

⁷⁸ Due to legal requirements, the courts are not able to refuse hearing a case even if the court fees are not paid, and they cannot charge late fees or interest payments. Therefore, it is common for court users not to delay or evade payment.

⁷⁹ Court fees fell by 12 percent from 2010 to 2013.

⁸⁰ Based on unofficial estimates shared by court financial officers.

procurement capacity, and funds earmarked for capital projects are routinely reallocated in supplementary budget processes.

70. **The courts are generating massive and growing arrears.**⁸¹ The main reason for accumulating arrears is poor planning in the budget preparation process and the legislative reform process. Frequently, new legislation imposes increased requirements on courts and other agencies to deliver services or fund costs of legal procedures. However, financial and regulatory impact assessments are not conducted and budgets are not adjusted. Arrears are increasingly impacting service delivery by courts, including by causing delays in hearings. Arrears also generate a significant amount of work, as court presidents and financial departments operate in a continuous crisis management mode, including the management of litigation against service providers.

71. **The lack of automation in the processing of requests for funding reallocation results in excessive budget rigidity, preventing courts and PPOs from adjust funding to business needs.** This rigidity is not a

Budget rigidity could be eased with more modern systems and better coordination between stakeholders, consistently with the Budget Law.

requirement from the Ministry of Finance (MOF) but of the HJC, SPC and MOJ respectively, which lack both human and technical capacity to process reallocation requests and so refuse them. The problem could be eased with more modern systems and better coordination between stakeholders, consistently with the Budget Law. Without addressing this problem, it is difficult to see how the

sector could unlock the funds necessary to achieve the transformation required to align with EU benchmarks.

72. **The divided management authority and lack of clear division of responsibility and accountability over judicial budget poses coordination challenges for financial management.** The budget authority is split between the Councils (the HJC and the SPC) and the MOJ. While the Councils are responsible for the wage bill for judges and prosecutors the MOJ is responsible for wages for all other staff in courts and PPOs. The division of budget responsibility and accountability in other areas, such as funding for maintenance and capital investments, is not clearly defined which slows progress and disbursements on much-needed capital projects. The authority over other non-financial matters, which may have a major financial impact, is also separated from the budget authority, including decisions that affect the large wage bill.

73. **Financial systems are fragmented and outdated.** Multiple financial management systems operate simultaneously, and staff are required to enter and transfer data between systems manually. The judicial system lacks a clear cost structure, and there is very little information on unit costs or data that would relate costs to outputs, making analysis of costs per case challenging. There is no alignment between case management and accounting systems, so financial management is unable to inform decision-making or support performance improvements.

⁸¹ By the end of 2013, the cumulative arrears reached 3.8 billion RSD exceeding the public prosecution's total budget.

ii. Recommendations and Next Steps

Recommendation 30:

Improve the quality of financial data that decision-makers require for performance analysis and planning.⁸² Implementation of this recommendation would give Court Presidents, judges and managers the information that would allow their greater and more meaningful engagement in court administration, as per good European practice.⁸³

- ✓ Ensure interoperability of different financial management systems and establish a centralized data storage management system where financial data needs to be entered only once and is then exported to authorized users. (HJC, SPC, SCC, RPPO, MOJ – medium term)
- ✓ Ensure that information management systems align financial and non-financial data around the core business processes (e.g., once a new case is registered in case management software, it should be reflected in accounting systems). (HJC, MOJ – medium term)
- ✓ Do no further harm to information fragmentation by requiring that any future automation initiative does not exacerbate the existing fragmentation between various systems. (MOJ -short term)
- ✓ Utilize the analytical potential of financial data that are already collected, e.g. by developing a standard methodology for calculating cost-per-case and encouraging courts to improve cost-effectiveness. (HJC, SPC, SCC, RPPO, MOJ – short term)

Recommendation 31:

Strengthen court fee collection. Consider establishing a body within the sector that is responsible for the collection of all court fees.⁸⁴ Implementation of this recommendation would contribute to better collection of court fees and would enable courts with more resources to respond to newly emerging needs.

- ✓ Assess the full budgetary impacts of the transfer of verification services from courts to private notaries. (HJC to lead, MOJ - short term)
- ✓ Consider amendments to Law on Court Taxes and related legislation to enable courts to charge interest and late fees and to refuse hearings to delinquent debtors in certain circumstances. Assess the fiscal impacts. (HJC, SCC – short term)
- ✓ Assess the feasibility of centralizing responsibility for all court fee collection in a specialized organization. (HJC to lead, with MOJ and MOF – medium term)

Recommendation 32:

Strengthen the accounting of financial commitments and expenditures of the courts and PPOs.⁸⁵ Enhanced procedures should ensure that delays in registering new commitments are minimized; and that commitment data is accurate, complete and easily reconcilable with the budgets and shared with decision-makers.

- ✓ Within the public sector accounting framework, strengthen procedures for the accounting and reporting of financial commitments by the courts and PPOs. (MOJ with HJC, SPC – short term)
- ✓ Generate regular reports that present commitment data against budgets. (MOJ with HJC, SPC – short term)
- ✓ Establish a workgroup which will collect and analyze detailed information on arrears within the system. (MOJ with representatives from budget and accounting departments from HJC and SPC – short term)

⁸² This recommendation aligns with the Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes).

⁸³ This is provided for in: *European Charter on Statute of Judges*, Article 1.6; *Magna Carta of Judges (Fundamental Principles) – Access to justice and transparency*, Article 22; *Recommendation Number CM/Rec(2010)12, Council of Ministers on judges: independence, efficiency and responsibilities*, Articles 40-41.

⁸⁴ This recommendation aligns with NJRS Strategic Guideline 2.5.2: Defining the criteria for determining the poverty threshold (in order to abolish or reduce court fees and reduce pecuniary fines in criminal and misdemeanour cases).

⁸⁵ This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences related with the budget.

- ✓ Based on the analysis of arrears work with MOF on settling existing arrears. (MOJ with HJC, SPC, MOF – medium term)
- ✓ Identify options for ensuring that courts and PPOs are informed when their arrears are about to be collected from the accounts of central government agencies. (HJC, SPC, MOJ and MOF – short term)

Recommendation 33:

Allow the courts and PPOs greater flexibility to reallocate funds within their individual budgets to optimize the use of resources and reduce arrears.⁸⁶ If implemented, this recommendation would increase the effectiveness of appropriated resources and reduce the number of instances when the courts have to return unspent funds because the funds' economic classification breakdown did not match their needs.⁸⁷

- ✓ Develop transparent rules and procedures enabling the courts and PPOs to reallocate funds with the approval of the Councils or MOJ respectively, consistently with the Budget Law. (HJC, SPC with MOJ – short term)
- ✓ Prioritize the timely processing of budget reallocation requests, and establish timeliness standards for these processes. (HJC, SPC – short term)
- ✓ Automate the submission of ad hoc reallocation requests by courts and PPOs to their respective Councils to minimize the administrative burden on Councils and enable the Councils to process requests. (HJC, SPC, Courts – medium term)

Recommendation 34:

Clarify the division of financial responsibilities in key areas of the budget.⁸⁸ **Articulate definitions of capital and current expenditures, and clarify which institution is responsible for each.**⁸⁹ **Clarify the division of financial responsibilities for the costs of legal procedure between the courts and PPOs. Improve coordination with service providers (i.e. prison facilities, attorneys, expert witnesses, and enforcement agents).** Clarity and coordination would improve the effectiveness of resource allocation by the HJC, SPC and MOJ. It would also improve operational efficiency and minimize unnecessary disruptions, reduce arrears and prevent duplication and equivocation among courts and PPOs.⁹⁰

- ✓ Within the existing regulatory framework, develop transparent criteria for defining and distinguishing between capital and current expenditures. The justice sector does not need to wait for a government-wide solution on the distinction between current and capital expenditures, but should one later be articulated, the justice sector could adapt it and be no worse-off. (MOJ, MOF – short term)
- ✓ Incorporate these definitions into regulations to guide the cycle of budget planning and execution within the judiciary in order to prevent duplications in requests and delays in budget execution. (HJC, SPC, MOJ with approval from MOF – short term)
- ✓ Establish a working group to clarify the division of financial responsibilities for the costs of procedure between the courts and PPOs for mandatory expenditures relating to criminal investigation by either adjusting the regulatory framework or by issuing a binding interpretation. (HJC, SCC, SPC, RRPO and MOJ and participation MOF/Treasury and, possibly, of the Judicial Committee of the Parliament – short term)

⁸⁶ This recommendation aligns with NJRS Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes.

⁸⁷ This aligns with *European Charter on Statute of Judges*, Article 1.6.

⁸⁸ This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences related with the budget.

⁸⁹ This recommendation aligns with NJRS Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes.

⁹⁰ This aligns with *European Charter on Statute of Judges*, Article 1.6.

c. Human Resource Management

i. Main Findings

74. **A strategic approach to human resources (HR) management is not evident in the Serbian judiciary.** To enable the judiciary to transform in line with EU practice, the Serbian judiciary requires a renewed focus on performance, productivity and investment in human potential.

75. **Serbia has one of the highest ratios of judges-to-population in all of Europe, along with a very high ratio of staff-to-judges.** A lack of planning and constraints in resource deployment explain in part the suboptimal system performance. Key problems with human resources management are as follows:

- a. Judges, prosecutors and staff are added to prior staffing levels in an ad hoc manner, rather than based on objective demand or caseloads;⁹¹
- b. Staffing complements are set without reference to an overall resource rationalization plan;
- c. There is in effect no national judiciary or prosecution service. Appointments and hiring are localized, resulting in groups of human resources in each court or PPO. Once appointed, judges, prosecutors, and civil service staff cannot be moved without their consent from low to high demand courts, or to other entities that have absorbed functions formerly performed in the courts. Few mechanisms exist to incentivize that consent.
- d. In addition to the large existing staff, large numbers of temporary staff and volunteers create a 'shadow workforce'. Selection is reportedly based on patronage, and their performance goes largely unmonitored. Their net contribution is likely to be marginal, and their presence often distracts more experienced staff from core functions, and turnover is high, resulting in a loss of corporate memory. In all, the shadow workforce destabilizes court operations, impedes integrated resource planning, and inhibits longer term efficiency.
- e. There is insufficient funding to support other expenditures (such as infrastructure or ICT), which would better support people to perform at a higher standard. Unnecessary rigidities in resource allocation within the sector prevent managers from making positive trade-offs between personnel and other expenditures (such as applying savings from personnel vacancies to cover training or operating costs).

Serbia has one of the highest ratios of judges-to-population in all of Europe, along with a very high ratio of staff-to-judges.

76. **Setting the appropriate number and properly allocating judges, prosecutors, and staff between courts and PPOs in line with caseload will improve the efficiency of the judiciary and provide more equitable public access.** The demand/supply balance already suggests overstaffing, and no judicial appointments should be made nor should vacancies be filled until the number of judges falls by attrition. Furthermore, a freeze should be put in place in most areas of staffing and a staff reduction plan be developed, focusing on low-skilled ancillary staff and registry staff that previously performed verification services. The 'shadow workforce' of temporary staff and volunteers should be reduced. The human resources already in the system need to be used more effectively, and investments should be made in their training. Meanwhile, the Serbian judiciary requires new mechanisms for determining the appropriate level of court staffing, taking into consideration workloads, performance, and the goals of transformation. Consolidating the responsibility for the number and

The demand/supply balance already suggests overstaffing, and no judicial appointments should be made nor should vacancies be filled until the number of judges

⁹¹ Judicial appointments should generally be considered very cautiously, recognizing that judges and prosecutors are permanent investments. Once appointed, they are difficult to remove or transfer and generate high unit costs to the system in terms of salaries, allowances, accompanying staff etc.

deployment of judges, prosecutors, and non-judge/prosecutor staff should greatly enhance resource planning. The Councils should immediately build their capacities to carry out this critical task.

77. The allocation of funding between positions, personnel needs, and other inputs (e.g., technology) needs a significant shift within the overall budget envelope. The system needs fewer low-level ancillary staff and should abolish lay judges who drain resources and do not contribute to service delivery. In its place, the system should invest in and foster specialized and analytic roles, such as judicial and prosecutorial assistants, advisors, court managers, court secretaries, planners, IT administrators, and statisticians. Investments in ICT, infrastructure and process re-engineering are needed to enable better skilled people to work to higher standards.

78. In particular, judicial and prosecutorial assistants make an important contribution to sector performance, and they deserve special attention in HR reforms. Currently, they do not receive any formal

The judicial system should create an attractive and viable career path for high-performing assistants to advance to key managerial (non-judge) positions in the courts in a new system that values mid-level management.

training, and there are few mechanisms in place for their objective evaluation or promotion. Yet they provide critical support to judges and the court administration in processing cases. Many assistants aspire to work in their role only temporarily as a 'stepping stone' to becoming judges or prosecutors. This aspiration is unrealistic (and perhaps always was) in a system that already has an excess supply of judges, falling caseloads and shrinking mandates. Yet their skills and corporate memory are valuable to the sector. The judicial

system should create an attractive and viable career path for high-performing assistants to advance to key managerial (non-judge) positions in the courts⁹² in a new system that values mid-level management. It should also provide training and re-skilling to enable these judicial assistants to align their aspirations with that of a modern judiciary.

79. Progress is underway in developing a system for the evaluation and discipline of judges. Rules for the evaluation of judges and prosecutors were adopted in 2014 after much delay. Although these rules are arguably too lenient and vague, they provide a frame for measuring performance and could be strengthened over time. Further work is also needed to link evaluation to promotion and career progression. Incentives should be built into both systems to encourage judges and prosecutors to develop their skills through continuing training and to demonstrate a track record of performance. An education program with judges and prosecutors may be useful to encourage this kind of cultural change.

80. There is an acute need for training and capacity building across the Serbian judiciary. The Judicial

The Academy should focus more on continuing training and lead a large-scale capacity building initiative for judges, prosecutors, assistants and court staff alike.

Academy has in the past been overly focused on the initial training of new judges, despite the system already having too many judges, falling caseloads and shrinking mandates. Looking forward, the Academy should focus more on continuing training and lead a large-scale capacity building initiative for judges, prosecutors, assistants and court staff alike. Training could cover all aspects relevant to the

transformation to a modern European judiciary, based on a comprehensive training needs assessment.

Continuing training should cover all aspects relevant to the transformation to a modern European judiciary, based on a comprehensive training needs assessment.

81. Overall, the judiciary needs clearer assignment of responsibility for human resources policy making, more sophisticated management, and better-defined systems for human resources. It is incumbent on the HJC and SPC to take the lead on most of these matters.

⁹² This could include as senior advisers, analysts, court administration professionals, court managers, chiefs of cabinets etc.

ii. Recommendations and Next Steps

Recommendation 35:

Impose a hiring freeze for judges and do not fill judicial vacancies until a rigorous and transparent methodology is developed to determine the needed number of judges. If adjustments are required, transfer judges with their consent or promote judges within the system to prevent any increase in the total number of judges. Work within the budget process to re-allocate funds earmarked for the salaries of judicial vacancies to more productive areas, such as mid-level specialist staff, ICT and infrastructure.⁹³ The HJC should implement this freeze immediately and maintain it for the medium term until the HJC develops a rigorous methodology to determine the number of needed judges and articulates that methodology. The number of judges needed is likely to be well below the current number of sitting judges, so a process of attrition will be required.

- ✓ Impose a freeze on filling judicial vacancies. If vacancies arise in higher ranks, fill them through promotion of judges from lower ranks. Do not fill the vacancies at lower ranks, given falling demand. (HJC, SCC – short term and ongoing)
- ✓ Gradually reduce the wage bill over time by attrition – i.e. not replacing retiring or departing judges. (HJC – short term and ongoing)
- ✓ If needs arise, transfer existing judicial assistants from less-busy courts to busier courts of the same court level within the same appellate region. (HJC, SCC – medium term)⁹⁴
- ✓ Work within the budget process to re-allocate funding for unfilled judicial positions to other priority expenditures, such as investments in managerial capacity, training, ICT upgrades and infrastructure improvements. (HJC, SCC, MOJ with approval of MOF – medium term)
- ✓ Request the consent of existing judges to be appointed as substitute judges in courts of the same court level within the same appellate region. Transfer judges temporarily with their consent, where needs arise. (HJC – medium term)
- ✓ Create incentives for judges to consent to transfers and be appointed as substitutes, including financial incentives and consideration in future promotion processes. (HJC, SCC – medium term)
- ✓ Establish a rigorous and transparent methodology at the central level to determine the number of judges needed, taking into account, inter alia, population, geography, demand for court services, demand by case type, domestic legal requirements, recent reforms to court mandates, and the experience of comparator EU Member States. (HJC, SCC – medium term)

Recommendation 36:

Determine staffing objectively and in line with European experience, and adjust staffing when circumstances change.⁹⁵ Reduce temporary employees and ‘shadow’ staff. Costs would be moderate in the short term, but reforms would produce significant savings.

- ✓ Analyze non-judge staffing needs in the courts based on caseload and economies of scale. Examine outliers to identify immediate staff reductions through layoffs or longer term through attrition. (HJC, SPC, MOJ – short term)

⁹³ This recommendation aligns with NJRS Strategic Guideline 5.1.1: Establishment of an efficient system of allocation of judges based on the principle of equalization of the number of cases per judge, as well as on additional criteria taken into consideration in the process of establishing the new court network; respect of the principle that a judge can be transferred only in the court of the same rank which is overtaking competences from the abolished court; introduction of the system of permanent transfer and reallocation of judges (on voluntary basis in accordance with the constitution and with adequate stimulation) with particular regard to the reintegration of judges who returned to office after the decision of the Constitutional Court of Serbia in 2012; termination of an office of public prosecutor only if the public prosecutor's office was abolished.

⁹⁴ See also Recommendation 1 to improve performance management in courts, including through the transfer of files.

⁹⁵ This recommendation aligns with NJRS Strategic Guideline 1.3.2: Analysis of the Results of work of Courts and PPOs and undertaking of the measures pursuant to the results of the analysis for better deployment of human resources in judiciary (determining the required number of deputies, judges and equitable caseload and allocation of cases).

- ✓ Develop a staff reduction program in the courts and PPOs, focusing on rationalizing staff in accordance with the changing mandates of courts (i.e. targeting redundancies of land registry staff, verification staff etc.) and reducing or outsourcing ancillary staff whose roles do not contribute to case processing (cleaners, drivers, typists, registry staff, maintenance staff, carpenters etc.). (HJC, SPC, MOJ – short term)
- ✓ Offer incentives to staff to move from the courts to the Executive Branch or PPOs as a preferred alternative to layoffs. (HJC, SPC, MOJ – short term)
- ✓ Strictly limit reasons for hiring temporary or contract employees. Standardize reporting on numbers, roles, and costs of the shadow workforce. (MOJ – short term)
- ✓ Freeze all volunteer appointments and phase out the volunteer program in courts and PPOs. (SCC – short term)
- ✓ Create formulas for determining funds and number of case processing staff per judge and administrative staff based on units of work (e.g., standard number of ICT people per device supported). Establish transparent justifications for deviations from the staffing levels set in the standards. Address staffing levels of administration and public employees in the medium term. (MOJ – short to medium term, with HJC advising prior to 2016.)
- ✓ Create a more sophisticated staffing needs/norms model considering the impact of statutory, administrative, or technological changes on staff needs and include other civil servants and public employees. (HJC – long term)

Recommendation 37:

Establish systems to select, evaluate, and promote the most qualified judges to enhance quality, increase efficiency and public trust in the judiciary.⁹⁶ Use the evaluation and promotion system to recognize good performance and incentivize innovation. Develop and apply remedial actions, including mandatory re-training, for low-performing judges. Implementation of recently-adopted evaluation rules should be the focus in the short term.

- ✓ Clarify performance evaluation procedures, including how evaluation ratings will be used to make decisions about probation, promotion and discipline. This will entail changes to both statutes and evaluation rules. (HJC, National Assembly – medium term)
- ✓ Establish criteria and rules for filling vacant Court President positions so that temporary appointments, if necessary, are for only a short duration. (HJC – medium term)
- ✓ Implement the recently-adopted rules on the criteria, standards and procedure for promotion and performance appraisal of judges. (HJC – short term)
- ✓ Consider tightening the rules in the following manner (HJC – medium term):
 - Establish more rigorous standards for the achievement of a satisfactory rating;
 - Reduce the periods of evaluation for probationary judges to ease the administrative burden on evaluation panels;
 - Include evaluation criteria that create incentives to improve system performance, including participation in training, mentoring of less-experienced judges and participation in task forces and working groups;
 - Give preference in promotions to judges who have served in multiple courts or voluntarily worked on backlog reduction in their own or other courts.
- ✓ Provide evaluation panels with sufficient support staff to compile information against evaluation criteria, to facilitate panels in the conduct of performance reviews. (HJC – short term)
- ✓ Conduct an education campaign for judges about the skill enhancement and promotional purposes of evaluations. (HJC – medium term)

⁹⁶ This recommendation aligns with NJRS Strategic Guideline 1.5.1: Encouragement, strengthening and maintaining the quality of human resources in judiciary, especially through improvement of the system of professional evaluation and management of human resources.

Recommendation 38:

Conduct a comprehensive training needs analysis for existing judges, prosecutors and court staff. Re-balance the focus of the Judicial Academy towards continuing training, and design and implement a significant continuing training program for all judges, prosecutors and staff.⁹⁷ Enhanced continuous training for judges and assistants should commence in the short term. The significant injection of training will require a moderate investment.

- ✓ Reduce the initial training intakes until a transparent and rigorous methodology has been developed to determine the number of needed judges and legal issues raised in the recent Constitutional Court decision have been resolved. (HJC, SPC, JA – short term)
- ✓ Rebalance the Judicial Academy budget by reducing funding for initial training activities and increasing funding for continuing training activities. Shift the focus of staff towards the preparing continuing training activities. (JA, MOJ – short term)
- ✓ Conduct a comprehensive training needs assessment for existing judges, prosecutors, and staff. (JA, HJC, SPC, MOJ – short to medium term)
- ✓ Focus the Academy as a training center developing rigorous, consistent, and effective training materials and methods, using lessons from the European Judicial Training Network (EJTN) as a guide. (JA, HJC, SPC, MOJ – short term)
- ✓ Adopt a skills-based training program for court staff to enhance performance in their current roles. (JA, HJC – medium term)
- ✓ Create a training plan and provide government-sponsored training to other employees (e.g., Court Managers, registry staff). (JA – medium term)
- ✓ Raise the standards of the initial training curriculum and evaluation. (JA, HJC, SPC – medium term)

Recommendation 39:

Develop effective, efficient, and transparent disciplinary measures to ensure quality of justice and effective access to justice.⁹⁸ Each of these recommendations is relatively inexpensive; reducing the number of complaints could result in the Disciplinary Prosecutor and Commission becoming more cost-effective.

- ✓ Ensure adequate staffing of disciplinary departments in the HJC and SPC, and consider increasing their salaries commensurate with their responsibilities. Reduce delays in the application of disciplinary procedures. Provide training on disciplinary procedures to judges, prosecutors and court staff. (JA, HJC, SPC – medium term)
- ✓ Issue opinions with practical examples of permissible/impermissible conduct, including online FAQs about ethics. (HJC – short term)
- ✓ Analyze the outcomes of complaints processes at a systemic level, and use data to inform future reforms. (HJC – long term)

⁹⁷ This recommendation aligns with NJRS Strategic Guideline 3.1.2: Further improvement of continuous training at the Judicial Academy.

⁹⁸ This recommendation aligns with NJRS Strategic Guideline 4.1.2: Normative Strengthening of Disciplinary accountability of judges, public prosecutors and deputy prosecutors, particularly emphasizing the obligation to adhere to the code of ethics.

Recommendation 40:

Consolidate HR policy development in the HJC and promote a professional, properly-managed staff within Courts.⁹⁹ This should conform with the CCJE adjudication standards and promote efficiency¹⁰⁰ in accordance with the Bangalore principles.¹⁰¹ While some steps could begin immediately, most tasks are medium term. Centralized staffing and performance pay are long term efforts. These tasks are generally low cost, but some require the addition of a moderate number of staff to the HJC.

- ✓ Invest in mid-level analytical staff in the courts with an additional benefit of creating an attractive career path in court administration for judicial assistants and court staff. Consider a regional approach for analytical tasks for smaller courts. (HJC – medium term)
- ✓ Create a detailed position description, specific evaluation process and career path for judicial assistants (from junior to senior assistant and on to advisor). Develop specific evaluation criteria and a rigorous evaluation process for judicial assistants that recognize their contributions to system performance. (SCC in consultation with HJC – short term)
- ✓ Build capacity within the Councils to take responsibility for the use and number of civil servants and employees. Adjust the systematization by reducing the number of court classifications to allow flexible deployment. (HJC, MOJ – short term)
- ✓ Codify that the HJC and SPC (with dedicated HR units) will be responsible for non-fiscal aspects of court employee policy development. (National Assembly, HJC, SPC, MOJ – short term)
- ✓ Establish uniform civil servant and labor processes for non-judge employees (uniform judicial-sector job descriptions, position-specific recruitment and selection methods, performance evaluations with standardized rankings); identify training needs and candidates for succession. (HJC – medium term)
- ✓ Identify the source of reluctance in certain courts to utilize Court Managers; raise awareness of the how Court Managers are successfully utilized in some courts. Establish standard duties and qualifications for Court Managers. (HJC – medium term)
- ✓ Introduce periodic reviews of performance evaluations by a centralized authority to ensure procedures are followed. (HJC – long term)

⁹⁹ This recommendation aligns with NJRS Strategic Guideline 5.3.3: Relieving the burden on judges in terms of administrative tasks which take a significant portion of their time, by reassigning them to the administrative and technical staff and judicial assistants by ensuring uniformity of administrative and technical procedures through the adoption of the relevant rules of procedure.

¹⁰⁰ See CCJE Opinion No. 2.

¹⁰¹ *'The responsibility for court administration, including the appointment, supervision and disciplinary control of court personnel should vest in the judiciary or in a body subject to its direction and control.'* Implementation of Bangalore Principles of Judicial Conduct, 2010.

d. ICT Management

i. Main Findings

82. **The Serbian judicial system does not yet approach ICT as a tool for transformation.** Responsibility for ICT is fragmented. An overall governance group representing primary justice institutions is needed to set ICT policies, prioritize reforms, and conduct long term planning across the judicial system. Without such coordination, ICT investments decisions will be taken on an ad hoc basis and continue to be donor-driven and supplier driven.

83. **ICT is under-funded and some basic needs are not being adequately addressed.** Hardware is often old; internet connections are uneven across the territory; server capabilities are weak; and many courts lack adequate scanning facilities. ICT literacy is generally low across the judiciary, and basic computer training has not been provided for judges, prosecutors and court staff. Several courts have no ICT support staff, while others do not have enough staff, or have temporary or poorly trained ICT staff. ICT staff turnover is high, and developing in-house ICT capacity will be critical to effective operations and sustainability.

Hardware is often old; internet connections are uneven across the territory; server capabilities are weak; and many courts lack adequate scanning facilities.

84. **The judiciary relies on a variety of unlinked ICT systems for case processing, case management, and document management.** The system used in Basic and Higher Courts (AVP) could readily produce greater functionality than it does currently. However, there has been no training on AVP since its rollout in 2010. Ongoing development has been limited, due to poor budgeting and lack of interest in evidence-based decision-making. New case management systems are being rolled out in different courts, and the process has been deeply fragmented. In many cases, courts continue to rely on hard copies that duplicate existing case management systems, and the systems have yet to instill changed behaviors.

85. **Automated information exchange is extremely limited across the sector.** The exchange of documents between lower and higher courts, between courts and PPOs, and between courts and external institutions (such as police and prisons) is almost entirely manual, resulting in significant inefficiencies, errors, and delays in case processing and delays in receiving funds owed to the court or other parties. Furthermore, ICT remains largely unexplored for sharing information on court practice, accessing services, or facilitating the exchange of documents between legal professionals and the courts.

The AVP system could readily produce greater functionality than it does. However, there has been no training on AVP since its rollout in 2010.

86. **The judicial system is caught in a ‘vendor lock-in’, where excessive dependence on vendors has heightened costs and risks and undermined in-house capacity.** Vendors are currently responsible for critical tasks throughout the judiciary, from development through to maintenance, and vendors own and control the data. Contracts favor the vendors, in large part because they were not subject to careful negotiation.

87. **Courts, PPOs and the Councils need meaningful, accurate, and timely statistics generated by the case management system to become more effective in managing overall system performance.** In recent years, significant improvements have been made, particularly to case management systems, and the Serbian judiciary is now a relatively data-rich environment. Data quality varies but is sufficiently reliable to inform decision-making.¹⁰² Yet, data collection requires substantial manual effort, which is time-consuming,

¹⁰² For discussion of how data was used in the Functional Review, see **Annex 1 Methodology**. The Functional Review team found that the data environment in Serbia is relatively rich relative to comparable jurisdictions. Data across the system contained numerous

inefficient, and prone to errors.¹⁰³ This negatively affects daily operations and inhibits the much-needed transition to evidence-based decision-making in the sector.

ii. Recommendations and Next Steps

Recommendation 41:

Develop more robust ICT governance structures to ensure future investments target justice sector goals and meet business needs.¹⁰⁴ Activities should commence in the short term and require few costs:

- ✓ Establish a strategic cross-institutional ICT Governance Group to include senior managers of relevant institutions. (MOJ, HCC, SCC, SPC, RPPO – short term)
- ✓ Establish an Operational Data Working Group that sits as a second tier in the ICT governance structure to enable front-line managers and staff to provide input to information management reforms. (ICT Governance Group – short term)
- ✓ Establish a technical working group of ICT staff across the sector to discuss detailed aspects of rollout.

Recommendation 42:

To enhance ICT funding: conduct a cross-judiciary technology architecture assessment; establish a long-range budget plan to sustain automation initiatives; and conduct cost- benefit and total cost of ownership (TCO) analyses for all proposed projects.¹⁰⁵ Costs would be moderate and additional staffing may be required. Activities could begin immediately, but build in the medium term:

- ✓ Conduct a Technology Architecture Assessment to assess the current technology environment across all judicial sector institutions, and develop a blueprint of future Target State Technology architecture including a transition strategy, roadmap, and solution architecture. (MOJ ICT division and Architecture Consultancy – short term, endorsed by ICT Governance Group)
- ✓ Establish a defined methodology for conducting business case analyses for proposed projects and analyzing their likely total cost of operations. (ICT Governance Group – short term)
- ✓ Create a complete inventory of ICT hardware and software assets, and ICT HR capacities in the judiciary beginning with information in BPMIS. (MOJ – medium term)
- ✓ Based on the inventory, develop a sector-wide long-range ICT budget plan. (ICT Governance Group in cooperation with MOF – medium term)
- ✓ Review future donor-funded proposals to determine TCO and assess whether the life-cycle costs can be supported with available funding. (MOJ – medium term)

Recommendation 43:

Invest in some ICT management capability, particularly in contract negotiation and oversight.¹⁰⁶ Effective contract management would increase value for money and reduce excessive, costly reliance on ICT vendors (vendor lock-in). Beginning immediately, contract arrangements for ICT vendor support should be more explicit and benefit the State more. Analysis of services to be brought in-house should begin in the medium

errors but generally minor ones. However, data were deeply fragmented across the system, and thus required processing, cleaning and triangulation to validate findings. The process highlighted that stakeholders could generally rely on data from existing systems to identify broad trends to inform decision-making, particularly at the individual court level. Unfortunately however, the use by stakeholders of existing data has been limited to date.

¹⁰³ For example, the judiciary created a centralized, standalone dashboard application to examine court performance and resources use. However, the courts enter data manually instead of downloading or exporting them from the case management system.

¹⁰⁴ This recommendation aligns with NJRS Strategic Guideline 5.2.3: Ensuring sustainable development OF ICT system through financial management and user support services during entire life cycle.

¹⁰⁵ This recommendation aligns with NJRS Strategic Guideline 5.2.14: Improving the fundraising capacities for ICT and efficient fund management.

¹⁰⁶ This recommendation aligns with NJRS Strategic Guideline 5.2.7: Achieving sound balance between external and internal services with emphasis on efficiency.

term. These activities are likely to result in cost savings, particularly in light of moderate upfront investment in contract analysis and negotiation.

- ✓ Negotiate the terms of future ICT contracts to ensure that the judiciary, and not vendors, own the data and control ICT operations. As they come due, re-negotiate service-level agreements to specify key details.¹⁰⁷ (ICT Governance Group, Directorate for E-Government, Ministry of State Administration and Local Self-Government – medium term)
- ✓ Evaluate which ICT services should be brought in-house by preparing feasibility and cost studies comparing vendor and government-provided services. (ICT Governance Group – medium term)
- ✓ Create a disaster recovery site for data collected by courts and prosecutors. (MOJ – medium term)

Recommendation 44:

Develop a cadre of well-trained local ICT staff with defined responsibilities.¹⁰⁸ Even with more robust central ICT support services, individual courts require local ICT staff for front-line support which, if not rectified can reduce employee effectiveness and inhibit service delivery. Most of the recommendations in this section can be expected to require mid-range upfront investments (of between 100,000 and 500,000 EUR) and could begin in the medium term after critical ICT operations are stabilized.

- ✓ Develop a staffing plan to add more specialized ICT staff in critical areas¹⁰⁹ with appropriate education and experience and knowledge of court operations.¹¹⁰ (ICT Governance Group – short term)
- ✓ Establish ICT career streams in critical areas to ensure that the interests of the judicial sector are well managed in partnership with the private sector and other implementation partners. (MOJ – medium term)
- ✓ Create ICT staffing norms within courts and PPOs relative to total number of staff in each location. Hire sufficient and appropriately experienced staff at each court, or regionally to cover a number of smaller Courts. (MOJ, HJC, SPC – medium term)
- ✓ Conduct a needs assessment of ICT staff training needs. Based on the needs assessment, develop a training program for ICT staff. (ICT Governance Group – medium term)
- ✓

Recommendation 45:

Enhance existing case management systems by ensuring all available functions are used and that sufficient training is provided. Add several critical features and fields that are generally present in case management systems. Improve server performance.¹¹¹ Upgrading AVP software and servers, while more costly, should begin now.

- ✓ Provide training on case management functionality for judges and court staff. Provide specific training on data entry for court staff, applying lessons from the Commercial Courts. (MOJ – short term)
- ✓ Conduct periodic audits of case management system entries to ensure accuracy and consistency. (MOJ – medium term)
- ✓ Develop a cost estimate for identified improvements in AVP that do not require a complete overhaul of the system. (MOJ – short term)

¹⁰⁷ Details should include: level and ownership of source code; how corrective preventative and upgrade maintenance will be provided, and fixed rates for regular maintenance; details of the development services to be provided; effective version release management so there are no conflicting versions; specifics of how help desk services will be provided (online, on the phone, in person) and the times of services for each mode of delivery; a requirement that vendors create trouble tickets and report on most common help desk assistance and interventions; and specific sanctions if contract terms are not met.

¹⁰⁸ This recommendation aligns with NJRS Strategic Guideline 5.2.13: Motivating well-performing ICT staff.

¹⁰⁹ Critical areas include project management, enterprise architecture, system integration, application management, infrastructure and operations management, information security, business process analysis, information management, ICT procurement, technical writing, and so forth.

¹¹⁰ There is also a clear need for trained statisticians, data management professionals, and reporting analysts within the judiciary sector. See discussion in Governance and Management Chapter.

¹¹¹ This recommendation aligns with NJRS Strategic Guideline 5.2.6: Improving efficiency of ICT operations through performance measurement.

- ✓ Extend functionality of AVP to include electronic document flows. (MOJ – medium term)
- ✓ Investigate causes of slow server communication speed, and upgrade servers and WAN connections where needed to improve the speed of transactions. Replace distributed AVP architecture (where each court has its own server) with larger server ‘farms’, as recommended by the ICT Strategy Report. (MOJ – medium term)

Recommendation 46:

Implement standard (or at least consistent) information management practices across the judiciary to improve the quality of record-keeping and enable sector-wide data analysis.¹¹² Resolve problems with the statistical reporting in the judiciary’s automated systems so that data from courts are consistently submitted, accurate and, to the extent possible, generated by the system and not by manual calculations. Low-cost but high-return activities should commence in the short term. Introduction of a statistical umbrella is estimated at three to six months of person effort and should be implemented in the short to medium term.

- ✓ Determine which data fields in AVP should be mandatory and introduce those and greater field validation to AVP to enhance the quality of system data. (ICT Governance Group, MOJ – short term)
- ✓ Evaluate how the dashboard function of BPMIS can be aligned into existing case management systems. (ICT Governance Group, HJC – medium term)
- ✓ Define detailed technical requirements, architecture, and implementation plans for an Information Integration, Data Warehouse and Business Intelligence Solution to support decision-making, management reporting, and access to case file information and history regardless of format and system of record. (ICT Governance Group, MOJ – medium term)¹¹³
- ✓ Develop and formalize data management mechanisms consistent with ISO/IEC TR 10032:2003 framework to include (ICT Governance Group – medium term and ongoing):
 - A sector-wide Corporate Data Model and Data Dictionary to document and maintain business and technical definitions across time and facilitate dialogue with judges, managers and staff.¹¹⁴
 - Data management processes, including data management roles and responsibility, data ownership and stewardship.
 - A data quality management process that includes ongoing maintenance and review of the data across subject areas (see ISO 8000 Standard for Data quality and Master Data).
 - Data quality audits on a regular basis, including audits of business processes.

Recommendation 47:

Link the judiciary’s ICT systems and share documents electronically wherever possible.¹¹⁵ Establishing standards should begin in the short term and continue into the medium term. These activities will require a moderate investment. The first and most critical of these activities is estimated at 20,000 to 100,000 EUR. Development of data exchange protocols is likely to be in the 100,000 Euro range.¹¹⁶ While electronic data flows between the courts would be quite costly, improving scanning to allow document sharing is a low-cost alternative.

¹¹² This recommendation aligns with NJRS Strategic Guideline 5.2.4: Achieving uniformity of ICT services, tools and methods across the entire judicial sector.

¹¹³ This task should follow the overall Technology Architecture assessment

¹¹⁴ This also will be the basis for a Metadata registry that will enable a metadata-driven exchange of data internally and externally (see ISO/IEC 11179 standard for representing an organizations data in a metadata registry).The exchange is based on exact semantic definitions of data elements independent of their representation in particular systems.

¹¹⁵ This recommendation aligns with NJRS Strategic Guideline 5.2.11: Introducing diversified communication channels by using modern ICT tools.

¹¹⁶ This contrasts to migrating to a single system, which is estimated at a minimum of 500,000 EUR and in excess of 1,000 person days of effort not including associated licenses and communication connections. The judiciary also does not have the specialized staff needed to manage this transition and is unlikely to for the medium to longer term.

- ✓ Ensure interoperability by developing and implementing standards required of vendors/ developers. For example, every ICT system needs to be able to export data from particular fields (e.g., parties' names, relevant dates, assigned judge) using XML structures. (ICT Governance Group – short term)
- ✓ Review standards for scanning documents to increase the number and types of documents scanned. Address existing barriers to scanning by increasing the quantity and quality of scanners and strengthening server capability. (ICT Governance Group, MOJ – medium term)
- ✓ Develop data exchange protocols to improve interoperability between existing systems. Install middleware to allow integration of data among existing systems. (MOJ – medium term)
- ✓ Install and use middleware to share data between the courts and prosecutors. (ICT Governance Group, MOJ – long term)
- ✓ Expand data exchange protocols and common technical standards to allow interoperability between the judiciary and external institutions, the law enforcement, the National Criminal Sanction database, and financial institutions. (MOJ – long term)

Recommendation 48:

Capitalize on e-justice by moving beyond providing information about the system to providing specific case information and allowing two-way interaction (e.g., paying fees, completing forms).¹¹⁷ Doing so will also allow Serbia to take advantage of the European Justice Portal as a one-stop shop for citizen access. The cost of implementing the short-and medium term recommendations is estimated in the ICT Strategy Report at less than 20,000 EUR:

- ✓ Evaluate the e-filing pilot,¹¹⁸ make changes as needed, and expand to other Courts.¹¹⁹ Upon expansion, shift resources in courts from data entry to tasks which support the modest costs of implementing e-filing. (ICT Governance Group – medium term)
- ✓ Create common look-and-feel standards for all court websites. Improve existing websites or create new websites for all first instance courts to move from basic functionality to providing dynamic, case-specific information and allowing two-way interaction, including forms to be downloaded for completion. (HJC, SCC – medium term)
- ✓ Develop common standards about appellate decisions to be uploaded to the public websites. (SCC – medium term)
- ✓ Prepare to participate in the EU's e-justice strategy prescribing a European Justice Portal as a one-stop shop for citizen access. (ICT Governance Group – long term)

Recommendation 49:

Require new and continuing employees to demonstrate computer literacy and provide staff with relevant ICT training.¹²⁰ Computer literacy requirements should be introduced in the short term with training in case management systems implemented in the medium term. Costs of this item are unknown but are likely to be moderate.

- ✓ Require that all future job classifications in the sector require a minimum level computer software and word processing skills. (MOJ, HJC, SPC, Courts – short term)
- ✓ Provide ICT literacy course to judges, prosecutors and court staff. Offer ICT refresher courses on-site in courts. (MOJ, HJC, SCC – short term)
- ✓ Develop a training program focusing on case management system training. Distinguish between ICT specialists, super-users, and other employees to tailor ICT needs to different staff, including on the

¹¹⁷ This recommendation aligns with NJRS Strategic Guideline 5.2.13: Increasing the level of information available across judicial sector.

¹¹⁸ Implementation at the pilot courts required only that two personal computers, two printers, one reader and scanner for each court, a smart card for each participant, and a shared time stamp account.

¹¹⁹ This recommendation aligns with NJRS Strategic Guideline 5.2.15: Improving of the functionality and coverage of the judicial sector by ICT systems.

¹²⁰ This recommendation aligns with NJRS Strategic Guideline 5.2.9: Improving ICT competencies of end users, ICT staff and management.

benefits of information management (case data capture and quality) and how statistical reporting can assist their work. (HJC, SPC, Judicial Academy – medium term)

e. Infrastructure Management

i. Main Findings

88. **The overall condition of justice sector infrastructure is very poor.** The new court network brings Serbia to the EU average of number of court locations per 100,000 inhabitants. However, most facilities are between 30 to 60 years old and have received only minimal maintenance for the last 20 years or more. Electrical installations in many judicial facilities are so dire that they are unable to support much needed investments in ICT. It is clear that significant investments in infrastructure will be required to enable the system to perform in a manner that is consistent with European standards.

Most facilities are between 30 to 60 years old and have received only minimal maintenance for the last 20 years or more.

89. **The insufficient capacity of existing infrastructure affects service delivery.** There is a lack of courtrooms in courts and interview rooms in PPOs. Poor working conditions are identified by many stakeholders as a significant reason for reduced quality of court services. Courts commonly occupy buildings designated as cultural heritage sites, which makes maintenance and renovation difficult and expensive. In addition to maintenance challenges, some buildings were not designed to be courts and do not provide a functional space. In many cases, two or three judges share a single office space and use this 'chambers' as their courtrooms, creating concerns for privacy and security. Despite this, existing courtrooms are not used optimally. Hearings are held only in the mornings and schedules could be tighter to maximize the use of this scarce resource. The lack of space also creates obstacle to reforms that would improve service delivery, such as the establishment of preparatory departments.

90. **Management of judicial infrastructure is ineffective.** Data are only partially available and the system lacks basic information, such as the number of facilities under its control and confirmation of their ownership. Responsibilities were split between the MOJ for facilities, and the HJC and the SPC for operating costs. This is now consolidated with the MOJ. The MOJ's Investment Department, which is currently in charge, has insufficient capacity in terms of staff, skills and funding to perform its functions. At the same time, the Councils lack staff dedicated to this task and do not yet have a plan for how to build their capacity for this purpose. The disbursement rates for capital expenditures are low, and funds are routinely lost or reallocated in the supplementary budget process to meet other needs, such as payment of arrears.

The sector lacks basic information, such as the number of facilities under its control and confirmation of their ownership.

91. **There are no design standards or maintenance protocols for courts and PPOs.** This results an inadequate number, size, and type of courtrooms and PPOs as well as inadequate access for people with limited mobility and sub-optimal working conditions in judicial facilities.

Disbursement rates for capital are low, and funds are routinely lost or reallocated in the supplementary budget process to meet other needs, such as payment of arrears.

ii. Recommendations and Next Steps

Recommendation 50:

Conduct an inventory of all buildings in the judiciary, clarify ownership of each building and assess its current condition.¹²¹ This activity can commence in the short term and continue in the medium term for moderate costs.

- ✓ Confirm that the MOJ (and not the HJC) is responsible for maintaining the inventory and secure funding through the state budget to prepare the inventory. (MOJ, HJC, MOF – short term)
- ✓ Conduct the inventory, applying lessons from the USAID-funded JRGA project for the Misdemeanor Courts. Include basic information, such as ownership of buildings, and an assessment of conditions. (MOJ with HJC, SPC – medium term)

Recommendation 51:

Based on the inventory, create an adequately-funded infrastructure plan that enables multi-year implementation. Closely monitor the implementation of the plan to ensure that budgets are fully executed in accordance with the plan.¹²² These items can be accomplished in the medium and long term. Overall costs for full implementation will be significant, but donors may be willing to provide support, particularly if the judiciary makes progress in the implementation of other recommendations outlined in this Review.

- ✓ Increase the capacity of the Investment Department by re-allocating staff within the MOJ (or from other ministries) and provide relevant training. (MOJ – short term)
- ✓ Develop, regularly update and continuously implement a long term investment strategy for renovation of facilities. (MOJ, HJC, SPC, with international assistance – medium to long term)

Recommendation 52:

Ensure the maximum use of scarce courtrooms and investigative chambers.¹²³ Maximizing use of courtrooms can be done quickly, without funds.

- ✓ Expand the daily court schedule to ensure that hearings take place throughout the day using facilities to their maximum capacity. (Court Presidents with Court Managers – short term)

Recommendation 53:

Develop guidelines with minimum rules for design and maintenance standards for Courts and PPOs.¹²⁴ An expert team or working group should develop terms of reference for developing design and maintenance guidelines. IMG developed a 'Model Court Guideline' that can be used as a baseline for design and operation standards. Standards for the number, size and configuration of courtrooms and chambers are needed to determine each facility's requirements.¹²⁵ The standards should reflect full use of existing space. Tasks commence in the medium term and involve moderate costs.

- ✓ Conduct a functional analysis of the current needs of users. (MOJ in coordination with HJC, SPC – medium term)
- ✓ Develop the design and maintenance guidelines. (MOJ through external consultants – medium term)

¹²¹ This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences related with the budget; Strategic Guideline 1.2.3.

¹²² This recommendation aligns with NJRS Strategic Guideline 5.1.6: Development of infrastructural investment planning procedures based on the level of priority to enable the Ministry's assessment of a clearly defined and prioritized list submitted by the HJC and the SPC.

¹²³ This recommendation aligns with NJRS Strategic Guideline 5.3.4: Infrastructural investments in courts and prosecution facilities targeted at tackling the lack of courtrooms and prosecutorial cabinets, thereby increasing the number of trial days per judge, reducing the time between the two hearings and significantly expediting the investigative proceedings.

¹²⁴ This recommendation aligns with NJRS Strategic Guideline 5.1.6: Development of infrastructural investment planning procedures based on the level of priority to enable the Ministry's assessment of a clearly defined and prioritized list submitted by the HJC and the SPC.

¹²⁵ Recommendation Number CM/Rec(2010)12, Council of Ministers on judges: independence, efficiency and responsibilities.

- ✓ Form an infrastructure team with appropriate background and experience representing the primary institutions to set standards for number of needed courtrooms and chambers, as well as appropriate size and configuration standards taking into account the profile of the Court/PPO and the physical limitations of each facility. (MOJ, HJC, SPC – medium term)
- ✓ Secure state and international funding support. (MOJ – long term)

Recommendation 54:

Improve access to courthouses and PPOs to persons with physical disabilities.¹²⁶ Improved information can be **provided** and initial assessments conducted in the short term at low cost.

- ✓ Provide physical layout information on court websites, including information about restrictions to accessibility. (HJC, SCC – short term)
- ✓ Conduct a campaign to raise awareness among judges and staff about access limitations for those with physical disabilities, applying lessons from the current campaign in Leskovac Basic Court. (HJC – short term)
- ✓ Assess structural impediments for persons with physical disabilities and evaluate the effectiveness of signs and markers. (MOJ – medium term)
- ✓ Improve court and prosecutor facilities to accommodate the needs of persons with physical disabilities. (MOJ– long term)

¹²⁶ This recommendation aligns with NJRS Strategic Guideline 5.1.6: Development of infrastructural investment planning procedures based on the level of priority to enable the Ministry's assessment of a clearly defined and prioritized list submitted by the HJC and the SPC.

Part 1: External Performance Assessment

Part 1 of the Functional Review examines the performance of Serbia's judicial system in terms of the efficiency of justice service delivery, the quality of justice services, and access to justice services. Assessments are made against the indicators and references in Part 1 of the Performance Framework (at Annex 2).

1. Demand for Justice Services (Caseloads and Workloads)

Chapter Summary

- Court performance should be measured in light of the demand for court services including the quantity and nature of cases, workloads, and changes in those factors over time.**
- Demand for court services in Serbia is weaker than EU averages.** When measured relative to population, Serbian courts receive around 13.8 incoming cases per 100 inhabitants, which is slightly lower than the EU average. Meanwhile, Serbia has nearly double the ratio of judges-to-population than the EU average, with over 39 judges per 100,000 inhabitants. As a result, the incoming caseloads per judge in Serbia are approximately half the EU average¹²⁷ and are also lower than most EU11 Member States and regional neighbors.
- Caseload figures in Serbia are also highly inflated.** Many matters are counted as a 'case' that would not be considered as such in other systems.¹²⁸ Much of the caseload is composed of cases requiring little judicial work, such as enforcement cases, with a number twice as high as the EU average, and a large number of old inactive cases. Caseload inflation can result in misleading statements about the real demand pressures facing the judiciary. Once case numbers are sifted and further analyzed, judicial workloads appear to be modest.
- Caseloads are distributed unevenly among courts and without any clear pattern.** Some small courts are extremely busy, whilst larger ones are less so. Higher Courts and Appeals Courts receive a comparatively small caseload on average. A series of painful reforms and court re-organizations have done little to address the uneven caseload distribution.
- Demand for court services is also falling significantly.** Declines are most apparent in Basic and Commercial Courts where the number of incoming cases fell by over one-third and one-half respectively from 2010 to 2013. The decline is likely attributable to the transfer of judicial functions to other private or public actors and the decrease in affordability of court services. As a result, workloads are falling and the average incoming caseloads of judges across the court system declined by one-third from 2010 to 2013.
- Even so, judges, prosecutors and staff throughout the system report feeling busy and overburdened with work.** The reasons lie in the systemic problems in the way the system operates that undermine external and internal performance, and not in the numbers of judges, staff, or cases. Therefore it is the systemic problems, and their possible solutions, which are the focus of the Functional Review Report.

¹²⁷ According to the CEPEJ, in Serbia in 2012, the judiciary received on average 350 incoming cases per judge, whereas the EU average was 840. A more conservative EU average, which removes certain outliers, is 453 incoming cases per judge, which is approximately 30 percent higher than in Serbia.

¹²⁸ As one example of case inflation, a criminal investigation counts as one case, then the ensuing trial counts as a separate case. If the decision is appealed, the appeal is a separate case, and if the appeal results in a re-trial then that too counts as a separate case. If the criminal trial raises an issue of compensation to the victim, then the compensation aspects is a separate civil case.

a. Introduction

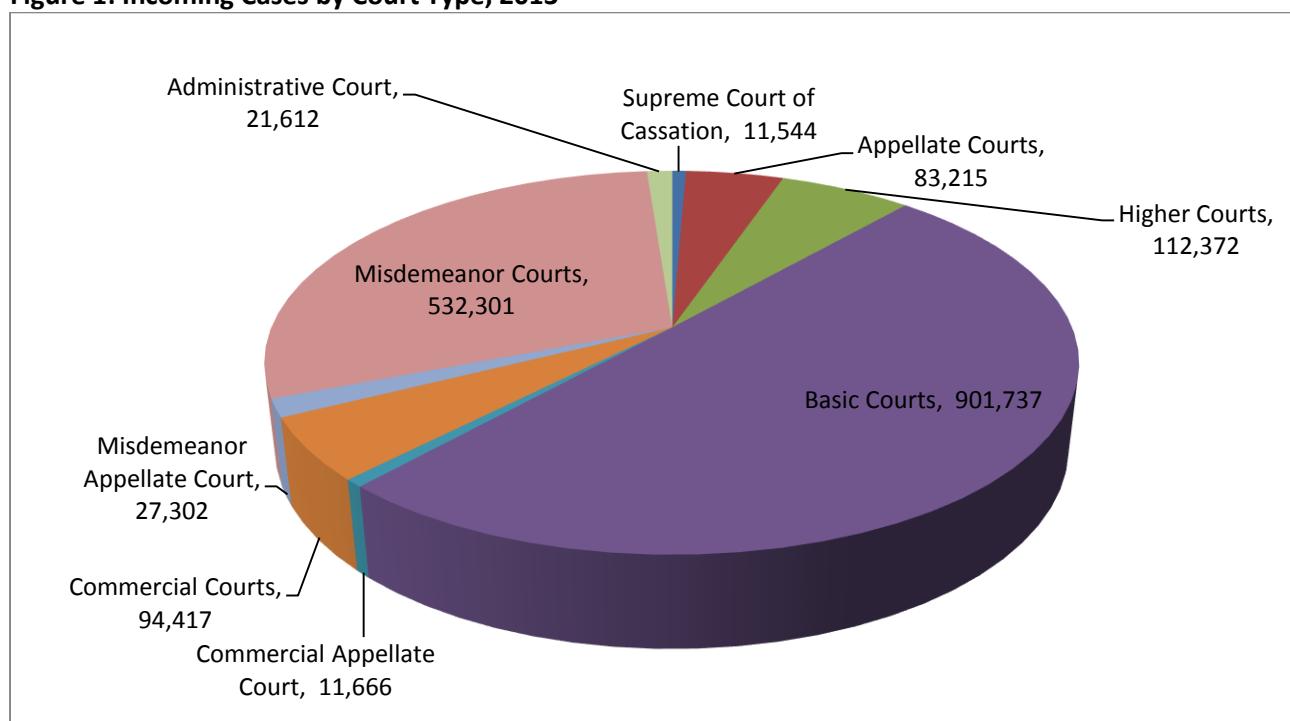
7. **Performance should not be assessed in a vacuum – evaluating what courts do requires an understanding of the quantity and nature of the demand for their services, as well as changes in those factors over time.**¹²⁹ Whether assessing a single court, an entire national judiciary, or comparing courts in different countries, absolute numbers reveal little information. The important questions are always relative: demand compared to population, incoming cases compared to the number of judges, or output compared to incoming demand. In the absence of a case-weighting methodology, this analysis attempts to distinguish between case types where possible.

b. Overall Demand and Litigation Rate

8. **In 2013, the judicial system received approximately 1,796,166 incoming cases in total across all courts.**¹³⁰ These ‘cases’ include a large number of small matters that involve little judicial work, as well as smaller number of complex cases, with little differentiation between them.

9. **The Basic and Misdemeanor Courts bear the largest number of cases - between them they receive 80 percent of all incoming cases.** For most court users, their experience with the judicial system occurs here. Figure 1 shows the breakdown between incoming cases across court types in 2013.

Figure 1: Incoming Cases by Court Type, 2013¹³¹



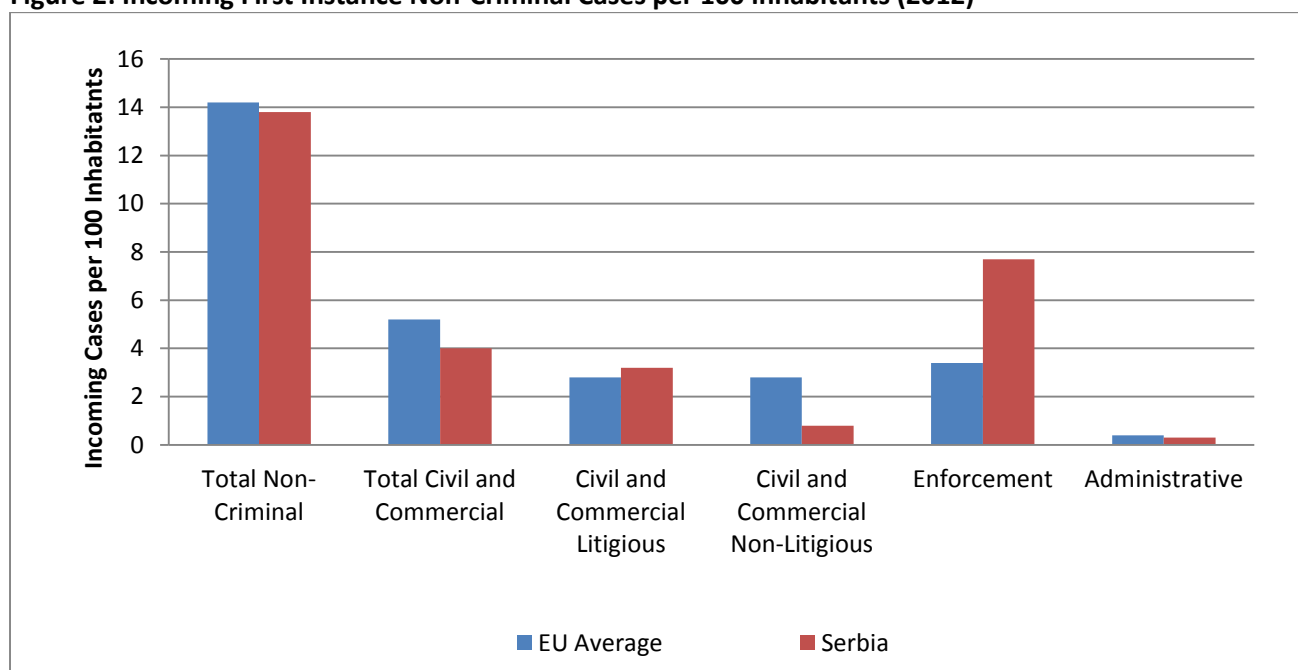
¹²⁹ In this Chapter, ‘demand’ refers here to incoming cases, not to broader injustices or potential disputes which have not made their way to the court and crystallized in an incoming case. For a discussion of unmet demand and reasons for why citizens do not take cases to court, see the Access to Justice Chapter.

¹³⁰ The SCC Annual Report for 2013 quotes a slightly higher figure of 1,800,746. The difference (4,580 cases) lies in discrepancies in the number of incoming cases in courts in Vranje and Pirot for that year. The difference is well within the margin of error does not impact the analysis or findings of the Functional Review.

¹³¹ All caseload data used for the Functional Review are contained at the *Megadata Table, World Bank*. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>). Data in the Megadata Table is sourced from the SCC (in addition to its Annual Reports) as well as supplementary sources and have been cleaned and triangulated to the extent possible to ensure the quality and reliability of analysis and findings. For further discussion on the methodology, see **Annex 1 Methodology**.

10. **Serbia is not a more litigious place than elsewhere in Europe – indeed it may be less litigious than EU counterparts.** As a proportion of population, Serbia's litigation rate (which measures the number of first instance incoming cases per 100 inhabitants) was roughly comparable with the EU average.¹³² In 2012, Serbia received approximately 13.8 incoming cases per 100 inhabitants. This suggests that around one in seven Serbians has a case in court. Serbia's litigation rate is thus slightly lower than the EU average of 14.2 cases per 100 inhabitants (see Figure 2).¹³³ Thus it appears that the general cultural perception that Serbians have a 'litigious mentality', which was suggested by some stakeholders, is thus not borne out by the data.

Figure 2: Incoming First Instance Non-Criminal Cases per 100 inhabitants (2012)¹³⁴



11. **Although Serbia's litigation rate roughly matches the EU average, there are significant differences in how that caseload is distributed and what is counted.** Serbia's enforcement cases are over twice the European average, whereas incoming administrative and civil non-litigious cases are far lower than the EU average. Some of these differences are explained by how cases are directed and processed, as well as what counts as a 'case' (see Box 1 below). For example, as more enforcement cases go to private enforcement agents, (see Enforcement Section), Serbia's litigation rate will reduce far below EU averages.

¹³² Data from EU Member States is from the *EU Justice Scoreboard 2014* based on 2012 data. See European Commission, Directorate-General for Justice, *The EU Justice Scoreboard 2014*. Serbia data is taken from Serbia's submission to CEPEJ in 2013 based on 2012 data. This covers only civil and administrative matters and does not include criminal caseloads. It is unclear how Serbian authorities delineated between first and second instance courts when completing the CEPEJ Questionnaire, so further analysis of data is not possible. When case number inflation is accounted for (such as double-counting of cases, lack of joinder etc.), Serbia's level of litigiousness may be even lower.

¹³³ The total number of cases shown in Figure 1 would not all count in the litigation rate, as those figures include some second or third instance cases. This is roughly equivalent to those entering the Basic, Misdemeanor and Commercial Courts, and some cases initiating at the Higher Court level. The rest, comprising appeals and cassation, constitutes a significant amount of additional workload for other courts but is not included in the 'litigation rate'.

¹³⁴ Since Serbian statistics are usually not broken down into these categories, figures may not match with those shown in their further analysis here. For its submission to CEPEJ, Serbia had to rework its categories to comply with the CEPEJ Questionnaire. For EU data, see *EU Justice Scoreboard 2014* (based on 2012 data). For Serbian data, see *Serbian official statistics provided to CEPEJ in 2013 for 2012*.

Box 1: What a ‘Case’ is and How the Definition Affects Litigation Rates

Serbia counts as an incoming case several items that most likely should not remain in this category. For example, many systems’ enforcement is not considered as a separate ‘case’. There is also a separate (i.e. double) accounting for criminal investigations and criminal trials. Similarly, a trial, its appeal, and its retrial are each counted as separate cases. (This has a large impact on caseloads, because a retrial is the most common result of a successful appeal in Serbia.) As a result, the number of ‘cases’ in the system is highly inflated.

Judicial workload is a different concept from the number of cases. Judicial workload includes a range of additional acts that represent real work for judges and the staff who support them. For example, appeals should arguably not be new caseload even though they represent work for judges. It also does not include cases that involve little judicial work, such as enforcement cases. Understanding judicial caseload also shows what happens to cases once they enter the system – whether, for example, most cases are decided in the first instance¹³⁵ or instead go to endless, sometimes circular, appeals and are recycled as ‘new old demand’.

Given challenges with the existing court statistics, the Review will be as specific as possible in what is measured given the current existing data. In many examples, it is not possible to distinguish truly new (first instance) incoming caseloads from the rest. Comparative data from the CEPEJ are similarly limited. As improvements to Serbia’s automated registries are made, it will be important to consider how these dimensions of judicial work can be measured and counted separately.

12. **Demand for court services is also declining significantly – the number of incoming cases fell by over 24 percent from 2011 to 2013.** As shown in Figure 3, the decline is most pronounced in the Basic, Commercial, and Misdemeanor Courts.

13. **There are likely two primary reasons why incoming cases are falling.** First and most likely, there have been significant changes in the courts’ mandate, resulting in a shift of ‘justiciable’ actions to private or other public actors. (See Box 2 below.) Secondly, economic factors may have reduced the demand for court services.¹³⁶

Box 2: The Shrinking Mandate of Serbia’s Courts

An important reason why demand for court services is falling is that several of their services have transitioned to other providers. These changes have had, and will have, an impact on incoming cases to various degrees. Their effects will not, however, eliminate court backlog created under prior laws. This backlog will remain until the courts find other means to dispose of those cases.

Bankruptcy trustees: In 2005, bankruptcy trustees were introduced to review bankruptcy cases filed in the Commercial Courts to determine if debtors own any assets that could be available for distribution to creditors. These cases did not have an effect on demand because bankruptcy cases still required judicial action, and disputes regarding the supervision of bankruptcy proceedings remain with the courts as before. Further, trustee cases constitute a small percentage of the Commercial Court caseload – bankruptcy trustees handled around 794 cases from 2005 to 2009 though that figure has since grown.

¹³⁵ This is a goal of many judiciaries and one put into effect by the Swedish courts a decade ago (Svensson, 2007).

¹³⁶ Studies show that competing factors explain how economic downturn affects the number of incoming cases and the litigation rate in the US and Western Europe. (See Bachmeier, L. et al. 2003. *The Volume of Federal Litigation and the Macroeconomy*, International Review of Law and Economics 24(2):191-207.) In non-litigious cases, economic downturn tends to increase the number of insolvency and probate applications, but dampened activity may reduce transactions, such as property registrations. In litigious cases, declining firm revenues encourage firms to reduce litigation to minimize costs which are increasingly unaffordable, yet it also encourages some firms to pursue wrongdoers more aggressively. In Serbia, it is not possible to conclude that economic downturn has caused the fall in incoming cases. However, data from World Bank surveys, as well as interviews and stakeholder dialogue, suggests that affordability is the driving factor in business decision-making, and firms express concern that courts costs are increasingly unaffordable to them. For analysis of the affordability of court services, see the Access to Justice Chapter. See also *Access to Justice Survey*, World Bank MDTF-JSS, 2014.

Land registries: From 2009, the role of land registries was transitioned from the courts to a Cadaster. Before then, court staff at the II Municipal Court in Belgrade were said to deal with around 300,000 cases per year. Any disputes over land remain with the courts as before.

Private Enforcement Agents: In 2012, enforcement agents (now called 'enforcement agents' were introduced to divest from court bailiffs the enforcement of certain types of disputes relating to monetary enforcement, and mainly focusing on the enforcement of unpaid utility bills. This transition led to a sharp fall in new incoming cases in the Basic Courts in 2013. The change may also affect caseloads in the Commercial and Misdemeanor Courts, but is not identifiable in the statistics provided.

Criminal investigation: In 2013, the function of criminal investigation was transferred from investigating judges to the prosecution service under the 2013 CPC. As a result, approximately 38,871 cases were transferred from the courts to the prosecution offices, comprising around 658 cases from the Higher Courts to the Higher PPOs, and the remaining 38,213 cases from the Basic Courts to the Basic PPOs. As shown in Figure 4 and Figure 5, criminal investigation represents a minor portion of Basic and Higher Court caseload. This transfer will therefore have less effect on litigation rates and demand, and courts will maintain a role in overseeing the process and may still count their interventions as cases. (It is, however, having significant impacts on prosecution workloads, discussed below.)

Geographic coverage of the court network: The geographic coverage of the network has also decreased. As of January 1st, 2014, Kosovska Mitrovica is no longer part of the new court network in Serbia. Under the Brussels Agreement signed in April 2013, it has been agreed that the judicial authorities in Serb-dominated north Kosovo will be integrated into, and operate within, the Pristina-run legal framework; and the appellate court in Pristina will establish a panel composed of a majority of Kosovo Serb judges to deal with all municipalities where Serbs form the majority. The Review team is not aware of any HJC and MOJPA plans of transferring cases or staff (judges, prosecutors and administrative staff) from Kosovska Mitrovica into the Serbian court network.

Private notaries: The introduction of private notaries will significantly reduce the number of non-litigious civil cases that come before the courts. However, no analysis has been undertaken of the likely impacts of these reforms on existing caseloads. In 2013, the Basic Courts resolved more than 700,000 verification cases, including the verification of non-public documents, signatures, handwriting and copies of documents, and documents intended for use abroad. Beyond that, statistics on non-litigious caseloads in the case management system (AVP) do not disaggregate the categories of cases that will become eligible for private notary services, so the Review team was unable to identify more precisely the likely impacts. Private notary services are, however, predicted to significantly reduce the workloads of registry staff but are unlikely to impact judicial workloads. For discussion on the corresponding need for staff reduction programs in courts, see the Human Resources Chapter. For discussion of the financial impacts of stripping courts of verification services, see the Financial Management Chapter.

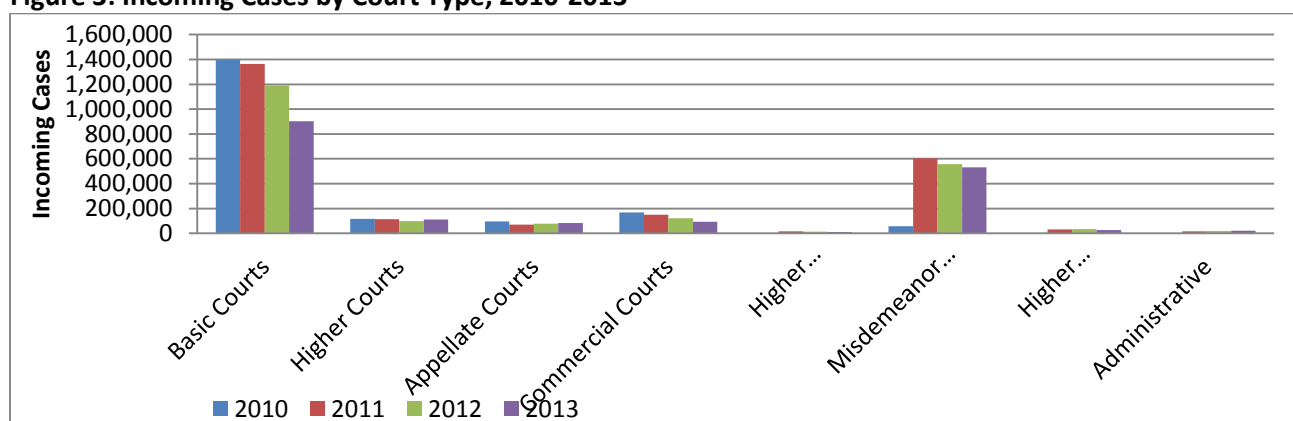
Mediation: Should mediation re-emerge in Serbia, it too may reduce workloads. Under the new Mediation Law, mediation could be applied in a range of cases including property lawsuits, family, commercial, administrative, consumer, environment and labor cases, and in the determination of damages in criminal and misdemeanor cases. The Law offers some incentives to court users to mediate. Court costs would be waived in cases that have been initiated but are successfully mediated before the first trial hearing. Further, mediator tariffs would be defined by the MOJ rather than the Center for Mediation which previously set high tariffs that deterred users. Whether such incentives are sufficient to overcome previously failed reforms and promote mediation of disputes is another matter. For a further discussion of mediation, see the Access to Justice Chapter.

Limits on successive appeals: A final change, with some impact on apparent litigation rates although not on mandate, is the limitation on second appeals. This provision was introduced in 2010 as an amendment to the existing Codes, and remained in the Civil Procedures Code enacted in 2012. From 2010 onward, while an initial appeal may remand a case for retrial, a second appeal will conclude with a judgment by the appellate court.

c. Demand for Justice Services by Court Type

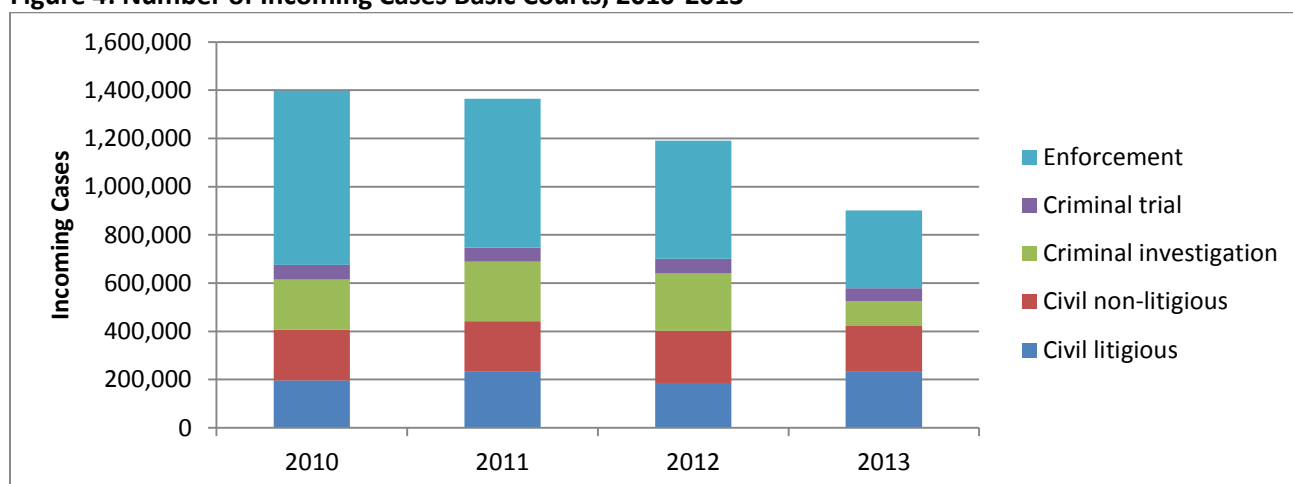
14. **The decline in demand affects some court types more than others.** The Basic, Misdemeanor, and Commercial Courts have been the most affected, while the Higher and Appellate Courts have been more stable.¹³⁷

Figure 3: Incoming Cases by Court Type, 2010-2013¹³⁸



15. **The Basic Courts have been most affected, with a 35 percent fall in incoming cases.**¹³⁹ The impact of the courts' changing mandate is visible when Basic Court incoming cases are further disaggregated (see Figure 4). The numbers of enforcement cases reduced significantly since the introduction of enforcement agents in 2011, but some new enforcement cases still enter the court system. The numbers of criminal investigations fell in 2013 when the CPC was introduced, and will soon disappear as prosecution-led investigation proceeds. Taking into account that enforcement cases require little judicial work, judges in Basic Courts will be left with a balanced workload of civil litigious cases, civil non-litigious cases, and a small caseload of criminal trials.

Figure 4: Number of Incoming Cases Basic Courts, 2010-2013¹⁴⁰



¹³⁷ The Administrative, Higher Commercial, and Higher Misdemeanor Courts have very few cases, so few that they nearly disappear from the graph. What may not therefore be evident is that among the different courts only the Administrative Court shows an increase in incoming cases from 15,536 to 21,612 cases. Due to the small size of the latter courts and lack of data, these three courts will not be further analyzed in detail in this section.

¹³⁸ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

¹³⁹ The Basic Courts received 1,397,677 incoming cases in 2010 and 901,677 in 2013.

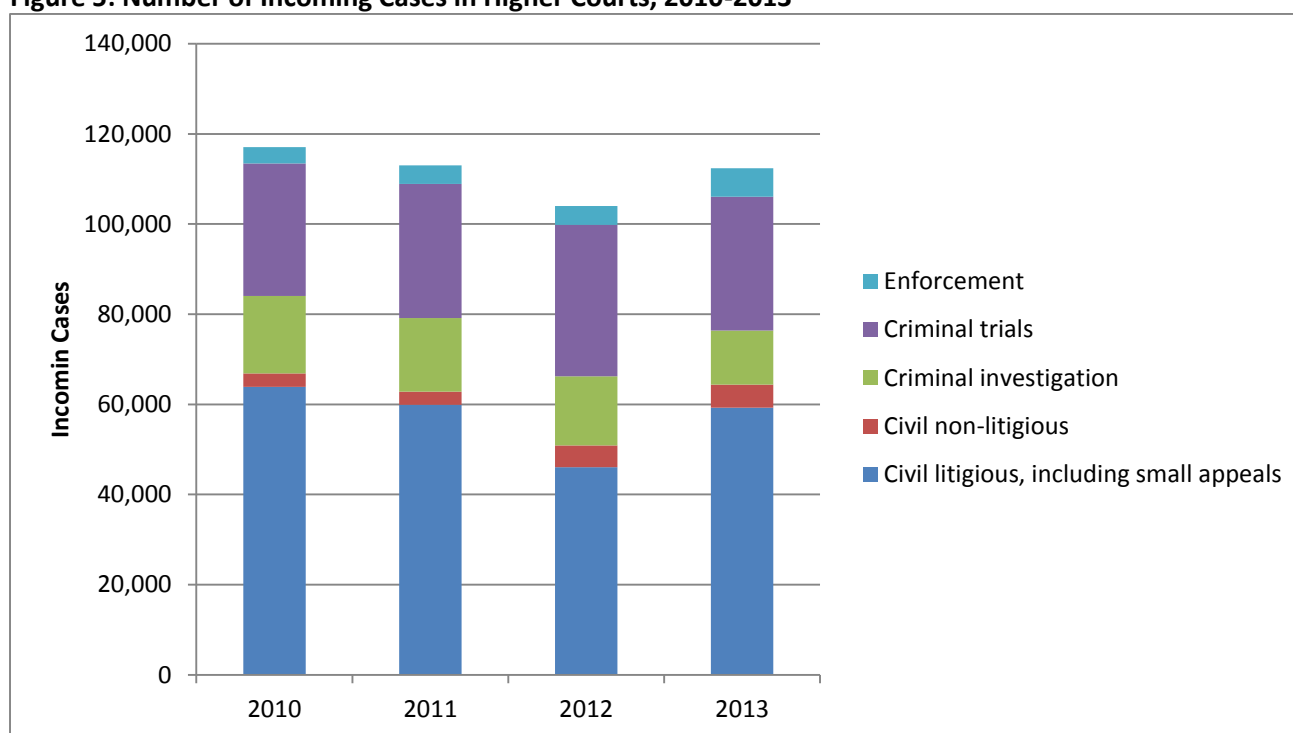
¹⁴⁰ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

16. **In the Misdemeanor Courts (the second busiest courts), incoming cases declined by 12 percent from 2011 to 2013.**¹⁴¹ Around 60 percent of their caseload is traffic cases, and the rest comprises a mix of minor offences relating to tax, customs, public procurement, corruption, etc.

17. **In the Commercial Courts, incoming cases fell by nearly 50 percent.**¹⁴² The Commercial Courts are now on a par with Higher and Appellate Courts in terms of caseload size. Such marked declines may well be related to economic factors, described above. The addition of 31 Commercial Court judges between 2011 and 2012 further decreased average caseloads per judge, leaving judges in Commercial Courts with much lower workloads than before.

18. **In the Higher Courts, the number of incoming cases remains fairly low,¹⁴³ but some of the volume of new incoming cases may soon shift from the Basic to Higher Courts.** Amendments to the Civil Procedure Code proposed by the Government in May 2014 reduce monetary thresholds so that lower value cases may be litigated in the less dense Higher Courts.¹⁴⁴

Figure 5: Number of Incoming Cases in Higher Courts, 2010-2013¹⁴⁵



¹⁴¹ Misdemeanor Court incoming cases fell from 602,761 in 2011 to 532,201 in 2013. Statistics provided by the SCC do not further disaggregate misdemeanor cases, for which reason separate charts are not repeated here.

¹⁴² Commercial Court incoming cases fell from 167,372 in 2010 to 94,417 in 2013. Statistics provided by the SCC do not further disaggregate commercial cases, for which reason separate charts are not repeated here.

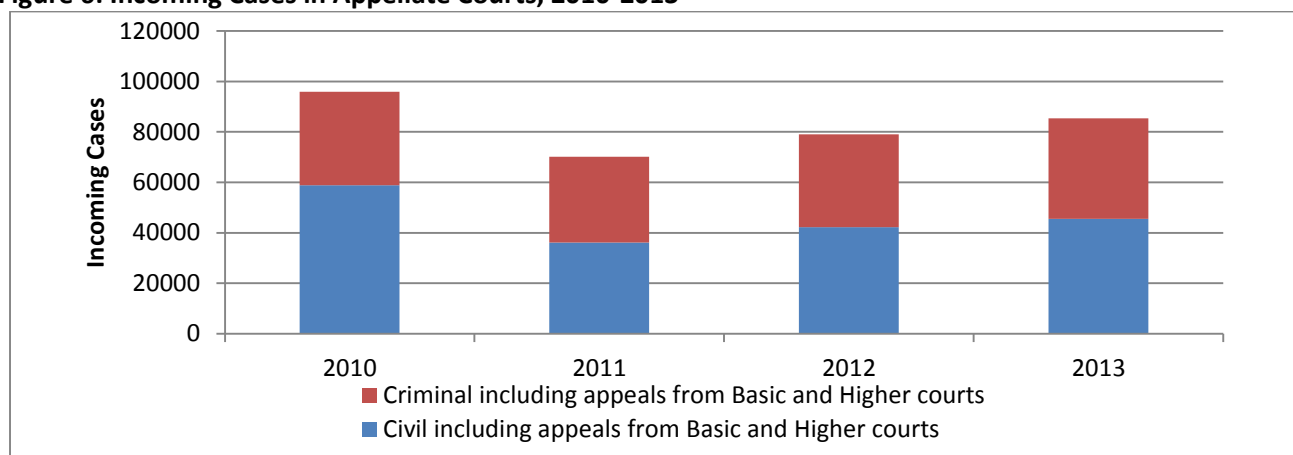
¹⁴³ There was an expected decline in criminal investigations and a less explicable rise in enforcement, as well as in civil claim appeals (small appellation).

¹⁴⁴ For example, monetary thresholds for review (as an extraordinary legal remedy) have been reduced from 100,000 EUR to 40,000 EUR, although these are unlikely to have a significant impact on the overall numbers of new incoming cases for civil cases in the Higher Courts.

¹⁴⁵ In this and the following charts, readers should note the change in scale to one-tenth the size of Figure 4. Together, Higher and Appellate Courts currently receive about 20 percent of the number of cases entering Basic Courts, up from about 15 percent in 2010. *Megadata Table, World Bank.* (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

19. The Appellate Courts also have a fairly small number of incoming cases (see Figure 6), but the number is increasing slightly.¹⁴⁶

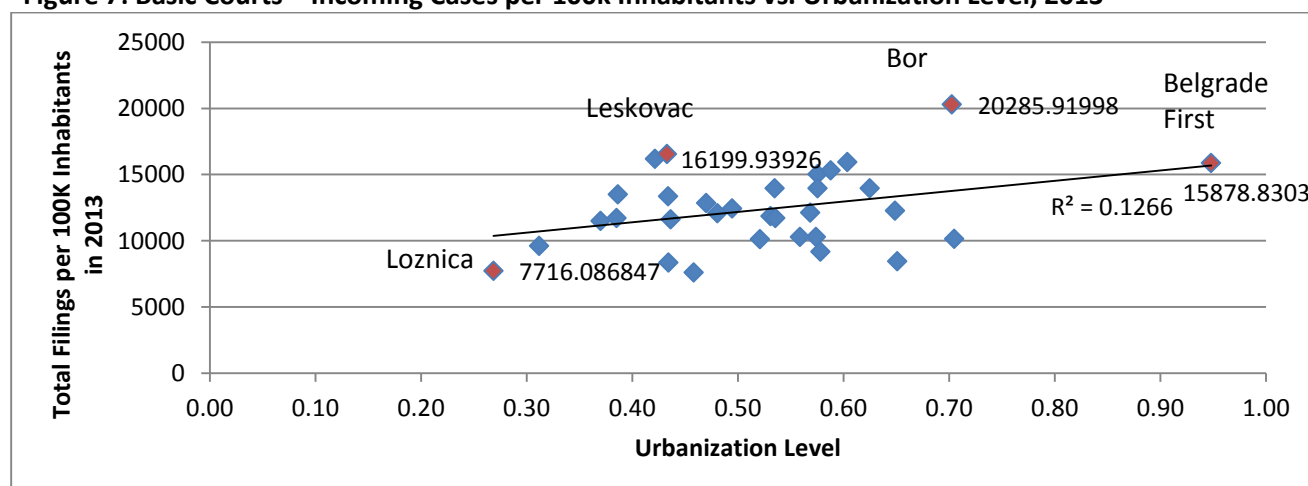
Figure 6: Incoming Cases in Appellate Courts, 2010-2013¹⁴⁷



d. Demographic Differences in Demand

20. There are also striking demographic differences in demand for court services in Serbia, which cannot be explained by common assumptions. As one might expect, there is a strong relationship between demand for justice services and the population in the court's territorial jurisdiction.¹⁴⁸ However, there is no such relationship between urbanization levels and the litigation rate as shown in Figure 7 below. Thus, the data do not support the common hypothesis that city-dwellers demand court services disproportionately more, nor that city courts are the busiest relatively speaking. To the contrary, the data reveal that some rural and semi-rural areas place significant demand on justice services, while other more urbanized areas have less demand. This also supports the view that some small courts in less urban areas receive much demand.

Figure 7: Basic Courts – Incoming Cases per 100k Inhabitants vs. Urbanization Level, 2013¹⁴⁹



¹⁴⁶ Appellate Court data for 2010 would not be representative as this was that court's first year of operation. The incoming cases may therefore have been high to accommodate pent-up demand for appeals of civil cases.

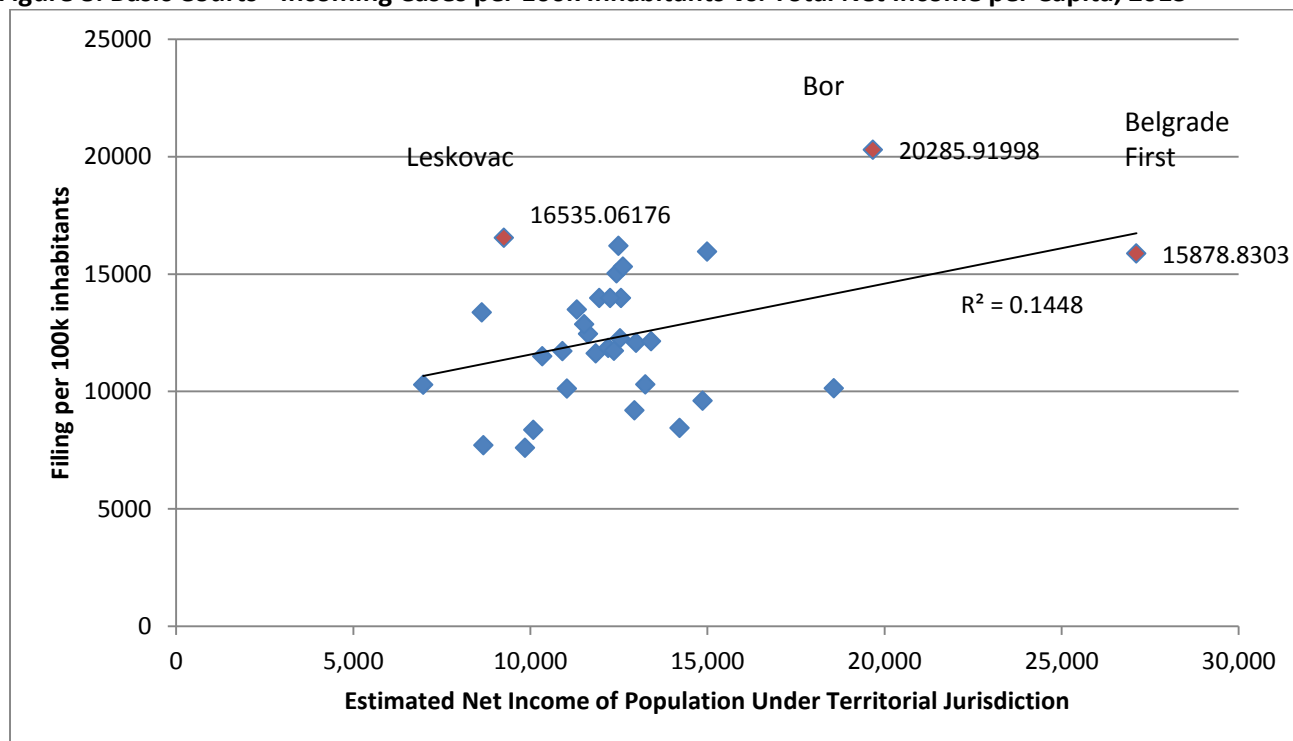
¹⁴⁷ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

¹⁴⁸ The number of cases in a given court's jurisdiction correlates somewhat to the size of the population. Hence the larger the population, particularly the urban population (in discrete amounts) in a particular court's geographic jurisdiction, the higher the number of incoming cases as well as the greater the number of dispositions and pending cases.

¹⁴⁹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

21. As expected, there is a strong positive relationship between caseload and incomes in the court's jurisdiction;¹⁵⁰ however, there is no such relationship between income per capita and the litigation rate. Thus, the data do not support the common hypothesis that wealthier individuals avail themselves of court services disproportionately more, nor that the silent and less well-off remain passive to their justice needs. To the contrary, the data reveal that some poorer areas place significant demand on justice services, while other poor areas receive less demand. Courts in some affluent areas receive high demand and others less.¹⁵¹

Figure 8: Basic Courts - Incoming Cases per 100k Inhabitants vs. Total Net Income per Capita, 2013¹⁵²



e. Caseloads per Judge

22. Incoming caseload per judge illustrates how demand for justice services matches the supply of judges.¹⁵³ Figure 9 shows average caseloads per judge by court type from 2010 to 2013.

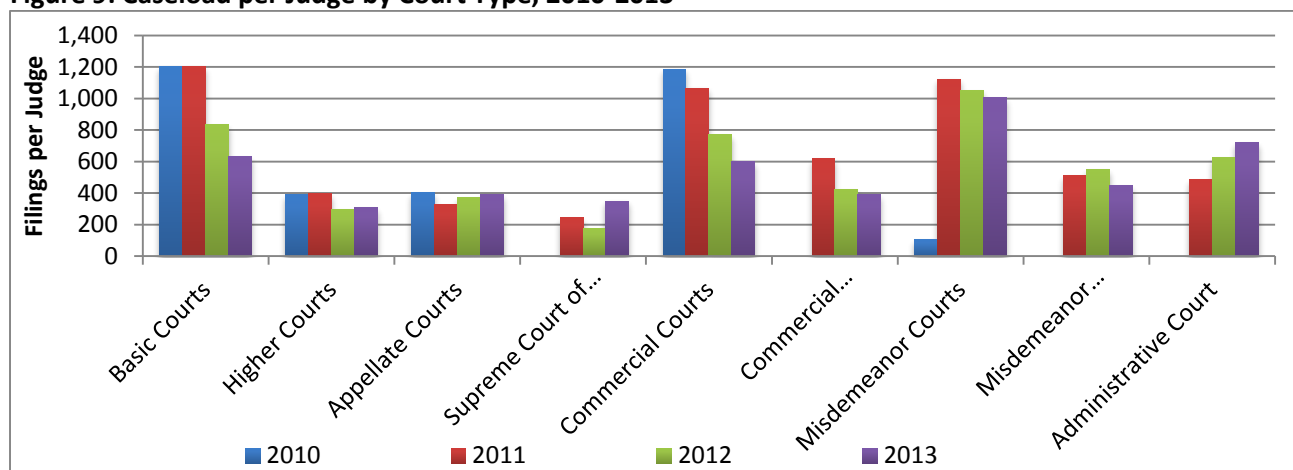
23. Incoming caseloads per judge fell dramatically in the Basic, Higher, Commercial, and Appellate Commercial Courts. Oddly, incoming caseloads per judge in Higher Courts are now lower than in either the Appeals Court or the SCC.

¹⁵⁰ Cases often concern money or economic activity. Consequently, the higher the total net income in a given court's geographic jurisdiction, the higher the number of incoming cases, dispositions, and pending cases that a court will likely experience.

¹⁵¹ For a more detailed discussion on the relationships between geographic, demographic, socio-economic factors, and court caseloads, see the Fiscal Impact Analysis of the draft *Free Legal Aid Law*, World Bank 2013, which includes a more extensive econometric analysis.

¹⁵² Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

¹⁵³ Incoming cases per judge provide a proxy for judicial caseloads and are used by the CEPEJ and others as the best indicator of demand for court services. They represent the workload of a judge in an environment where clearance rates are approximately 100 percent and backlogs are manageable – i.e. that each year the number of incoming cases will comprise to the number of cases in work, although the actual cases will change. In Serbia, the actual total caseloads (the 'full dockets') are larger, particularly in Basic Courts, due to backlogs. However, those backlogs do not reflect workload, because many are inactive and unattended or involve little judicial work (such as enforcement cases). For backlog reduction, see the Efficiency Chapter. For options to manage workloads, see the Governance and Management Chapter.

Figure 9: Caseload per Judge by Court Type, 2010-2013¹⁵⁴

24. **The fall in average incoming caseloads per judge is caused by two factors: the marked declines in incoming cases, along with an increase in the number of judges.¹⁵⁵**

If all Serbian caseloads were to be divided by the total number of judges for new or reworked demand (excluding judges and caseload for the SCC), Serbia would count 632 cases per judge, which is a drop of around one-third from 965 cases per judge in 2011.¹⁵⁶

Average workloads per judge across Serbia have fallen by around one-third from 2011 to 2013.

25. **The demand pressures facing Serbian judges are far lower than the EU average and continue to decrease.** As discussed above, Serbia receives roughly the same number of incoming cases to population than EU Member States. However, Serbia has around double the number of judges-to-population than EU Member States to service that demand. In Serbia, there are around 39 judges per 100,000 inhabitants,¹⁵⁷ whereas the EU average is 21.5 judges per 100,000 inhabitants.¹⁵⁸

26. **On average, Serbian judges receive less than half the number of incoming cases per judge than their counterparts in EU Member States.** According to CEPEJ, the average number of incoming cases in EU Member States was 840 first instance non-criminal cases per judge in 2012, whereas in Serbia, the average was 350 per judge.¹⁵⁹ Serbia's figures may also be generous, given caseload inflation.¹⁶⁰ This data suggests that Serbian judges may be less efficient than EU counterparts, since about twice as many judges are needed to process a similar level of demand.¹⁶¹ If the two EU outliers which have very high caseloads per judge are removed from the equation, the EU average is lowered to 453 cases per judge.¹⁶² Even on these more conservative calculations, Serbia has on average 23 percent lower first

On average, Serbian judges receive less than half the number of incoming cases per judge than their counterparts in EU Member States.

¹⁵⁴ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

¹⁵⁵ Given differences in how courts are organized and data are kept, this Report does not present a comparison with EU Member States. Instead, it includes only a comparison of overall Serbian caseloads.

¹⁵⁶ These are rough measures and do not take into account how cases are distributed among courts. However, the figures demonstrate the relationship between overall human resources (or judges, in this case), and the size of demand for court services.

¹⁵⁷ Based on 2013 data. This represents an increase from 33.7 per 100,000 inhabitants in Serbia in 2010.

¹⁵⁸ For EU data, see *EU Justice Scoreboard 2014* (based on 2012 data). This represents a slight increase from 21.3 judges per 100,000 inhabitants in 2010.

¹⁵⁹ For EU and Serbian data, see *CEPEJ Final Evaluation Report 2014* (based on 2012 data). This figure was calculated on the number of incoming non-criminal cases in first-instance courts.

¹⁶⁰ Current estimates may be lower still, because incoming cases fell in Serbia from 2012 to 2013.

¹⁶¹ These are rough measures because jurisdictional differences between countries leads to different estimations of incoming cases.

¹⁶² Denmark receives the largest number of incoming cases per judge, at 7,554 cases per judge, partly because it counts in its non-litigious caseload over 2 million land registry cases. Austria also has a high number of incoming cases per judge, at 2,255 cases per judge, partly because it counts in its non-litigious caseload over 1 million enforcement cases and over 600,000 land registry cases.

instance non-criminal caseloads per judge than EU Member States.

27. **Serbia also has a lower average number of incoming cases per judge than most of the EU11 Member States in its region.**¹⁶³ For example, in Croatia the average incoming caseloads per judge are over 62 percent higher than Serbia, with 568 incoming cases per judge in 2012. Croatia provides a more direct comparison, given its similar legal tradition, although it has a slightly higher judge-to-population ratio and a slightly lower staff-to-judge ratio. Slovenia has nearly triple the number of incoming cases per judge of Serbia, with an average of 939 incoming cases per judge in 2012.¹⁶⁴ In all, the data suggest that the demand pressures facing Serbian judges are generally milder than those facing judges in EU Member States in the region.

28. **In Basic Courts, the average caseload is 634 cases per judge; however, there are substantial differences in workloads among those courts.** As Table 1 indicates, these differences are not related to the size of the court. Judges in some small courts are very busy, while others in some larger courts are less busy. In an exemplary performance, the Zrenjanin Basic Court with only 27 judges has the highest workloads of 919 average incoming cases per judge. The Belgrade First Basic Court counts 234 judges and 846 average incoming cases per judge. Meanwhile, the second largest Basic Court, the Basic Court in Novi Sad, has 123 judges with a much lower average of 507 incoming cases per judge, well under the average of 634 cases per judge. These figures suggest that the general myth that ‘Belgrade is always the busiest’ is not supported by the data. The two least over-burdened courts in 2013 were Kosovska Mitrovica with 62 incoming cases per judge, and Sabac with 341 incoming cases per judge.

29. **In 2013, the busiest Basic Court had over 15 times the number of incoming cases than the least active Basic Court.** However, if the low-end outlier (Kosovska Mitrovica) is taken out of the equation, the range improves to around 3:1. In 2012, the Basic Court average was higher at 881 incoming cases per judge, but there was wide variation ranging from 1,392 incoming cases per judge in Belgrade First Basic Court to 158 incoming cases per judge in the least busy court. It is concerning that the busiest courts are routinely carrying at least three times the workload per judge of the least busy courts.

30. **The lower workloads in 2013 were a result of a 50 percent drop in enforcement incoming cases in Basic Courts.** The decline of incoming enforcement cases affected virtually all courts, but in some courts, such as the Belgrade First, Belgrade Second, Vrsac, Loznica, Pancevo, and Subotica, the decline ranged from one-third to over one-half.¹⁶⁵ It is worth noting that 634 (or even 881) incoming cases per year are not generally considered an excessive workload for a Basic Court judge.

Serbia too counts its non-litigious caseload, including large numbers of enforcement and verification cases, but the removal of these two outliers provides a more consistent picture of average caseloads per judge across the EU.

¹⁶³ Elsewhere in the region, Romania has an average incoming cases per judge are over 33 percent higher than Serbia, with 427 incoming cases per judge in 2012. Romania also has half the judge-to-population ratio and half the staff-to-judge ratio to service that demand. Bulgaria has a lower number of incoming cases per judge (at 175) and has a lower judge-to-population ratio and a lower staff-to-judge ratio. Hungary has a similar number to Serbia, with an average of 408 incoming cases per judge in 2012. However, Hungary has a lower judge-to-population ratio and a lower staff-to-judge ratio to service that demand.

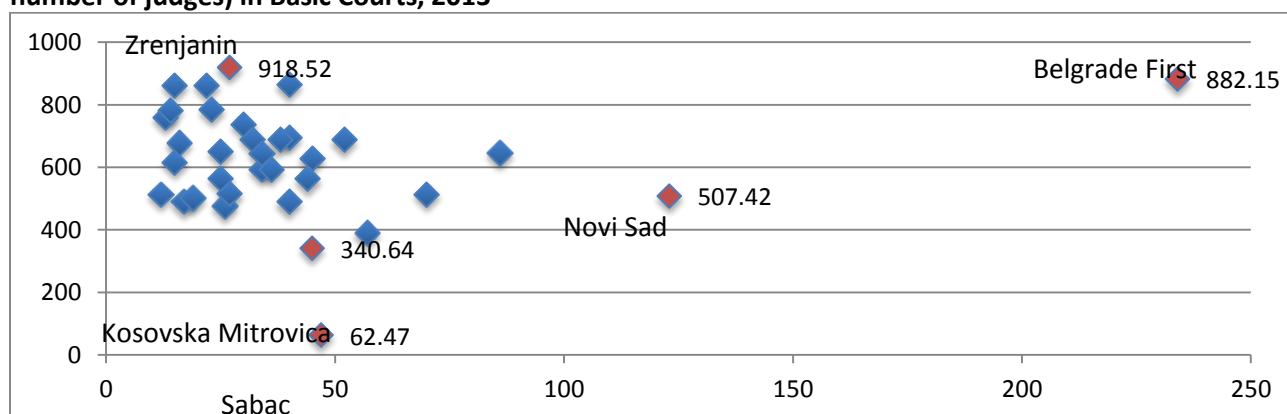
¹⁶⁴ Precise figures on the composition of Slovenia’s caseload were not available for 2012. However, based on earlier year estimates, over one-third of Slovenia’s caseload comprises land registry and business registry cases. If that discount is applied to the 2012 figures, Slovenia would have around 75 percent more incoming cases per judge than Serbia. Slovenia also has a slightly higher judge-to-population ratio and a lower staff-to-judge ratio.

¹⁶⁵ Given prior comments on issues of counting enforcement cases as actual court cases, their declining importance contributes to a more realistic picture of workloads.

Table 1: Average Caseloads per Judge in Basic Courts (2013)¹⁶⁶

Court	New Incoming Cases	No. of Judges	Caseloads Per Judge	Court	New Incoming Cases	No. of Judges	Caseloads Per Judge
First Belgrade	206,424	234	882	Nis	55,522	86	646
Second Belgrade	34,555	40	864	Novi Pazar	16,251	25	650
Bor	9,862	13	759	Novi Sad	62,413	123	507
Valjevo	28,271	45	628	Pancevo	19,586	40	489
Vranje	22,237	57	390	Paracin	13,902	27	515
Vrsac	8,322	17	490	Pirot	12,928	15	861
Zajecar	18,030	23	784	Pozarevac	24,791	44	563
Zrenjanin	24,800	27	919	Pozega	10,847	16	677
Jagodina	12,372	26	476	Prijepolje	6,151	12	513
Kikinda	10,958	14	783	Prokuplje	14,135	25	565
Kosovska Mitrovica	2,936	47	62	Smederevo	20,190	34	594
Kragujevac	36,000	70	514	Sombor	22,066	32	690
Kraljevo	22,131	30	738	Sremska Mitrovica	26,130	38	687
Krusevac	27,837	40	696	Subotica	21,351	36	593
Leskovac	35,766	52	688	Uzice	18,957	22	862
Loznica	9,535	19	502	Cacak	21,927	34	645
Negotin	9,225	15	615	Sabac	15,329	45	341

31. The graph below demonstrates the nearly random distribution of caseloads vis-à-vis court size. If all judges had similar workloads, the graph would arrange all courts along a horizontal line representing a nearly equal number of new incoming cases per judge. Instead, the majority of courts are nearly clustered toward the left-hand side of the graph. Smaller and medium size courts show caseloads across nearly the entire range, suggesting that some small courts are very busy (with nearly 1,000 incoming cases per judge) while others are far less busy (with around 50 cases per judge).

Figure 10: Relationship Between Average New Incoming cases per Judge and Size of Court (measured by number of judges) in Basic Courts, 2013¹⁶⁷

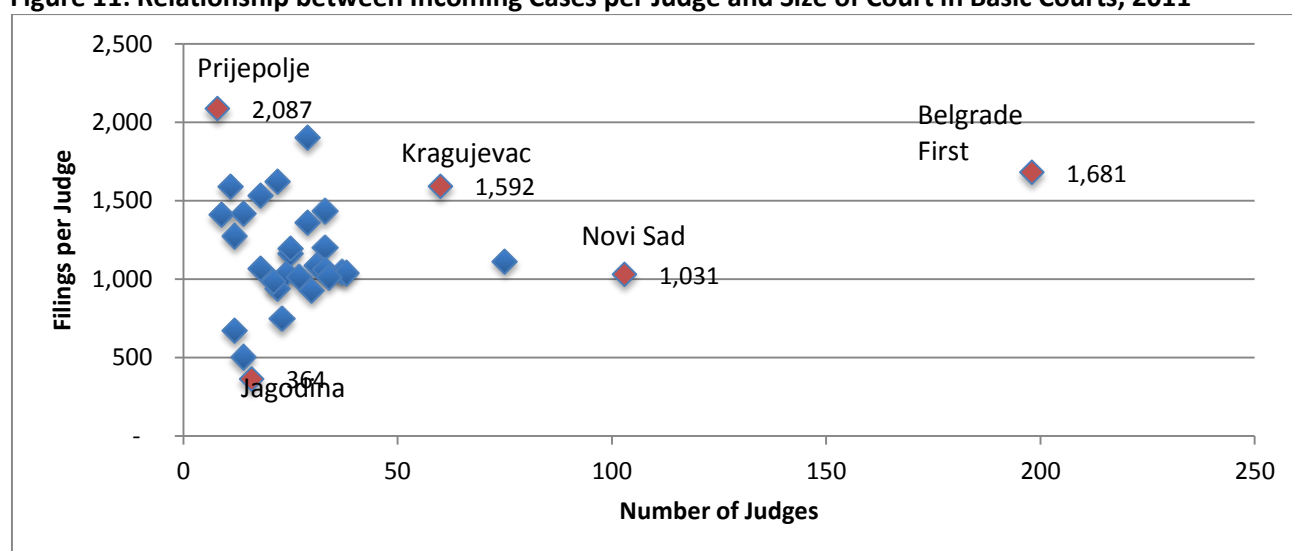
¹⁶⁶ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

¹⁶⁷ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

32. **There is much variation in workloads even within individual courts.** Judges and stakeholders reported to the Review team that caseloads varied significantly within courts, with some judges far busier than others. The Review does not assess individual judges' performance and thus did not seek statistical data on this point.

33. **The problem of unequal caseloads has persisted over time.** Some stakeholders suggested that the 2010 change to the court network reflected the ideal where judges were ensured equal caseloads, but that variation crept in since that time. However, this view is not supported by the data, which show that caseloads per judge were starkly uneven in 2010 and 2011 as well. Figure 11 shows caseloads per judge in 2011 following the court network change, with some very active small courts and some larger courts less so. Since 2011, the drop in average caseloads has done little to rectify their highly unequal distribution. This finding suggests that management of caseloads across the judicial system has been persistently weak, and that successive reforms and reorganizations have failed to equalize workloads.

Figure 11: Relationship between Incoming Cases per Judge and Size of Court in Basic Courts, 2011¹⁶⁸



f. Workloads of Prosecutors

34. **Data availability regarding prosecution services is much more limited than for courts.** In PPOs, there is no unified electronic system for case management and, as with the courts, there is no case-weighting system. As a result, it is difficult to analyze the existing workloads or the efficiency of workloads and case processing. Moreover, the prosecution service is undergoing the largest reform it has experienced since its establishment.

35. **The introduction of prosecution-led investigation under the new CPC is dramatically increasing the caseloads of the prosecution offices and expanding their roles and obligations.** By altering the amount and nature of their work, the CPC will change how the prosecutors measure and manage their performance.

36. **Table 2 below outlines the caseloads in prosecution offices in 2011 and 2012.¹⁶⁹** The number of motions for criminal investigation amounted to 331,336 by the end of 2012, an increase from 2011 to 2012 of 7.30 percent. In that period, prosecution offices worked on 11,048 new cases and handled 13,798 cases in the appeals procedure. To date, prosecution offices have rarely faced problems with backlogs. Under Serbian law, a case may remain open for more than two years with the prosecution as long as the initial motion for

¹⁶⁸ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

¹⁶⁹ 2013 data are not available.

opening a case was filed with an investigative judge in a court or the request for additional investigation was forwarded to the police. Prosecutors are reported to ‘clear their desks’ more readily than courts because they can return more unsubstantiated cases to the police requesting further information.

Table 2: Prosecution Caseloads, 2011 and 2012¹⁷⁰

	2012	2011	Percentage Change
Total number of motions for criminal investigations	331,336	308,810	Increase of 7.29%.
Criminal acts	255,049	241,340	Increase of 5.68%
Total caseload in Republic Prosecutor Office	11,048	10,787	Increase of 2.41%.
Total caseload of 2 nd instance appeals	13,798	6,304	Increase of 118.87%
Total caseload of 3 rd instance appeals	27	0	

37. **With the introduction of the new CPC, approximately 38,871 cases were transferred from courts to prosecution offices.** There are no statistics about the age structure of these cases. However since the prosecution is now responsible for investigations, several cases will certainly fall under the backlogged cases category. Paired with the fact that no investigative judges opted for transfer to the prosecution service, a significant pressure is put on prosecutors and deputy prosecutors.

38. **At the end of 2013, Serbia had 705 prosecutors and deputy prosecutors.** An additional 36 deputy prosecutors were appointed to the Basic Prosecutors’ Offices in May 2014 based on the premise that workloads will increase.¹⁷¹ Also, the number of Basic Prosecution Offices expanded from 34 to 58 under the new court network, effective January 1st, 2014. However, no substantive investments were made in IT, equipment, or infrastructure to support the work of the newly established Prosecutor’s Offices. Therefore, many prosecutors and deputy prosecutors languish with sub-standard or insufficient equipment.

39. **The prosecution service now faces multiple challenges.** There is not enough information to analyze performance and efficiency under the new CPC, and the prosecution service has a limited framework in which to conduct it. There is a need for more resources, but it is difficult to estimate the amount, type or where they would best be allocated. Some preliminary analysis was undertaken in late 2013 based on existing resource allocations for criminal investigations in courts. However, this was insufficient to measure objective needs. Investment in IT and case-management software is a top priority to enable the generation of more reliable information on the caseloads, performance, and efficiency of prosecution services. Analysis of these data will be critical to understanding the effectiveness of CPC implementation and identifying any corrective measures along the way.

¹⁷⁰ SPC Annual Report, 2012.

¹⁷¹ A total of 45 positions were announced and are expected to be filled in 2014.

2. Efficiency in the Delivery of Justice Services

Chapter Summary

1. **System efficiency is a significant challenge facing the Serbian judiciary but is improving in some areas.**
2. **Production and productivity in courts has improved over the last three years, but more should be done to address pockets of under-performance.** Clearance rates rose and are currently in line with EU averages, but this success is due largely to declines in incoming cases, and given the amount of resources they could have been higher.¹⁷² There is significant variation across courts, but few courts produced a less-than-100 percent clearance rate by 2013. The average case dispositions per judge are in the acceptable range but vary markedly by court type and court location.¹⁷³ Average case dispositions per judge have declined in the last two years in Basic, Commercial, and Misdemeanor Courts, again to due to a reduction in incoming cases and an increasing number of judges. It appears that judges generally dispose of about the same number of cases that they receive – whether that figure is big or small – without much impact on case backlogs. Many courts resolve fewer cases per judge than could be reasonably expected, and many judges resolve fewer cases than their colleagues. If the output of the worst performing courts could be lifted to the current average, productivity would be in line with performance in EU11 countries. Judges across Serbia would then have more time to contribute to other important functions that support the attainment of Chapter 23 standards, including training.
3. **In terms of timeliness of case processing at first instance, the picture is also mixed but improving.** Serbia's pending stock of unresolved cases per 100 inhabitants is high in comparison to EU averages, although this is improving for civil and commercial cases. Congestion rates remain high at around 1.41 and are particularly high in Basic, Commercial, and Misdemeanor Courts. On average, new cases proceed through the system relatively smoothly: as a result the average age of resolved cases is relatively young across all case types. However, backlogs persist because old cases remain 'stuck' and many inactive cases remain on the books. Although the case management systems are capable of producing Ageing Lists of Unresolved Cases, they are not routinely produced and so Court Presidents do not generally analyze them. This is unfortunate because Ageing Lists are perhaps the most useful tool available to track timeliness in case processing. The Functional Review developed an Ageing List for the purpose of this report, and it highlights an alarming number of cases that remain pending after three, five, and even ten years. These old cases are unlikely to meet the timeliness requirements of the European Convention on Human Rights (ECHR) and they thus require particular attention. The time to disposition of resolved cases in days varies markedly by case and court type. The time to case disposition is short in Higher Courts (98 days) but long in Basic Courts (736 days). In civil and commercial litigation, Serbia's time to case disposition is reasonable and in line with EU averages. Whereas in enforcement cases, timeliness is intractably long and far worse than elsewhere in Europe. Unsurprisingly, user perceptions of timeliness remain negative, and the long duration of cases frustrate court users. Furthermore, data on the timeliness of first instance proceedings does not reflect the full user experience, as appeal rates are high and the 'recycling' of cases through re-trials is too common, and this further prolongs the ultimate resolution of disputes for the parties.

¹⁷² For example, the judiciary maintained average clearance rates over 100% across most court types and case types during the period when more than 800 judges and prosecutors were absent from work during the failed re-appointment process. Their gradual return to work by 2013 should have significantly boosted clearance rates that year. Combined with falling incoming cases, clearance rates in 2013 could have increased dramatically. Instead, clearance rates remained about the same, and actually fell in all Higher, Appellate, Commercial and Misdemeanor Courts. This suggests that there is much capacity within the system to do more to tackle caseloads.

¹⁷³ For example, the Higher Courts currently produce fewer dispositions per judge than the SCC, and judges in the busier Basic Courts dispose of three times the number of cases than their colleagues in the least busy Basic Courts.

4. **Effective enforcement underpins the justice system, and on this indicator Serbia lags far behind EU Member States.** Enforcement cases comprise much of the backlog and cause most of the congestion and delays in courts. Enforcement departments within courts are often poorly staffed and exhibit low morale. Much of the problem relates to unpaid utility bills, which make up around 80% of the enforcement caseload.¹⁷⁴ While recent reforms will ensure that many new monetary enforcement cases, including utility bill cases, are now channeled to private enforcement agents instead of to courts, and ongoing monitoring of this profession will be required to ensure their effectiveness in dealing with these cases. Meanwhile, the elimination of the existing backlog of old enforcement cases in courts will require specific measures.¹⁷⁵ On a positive note, remedies are available. Mass resolution (purging) of cases has proven successful at the Belgrade First Basic Court, and this experience could be replicated in other courts. Targeted evidence-based approaches have also shown some promise in the Vrsac Basic Court. By contrast, enforcement cases that do not relate to utility bills, such as the enforcement of court judgments, proceed relatively smoothly, though there remains room for improvement.

5. **A range of procedural inefficiencies cause frustration among court users and practitioners and contribute to delays.** Service of process is required at each step of the process, and unnecessary delays here cause a ricochet effect through the system. Avoiding service of process is relatively easy; on average at least 57% of attempts at service of process fail. Stakeholders are unanimous that the Postal Service is ineffective and it has little incentive to improve whilst it charges the courts per attempt of service. Related cases are rarely joined (and even claims and counter-claims are not routinely joined) resulting in duplication. However, judges are unlikely to change that behavior and join cases more often whilst ever they are monitored on the raw quantity of their resolved cases. Time management in courts is often poor. Hearings are held only in the mornings, despite a lack of courtrooms. Some courts use existing case management software to schedule hearings, while others rely on manual diaries which are less reliable and more time-consuming than their modern equivalents. Routinely, there is a long delay in scheduling the first hearing in a case and an average three-month time lag between hearings. Case processing practices are outdated, including disjointed hearings and the manual exchange of case information. Case files get misplaced and take a long time to transfer from one court to another. Preparatory departments have shown some promise, but many courts have been slow to establish them, often due to lack of space or reluctance on the part of judges to part with 'their' assistants.¹⁷⁶ Hearings are often cancelled or adjourned because of the non-appearance of prisoners or expert witnesses: this is often due to poor coordination between courts and critical service providers, which is exacerbated by the growing arrears owed to these providers. An excessive number of hearings do not contribute to resolution of the case, suggesting that judges are not using their powers to actively manage their cases. For their part, attorneys perpetuate procedural inefficiency in the courts, and they have little incentive to change behavior whilst ever they are paid per hearing.

6. **Procedural abuses by litigants often go unmanaged, as do frivolous claims and appeals.** Trial judges fail to exercise their powers to curtail abuses due to a range of factors, including fear that their decisions may be overturned by appellate courts, their close relationships with attorneys, as well as a general dynamic of torpor within courts. In some areas however, stronger procedural laws, including tougher sanctions, as well as greater clarity from appellate jurisdictions, may assist judges to be more proactive in case management.

7. **Efficiency in the delivery of prosecution services is also a concern, but a lack of data inhibits more detailed analysis in this Review.** The prosecution service is also undergoing profound change in the

¹⁷⁴ At the end of 2013, around 2 million enforcement cases remained unresolved in the Basic Courts, of which around 1.7 million related to unpaid utilities bills.

¹⁷⁵ Some have suggested that private enforcement agents should also be allocated old enforcement cases, but the Functional Review advises against this.

¹⁷⁶ Preparatory departments are designed for medium and larger sized courts, where judicial assistants and court staff work together in a pool to ensure that procedural requirements are met and that cases are ready for hearing.

transition to a prosecution-led adversarial system under the new Criminal Procedure Code (CPC). The transfer of more than 38,000 investigation cases from Basic Courts to PPOs reduced inventory in the courts but created a new backlog for prosecutors, which they are struggling to process. New obligations have also expanded their scope of works, and they are ill-equipped to deal with these. Work processes require review to adapt to this new environment.

8. **Meanwhile, the efficiency of administrative services¹⁷⁷ is high and improving, but unfortunately many of these functions will soon be taken from courts.** The time required to complete verification tasks has reduced by one-third from 2009 to 2013, and in at least half of all cases, verification can be completed at one location within a half-hour. User satisfaction is often over 70% and has increased on most aspects between 2009 and 2013. Perceptions of the conduct and competence of staff has also improved. Nevertheless as part of a controversial reform to create private notary services, these tasks are scheduled to be transferred in 2015 from courts to private notaries. It is unclear what problem this aspect of the reforms is seeking to solve, given high existing levels of satisfaction with verification services. If courts were to be able to compete with notaries for basic verification tasks, they would be well-placed to provide good value-for-money services. If courts do lose these functions, significant staff reductions should be expected to follow.

a. Production and Productivity of Courts

9. **This section reviews three basic indicators regularly employed to measure judicial efficiency: total dispositions, dispositions per judge, and clearance rates, corresponding to Indicator 1.1 of the Performance Framework.** The section examines variations among types of courts, courts of the same type, and types of cases. Each indicator is explained in its respective subsection. Analysis is inhibited by the absence of a case-weighting methodology.¹⁷⁸

i. Case Dispositions

10. **The absolute number of dispositions realized annually is a measure of production or of ‘system productivity’.** This is not a usual comparative and cross-country indicator because, like caseloads, absolute numbers require context.¹⁷⁹ Nonetheless, in a single country, tracking disposition numbers across time is useful for assessing performance, particularly for management purposes. Rising or falling numbers of dispositions, overall or by court type, can help guide redistribution of resources, signal problems requiring further exploration, or be used to assess the results of reform initiatives. For example, if more criminal investigations and trials are completed under Serbia’s new Criminal Procedures Code 2013 (CPC), the transfer of investigations to the prosecutors could be considered to have enhanced efficiency. If adding judges or setting production targets produces significantly more dispositions, the measures have had their intended impacts. Disposition numbers can also be used as budgetary targets and the basis for budgetary requests. The Netherlands uses this system. Dutch courts not meeting their disposition targets return all or a part of the extra funds.

¹⁷⁷ This includes verification of documents and related services provided by courts.

¹⁷⁸ For further discussion of workloads and caseloads, see the Governance and Management Chapter.

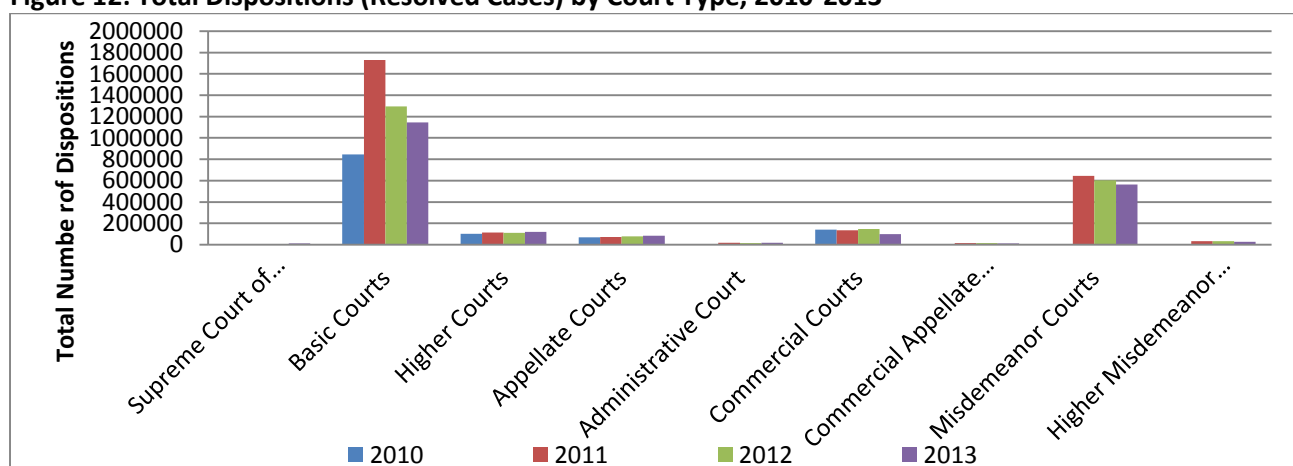
¹⁷⁹ An international comparison would be possible were there an indicator comparable to litigation rates (incoming case/population). However, no such ‘disposition rate’ indicator exists.

11. As shown in Table 3 below, total annual dispositions vary considerably across court types. As discussed in the Demand Chapter, incoming cases were either stable or declining in number over the period. Thus, an increasing number of dispositions would suggest that judges were able to address (or at least not increase) their backlog, as further elaborated below.

Table 3: Total Dispositions (Resolved Cases) by Court Type and Case Type¹⁸⁰

	2010	2011	2012	2013
Basic Courts	846,358	1,731,319	1,297,816	1,146,239
Civil litigious cases	171,559	209,539	215,180	223,388
Civil non-litigious cases	178,438	199,201	219,295	190,599
Criminal investigation	184,823	247,094	238,162	139,436
Criminal post-investigation (trial)	47,049	51,207	65,089	64,113
Enforcement	262,479	1,022,267	558,078	528,209
Higher Courts	102,855	114,048	110,049	119,962
Civil litigious cases	50,248	61,373	53,515	64,544
Civil non-litigious cases	2,968	2,944	3,428	4,391
Criminal investigation	17,548	16,239	15,733	13,848
Criminal post-investigation (trial)	28,812	29,684	33,529	31,371
Enforcement	3,279	3,808	3,844	5,808
Appellate Courts	69,391	72,154	78,513	82,274
Civil litigious cases	39,802	38,253	40,755	39,840
Civil non-litigious cases	795	594	449	2,608
Criminal post-investigation (trial)	28,794	33,307	37,309	39,826
Commercial Courts	139,601	134,468	145,670	99,975
Commercial Appellate Court	N/A	15,224	13,501	12,207
Misdemeanor Courts	567,066	644,845	601,648	562,612
Higher Misdemeanor Court	N/A	33,042	32,854	27,421
TOTALS	1,725,271	2,745,100	2,280,051	2,050,690

Figure 12: Total Dispositions (Resolved Cases) by Court Type, 2010-2013¹⁸¹



¹⁸⁰ Numbers indicate 'resolutions at the instance.' They do not necessarily signify final dispositions for cases appealed and remanded for retrial. Where they do include such cases, the numbers may involve a double counting for lower instances (first disposition and then disposition on retrial). *Megadata Table, World Bank.* (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

¹⁸¹ *Megadata Table, World Bank.* (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

12. **The Basic Courts made a remarkable upward leap between 2010 and 2011, nearly doubling the number of dispositions, but fell back significantly in 2012 and 2013.** There were positive trends in all cases except enforcement and criminal investigations, which were affected by legislative reforms and consequent declines in new filings. In these two areas, future disposition levels will only rise if more backlogged cases are resolved.

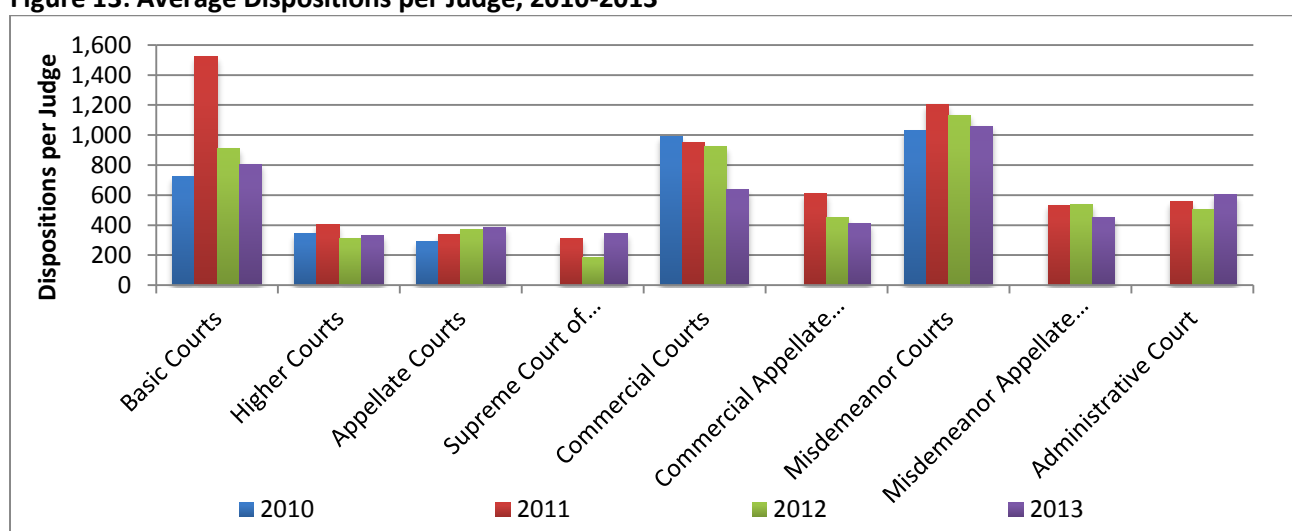
13. **The performance of Commercial Courts was less positive.** Commercial Courts reached a peak in dispositions in 2012, but declined in 2013, likely due to a decrease in incoming cases. Despite lower caseloads in 2013, judges appear not to have turned their attention to backlog reduction, as they had in 2012.

14. **Misdemeanor Courts reduced dispositions between 2011 and 2013, again due to a fall in incoming cases.** As discussed below, while all courts have a backlog they could attend to, output seems best explained by input. As courts receive fewer cases, most seem to cut back on their output correspondingly rather than compensating the difference with a concerted backlog reduction effort.

ii. Dispositions per Judge

15. **Judicial (as opposed to ‘system’) productivity is measured by calculating the ratio between the number of resolved cases and the number of professional judges within each court.** A review of average dispositions per judge across the major types of courts (Figure 13) shows significant variations over time. The Basic and Commercial Courts have shown the largest and most significant drops, while the Appellate, Higher, and Misdemeanor Courts remained relatively stable.

Figure 13: Average Dispositions per Judge, 2010-2013¹⁸²



16. **After a remarkable rise in dispositions in 2011,¹⁸³ dispositions per judge in Basic Courts dropped between 2012 and 2013.** As detailed below, dispositions rates among individual courts showed considerable variation. However, the decrease in 2012 and 2013 were consistent across all Basic Courts as result of a combination of declining incoming cases and a lesser push to reduce backlogged cases.

¹⁸² Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

¹⁸³ This rise in dispositions was due to the resolution of a large number of enforcement cases. For a further discussion on enforcement, see the Enforcement section below.

17. **Dispositions per judge are far lower in the Higher and Appellate Courts.** When asked, judges reported this is possibly due to their more complex work, and that they usually work in panels. However, judges in the Commercial Courts also deal with complex cases and sit in panels as commonly as the Higher and Appellate Courts do. Yet, despite a declining performance, Commercial Courts manage a disposition rate per judge that is almost double that of Higher and Appellate Courts. This may support the long-held view that specialization reaps a dividend in terms of the productivity of judges. Such a productivity dividend was emphasized to the Review team in interviews, and many stakeholders suggest that some form of specialization in the daily work of judges, prosecutors, and their staff, particularly in large jurisdictions, could lead to massive improvements in productivity and uniformity of decision-making.

18. **Dispositions per judge in the Higher Courts declined by 23 percent from 2011 to 2013.**¹⁸⁴ The appointment of new judges during that period resulted in higher total dispositions but lesser workload, (see Table 3 above). The Higher Courts also demonstrate considerable variation around the average, with several courts averaging as low as 154 dispositions per judge, while others averaged 450 dispositions per judge. As a result, some Higher Court judges have resolved over three times the workloads of other Higher Court judges in the same period.

19. **Appellate Courts managed a steady increase in disposition rates despite maintaining the same number of judges from 2011 to 2013.** As shown further below, the Appellate Courts also improved other performance indicators over the period.

20. **Commercial Courts averaged 636 dispositions per judge in 2013. This is much lower than the 925 dispositions per judge in 2012 and preceding years.**¹⁸⁵ There is much variation across Commercial Courts. Belgrade has a huge impact on the Commercial Court average, receiving nearly half of all commercial incoming cases and delivering over one-third the dispositions. There are a few other Commercial Courts with consistently high disposition rates, but the remaining courts are typically well below the average for Commercial Courts. Still, the overall performance is higher than Higher or Appellate Courts.

21. **Judges working in the Misdemeanor Courts produced an acceptable average 1,060 dispositions per judge in 2013, but there is much variation between Misdemeanor Courts.** Disposition rates range from 156 dispositions per judge to 1,466 (in the Smederevo Misdemeanor Court). Still, misdemeanor cases are, by their nature, relatively quick to resolve. Thus, courts with disposition rates below the average, and in particular the 14 courts (out of 45) with fewer than 900 dispositions per judge, could be encouraged to do more. If all Misdemeanor Courts could average what Belgrade produces (1,365 dispositions per judge), only 412 Misdemeanor Judges would be needed full-time to manage the caseload. The remaining 100 or so judges could then contribute to other performance improvements, such as rotational training and managerial functions in courts. In contrast with the Basic Courts, there are only a few instances where the number of judges seems out of sync with demand.

22. **In Basic Courts, the average of dispositions per judge was 806 in 2013, a decline from 959 in 2012.**¹⁸⁶ Table 4 shows average dispositions per judge in all Basic Courts. Dispositions per judge vary significantly across Basic Courts, ranging from 60 to 1,427 dispositions per judge.

¹⁸⁴ Higher Courts averaged 400 dispositions per judge in 2011 and 327 dispositions per judge in 2013.

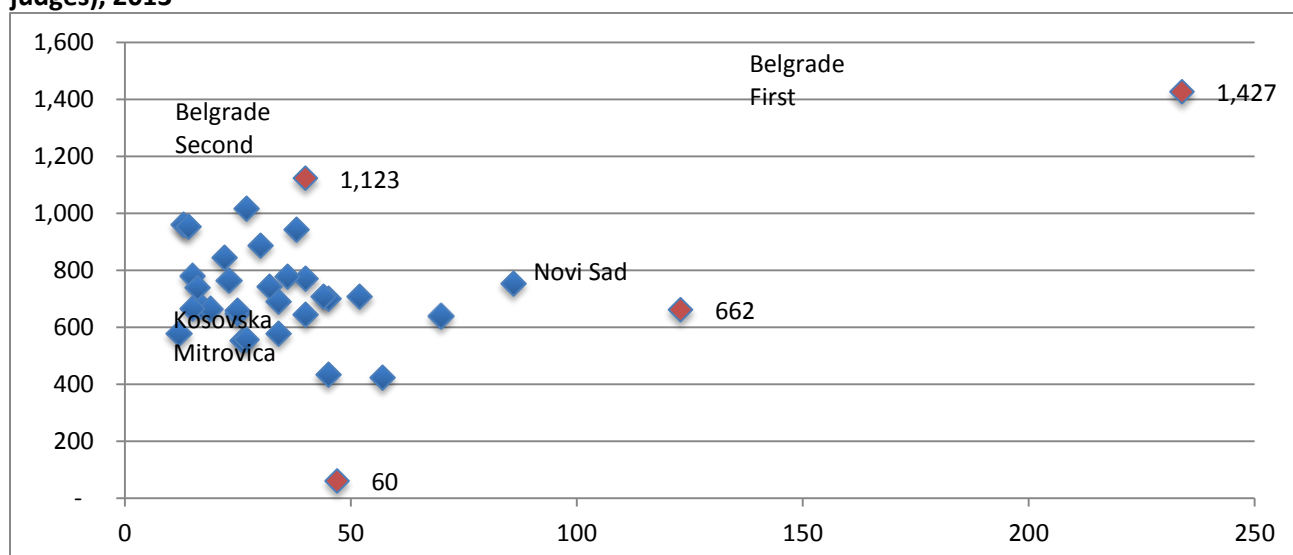
¹⁸⁵ This reduction was occurred nearly across the board. Only one court, the Commercial Court in Kragujevac, raised its average dispositions slightly over 2012. In other courts, the number dropped significantly, by as much as 50 percent for some. Only the 30 percent decrease in incoming cases enabled these courts to maintain a clearance rate of over 100 (see discussion on clearance rates).

¹⁸⁶ This does not count courts, which did not submit data.

Table 4: Total Dispositions and per Judge, Basic Courts (2013)¹⁸⁷

Basic Court	Dispositions	Judges	Per Judge	Basic Court	Dispositions	Judges	Per Judge
First Belgrade	33,871	234	1427	Nis	64,878	86	754
Second Belgrade	44,924	40	1123	Novi Pazar	16,232	25	649
Bor	12,502	13	962	Novi Sad	81,398	123	662
Valjevo	31,620	45	703	Pancevo	30,896	40	772
Vranje	24,121	57	423	Paracin	15,052	27	557
Vrsac	11,461	17	674	Pirot	11,699	15	780
Zajecar	17,593	23	765	Pozarevac	31,137	44	708
Zrenjanin	27,447	27	1,017	Pozega	11,854	16	741
Jagodina	14,363	26	552	Prijepolje	6,938	12	578
Kikinda	13,337	14	953	Prokuplje	16,488	25	659
Kosovska Mitrovica	2,842	47	60	Smederevo	23,449	34	690
Kragujevac	44,761	70	639	Sombor	23,796	32	744
Kraljevo	26,649	30	888	Sremska Mitrovica	35,847	38	943
Krusevac	25,810	40	645	Subotica	28,023	36	778
Leskovac	36,871	52	709	Uzice	18,585	22	845
Loznica	12,615	19	634	Cacak	19,689	34	579
Negotin	9,985	15	666	Sabac	19,506	45	433

23. **In Basic Courts, dispositions per judge do not correspond to court size.** Medium size courts reach some of the highest disposition rates.¹⁸⁸ The smallest courts (furthest to the left on the graph) are arranged nearly in a vertical line, from fewest to relatively high dispositions per judge. This suggests that some small courts are highly productive, while other small courts are not.¹⁸⁹

Figure 14: Relationship between Dispositions per Judge and Size of Basic Courts (measured by number of judges), 2013¹⁹⁰

¹⁸⁷ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

¹⁸⁸ For example, the 40 judges in Belgrade Second Court average 1,123 dispositions each. Sremska Mitrovica with 38 judges averages 943 dispositions per judge, while other medium-sized courts lie toward the middle or even lower disposition rates.

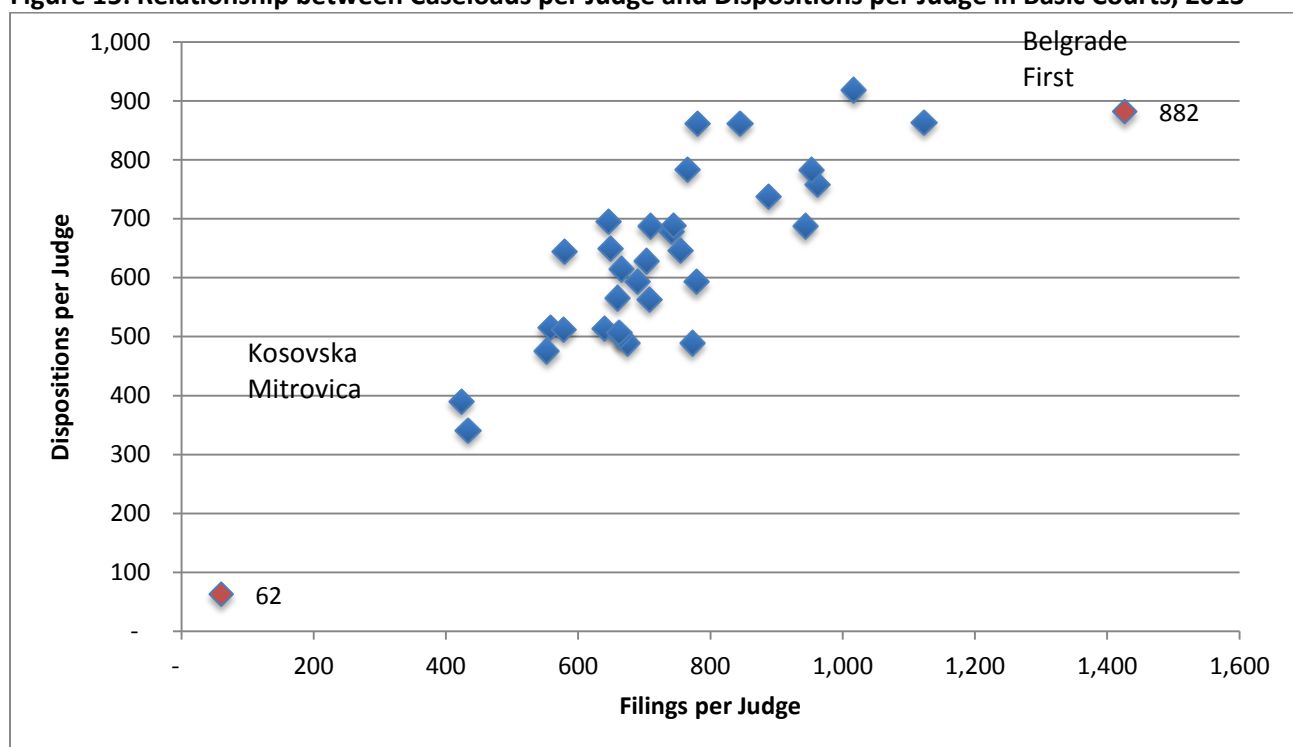
¹⁸⁹ This is not surprising given the only slightly linear and somewhat inverse correspondence between numbers of incoming cases and of judges. A similar pattern is found in Higher, Commercial, and Misdemeanor Courts. With only four Appellate Courts, there are too few observations to generalize.

¹⁹⁰ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

24. **Despite the significant variations both in incoming cases per judge and dispositions per judge, there is a close relationship between the two variables (see Figure 15).** The relationship suggests that judges tailor their output to their input to a large extent. Where the number of incoming cases is low, productivity is low as well, but when the workload increases, judges work more productively. This relationship has been found in other countries.¹⁹¹ Serbian judges appear to resolve slightly more than the number of cases they receive, but their productivity is closely linked to their incoming caseload.

25. **The close relationship may be due to prevailing productivity norms, which informally require judges to meet around 20 dispositions per month.**¹⁹² Several judges report that they monitor their norms, with a focus on getting cases ‘out the door’, and once targets are reached they report feeling more comfortable to relax their pace of work. However, the theory does not explain why there are so many judges with low dispositions per judge.

Figure 15: Relationship between Caseloads per Judge and Dispositions per Judge in Basic Courts, 2013¹⁹³

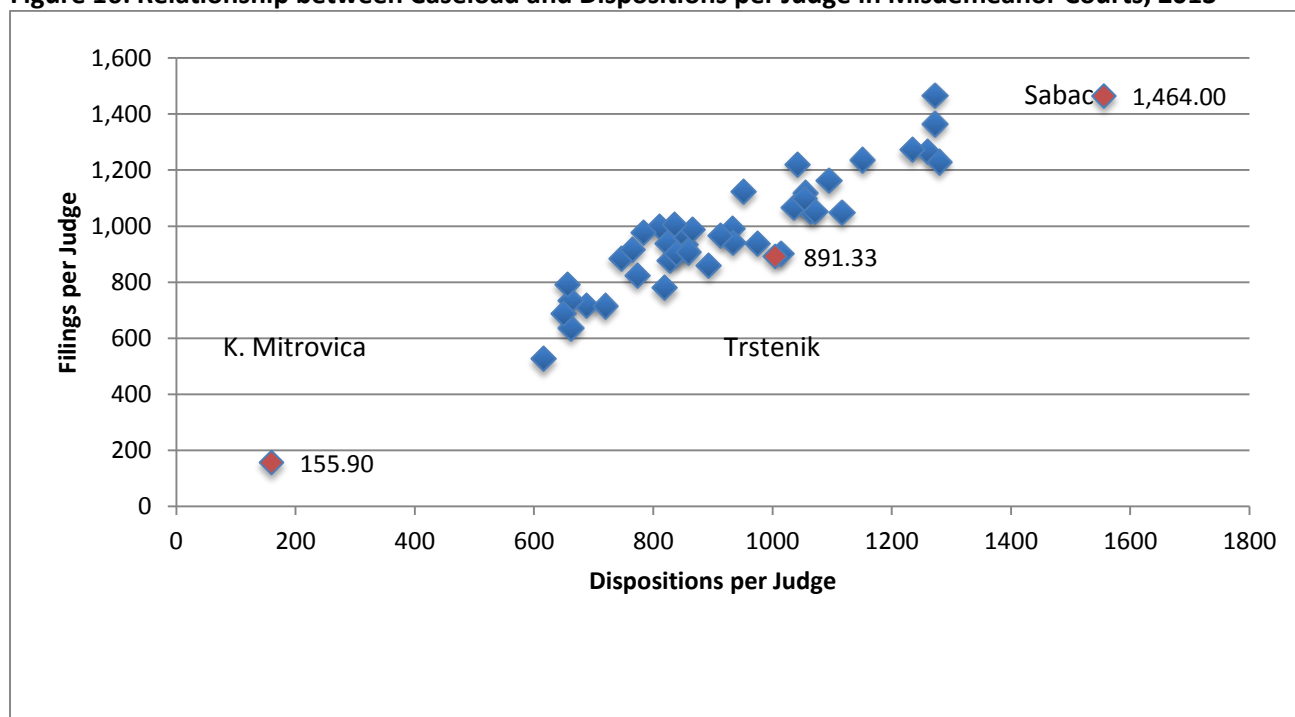


26. **The relationship between incoming cases and dispositions is even stronger for Misdemeanor, Higher, and Commercial Courts.** Variations in disposition rates show no relationship to size of court, except that the largest court (always in Belgrade) has one of the highest disposition rates. The rates among other courts in each category are distributed nearly randomly when compared to court size. All are nonetheless strongly correlated with the number of incoming cases per judge.

¹⁹¹ Magaloni and Negrete (2001) reviewed incoming cases and disposition rates for Mexico’s federal courts. They found that when incoming cases dropped, dispositions rates did as well, suggesting that judges tailored their output to the number of cases received.

¹⁹² The defined norms vary by case type and court type. In Basic Courts, the requirement is: 14 per month for criminal matters; 20 per month for civil cases; 20 for administrative cases etc. Such productivity norms are based on a 2005 decision of the SCC, but stakeholders conveyed various views as to whether these norms are still in force. Nonetheless, until they are replaced, judges and Court Presidents report that they continue to rely on them as a yardstick for judicial performance.

¹⁹³ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

Figure 16: Relationship between Caseload and Dispositions per Judge in Misdemeanor Courts, 2013¹⁹⁴

27. The above analysis highlights two conclusions; many courts are resolving fewer cases per judge than is reasonably feasible, and many judges have fewer cases than their colleague-judges. Dispositions per judge, and thus overall production (total dispositions), could be increased in each type of court if the low producers rose to meet the average disposition rate. Second, higher judicial productivity could further reduce backlogs, especially in the Basic, Commercial, and Misdemeanor Courts where it equals or exceeds the number of annual incoming cases. Third, if all courts produced at the current average level or above, fewer judges and fewer court staff would be needed for case processing.

28. Judicial productivity could be significantly improved by setting higher targets – and monitoring them closely – while ensuring a more equitable distribution of incoming cases.¹⁹⁵

29. Further, if the output of lower performing courts could be lifted to the average, judges across Serbia would have considerably more time to contribute to other important functions that support the attainment of European standards. These could include more robust court management, participation in taskforces or working groups, knowledge-exchange and collegiums, mentoring of inexperienced judges, and continuous training at the Judicial Academy.¹⁹⁶

iii. Clearance Rates

30. While disposition levels are important indicators of productivity, they do not indicate whether courts are keeping with their workloads: the clearance rate is needed for this.¹⁹⁷ Clearance rates for all court types have improved since 2010,¹⁹⁸ and are now consistently over 100%.

¹⁹⁴ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

¹⁹⁵ An alternative, which has been applied elsewhere, would be to reduce the number of judges in courts with a lower amount of work and transfer them, with their consent and accompanying incentives, to locations of higher need.

¹⁹⁶ For further discussion of opportunities to strengthen management training, see the Governance and Management Chapter.

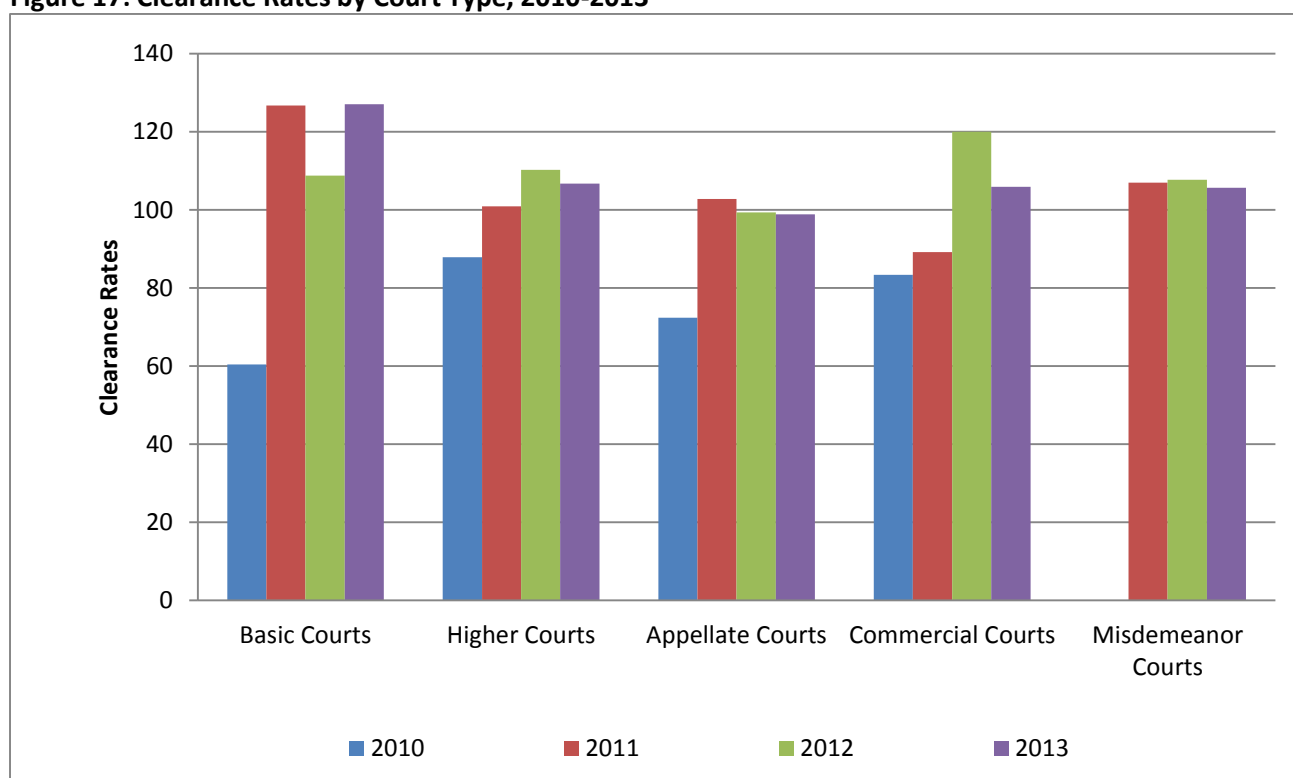
¹⁹⁷ The clearance rate is the ratio between the number of resolved and the number of incoming cases (disposed/incoming for any given year X 100). A rate above 100 implies that courts are able to keep up with the incoming caseload, and reduce accumulated backlog. A ratio below 100 indicates that a court is accumulating unresolved cases, and transferring them to the following year.

¹⁹⁸ 2010 rates for Misdemeanor Courts are not included because of concerns with the reliability of statistics.

31. **Increases in clearance rates have been largely due to falls in incoming cases, rather than improved performance.** The sharp drop in incoming cases helped the courts (particularly the Basic, Commercial and Misdemeanor Courts) to resolve fewer cases without lowering their clearance rates.

32. **The data demonstrate that clearance rates should have been much higher, and in future there is capacity within the courts to do much better.** With significantly fewer incoming cases in 2011 to 2013, clearance rates could have been higher, as judges resolved their incoming cases and attended to the backlog. Rather, clearance rates have been merely sustained or fallen slightly in 2013. Manpower is also a factor here. The fact that the court system maintained clearance rates of over 100% across most court types and case types in the absence of over 800 judges and prosecutors through 2011 and 2012 is telling.¹⁹⁹ One would expect that following the return of over 600 judges by 2013²⁰⁰ that clearance rates would have boosted to reflect their return to work, but clearance rates changed only marginally. Looking towards 2014 and beyond, there is clearly capacity within the system to increase these clearance rates and thus reduce the backlog.

Figure 17: Clearance Rates by Court Type, 2010-2013²⁰¹



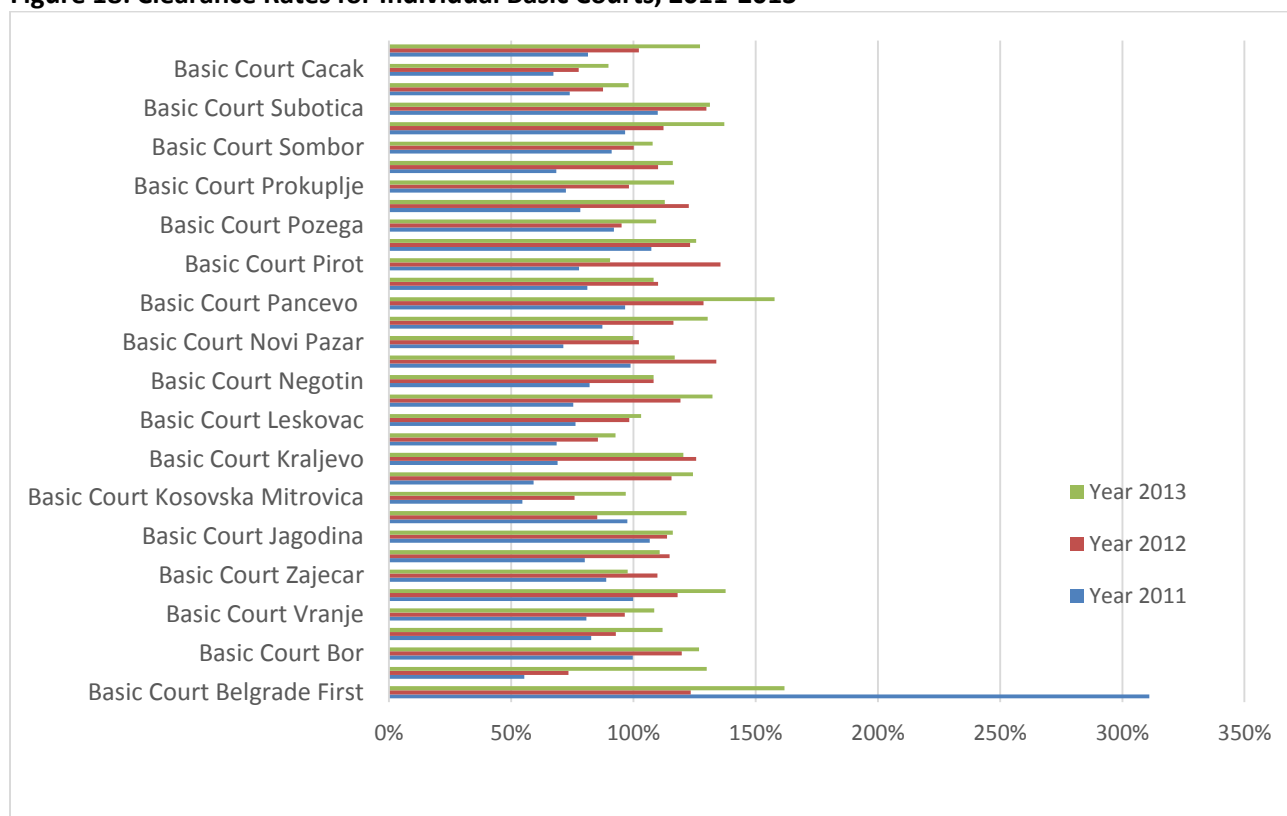
¹⁹⁹ Non-reappointed judges and prosecutors actually stopped work in 2010; however given the various upheavals in that year the 2010 clearance rates can be expected to be modest.

²⁰⁰ After the failed re-appointment process, approximately 632 judges returned to work in tranches from 2010 to 2013. The largest tranche was towards the end of 2012, following decisions of the Constitutional Court.

²⁰¹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

33. **The average clearance rates by court type obscure the significant variation among individual courts.** This is best illustrated by the Basic Courts (Figure 18).

Figure 18: Clearance Rates for Individual Basic Courts, 2011-2013²⁰²



34. **Basic Court clearance rates have improved significantly since 2010.** Although some of the highest rates were achieved in 2011 or 2012, there are still many courts with rates well over 100 in 2013. For both 2011 and 2013, the system-wide clearance rate for Basic Courts was 127 percent, with a drop to 109 percent in 2012. However, in 2011, Belgrade First Basic Court raised the entire average, compensating for many courts that remained below 100. In 2012, more courts improved their rates, and Belgrade First dropped to sixth place. By 2013, only a few courts reported clearance rates below 100 percent, including Cacak, Krusevac and Pirot.

35. **For the Higher Courts, the overall clearance rate rose steadily from 88 to 107 percent.** Belgrade and Novi Sad, with over half the dispositions between them, largely raised the average score for 2013, with rates of 120 and 124 respectively. Unfortunately, the least busy Higher Courts remained below 100: with lower workloads, judges in those courts could have at least resolved as many cases as they received.

36. **The Appellate Courts produced an overall clearance rate of around 100.** The clearance rate could have been higher in 2013, except that the Appellate Court in Belgrade, which represents around one-third of all incoming cases and dispositions, brought down the average with its 95 percent score. However, the variation around the mean was relatively slight.

37. **The Commercial Courts' improvements were due to the steady decline in incoming cases and the addition of 16 judges in 2012.** However, despite an especially large drop in incoming cases in 2013, the higher clearance rate was not maintained for that year. Belgrade, with one half to one third the dispositions and incoming cases, played a critical but not always positive role. Although very few courts scored under 100

²⁰² Megadata Table, World Bank. (Available at: <http://www.mdtfjs.org.rs/en/serbia-judicial-functional-review>).

in either of the last two years, with falling workloads, higher rates and thus a reduction of backlog should have been entirely feasible.

38. **The average clearance rates for the Misdemeanor Courts remained fairly stable, dropping only by a point in 2013.**²⁰³ While the clearance rates in many courts slipped in 2013,²⁰³ most individual courts were within 10 points on either side of the annual average, and a few reached 120 at least once.

39. **Serbia's clearance rates are broadly consistent with EU averages, but with significant variations.**²⁰⁴ This is an improvement on previous performance. Still, as Serbia has nearly twice the European average for judges per 100,000 inhabitants, and a declining number of incoming cases, it would be surprising had it not done so.²⁰⁵

Figure 19: Overall Clearance Rates (excluding criminal cases), Serbia and EU Average, 2012²⁰⁶

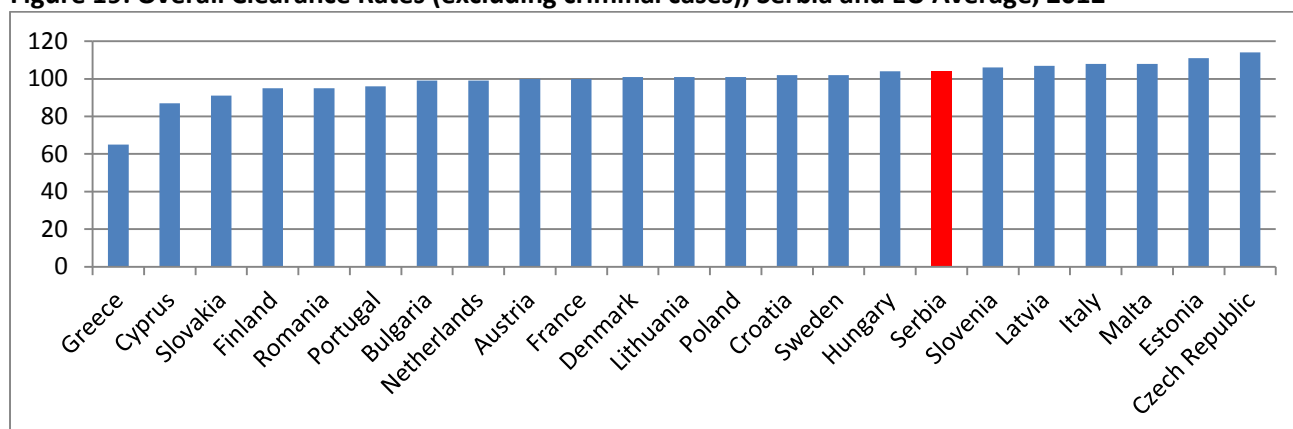
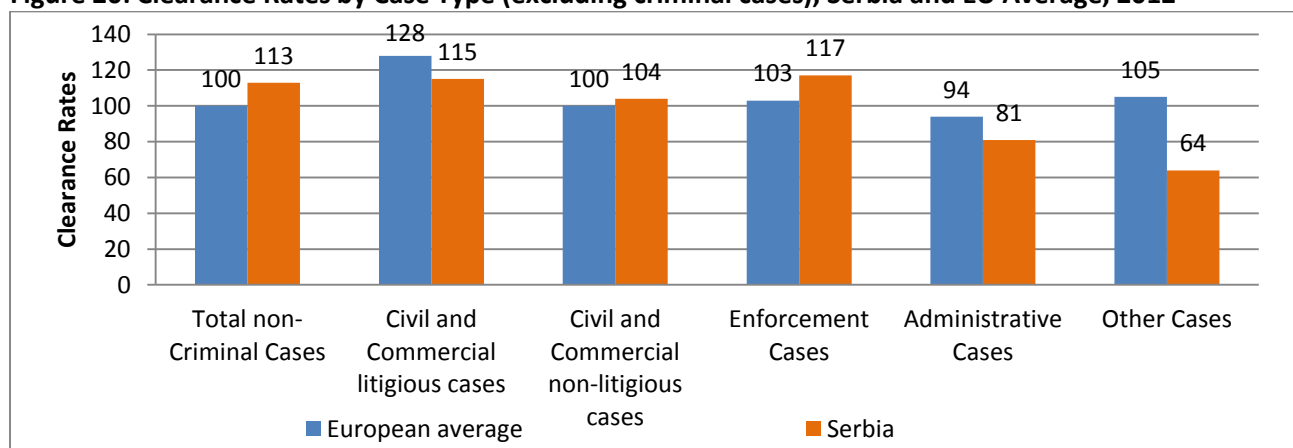


Figure 20: Clearance Rates by Case Type (excluding criminal cases), Serbia and EU Average, 2012²⁰⁷



²⁰³ For example, the Raska Misdemeanor Court was a star performer in 2011 with a clearance rate of 151%, but its rate fell to 121 percent by 2013. Only two Misdemeanor Courts, Prijepolje and Trstenik, maintained rates under 100 for all three years.

²⁰⁴ For EU data, see *EU Justice Scoreboard 2014* (based on 2012 data). For Serbian data, see *Megadata Table, World Bank*. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review/>).

²⁰⁵ For example in civil litigious cases, Serbia lags the EU average clearance rate, as shown in Figure 20 below. However across all the European countries that submit data to CEPEJ, Serbia was among 14 jurisdictions to report to CEPEJ a higher-than-100% clearance rate for these types of cases. See *CEPEJ Evaluation Report, 2014* (based on 2012 data). Other countries that achieved higher than 100% clearance rates in civil litigious cases included Armenia, Bosnia and Herzegovina, Denmark, Estonia, Italy, Hungary, Latvia, Luxembourg, Malta, Macedonia, Slovenia, Turkey and Ukraine.

²⁰⁶ For EU data, *CEPEJ 2014* (based on 2012 data). For Serbian data, Serbian official statistics provided to CEPEJ in 2013 for 2012.

²⁰⁷ For EU data, see *EU Justice Scoreboard 2014* (based on 2012 data). For Serbian data, Serbian official statistics provided to CEPEJ in 2013 for 2012.

b. Timeliness in Cases Processing

40. **Delay, or lack of timeliness, is a key indicator of the efficiency of a justice system, and an EU concern in the Chapter 23 accession process.**²⁰⁸ Here, timeliness is addressed with three types of indicators, corresponding to Indicator 1.2 of the Performance Framework:

- a. pending cases (carry-over stock);
- b. time to disposition (measured in a variety of ways); and
- c. timeliness as reported by court users and practitioners.

Among these, the indicators for pending cases are the most reliable, although they are less direct measure of timeliness.²⁰⁹

i. Number of Pending (Carry-Over) Cases

41. **Pending cases can be defined in many ways – examined here are the number of unresolved cases carried over from one year to the next, known as pending stock or backlog.** The existence of pending stock is not a concern in itself and is only problematic when the numbers are large and the cases are old.²¹⁰ The size of Serbia's pending stock is a consequence of years of accumulation. The good clearance rates seen over the past few years have brought gradual reductions, aided in part by the overall decline in new incoming cases, but not enough to remove the old pending stock. Pending stock is sometimes called backlog, but in Serbia (and in many countries), the term backlog is legally defined by the age of the case.²¹¹

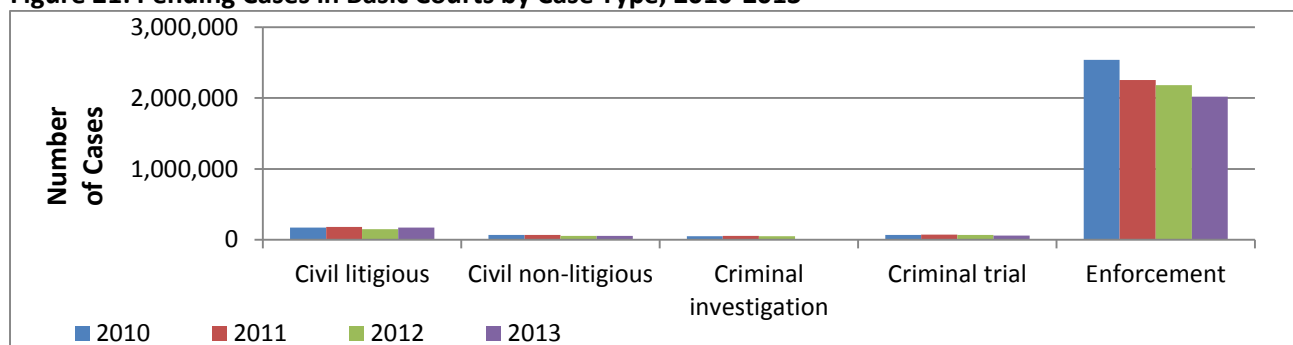
42. **In Basic Courts, as shown in Figure 21, the size of the pending stock varies by case type and by the direction, rate, and size of changes from year to year.** Enforcement cases dwarf the other categories. The number of pending enforcement cases declined over the four-year period but remains very high. The four other types of cases showed less reduction, but they are such a small portion of the total pending stock that their numbers alone are no cause for alarm. More important, these pending cases also represent a lesser proportion of the annual incoming cases in their respective categories. For enforcement cases, pending stock still comes to over three times the new incoming cases, which are also decreasing.

²⁰⁸ This is noted in Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on *Fair Trial Within a Reasonable Time and the Judge's Role in Trials Taking into Account Alternative Means of Dispute Settlement*. The opinion also lists various measures to enhance the timeliness of dispositions.

²⁰⁹ A court with a large number of pending cases could still be resolving new filings quickly. Its pending caseload would comprise old, possibly inactive cases. This is what occurs in the Serbian judiciary.

²¹⁰ Even the most efficient court in the world will always carry over some cases, if only those filed in the last months or days of the reporting period. In that scenario, though, all pending cases would be of recent origin.

²¹¹ In Serbia, most first instance cases are considered 'backlogged' after two years. An investigation becomes backlogged at 9 months. A second instance case becomes backlogged at one year. In misdemeanor cases, backlogs are largely avoided because the statute of limitations requires the initiation of an action within one year, and two years is an absolute deadline, except for some misdemeanor case types (such as tax, finance, public procurement, customs, environment, corruption, and air transport) where the statute of limitations is five years. These definitions are somewhat arbitrary, particularly in the absence of a case-weighting methodology. Arguably a simple first instance case, such as a basic small claim, should be resolved well before two years, whereas, a highly complex case may justifiably take longer than two years.

Figure 21: Pending Cases in Basic Courts by Case Type, 2010-2013²¹²

43. **At the end of 2013, 2.3 million cases were pending at the Basic Courts, a reduction of nearly 600,000 cases compared to 2010.** Enforcement cases accounted for roughly two million of the total cases pending. Most of the reduction occurred in Belgrade First Basic Court that retained 1.1 million enforcement cases awaiting resolution.²¹³ Other Basic Courts with a high number of pending enforcement cases at the end of 2013 are the Belgrade Second Basic Court with 104,483 pending enforcement cases, followed by Kragujevac with 69,217, Nis with 64,164, and Novi Sad with 64,495. Despite their current large numbers (and in some instances advanced age, see below), backlogged enforcement cases are likely to decrease in importance. An exercise to purge old inactive cases would also help. For a further discussion on enforcement cases, see the Enforcement section.

44. **Once enforcement is set aside as a special issue with special remedies, there remain 290,925 cases pending in Basic Courts, of which 171,222 are civil litigious cases.** Little is known about these pending cases, and some may be relatively young cases entering late in the previous year. Other cases however, like the minority of non-utility bill enforcement cases, merit further attention to understand why they remain unresolved (there are some data on their relative age, but the statistics are not very reliable – see discussion below). The reasons are likely to be varied, and individual Court Presidents should examine their stock of pending non-enforcement cases that were not commenced late in the prior year. Court Presidents should identify the reasons why they remain unresolved and press for their resolution.

45. **Criminal investigations are also a disappearing category for the Basic Courts because of the new CPC.** Of the 38,871 investigation cases in the Basic Courts in 2013, 98 percent (or 38,123 investigations) were transferred to the Basic Prosecutor Offices. By the end of 2013, Basic Courts had only 6,578 investigation cases in pending stock, presumably in pre-trial matters. Courts may still count their occasional interventions (e.g., to decide on pre-trial detention or grant search warrants) as ‘cases’ because they represent an easy way to raise dispositions. But given the need for quick resolution of these matters, very little pending stock is expected. The Basic Courts’ transferred stock probably included many ‘dead’ cases that could be closed quickly. An investigation that goes on for several years usually will, or should, be terminated for lack of progress. With the transition of investigation functions, it will be important for the Prosecution Offices to sift through these pending cases and dispose of old ‘dead’ ones. Further, turning investigations over to the prosecutors is no guarantee of quick resolution – it may simply shift a problem from one place to another. In many countries that have adopted this practice, the prosecutorial backlog has mounted quickly.²¹⁴ In Serbia, prosecutors’ careful management of incoming investigations will be necessary to prevent numbers of pending cases from climbing, and ultimately the backlog from growing.

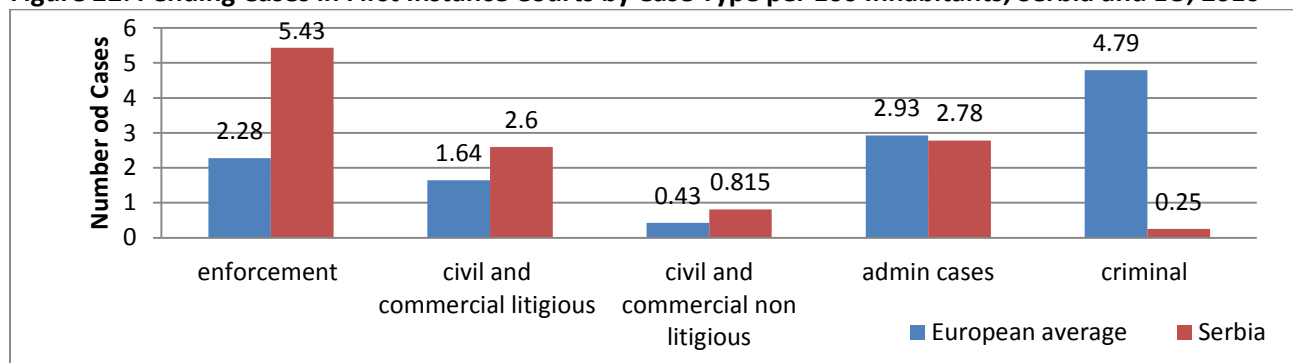
²¹² Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

²¹³ This is despite three years of purges of enforcement cases.

²¹⁴ This tendency has been observed in World Bank studies in Honduras and Romania, and by other observers in Colombia, El Salvador, Guatemala, Mexico, and Peru. Latin America is an important example as its countries moved to prosecutorial investigation starting in the 1990s. However, as the World Bank study in Romania found, the phenomenon also occurs in transitioning European countries. The explanation appears to be that prosecutors new to the task resist completing all but the simplest investigations out of a fear of losing the case.

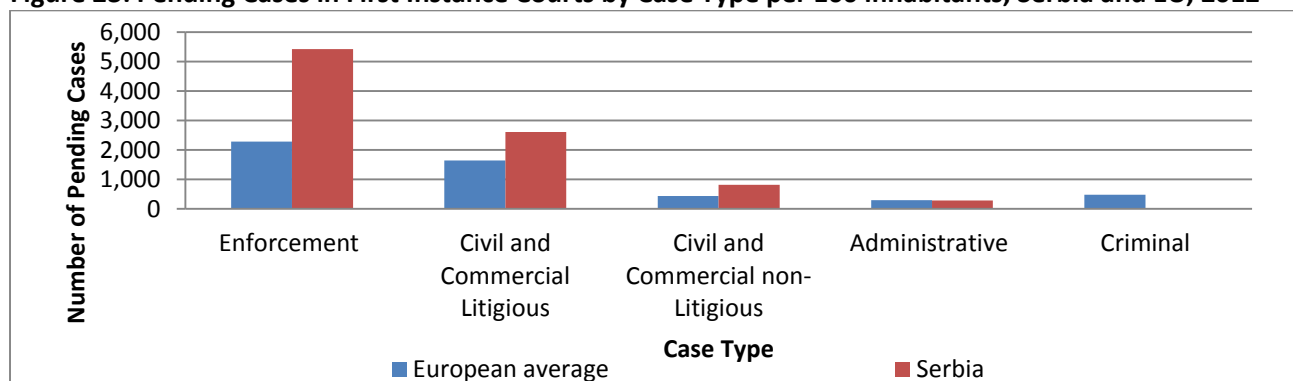
46. Compared to European averages, Serbia's pending stock per 100 inhabitants is high, and unsurprisingly, is highest for enforcement cases (see Figure 22 for 2010 figures). The CEPEJ 2010 figures for civil and commercial cases (litigious and non-litigious) were also substantially higher for Serbia, reflecting the many years when clearance rates were well below 100%. Given what is known on the number of enforcement cases carried over from 2010 to 2011, the figures below are questionable (far too low for enforcement, but possibly reasonable for other areas) and the true position may be worse.

Figure 22: Pending Cases in First Instance Courts by Case Type per 100 Inhabitants, Serbia and EU, 2010²¹⁵



47. Data from the CEPEJ for 2012 do not put Serbia in a much better light. Figure 23 compares Serbia's pending caseload with the EU average. On a positive note, the differences in civil and commercial cases have lessened, and Serbia has fewer pending administrative cases.

Figure 23: Pending Cases in First Instance Courts by Case Type per 100 inhabitants, Serbia and EU, 2012²¹⁶



ii. Congestion ratios (the Relative Size of the Pending Stock)

48. The congestion ratio helps to assess the importance of pending stock, by analyzing two figures: the number of cases carried over and the number of cases disposed.²¹⁷ Ideally, the congestion ratio should be well under 1.00, indicating that pending stock is far less than the annual outflow.

²¹⁵ For European data: CEPEJ (2012) based on data from 2010; for Serbian data: Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

²¹⁶ For EU data, see EU Justice Scoreboard 2014 (based on 2012 data). For Serbian data, see Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

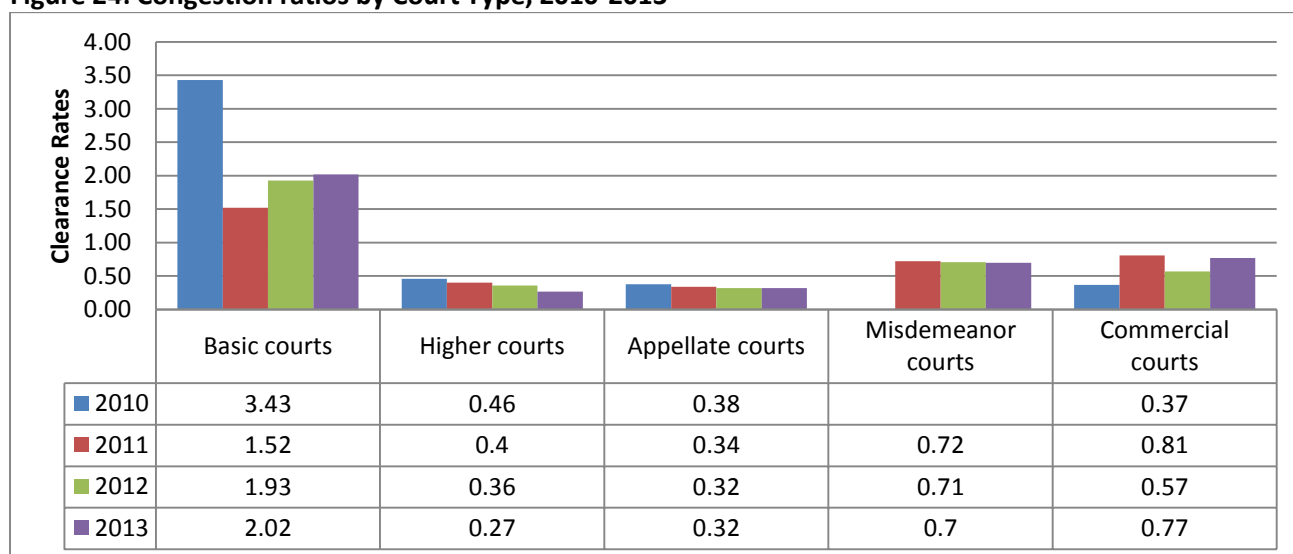
²¹⁷ The congestion ratio is the number of unresolved cases at the end of one year/the number of resolved cases during the same year. It helps avoid the mistaken impression that a larger number of carry-over cases is intrinsically bad. (If, for example, enforcement cases made up 95 percent of the Basic Court annual incoming cases (they do not), the numbers shown in Figure 23 would be of less concern than the lower numbers for the other types of cases.) The congestion ratio does not reveal the age of stock. Still, a lower rate is most probably the natural result of cases received later in the year having to be attended in the next year.

49. **Serbia's congestion ratio has gradually improved and is now at 1.41 for the entire judicial system.** That comprises 2,839,979 cases unresolved or carried-over to 2014, versus 2,011,062 resolved in 2013. The gradual improvement is due to a combination of decreases in the number of incoming cases, and slight to significant increases in resolved cases. See Table 5, which is depicted graphically in Figure 24.

Table 5: Congestion ratios by Court Type and Case Type, 2010-2013²¹⁸

Court type	2010	2011	2012	2013
Basic Courts	3.43	1.52	1.93	2.02
Civil litigious	1	0.87	0.7	0.76
Civil non-litigious	0.37	0.34	0.25	0.28
Criminal investigation	0.28	0.23	0.2	0.05
Criminal Trial	1.45	1.21	1.03	0.99
Enforcement	9.67	2.21	3.91	3.8
Higher Courts	0.46	0.4	0.36	0.27
Civil litigious	0.69	0.54	0.48	0.32
Civil non-litigious	0.26	0.24	0.62	0.65
Criminal investigation	0.22	0.22	0.2	0.16
Criminal Trial	0.45	0.5	0.58	0.47
Enforcement	0.45	0.5	0.58	0.47
Appellate Courts	0.38	0.34	0.32	0.32
Civil litigious	0.46	0.41	0.41	0.49
Civil non-litigious	0.06	0.05	0.12	0.11
Criminal Trial	0.29	0.27	0.23	0.16
Misdemeanor Courts	N/A	0.72	0.71	0.7
Commercial Courts	0.37	0.8	0.57	0.77

Figure 24: Congestion ratios by Court Type, 2010-2013²¹⁹



²¹⁸ Congestion ratios are color-coded to signal their severity. Green is good. Orange is concerning. Red is alarming, and Purple is even more so. Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

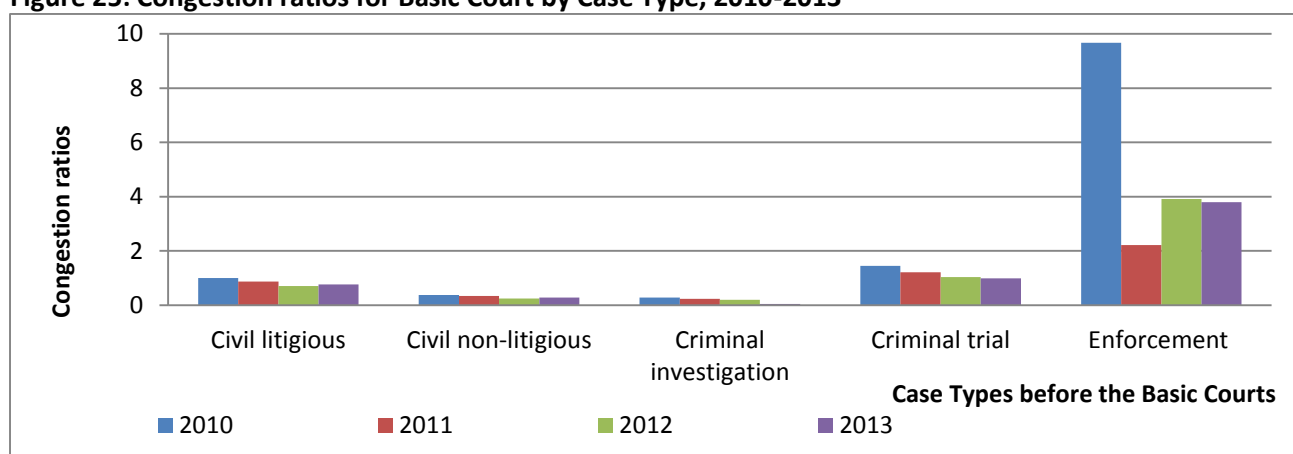
²¹⁹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

50. **There is considerable variation among and within the different court types.** Rates remained below 1.00 for the entire period for all but the Basic Courts. However, the disaggregated ratio shows some important differences.

51. **Basic Courts improved their congestion ratios but they remain still well above 1.00.** Still their lowest rate of 1.52 was not repeated in the two following years. The 2011 congestion ratio was the result of the closure of a large number of enforcement actions in Belgrade First Basic Court. Nonetheless, Belgrade First still has the second highest congestion ratio, 3.51, of all the Basic Courts. Other Basic Courts with rates much higher than the average of 2.02 include Belgrade Second, Krusevac and Cacak.

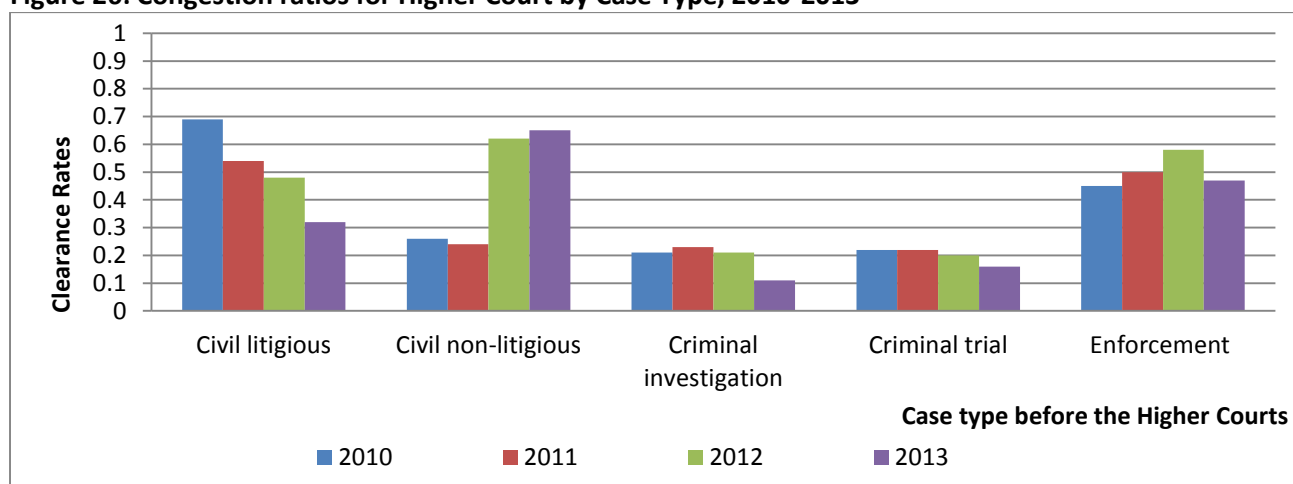
52. **Within Basic Courts, congestion ratios vary by case type.** For civil cases (both litigious and non-litigious), congestion has been easing. Congestion ratios from criminal trials have been gradually improving from an alarming 1.45 in 2010, to a still-concerning 0.99. The congestion ratio for enforcement cases remains over three times that of other case types (see Figure 25).

Figure 25: Congestion ratios for Basic Court by Case Type, 2010-2013²²⁰



53. **Congestion in Higher Courts is low and falling.** The Higher Courts reduced their congestion ratio in civil litigious cases by more than half. However, congestion of non-litigious cases has risen and needs to be dealt with (see Figure 26).

Figure 26: Congestion ratios for Higher Court by Case Type, 2010-2013²²¹

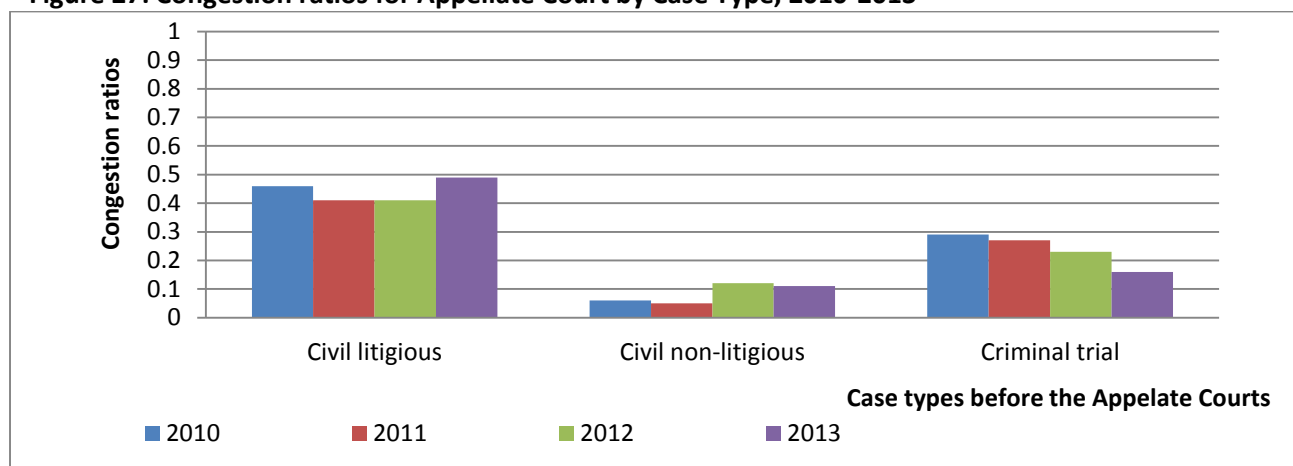


²²⁰ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

²²¹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

54. **The Appellate Courts' congestion ratio is low and falling.** Congestion ratios for civil litigious cases rose from 0.46 to 0.49 and should be monitored (see Figure 27).

Figure 27: Congestion ratios for Appellate Court by Case Type, 2010-2013²²²

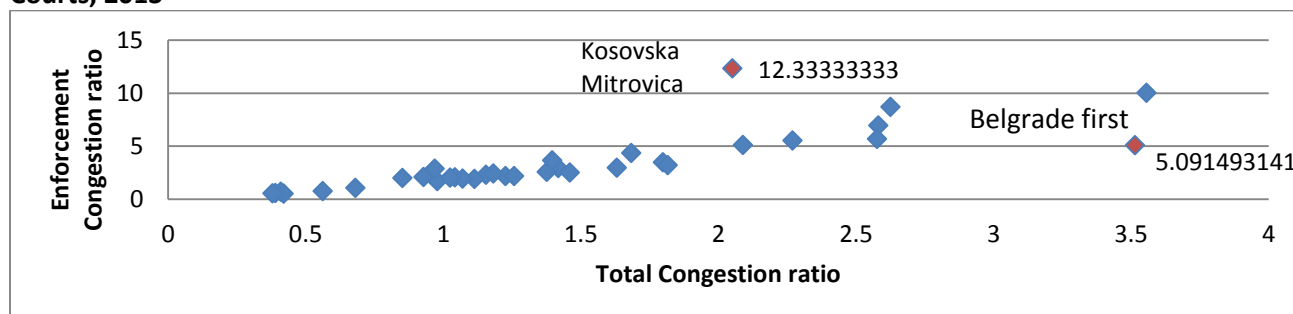


55. **Congestion in the Commercial Courts has been erratic and the current congestion ratio of 0.77 is of concern.** This is particularly puzzling in light of the substantial decrease in incoming cases, and a 20 percent increase in additional judges in 2012. With lower incoming cases and a higher number of judges, the Commercial Courts could reasonably have reduced congestion and attended to their backlog.

56. **Misdemeanor Courts also present a puzzle – their congestion ratios have been dropping but are still unsatisfactorily high.** Misdemeanor Courts are reasonably expected to perform better since the number of new incoming cases has declined as well. Increasing dispositions per judge, particularly among under-performing courts, may resolve this issue.

57. **Examination of the relationship between overall congestion ratios and congestion ratios for enforcement cases in individual courts is very strong, revealing that courts that tend to be congested with enforcement cases tend to be congested generally.** As shown below, some of the enforcement congestion ratios are alarmingly high. For example, 10.0 for Cacak, 8.7 for Vranje, and 7.0 for Belgrade Second. Belgrade First's high congestion ratio of 5.0 for enforcement cases is modest in comparison. This observation simply reinforces prior conclusions that backlogged enforcement cases are the Basic Courts', and thus the entire systems, principal challenge regarding delays.²²³

Figure 28: Relationship between Overall Congestion ratios and Enforcement Congestion Ratios in Basic Courts, 2013²²⁴



²²² Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

²²³ For a further discussion on enforcement, see the Enforcement section.

²²⁴ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

58. **This finding should not divert attention from the smaller number of other types of pending stock in the Basic Courts or in the rest of the judiciary.** As further discussed below, the enforcement backlog is for the most part a special problem, and is numerically concentrated in a few courts. Nonetheless, as Figure 28 demonstrates, the backlog affects Basic Courts throughout the system even if on a smaller scale. As for the pending stock in other courts, the collective figures tended to remain stable or improved, collectively accounting for roughly 530,000 cases, 80 percent of which found in the Misdemeanor Courts. The rates for the Misdemeanor and Commercial Courts do raise questions. Despite declining workloads for the Commercial Courts, the congestion ratios of a majority of judges remain relatively high. The sheer size of older cases for these courts should be manageable, and while there may also be a few cases that defy resolution, further significant reductions should not be difficult.

iii. Age Structure of the Pending Stock

59. **To comprehend the challenges posed by pending stock, a clearer understanding of its composition, age, and how courts select the cases for resolution is needed.** A court with a clearance rate of 100 or higher is probably resolving a significant number of new cases fairly quickly, handling a smaller portion of cases over a slightly longer period (depending on their complexity), and passing (once enforcement cases are out of the picture) only a relatively small percentage to that part of its pending stock that may never be resolved. Judges tend toward this pattern naturally. When judges know their output is monitored, such as through ‘productivity norms’, this can distort incentives. Judges are then likely to ‘cherry picking’, focusing on the easiest cases while leaving the older cases in the cupboard.²²⁵ Whether judges are monitored or not, it is extremely unlikely that they would automatically resolve the oldest cases first.²²⁶ This is why concerted backlog reduction programs are necessary to eliminate the older cases.²²⁷

60. **The Ageing List of Unresolved Cases at Table 6 shows the composition and age structure of all unresolved cases from the date of the initial act.** The Ageing List is incomplete (and may thus present an optimistic conclusion) but nonetheless provides some insights.²²⁸ As a priority, case management systems should be upgraded to enable the production of more comprehensive ageing lists for both resolved and pending cases.

²²⁵ Differential case management or case tracking requires an initial triage. Judges must decide how much of their attention each case requires, and will delegate many tasks for simpler cases to courtroom staff. But there the resemblance ends. ‘Cherry picking’ is not the same as efficiency. It is a way to raise disposition rates without addressing the more difficult task of ameliorating the entire process. When judges cherry pick, they merely select those cases that can be decided quickly to raise their numbers.

²²⁶ In accounting, this is called FIFO (First in, First out) inventory control. It is not usually recommended as a solution to judicial caseload management because it virtually condemns all cases to a slower resolution. Differential case management works on parallel tracks so that easy cases are decided quickly and more difficult ones get more time, but are not postponed.

²²⁷ See Federal Court of Malaysia and the World Bank (2011), the Malaysian Court Backlog and Delay Reduction Program: A Progress Report. See also The Best Practices Guide: Backlog Prevention & Reduction Measures for Courts in Serbia, USAID, 2012.

²²⁸ Data for the first-half of 2013 only are shown because those for the second-half of the year would be unreliable due to preparations for the changes in the court network effective on 1 January 2014. Data were drawn from custom-format excel tables provided to the Review team by the SCC. Serbian courts do not routinely produce reports in this format, and there is no centralized data base, so the SCC instructed courts to provide the requested information in this specific format. The Basic Courts in Pirot and Vranje did not provide data despite requests and reminders. Some courts that did respond may have submitted inaccurate or incomplete reports. In all, the ‘ageing list’ table is likely incomplete. It is certain that the number of ‘older’ cases is correct as far as it goes, but it appears likely that much older cases have been omitted. The table thus represents an optimistic view of the ageing structure of pending cases in courts across Serbia. *Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).*

Table 6: Ageing List of Unresolved Cases by Court Type and Case Type, first half of 2013

		Age of Unresolved Cases							
		Total	0-2 years old			2-3 years old	3-5 years old	5-10 years old	10+ years old
			0-9 mths	9 mths - 1 year	1-2 year				
Basic Courts									
Civil litigious	141,882	104,880			15,651	11,761	7,170	2,420	
Civil non-litigious	48,881	41,865			3,173	1,813	1,355	675	
Criminal, Investigation	42,648	25,736	4,097	8,917	2,526	1,006	210	156	
Criminal, Post-investigation (Trial)	61,082	45,375			6,610	6,165	2,045	887	
Enforcement	1,952,244	469,964			380,305	407,951	509,307	184,717	
Basic Courts Total	2,246,737	700,834			408,265	428,696	520,087	188,855	
	94%	31%			18%	19%	23%	8%	
Higher Courts									
Civil litigious	24,775	11,957			4,038	5,031	2,830	919	
Civil non-litigious	2,483	2,413			14	26	29	1	
Criminal, Investigation	3,041	2,119	503	174	97	87	22	39	
Criminal, Post-investigation (Trial)	5,472	3,966			411	579	408	108	
Enforcement	2,432	1,711			239	382	100	-	
Higher Courts Total	38,203	22,843			4,799	6,105	3,389	1,067	
	2%	60%			13%	16%	9%	3%	
Appellate Courts									
Civil litigious	17,883	1,103			4,900	5,566	4,673	1,641	
Civil non-litigious	266	64			136	33	26	7	
Criminal, Post-investigation (Trial)	7,773	1,238			2,694	2,254	1,434	153	
Appellate Courts Total	25,922	2,405			7,730	7,853	6,133	1,801	
	1%	9%			30%	30%	24%	7%	
Commercial Courts									
Commercial	78,795	47,050			19,717	11,133	652	243	
	3%	59.71%			25%	14%	1%	0.31%	
TOTAL	2,389,657	773,132			440,871	453,787	530,259	191,966	

61. **The Ageing List reveals that many very old unresolved cases remain ‘stuck’ in the Serbian judiciary.** Any case older than 10 years is likely to violate Article 6 of the ECHR as well as other international and European standards – and there are 191,966 of such cases in Serbia. Across the system, the approximately 772,225 cases older than five years is alarming, and whilst 694,124 of them consist of enforcement cases in the Basic and Higher Courts, there are around 78,101 non-enforcement cases that remain pending after five years. Most are likely to be inactive and could be purged.

62. **For the Basic Courts, it is not surprising to see the large number of old and unresolved enforcement cases.** Setting them aside, there still remain 9,590 civil litigious cases and 731 civil non-litigious cases that are older than five years. There also remain 366 criminal investigations and 2,932 criminal trial cases that are older than five years. These should be targeted immediately.

63. **With regard to the Higher and Appellate Courts, the majority of pending cases are relatively young, although many would be considered backlogged within the Serbian definition of the term.** Most concerning, in the Appeals Court there remain 6,314 civil litigious cases that are older than five years, and 1,587 criminal cases pending after five years. In the Higher Court, 3,748 civil litigious cases remained pending for over five years. There are also 61 criminal investigations and 516 criminal trial cases that have been pending for over five years. Given the large number of judges and the low workloads in these courts, instructions could be given to target these old cases immediately.

64. **Given the number and age of cases in the pending stock at nearly all levels, it is clear that this situation will not change rapidly even with current clearance rates and falling caseloads.** Additional measures are needed. This usually means a backlog reduction program and another kind of triage to divide stock into three categories, each for different treatment: cases that can be closed because the right to pursue them has expired, inactive cases the parties may be invited to revive before they are closed for lack of action, and active cases likely needing a nudge to process faster. It would also be useful to identify large classes of cases, such as the public utility enforcement actions, that might lend themselves to a mass solution.

65. **The USAID Separation of Powers Project implemented one such program in 10 pilot courts between 2009 and 2013.**²²⁹ The results in the participating seven Basic Courts and three Higher Courts demonstrated that backlogs could be reduced with the use of simple measures. By the end of 2012, the initial six pilot courts had reduced their backlogged cases by 49 percent, from 23,000 to 12,000. The still more dramatic removal of 600,000 backlogged enforcement cases from Belgrade First Basic Court through an agreement with Infostan was also a result of the project, as were various additions to the new civil and criminal procedures codes (e.g., the use of preliminary hearings and improvements to service of process and delivery of court documents). In connection with the development of a second NJRS, the Supreme Court embarked on a national-level backlog reduction plan.

²²⁹ A best practices guide for backlog reduction and prevention is available, which describes practical measures including the introduction of backlog reduction and prevention teams at the courts, a better cooperation strategy for external partners of the courts, procedural measures in criminal and civil law (by introducing a preliminary hearing for example), the use of e-justice technology, and the labeling and registration of old pending cases (USAID 2012).

Box 3: Backlog Reduction in Action: a Story from Vrsac

The Vrsac Basic Court has significantly improved efficiency and reduced its backlog through a series of initiatives. These were led by two successive acting Court Presidents with the support of a core managerial team of skilled court staff, and the advice of the USAID SPP.

The Court Presidents focused on using court statistics to monitor judges on a weekly and monthly basis, comparing the number of resolved cases and the ratio of new and old resolved cases among different judges. Using an 'I'm watching you' strategy, each of the Court Presidents encouraged judges to work more efficiently, and not neglect old and difficult cases in favor of new and easy-to-resolve cases.

The Vrsac Basic Court did the same with the routine monitoring of progress in unresolved enforcement cases by court bailiffs. Once bailiffs knew that their work was monitored, the pace of resolution in enforcement cases improved dramatically. Outreach to the public with accompanying incentives also encouraged enforcement defendants to pay out their debts. For further discussion of enforcement, see below.

The Vrsac Basic Court also introduced simple layman's checklists and forms for parties unfamiliar with court procedures, whether due to education, language, or socio-economic status. One such checklist, on how parties need to fill-in and file documents helped ensure that cases ran more smoothly. That practice became more complete and uniform. As parties became easier for judges to work with, the valuable time of judges could be better spent on judicial work.

The Vrsac Basic Court and Prosecutors Office increased their use of deferred prosecution, thus decreasing the inflow of new minor cases that could be readily dealt with in other ways. This allowed the court to focus on resolving cases. For further discussion of deferred prosecution, see the Quality Chapter.

The experience of the Vrsac Basic Court demonstrates a holistic approach to backlog reduction, which was led by two proactive Court Presidents at minimal cost. Congestion ratios dropped from an alarming 9.8 in 2012 to 2.6 in 2013.

66. **The Misdemeanor Courts have a different type of ageing problem, and one which directly results in impunity.** In misdemeanor cases, a strict statute of limitations requires the initiation of an action within one year, with two years as an absolute deadline for resolution of the case, after which time the case collapses.²³⁰ In most common offences – such as traffic offences, defendants commonly 'run out the clock' by avoiding appearance or delaying procedures. Whilst this makes the case processing statistics of the Misdemeanor Court impressive, it inhibits the system from delivering justice for a range of common offences.²³¹

iv. Time to Disposition by the Age of Resolved Cases

67. **Because average times can be deceptive, a detailed Ageing List of Resolve Cases is a preferred indicator of timeliness and delay.** Ageing Lists group annual dispositions by the age of case, thus giving a better picture of the different tracks on which cases proceed. Table 7 below is an ageing list for the first half of 2013 provided by the SCC and shows the duration of resolved cases from initial filing until the date on which the judiciary considers it a resolved case. This ageing list is incomplete and may present an overly optimistic conclusion.²³² Nonetheless, it provides insights into the composition and age structure of the

²³⁰ There are some exceptions: cases involving tax, finance, public procurement, customs, environment, corruption, and air transport have a statute of limitations of five years.

²³¹ The strict statute of limitations also deprives the State of the revenue it could accrue in fines in common offences, which are considerable in other jurisdictions.

²³² The first half of 2013 only is shown, because the second half of the year's statistics would be unreliable due to preparations for the changes in the court network effective on 1 January 2014. The data were compiled by the SCC based on submissions from individual courts, some of which may not be fully accurate or may be incomplete. Ageing data are not available in a centralized database and the localized systems make it difficult to calculate total time from the initiating act to the final resolution, incorporating appeals, retrials, and possible second appeals. Further, AVP allows users to modify the status of cases even after a reporting period has closed. Courts can thus, to some extent, manipulate the data. Though this may be more commonly caused by lack of timeliness

resolved cases from the date of the initial act. As a priority, case management systems should be upgraded to enable the production of more comprehensive ageing lists.

Table 7: Ageing List of Resolved Cases by Court Type and Case Type, First half of 2013

		Age of Resolved Cases							
		Total	0-2 years old			2-3 years old	3-5 years old	5-10 years old	10+ years old
			0-9 mths	9 mths - 1 year	1-2 year				
Basic Courts									
Civil litigious	102,016	92,922			4,128	3,456	1,229	281	
Civil non-litigious	104,741	102,982			735	636	204	184	
Criminal, Investigation	126,250	119,727	3,278	2,316	616	205	20	88	
Criminal, Post-investigation (Trial)	28,900	24,958			1,809	1,642	292	199	
Enforcement	320,333	286,813			15,929	14,049	3,064	478	
Basic Courts Total	682,240	632,996			23,217	19,988	4,809	1,230	
	82%	92.78%			3.40%	2.93%	0.70%	0.18%	
High Courts									
Civil litigious	29,104	24,628			1,852	1,596	874	154	
Civil non-litigious	2,079	2,063			9	2	5	0	
Criminal, Investigation	7,734	6,279	1,316	78	22	9	20	10	
Criminal, Post-investigation (Trial)	16,710	16,250			234	154	58	14	
Enforcement	3,115	3,072			21	18	4	-	
Higher Courts Total	58,742	53,686			2,138	1,779	961	178	
	7%	91.39%			3.64%	3.03%	1.64%	0.30%	
Appellate Courts									
Civil litigious	21,117	2,828			8,731	5,344	3,101	1,113	
Civil non-litigious	649	167			308	110	54	10	
Criminal, Post-investigation (Trial)	20,606	4,012			9,337	4,718	2,230	309	
Appellate Courts Total	42,372	7,007			18,376	10,172	5,385	1,432	
	5%	16.54%			43.37%	24.01%	12.71%	3.38%	
Commercial Courts									
Commercial	53,505	52,835			555	90	24	1	
	6%	98.75%			1.04%	0.17%	0.04%	0.00%	
TOTAL	836,859	746,524			44,286	32,029	11,179	2,841	

in paperwork, particularly in situations where a court deals with thousands of cases, it can take some time for the status of cases to be registered in AVP. As a result, reports covering one reporting period could show different results depending when the report was generated. The Functional Review used a custom report that was generated at a later time than the official SCC Annual Report statistics. There are consequently some minor variations between them. In both, the 'ageing list' is likely incomplete. It is certain that the number of 'older' cases is correct as far as it goes, but the Review assesses it likely that many older cases have been omitted. The table thus represents an optimistic view of the ageing structure of resolved cases in courts across Serbia. *Megadata Table, World Bank.* (Available at: <http://www.mdtfjs.org.rs/en/serbia-judicial-functional-review>).

68. The proportions of older to younger cases resolved (shown in the figures below) confirm the view that productivity is improving but is selective. On a positive note, the figures suggest that the overwhelming majority of cases are resolved within two years. On the downside, the pie charts below show that judges in Higher, Basic and Commercial Courts are ‘cherry-picking’ in the extreme. Thus, a more concerted approach will be required for attacking what are probably various obstacles to faster disposition times.

Figure 29: Age of Resolved Cases in Basic Courts, 2013²³³

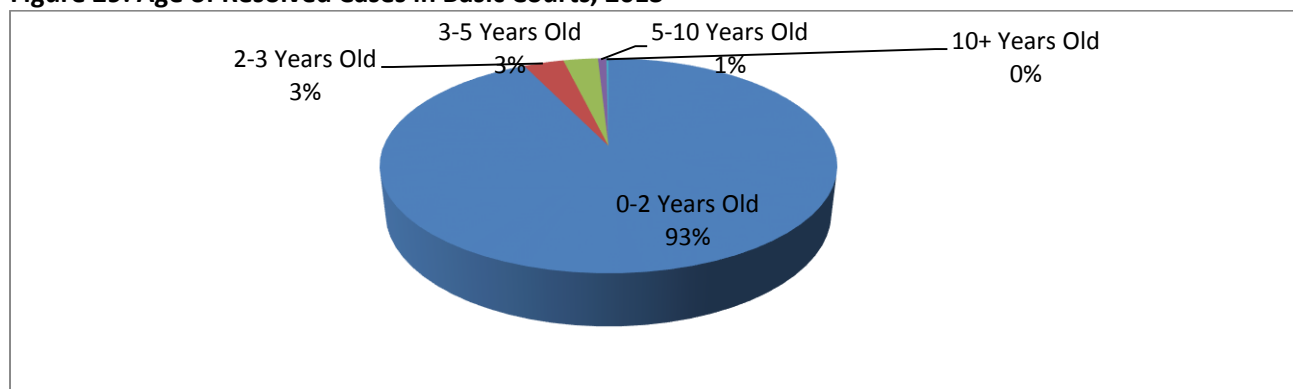


Figure 30: Age of Resolved Cases in Higher Courts, 2013²³⁴

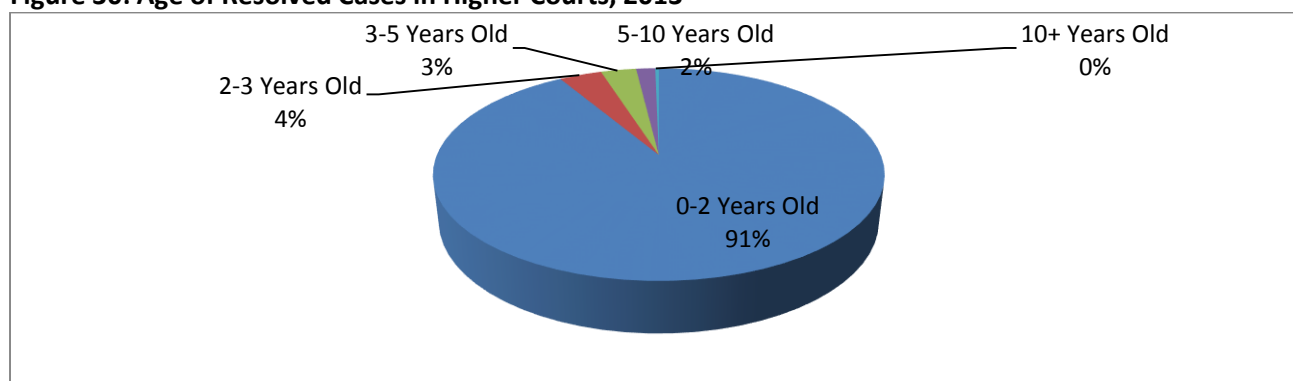
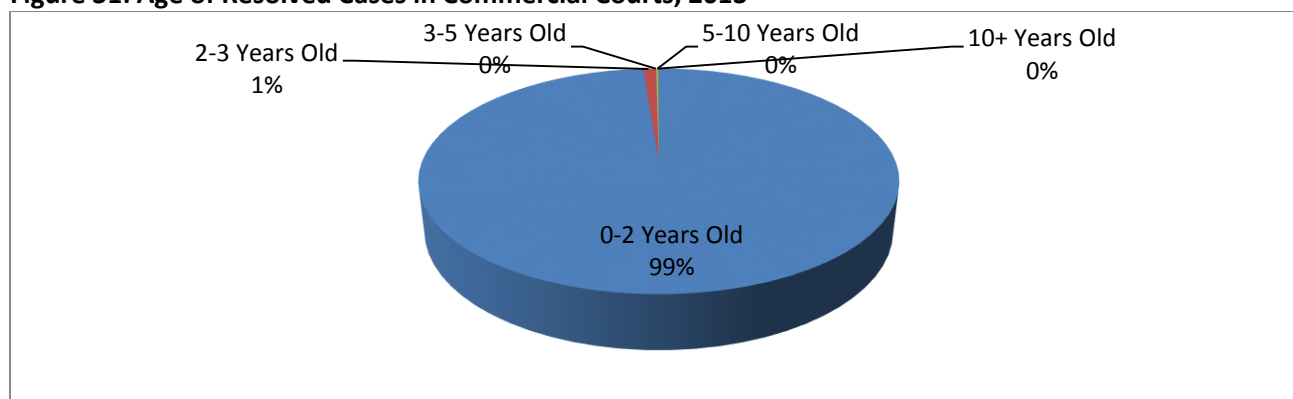


Figure 31: Age of Resolved Cases in Commercial Courts, 2013²³⁵



²³³ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

²³⁴ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

²³⁵ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

v. Time to Disposition in Days (the SATURN Method)

69. The CEPEJ devised its own means to estimate disposition times via a method called the SATURN (see Box 4 below for description). SATURN is a highly dramatic representation of the significance of congestion ratios. The SATURN methodology's main difficulty is in its assumption of a 'FIFO' (First In, First Out) approach to case resolution, namely that judges resolve the oldest cases first. It is known that FIFO is not used in Serbia, or for that matter anywhere else. Rather, the opposite approach is common where judges prefer to resolve newer cases than older ones. Much of the accumulated stock, such as the utility bill enforcement cases, will only be removed through a radical backlog reduction program. If such steps are not taken, the older cases will continue to slumber in the court archives. SATURN also attempts to calculate average times, which, as noted above, can be deceptive for other reasons.

Box 4: What is the SATURN Methodology?

Case turnover ratio: Relationship between the number of resolved cases and the number of unresolved cases at the end of each year.

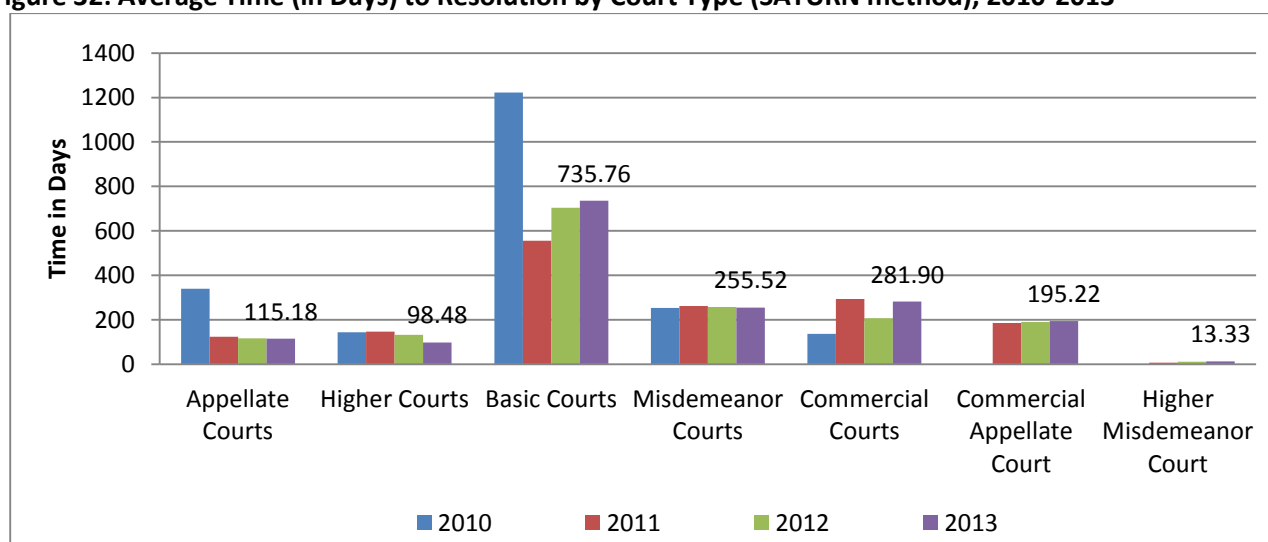
$$\text{Case turnover ratio} = \frac{\text{Number of resolved cases}}{\text{Number of unresolved cases at the end}}$$

Disposition time: The turnover rate is actually the **congestion ratio inverted**. Here it is divided (or multiplied) by 365 days to reach an approximate time for case resolution. The ratio measures how quickly the court turns over received cases, or in other words, how long it could be expected to take for a type of case to be resolved.

$$\text{Disposition time} = \frac{365}{\text{case turnover ratio}} \text{ or } 365 \times \text{congestion ratio}$$

70. When SATURN is applied to the five major court types, significant differences in 'average' disposition times and trends between 2010 and 2013 emerge. All except the Misdemeanor Courts show significant changes, although not necessarily improvements. The Appellate Courts reduced their times markedly from the 2010 high, making small improvements thereafter. The Higher Courts showed less change but ended the period with their best score. The Basic Courts did reduce their average times from the 2010 high but increased again after 2011. The Commercial Courts demonstrate an up-and-down pattern, but never replicated the lowest time reached in 2010. Except for 2010, the Appellate Courts and Higher Courts consistently record the lowest times.

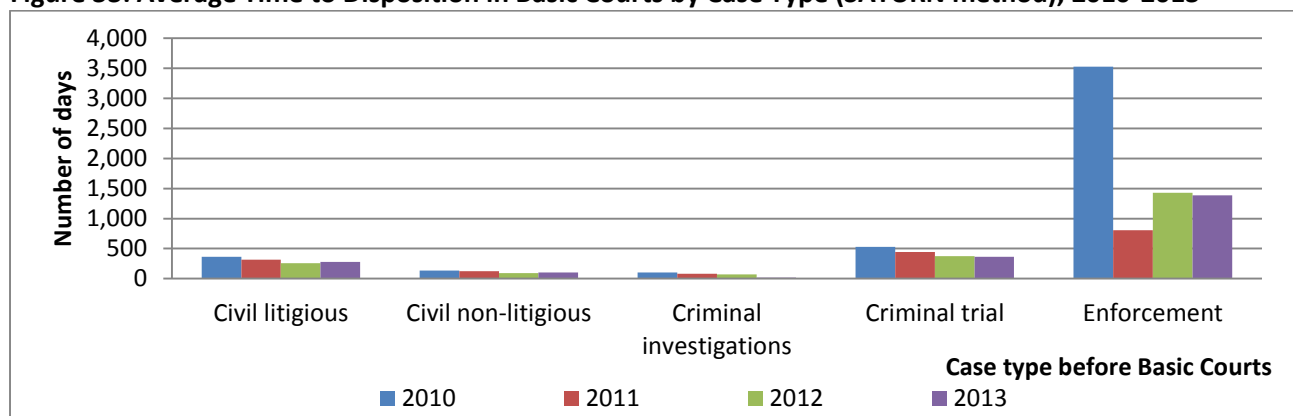
Figure 32: Average Time (in Days) to Resolution by Court Type (SATURN method), 2010-2013²³⁶



²³⁶ Megadata Table, World Bank. (Available at: <http://www.mdftjss.org.rs/en/serbia-judicial-functional-review>).

71. When the SATURN calculations are disaggregated by case types, significant differences emerge. These differences are especially pronounced in the Basic Courts (see Figure 33). Times for other legal matters seen in Basic Courts remained low, and generally improved over the four-year period, but there is high fluctuation in enforcement cases. This reflects the impact of bulk resolutions of cases, which have been conducted in a few courts, most principally Belgrade First Basic Court.

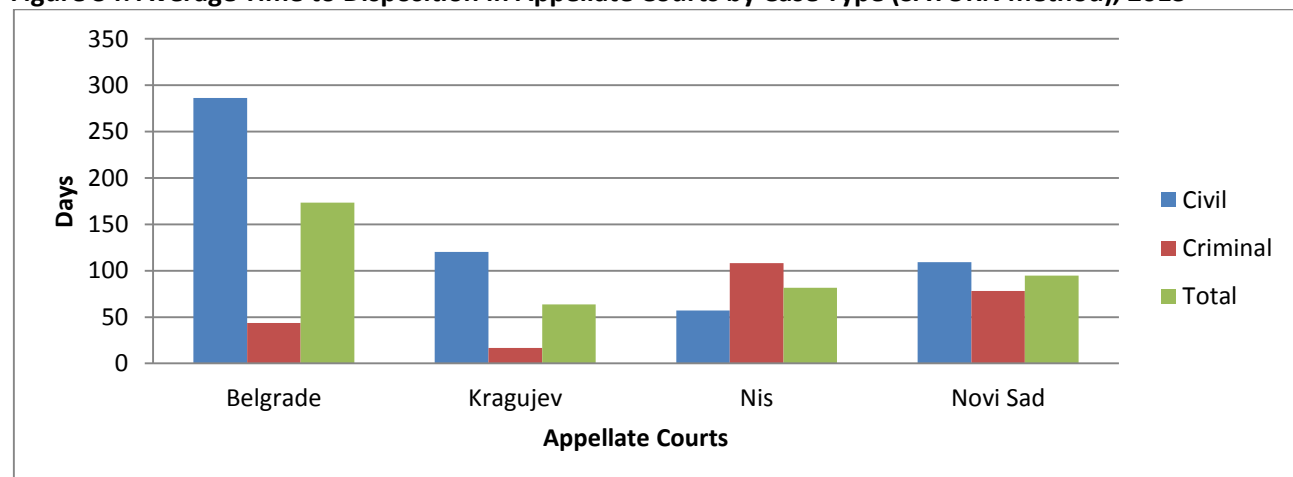
Figure 33: Average Time to Disposition in Basic Courts by Case Type (SATURN method), 2010-2013²³⁷



72. When the SATURN figures are calculated for individual Basic Courts, there are striking variations in the timeliness of cases by case type. In 2013, the average disposition time for civil litigious cases was 277 days. At the low end, Pancevo recorded 181 and Zrenjanin 192 days. At the high end, Kraljevo recorded 328 days and Belgrade Second 429 days. For enforcement cases in 2013, SATURN shows an average time of 1395 days, but Basic Courts range from 212 in Subotica to 3,664 in Cacak. The average time for enforcement in 2011 was 805 days, but Vrsac registered nearly 5,000 days as opposed to 154 days in 2013.

73. There are similar, but less dramatic variations among other court types. Figure 34 shows differences among the four Appellate Courts for 2013. As disposition and clearance rates were similar for all four courts, the difference in time to disposition is best explained by the pending backlog at the beginning of 2013.²³⁸

Figure 34: Average Time to Disposition in Appellate Courts by Case Type (SATURN method), 2013²³⁹



²³⁷ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

²³⁸ Belgrade, for example, had three times the carry-over stock of civil cases compared to the next highest court (Novi Sad), and Nis Appellate Court had relatively more carry-over criminal stock than the other Appellate Courts.

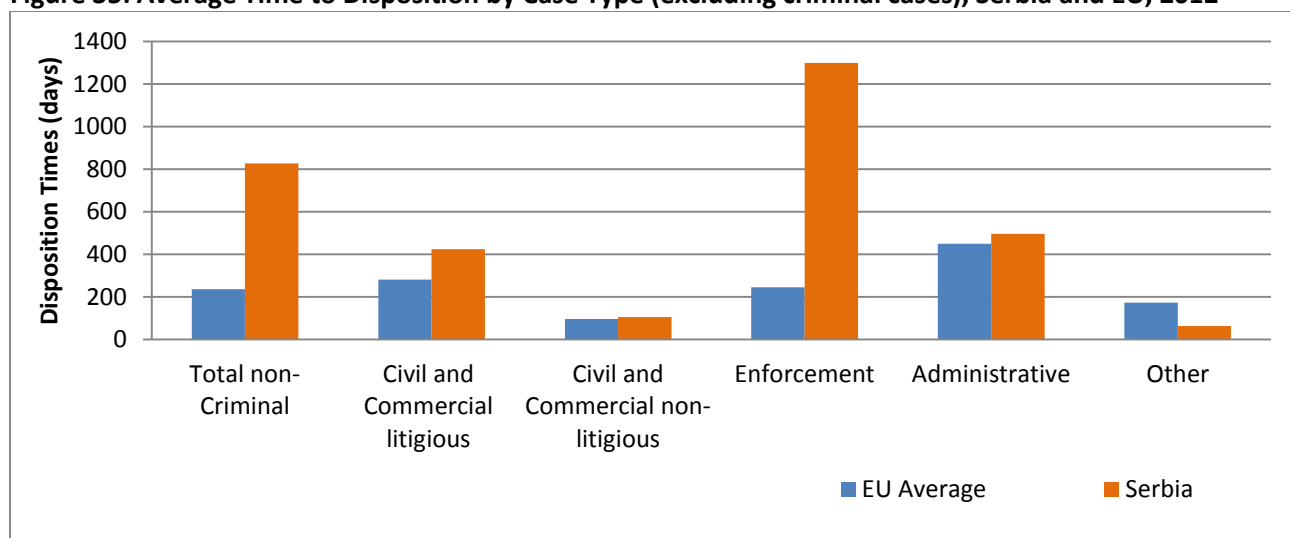
²³⁹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

74. **Commercial and Misdemeanor Courts also showed less variation than the Basic Courts in time to disposition.** In 2013, times to disposition for all cases in individual Misdemeanor Courts ranged from 94 to 364 days, and individual Commercial Courts ranged from 123 to 338 days. The statistics provided do not allow a further disaggregation of commercial and misdemeanor cases.

75. **When compared with the ageing lists for time to resolution (Table 7), it is apparent that the SATURN averages conceal a good deal about real trends.** SATURN is rather a prediction of how quickly cases will be resolved in the future based on total backlog and dispositions for one year. Where a backlog is very old and completely unattended, young and active cases may well be decided rapidly. The method does not capture this aspect and SATURN is not a direct measure of time to disposition, and thus real times experienced by parties may be quite different. However, the SATURN figures could spur courts to reduce backlog as the best means to improve their scores. Given the apparent tendency for courts to resolve more or less what they receive, this can be a positive idea. However, as old backlog is eliminated, the SATURN times for following years may appear to increase as they did for enforcement in 2012 after the purge at Belgrade Basic First in 2011.²⁴⁰

76. **Compared to EU averages, Serbia's SATURN scores for first instance civil and commercial litigious cases stand up well. However, Serbia fares much worse in estimates for overall time to disposition for all non-criminal and enforcement cases.** While the days calculated are somewhat different from Figure 32 and Figure 33, this is due to variations in how the Serbians and others interpreted the CEPEJ Questionnaire.

Figure 35: Average Time to Disposition by Case Type (excluding criminal cases), Serbia and EU, 2012²⁴¹



77. **The EU averages are based on scores from 25 countries, but not all answered every question.** Only 14 provided data on enforcement cases: Austria, Croatia, the Czech Republic, Denmark, Finland, France, Hungary, Italy, Lithuania, Poland, Portugal, Slovakia, and Slovenia. Of these, only Portugal has a higher time to disposition at 1,399 days, compared to Serbia's 1,299 days. Slovakia is the country with the next highest time to disposition with 656 days. From there, times ranged from 398 to 9 days (in the Czech Republic). More complete data, including Serbia, will be provided in CEPEJ's biennial evaluation to be published later in 2014.

²⁴⁰ In this way, SATURN reveals only a part of the picture. It provides a convenient quick estimate of timeliness, but at the risk of concealing both improvements and problems.

²⁴¹ For EU data, see *EU Justice Scoreboard 2014* (based on 2012 data). For Serbian data, see *Serbian official statistics provided to CEPEJ in 2013 for 2012*.

78. Lastly, Serbia's figures can be compared with EU timeliness standards, as measured by the decisions of the ECtHR in Article 6 cases (See Box 5).

Box 5: How Long is Too Long? ECHR Timeliness Standards

There are no clear-cut rules for what constitutes a 'reasonable time', as every case must be considered separately. However, an analysis of a large number of cases before the ECtHR provides a useful indication of the approach taken by the ECtHR in interpreting Article 6 of the ECHR. The following can be established:

- i. The **total duration of up to two years per level of court** in normal (non-complex) cases is generally considered reasonable. Beyond two years, the ECtHR examines the case closely to determine whether the national authorities have shown due diligence in the process. (NB: Duration is measured differently for different cases. In civil cases it is normally the date on which the case was referred to the court; in criminal cases, it may also be the date on which the suspect was arrested or charged, or the date the preliminary investigation began. In administrative cases, it is the date on which the applicant first refers the matter to the administrative authorities).
- ii. The end of the period in criminal cases is generally the date on which the final judgment is given on the substantive charge or the decision by the prosecution or the court to terminate proceedings. In civil cases, the end date is the date on which the decision becomes final; however, the ECtHR may also take account of the length of enforcement, which is considered as an integral part of proceedings. '**Of manifestly excessive duration of proceedings**' refers to cases in which the applicant's behavior had contributed to the delay.
- iii. In **priority cases**, the court may depart from the general approach and **find violation even if the case lasted less than two years**. ('Priority cases' comprise the following: labor disputes involving dismissals; recovery of wages and the restraint of trade; compensation for victims of accidents; cases in which applicant is serving prison sentence; police violence cases; cases where applicant's health is critical; cases of applicants of advanced age; cases related to family life and relations of children and parents; and cases with applicants of limited physical state and capacity.)
- iv. In **complex cases**, the ECtHR may allow longer time, but pays special attention to periods of inactivity which are clearly excessive. The longer time allowed is, however, rarely more than five years and almost never more than eight years of total duration. The only cases in which the ECtHR **did not find violation in spite of manifestly excessive duration of proceedings** were cases in which the applicant's behavior had contributed to the delay.

The tables below provide a 'rough guide' to appropriate lengths of proceedings by case type and complexity. It should not be taken as a fixed rule.

Violations of Reasonable Time (Article 6)

Type of case	Issues	Length	Decision
Criminal cases	Diverse	More than 5 y.	Violation
Civil cases	Priority cases	More than 2 y. (min: 1y10m)	Violation
Civil cases	Complex cases	More than 8 y.	Violation
Administrative	Priority cases	More than 2 y.	Violation
Administrative	Regular, complex	More than 5 y.	Violation

Non-violation of Reasonable Time (Article 6)

Type of case	Issues	Length	Decision
Criminal cases	Normal cases	3 y 6 m (total in 3 instances); 4 y 3 m (total in 3 levels. + investigation)	No violation
Criminal cases	Complex	8 y 5 m (investigation and 3 levels)	No violation
Civil cases	Simple cases	1 y 10 m in first instance; 1 y 8 m on appeal; 1 y 9 m Court of Cassation	No violation
Civil cases	Priority cases (labour)	1 y 7 m in first instance (labour); 1 y 9 m on appeal; 1 y 9 m Court of Cassation	No violation

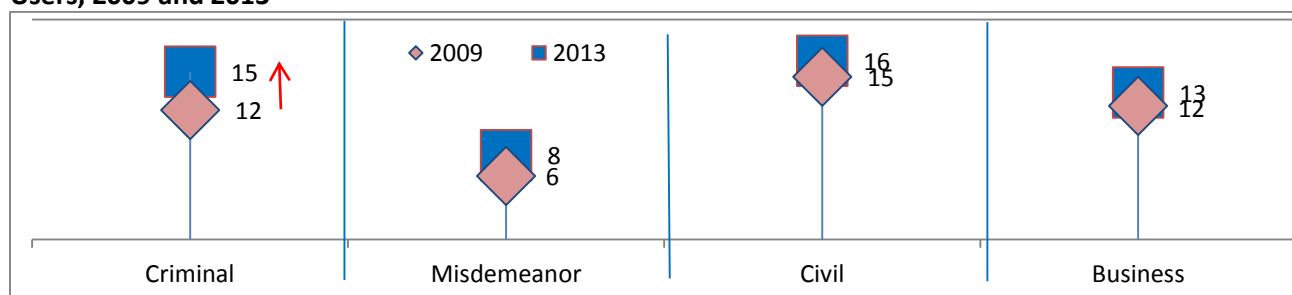
From: CEPEJ 2012 'Length of court proceedings in the member states of the Council of Europe based on the decisions of the European Court of Human Rights' available at

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2204779&>

vi. Timeliness as Reported by Court Users and Practitioners

79. In the Multi-Stakeholder Justice Survey, court users reported the average duration of their court proceeding from case filing to first-instance judgment.²⁴² In criminal and civil cases, the average duration at first instance was approximately 15 months, and 8 months for misdemeanor cases. In business sector cases, the average duration is reported to be 13 months (see Figure 36) Timeliness of first instance proceedings appears not to have changed much since 2009. Compared with the data reported in 2009, the only change occurred in criminal cases, and this change is negative: on average, cases lasted three months longer.

Figure 36: Average Number of Months from Case Filing to First Instance Judgment as Reported by Court Users, 2009 and 2013²⁴³



80. However, average durations hide the striking variation as reported by individual court users. In 2013, user responses on the duration of criminal cases ranged from less than a month to up to 70 months. In misdemeanor cases, duration ranged from less than a month to 46 months, well above the usual two years. In civil and business cases, duration ranged from less than a month to over 100 months. The variations are difficult to assess without further details on the nature or types of cases, but the data suggest that, at least in Serbia, discussions of ‘averages’ can be highly misleading of the court user’s experience.

81. In all, court users surveyed for the Multi-Stakeholder Justice Survey expressed dissatisfaction with the duration of their first instance court proceeding.²⁴⁴ More than 70 percent of court users with experience in criminal, civil, and business sector cases stated that their court proceeding was longer than what they considered necessary.²⁴⁵ Misdemeanor Courts fared better – only 60 percent of users with experience in misdemeanor cases stated that their court proceeding was longer than what they considered necessary. Since 2009, dissatisfaction remains constant among the general court users, but business sector representatives are now even more likely to be dissatisfied with duration of their court proceeding (see Figure 37). Judges and prosecutors had a more positive perception of timeliness, and reported that about one quarter of their cases lasted longer than necessary, while prosecutors reported that about one third of

²⁴² Respondents were asked about the duration of only the first instance proceedings, from filing to judgment. Focusing just on this phase of the users’ experience provided dates and periods of duration that are comparable across all the respondents. Respondents had different experiences on appeals (some did not appeal, while others had numerous appeals) and with enforcement. Their responses on these issues are dealt with elsewhere in the Report. As a result, though, the figures provided are not intended to represent the user’s full experience with the court system, which may be considerably longer.

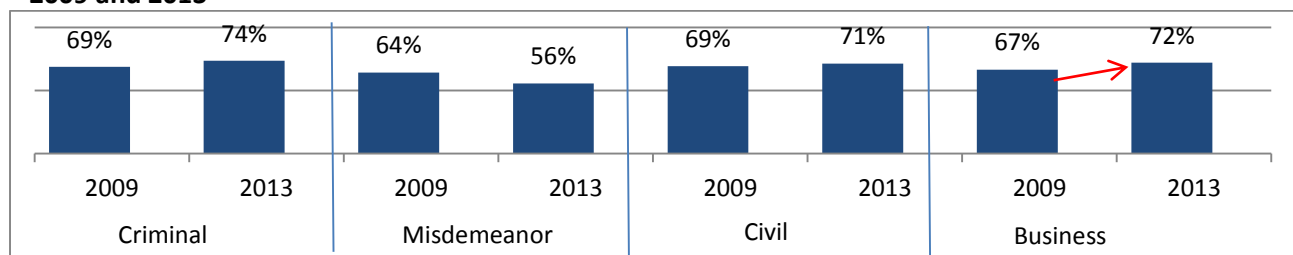
²⁴³ Survey Questions: *When was the case filed: month and year? / When was the first instance judgment rendered: month and year?* Population base: public and members of business sector with experience with court cases that reported data. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

²⁴⁴ Similarly to the Multi-Stakeholder Justice Survey, the Argus Survey found that members of general population who had direct and recent contact with the judiciary were even less satisfied (at 95 percent dissatisfaction) than the general public who had no direct contact (at 91 percent dissatisfaction). See *Argus Survey, 2014.*

²⁴⁵ Information from citizens and representatives from the business sector about the duration of their court cases is based on their recollections and reflects their subjective appreciation of how long is ‘necessary’. However, the relative consistency of the responses in each survey (2009 and 2013) suggests that the average values for case duration are in the range of actual with reasonable size of deviations. Whether or not users are realistic about ‘necessary time,’ their responses should be considered a significant indication of client satisfaction.

theirs did. Lawyers estimated that about 55 percent of their typical cases lasted longer than necessary, which was about the same as citizens' estimations.²⁴⁶ Survey data therefore also support the view that proceedings should be resolved more quickly.

Figure 37: Share of Court Users who Perceive that their First Instance Case Lasted Longer than it Should, 2009 and 2013²⁴⁷



c. Effective Enforcement

82. **Effective enforcement underpins the entire justice system and is an important requirement of Chapter 23 of the Acquis.** Serbia has traditionally relied on judicial enforcement,²⁴⁸ and most enforcement cases are in the Basic Courts.²⁴⁹ Without effective enforcement, access to justice is effectively denied and improvements in other aspects of efficiency or quality are meaningless. This section assesses performance against Indicator 1.3 of the Performance Framework.

i. Number of Pending Enforcement Cases

83. **The lack of enforcement is one of the biggest challenges for the Serbian court system.** This is evident from the great number of backlogged enforcement cases and the accompanying congestion ratios.

84. **In 2013, there were 2,547,215 active enforcement cases (meaning those carried over from 2012 or filed in 2013) across the Basic Courts.** By the end of 2013, a total of 2,019,006 enforcement cases remained unresolved and were carried over to 2014 (Table 8 highlights the enforcement caseloads from 2010 to 2013). There are also enforcement cases in the Higher and Commercial Courts. In the Higher Courts, although enforcement cases account for less than 5 percent of the new incoming cases, their congestion ratio is close to 50 percent and indicative of a slower resolution. Other courts' congestion ratios averaged between 0.27 and 0.76, but in the Basic Courts, the overall rate averaged between 2.02 and 3.81. Therefore, it is in the Basic Courts that the absolute numbers and congestion ratios for enforcement cases are the most significant.

85. **Despite the well-publicized efforts to tackle enforcement backlog in a few Basic Courts, statistics from 2010 to 2013 reveal insufficient system-wide progress.** Instead, it appears that most courts were

²⁴⁶ The perceptions of judges, prosecutors and lawyers regarding the duration of their cases has not changed since 2009.

²⁴⁷ Survey question regarding the difference between the duration of the case in months reported by court users and the users' estimations of the number of months the case should have lasted: *When was the case filed -month and year? / How long do you think the first instance proceeding should have lasted - in months?* Population base: public and members of business sector with experience with court cases. *Multi-Stakeholder Justice Survey*, World Bank MDTF-JSS, 2014

²⁴⁸ Whenever a final court decision has not been satisfied through voluntary compliance or a debtor has an outstanding material obligation to the creditor, the creditor may seek court-ordered enforcement. A claim for enforcement has to be must be accompanied by either an 'enforceable document' (a final court decision) or an 'authentic document' demonstrating enforceable title, such as a utility bill, invoice, bank guarantee, or other security.

²⁴⁹ Basic Courts are responsible for enforcements between individuals or between individuals and firms, while Commercial Courts are responsible for enforcement between firms. Generally, the enforcement motion should be filed in the jurisdiction where the debtor resides or where a company has its main office, but in certain cases the law stipulates a different territorial jurisdiction (e.g., for claims over movable assets/chattel, real estate, or other physical assets, jurisdiction is where such objects are physically located).

disposing of approximately the same number of enforcement cases as they were receiving. There are a few exceptions, most notably in the Belgrade First Basic Court in 2011 (see the discussion on Infostan), and to some extent in 2012 and 2013. Thus, while the number of incoming enforcement cases declined over the three years, they still remain at roughly the same percentage of the pending stock.

Table 8: Enforcement Cases in Basic Courts, 2010-2013²⁵⁰

	2010	2011	2012	2013
Incoming Enforcement Cases	721,744	617,812	489,041	319,816
Incoming Enforcement/Total Incoming	0.52	0.45	0.41	0.35
Pending Enforcement Cases End of Year	2,538,539	2,255,329	2,179,572	2,019,006
Pending Enforcement Cases/Total Pending	0.88	0.86	0.87	0.87
Disposed Enforcement Cases	262,479	1,022,267	558,078	528,209
Disposed Enforcement Cases/Total Dispositions	0.40	0.59	0.43	0.46

86. **Enforcement Departments within courts have not been well-managed and have traditionally performed quite poorly.** In some courts, bailiffs face massive caseloads and receive thousands of enforcement cases per month. Arguably, the approximately 800 bailiffs have been insufficient in number and poorly distributed across the country. Court bailiffs are poorly paid, routinely lack vehicles or fuel allowances, and have been reluctant to risk venturing into bad neighborhoods. Moreover, repeated visits might exceed the value of the claim. Further, AVP does not capture the court bailiffs' performance, and any good performance goes undetected. As a result, stakeholders report that Enforcement Departments often suffer from low morale and a lack of motivation in their job performance. In some courts, transfer of personnel to the Enforcement Department has usually been considered a form of punishment or demotion.



Image of a Registry Office in the Enforcement Department of a Basic Court, 2014.

Support from IT experts would be useful to develop software to identify and triage cases, and track bailiffs' actions, as the Vrsac Basic Court has done.

87. **There has been some innovation, however.** Box 6 below highlights the good work done by the Vrsac Basic Court to reduce enforcement backlogs.

88. **Reducing the enforcement backlog will require a joint effort led by Basic Court Presidents.** Given that enforcement cases involve little judicial work, reforms will depend on the engagement of the Court President, with the support from a small number of judges, and a larger number of judicial assistants and court staff. To date, however, joint efforts have been rare. In Belgrade, judges refused to be transferred to the Enforcement Department, so assistants were sent instead. While the latter can process most of the work, finalization requires judicial participation.

89. **Better incentives are also needed to encourage judges, assistants, and staff participation in the programs.** Judges who contribute to purges could receive extra credit in productivity norms and evaluations, or their time spent in the Enforcement Department could be relevant for promotion. The transfer to the Enforcement Department might then become attractive. In Belgrade, assistants have been awarded additional leave days in recognition of their work on enforcement cases. However, to be effective, leave days should only be granted upon results and not simply upon willingness to work in an unattractive department. Leave days could be considered, for example, upon proof that targets for backlog reductions have been met. Also, non-financial awards of recognition and appreciation could be organized to help boost staff morale towards the achievement of targets.

²⁵⁰ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

Box 6: Vrsac Basic Court Innovative Approach to Reduce Backlog through Evidence-Based Management

This was a second experiment involving the active monitoring of judicial bailiffs in Vrsac. The AVP system does not generate specialized reports related to bailiffs, and at the request of the Court President, the IT administrator identifies information registered in the AVP system on enforcement cases (e.g., assigned bailiffs, dates and types of enforcement activities, collected amounts) that could be used for this purpose.

Every night, every AVP system makes full backups of the entire local database. The IT administrator installed Microsoft SQL Server on one court computer and copied the AVP files from the most recent backup to see which additional reports could be produced. Eventually, he completely retro-engineered the schema of the relational database and was able to produce some highly useful reports for the Court President. These reports revealed which activities (if any) a particular bailiff performed in the reporting period, how many collection attempts s/he made, and which cases were not 'touched.' With the bailiffs' work (or lack thereof) suddenly visible and actively supervised, the bailiffs were encouraged to improve their performance. As a result, the backlog decreased and good performers were promoted.

The IT administrator regards what he created as an unpolished product, but there is evidence of the effectiveness of this approach. The IT administrator would like to establish a real reporting server that would mine the AVP database to produce new structured and formatted reports for court management. This approach would allow for a greater

ii. Number of Pending Utility Bill Enforcement Cases

90. **The enforcement of unpaid utility bills warrants specific analysis, as it represents the overwhelming majority of the enforcement backlog.** The enforcement of authentic documents (IV Cases) constitutes 82 percent of all enforcement cases in work. Among these, utility bills represent the overwhelming majority. By the end of 2013, a total of 1,748,086 IV Cases remained unresolved and were carried over to 2014. Of these, the Review estimates that around 80 to 90 percent of IV Cases relate to the non-payment of utility bills, suggesting that around 1.5 million unpaid utility bill cases remain in Basic Courts.

Table 9: Enforcement of Authenticated Documents in the Basic Courts (2013)²⁵¹

	All Enforcement Cases ²⁵²	Enforcement Cases Related to Authenticated Documents (IV Cases)	%
Number of cases in work in 2013 (carried-over from 2012 plus incoming in 2013)	2,547,215	2,089,868	82%
Pending at the end of the year, 2013	2,019,006	1,748,086	87%

91. **The issue is partially procedural.** Companies have 12 months to initiate an enforcement case or their claims will expire under the statute of limitation. They therefore flood the courts with thousands of enforcement cases all at once, a process automatically generated by their software systems. The nominal value of unsettled claims is often trivial (e.g., below 10 EUR), and for persistent non-payers, repeated small-value enforcement cases (with the same creditor, same type of debt, and the same debtor) will accumulate over time but are never joined. Two to three years later, companies declare a loss in their own accounting systems, but leave the actions in the courts 'just in case' circumstances change.

²⁵¹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

²⁵² The term 'enforcement cases' includes the following case types as identified in the Court Book of Rules: I, Iv, li, Ik, Ika, Ikd, loi, Ion, Ipvlvk, IpvI, Ipvlv, Ipi, Kp and Kuo.

92. **The magnitude of unpaid utility bills is partly a social problem.** Poor residents unable to service their bills accumulate debts over time. This issue is both cultural and political.²⁵³ Utilities cases do allow a more expedient treatment – they can and have been resolved on a massive scale (see Box 7 for an example from Infostan). Other European countries have experienced large utility bill backlogs and have purged these in similar ways. This experience with Infostan could be modeled with other state-owned utility companies, for example through coordination between SCC, MOF and the MOE.

Box 7: Bulk Resolution of Unpaid Utility Bills: a Lesson from Infostan

The huge reduction backlogs at the Belgrade First Basic Court in 2011 was due to a single court user. In 2011, Infostan, the largest utility company in Belgrade, invited their long-time debtors to reach an agreement and pay their accumulated debts in installments without interest. For those who agreed, Infostan withdrew the pending enforcement cases before the Belgrade First Basic Court, leading to a significant decrease in the pending stock.

Infostan is now replicating the exercise. In an offer ending 30 September 2014, long-time debtors who sign agreements will be allowed to pay their debts in installments. Debts of up to 100,000RSD may be paid in 24 installments, while debts of over 200,000RSD may be paid in up to 60 installments. As at 17 June 2014, 1,527 residents of Belgrade had agreed to pay off their debts in installments, with numbers rising daily.

The impact on backlogs could be significant. Although the final outcome remains to be seen, Infostan is reported to be planning to withdraw up to 300,000 enforcement (IV) cases from Belgrade's courts. These withdrawals would likely include a combination of debt restructuring with clients, as well as debt write-offs for very small-value cases that are not worth pursuing. This would represent around 20 percent reduction in the 1.5 million pending IV enforcement cases in Belgrade.

The Serbian judiciary should explore ways to replicate this experience with other utility providers. It should analyze what worked well in the Infostan experience, why other utility companies have not followed suit, and how they could be encouraged to do so. The result could mean the end of utility bill enforcement backlogs in Serbia.

93. **Utility cases might also benefit from joining.** The number of cases could be reduced if those involving the same debtor, creditor, and subject of claim could be identified and merged into a single claim. This would make the collection of the total amount more profitable for the bailiff and easier to set up a payment plan for. It should be of interest to the creditors and bailiffs, although it may take time to develop the technological mechanism to do so. Judges may have to be encouraged to support and facilitate such an initiative.

94. **Basic Courts could mimic the Misdemeanor Court's registry for the non-payment of fines.**²⁵⁴ The details of persistent non-payers could be placed in an electronic database, and these would be denied certain government services (such as license renewals) until they agree to a payment plan for their unpaid utility bill debt. This would require a legislative amendment of the kind enacted for the Misdemeanor Courts.

iii. Private Enforcement

95. **Reforms in 2011 sought to address the problem of ineffective enforcement in monetary claims, such as utility bill cases, by allowing these to be dealt with by private enforcement agents.** In the areas of their jurisdiction,²⁵⁵ enforcement agents should enjoy better incentives to provide more effective

²⁵³ Utilities were previously provided in the Socialist Federal Republic of Yugoslavia. In the 1990s, the non-payment of utility bills was a form of civil disobedience. To this day, certain individuals refuse to pay their utility charges. State-owned utility companies are often reluctant to pursue these debts aggressively for socio-political reasons.

²⁵⁴ For further discussion on the register, see the Financial Management Chapter.

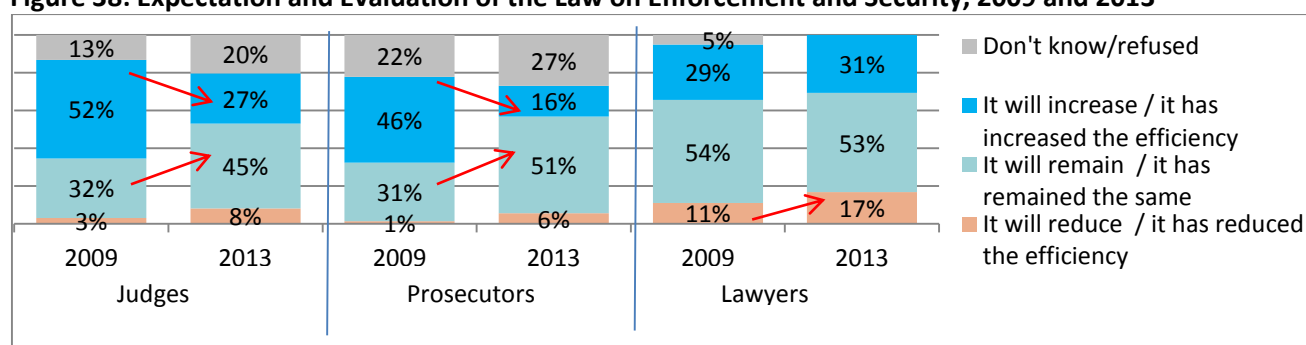
²⁵⁵ Most cases involving enforcement of a monetary claim can be handled by enforcement agents. Non-monetary enforcement cases, such as child custody enforcement, must continue to be handled by court bailiffs. For further background, see the Background Information on the Serbian Judiciary, available at [http://www.mdtfjss.org.rs/archive//file/Annex%201%20-%20Background%20Information%20on%20the%20Serbian%20Judiciary\(1\).pdf](http://www.mdtfjss.org.rs/archive//file/Annex%201%20-%20Background%20Information%20on%20the%20Serbian%20Judiciary(1).pdf).

enforcement.

96. **The creation of enforcement agents will not reduce the court's existing backlog, but will prevent it from growing further.** From 2011 to 2013, the number of incoming enforcement cases dropped by 49 percent. In 2013, only 17.6 percent of incoming enforcement cases related to the enforcement of authenticated documents. It is likely that this trend will continue. However, if enforcement agents do not actually increase the rate of successful enforcement of authenticated documents, the same issue will persist – the backlog issue would merely be shifted from the courts to private entities.

97. **Perceptions vary regarding the effectiveness of the recent reforms.** In the Multi-Stakeholder Justice Survey, most respondents considered that the reforms will do little to affect efficiency, and perceptions of the effectiveness of the law have deteriorated (see Figure 38). This may be due to the range of implementation challenges, discussed below.

Figure 38: Expectation and Evaluation of the Law on Enforcement and Security, 2009 and 2013²⁵⁶



98. **The numbers of enforcement agents is growing, but they are not yet uniformly available throughout the country.**²⁵⁷ There is an insufficient number in Central/Southern Serbia and concerns about the quality and efficiency of enforcement in those locations. It is expected, however, that geographic distribution will improve over time.

99. **The registry for private enforcement agents does not provide information necessary for parties to make an informed judgment about whom to select.** The only information listed in the registry is the agent's name and date of appointment to the territorial jurisdiction of the court. On paper, the complaint process against private enforcement agents is well regulated.²⁵⁸ However, registries do not indicate if disciplinary actions have been initiated or fines levied against a particular enforcement agent.

100. **Enforcement fees are opaque, and this may act as a disincentive to effective enforcement.** Fees are assessed using a complex system based largely on the value of the amount to be collected and cannot be easily determined. In addition, parties in non-utility cases who have obtained a court judgment and have already paid court fees are often reluctant to incur additional costs by hiring enforcement agents. At this juncture, many court users simply 'give up' on their cases.

²⁵⁶ Survey Question: *In your opinion, how the enactment of the new Law on enforcement and security launched in 2011 will affect the efficiency of the judicial system (2009) / has affected the efficiency of the judicial system (2013).* Population base: total populations of judges, prosecutors, and lawyers. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

²⁵⁷ The standard set in statute is to have one enforcement agent for every 25,000 inhabitants, which should result in 287 registered enforcement agents. The MOJ's aim is to have 308 enforcement agents. As at July 2014, there were 217 enforcement agents appointed. The distribution is slightly skewed. Belgrade and Novi Sad may have excess numbers of enforcement agents, while most areas in the south have less than 50 percent of their quota, and Novi Pazar has no enforcement agents.

²⁵⁸ The statute allows a range of disciplinary actions (private or public reprimand, fines, suspension, and termination) against bailiffs. A disciplinary commission has launched four investigations since the formation of the Commission in 2012 but none has been concluded. The Chamber of Bailiffs is currently considering creating an internal panel as a first tier for reviewing complaints against bailiffs.

101. **Further, enforcement agent fees are relatively high.** For example, the deposit fee alone to request the enforcement of a divorce decision would cost an average Novi Pazar resident 56 percent of their monthly net income and 14 percent for an average Belgrade resident. The deposit alone thus represents a further barrier to access to the Serbian courts, particularly given that several fees have already been incurred by this stage of the proceeding.

Table 10: Enforcement Deposit as a Share of Monthly Income²⁵⁹

Basic Courts	Monthly Income per Capita (RSD)	Enforcement Deposit	Deposit Income percent of
Novi Pazar	6,970	3,900	56%
Belgrade First	27,110	3,900	14%

102. **Limited availability of and costs for enforcement agents go against European principles that enforcement be cost effective and readily available.**

'(...) Member states should facilitate the efficient and cost-effective enforcement of judicial decisions (...) Enforcement fees should be reasonable...'

Council of Europe Recommendation 2003 (17)

'Parties should be able to initiate enforcement proceedings easily. Any obstacle to this, for instance excessive cost, should be avoided.'

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103. **Perhaps most problematic is the persistent concerns regarding collusion and kickbacks to private enforcement agents.** Stakeholders report that a number of socially-owned enterprises have transferred many thousands of unmeritorious enforcement cases to a select number of enforcement agents.²⁶⁰ The size of the transfers alone raises some concern, as they are beyond the ability of a single enforcement agent to action within a reasonable period of time. According to stakeholders, enforcement agents thus received large amounts in enforcement deposits without acting on the cases. The public perception of enforcement agents has been harmed by these suspicions, and this is likely to further reduce trust and confidence with the judicial system as a whole.

104. **The number of enforcement cases that remain pending with enforcement agents has grown each year, since the profession was established in 2011.** However, the precise number of pending cases is not known. Each enforcement officer is obliged to file an annual report noting their total number of cases resolved, unresolved and the ratio of assets to claims. This information would be useful to monitor performance across the profession. The Chamber of Bailiffs has indicated that it intends to do so but is yet to publish its reports. Several stakeholders reported that, if the performance of private enforcement agents is not monitored carefully, the backlog problem will remain – it will simply have been displaced from courts to enforcement agents.

105. **A range of options is available to remedy these implementation challenges.** First, training would assist for private enforcement agents to improve the efficiency and quality of their work. Caps on the number of cases assigned to each enforcement agent would assist in balancing the workloads of enforcement agents. Debtors could also employ a panel of enforcement agents (e.g., three) rather than a single agent. The Chamber should set quality and efficiency standards, including standard timeframes for when an enforcement agent should either complete or abandon a case. The Chamber of Bailiffs is proposing amendments to the law requiring state-owned creditors to distribute cases more evenly among private

²⁵⁹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>); Court Fee Schedule.

²⁶⁰ For example, according to statistics received from the Chamber of Bailiffs, a utility recently assigned 20,000 cases to a single enforcement agent, resulting in a deposit to that individual of nearly 1 million EUR.

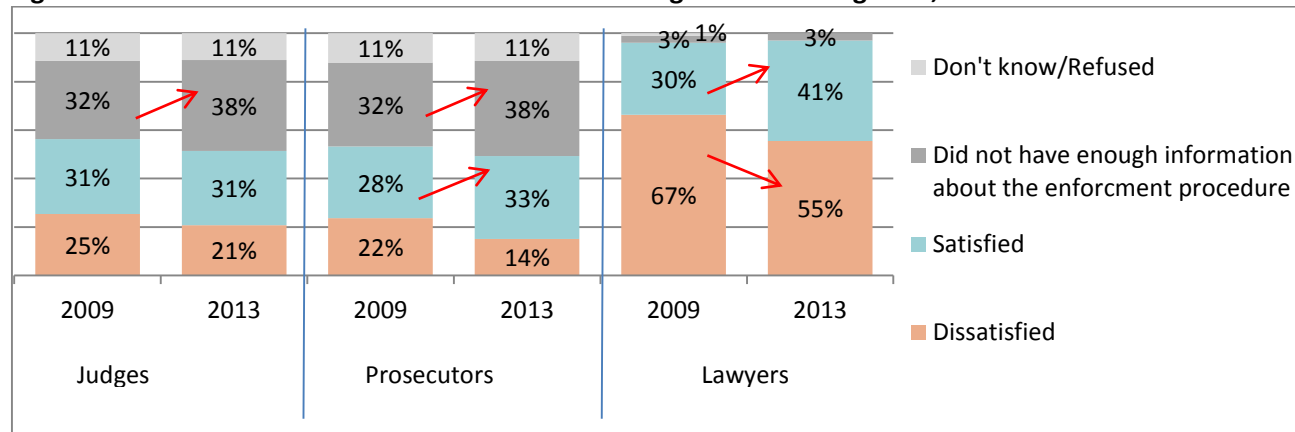
enforcement agents and adding a complaint process to the Chamber, allowing the suspension of agents from the list until their backlog is reduced. Improvements could include requiring remedial training for bailiffs for less serious performance issues such as excessive delay.

106. **Some stakeholders suggest that private enforcement agents should take over the utility bill backlog from the Basic Courts, but the Functional Review advises against this.** First, the enforcement deposit is likely to exceed the value of most of these cases. Several more cases are also likely to be found unenforceable or unmeritorious. So it is unlikely that enforcement agents would have any more success in resolving them than the courts have. To transfer large amounts of cases of negligible worth to enforcement agents would thus massively increase the cost of their resolution without results. Further, such a decision would likely to be viewed with suspicion by many stakeholders and the public, in light of the sensitivity of utility bill enforcement and prevailing concerns regarding the integrity of enforcement agents in cases involving large numbers of unmeritorious cases. First and foremost, these cases require triage and analysis. Many are likely to require purging or would be amenable to mass resolution by installment plans in a manner similar to what Infostan has done at the Belgrade First Basic Court. Such options can be pursued at minimal cost within the existing regulatory framework.

iv. Enforcement of Court Judgments

107. **The enforcement of court judgments performs considerably better than utility bill enforcement.** Data from the Multi-Stakeholder Justice Survey provide some insight into the enforcement of court decisions in real cases (i.e., other than utility bill enforcement).²⁶¹ Figure 39 below compares the evaluations by judges, prosecutors and lawyer in the two surveys. Not surprisingly, lawyers were less satisfied, although their perception is improving.

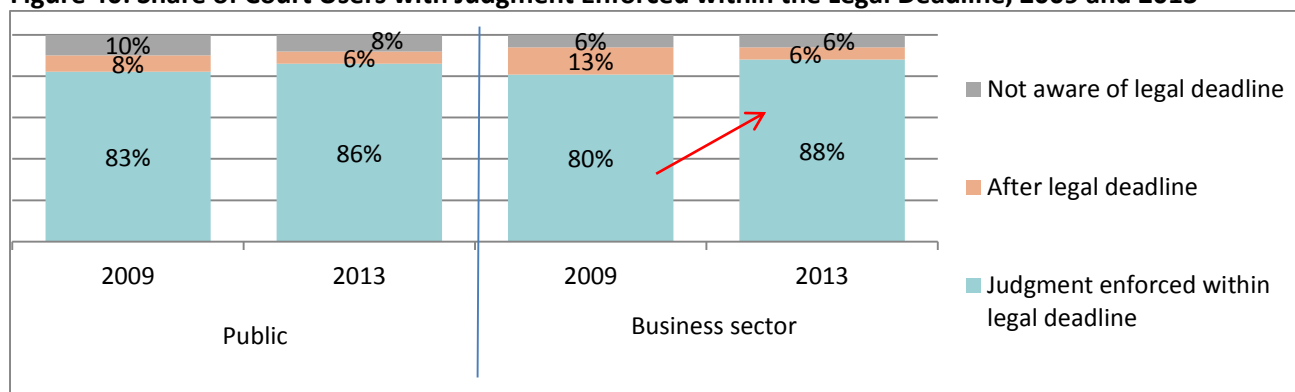
Figure 39: Satisfaction with the Procedure for Enforcing the Court Judgment, 2009-2013²⁶²



108. **In cases where the court decision has been enforced (over 80 percent of cases involving survey participants) a majority of respondents reported that enforcement occurred within the legal deadlines (Figure 40).** Recent amendments to the Law on Enforcement and Security of Court Judgments have further improved efficiency. This reinforces the finding that many cases, particularly new cases, proceed smoothly through the system, and when systems work, they work well. Meanwhile, other cases, often older cases, get 'stuck' and become protracted.

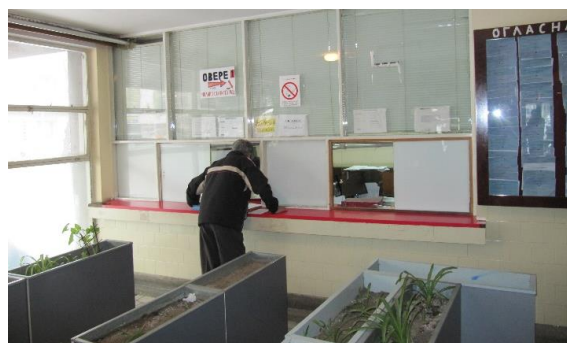
²⁶¹ Responses were provided by the public and business people who were parties in cases before the courts. Regarding enforcement, respondents' answers relate to the court's judgment in their case. It is possible that a small number of these cases involved the contestation of a utility bill, but they were mostly civil, criminal, misdemeanor, and business cases.

²⁶² Survey Question: *How satisfied were you with the procedure for enforcing the court judgments in cases you worked on, in last three years?* Population base: judges (other than appellate judges); prosecutors; lawyers, total population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

Figure 40: Share of Court Users with Judgment Enforced within the Legal Deadline, 2009 and 2013²⁶³

d. Procedural Efficiency and Efficacy

109. **The court system's ability to process cases is significantly affected by how the court is organized and managed, whether procedural tools are available to judges, and how their work can be facilitated or obstructed by others.** This section reviews several indicators of procedural efficiency, corresponding to indicator 1.4 of the Performance Framework. As opposed to arguments that higher caseloads always require more judges or more work, these reforms explore ways to facilitate performance by enabling courts to deliver higher (or same) quality services in less time while reducing the pressure and burden on judges and staff. The Committee of Ministers to the Council of Europe and the CCJE suggested standards for hearings and adjournments, but indicators for these issues are best tailored to the individual country.²⁶⁴



Title: Pisarnica, submitted by an entrant to the Justice Competition, World Bank MDTF-JSS, 2014.

110. **In contrast with the previous discussion, this section relies less on caseload statistics and more on survey results, legal analysis, and key informant interviews.** The case management systems do not generate reports that could be used for determining the procedural causes of delays, or indicators that might be used to track improvements.²⁶⁵ Such capabilities are available but data is not entered. It will be important to remedy this oversight to ensure that procedural efficiency can be monitored and improved through the collection and analysis of data.²⁶⁶ Improved procedural efficiency likely requires a suite of targeted and calibrated reforms, which will need to be effectively monitored.

²⁶³ Population base: court users in whose cases the final judgment was rendered and judgment was enforced at the time of survey. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

²⁶⁴ As the CCJE notes (Opinion 6, 2004), there can be no single template. Individual countries have differing processes and values. Nonetheless, the efficient use and scheduling of hearings remains a goal. Once countries determine their own targets, these targets need to be monitored and possibly adjusted over time. Reform impacts also require tracking, and new legal practices only work if there are incentives to use them. Monitoring is critical.

²⁶⁵ For example, AVP can track statistics such as the number of attempts for delivery, the average number of adjournments and hearings per case, and the frequency of hearings. However, this information is generally not systematically entered into localized databases or collected centrally. A few courts (see Boxes 1 and 3) are exceptions.

²⁶⁶ Perceptions can occasionally be mistaken, even when offered by judges and frequent litigants, and this possibility makes it still more important to work with real data generated by AVP. Practitioners and users frequently overestimate delay or misdiagnose the causes for delay, thus suggesting ineffectual remedies. See Kritzer (2000) and World Bank (2002), which provide examples of reforms tackling court delay in both the US and Mexico. In both instances, the original theories about the causes of delay proved incorrect.

i. Service of Process

111. **The service of process plays a critical and frequent role in Serbian court proceedings.** Procedural laws require that parties be notified via service of process at every stage of the proceeding, and decisions have effect only from the date that process is served. As a result, a high number of services are required.²⁶⁷

112. **Users experienced difficulties in locating the address of relevant parties prior to the service of process.**²⁶⁸ Obtaining an address often requires the cooperation of other state bodies such as the police, various line ministries, or the Agency for Commercial Registers. Stakeholders report that these bodies are routinely unresponsive. Recent procedural amendments now require the police to assist courts in delivery of process,²⁶⁹ but enhanced cooperation between courts and police will be necessary for this to work in practice. Within courts, there are also some delays in preparing services of process due to cumbersome internal processes. For an example of how the Subotica Basic Court has streamlined the internal process, see Box 20 of the Governance and Management Chapter.

113. **Once addresses are obtained, 57 percent of attempts at service fail on average.** There are no standard AVP or SAPS reports that track or compare the service of process across different courts and/or different periods. To improve performance, data should be collected and analyzed on the number of services, success rates, and costs.

114. **Avoiding the service of process is easy.**²⁷⁰ The postal service delivers only in the daytime when most people are at work. In cities, receipt is difficult to verify when apartment letterboxes are not sealed.

²⁶⁷ An average two-party dispute at first instance may ultimately require 30 services, and in a larger case the number may be as high as 70. There are currently three legal options for serving process in Serbia: the Postal Service, the police, or a contracted service provider. Should none of these methods be successful, courts will order that notices be posted on their bulletin boards.

²⁶⁸ The defendant's address is necessary to move the process forward, and no document can be delivered or any procedure initiated without it. The Law on Civil Procedure requires that claimants provide the court with the defendant's address for service, or they can request assistance from the court where they are unable to obtain it. Some citizens do not report their current address to the local police station as required, or are not registered on the voter registry.

²⁶⁹ Amendments to the *Civil Procedure Law* adopted in May 2014 require that 'if the court cannot deliver acts at the provided address, court will *ex-officio* ask the competent body residence address or temporary address of the party to whom act has to be delivery and will deliver it according to the Law.' The police must assist in the performance of delivery (art. 128 para 4).

²⁷⁰ Most commonly, defendants who wish to delay the effect of a judgment do this.

Box 8: Innovation and Efficiency Stifled in Novi Sad

The Misdemeanor Court in Novi Sad used the Sloboda Youth Employment Agency as its internal delivery service in the city of Novi Sad as well as the municipalities in Veternik, Futog and Petrovaradin. Sloboda couriers were paid 40RSD per successful delivery. According to the Misdemeanor Court, success rates ranged from 75-80%, resulting in the delivery of 7,000-10,000 documents per month. Their couriers repeatedly attempted service of process for the same price by going several times in a single day to the address of the party. They also provided the court with observations from the field, which facilitated further procedural steps such as advising if the address was invalid or if the person no longer lived there. Couriers were also willing to work after regular work hours and on weekends, when residents are more likely to be home.

According to the Court President:

'Sloboda provided an astounding contribution to more efficient operation of the court, in pre-trial process, during court proceedings, and later in the phase of enforcement of court decisions. They also facilitated more effective enforcement of deadlines that are essential in legal proceedings, and therefore helped us reduce the number of cases that collapse by falling under the statute of limitations. Their work significantly improved our fines collection rate and increased inflow of funds to the budget.'

Despite the success, the Misdemeanor Court discontinued its cooperation with Sloboda in 2014. The 2014 budget for the court was only partially approved, and the line item for internal delivery service was cut to one-quarter of the sum. The Misdemeanor Court returned to using the postal service, where it is safer to accumulate arrears, and expenses can be more easily masked within general administration.

Table 11: How does the Postal Service Compare to the Sloboda Youth Employment Agency Delivery?²⁷¹

Sloboda Youth Employment Agency (Novi Sad)	Postal Service
40RSD	44RSD
Paid per successful service	Paid per attempt
Delivers outside regular work hours and weekends	Delivers during work hours only
Attempts service several times per location	Attempts once, then returns receipt of unsuccessful delivery to the court

115. **Stakeholders are unanimous that the postal service is ineffective. Further, there is little incentive for the Postal Service to improve, because it charges per attempt of service.**²⁷² Postal workers are poorly paid, earning approximately 200EUR per month, and are reluctant to risk venturing into bad neighborhoods. In smaller towns, postal workers are known to help residents avoid service either as a favor to friends/relatives or in exchange for a bribe.²⁷³ Postal service workers also receive minimal training.

116. **Some courts are attempting to manage the performance of the postal service, with some success.** The Basic Court in Uzice has an MOU with the Uzice Postal Service for service of process, in which the Postal Service agrees to make two attempts in exchange for its 44RSD fee. The postal service also agreed to give special attention to the service of process in rural areas. On average, the Basic Court in Uzice has no arrears and spends approximately 34,000EUR per year for all postal services, including services of process and delivery of other court decisions and legal acts, as well as regular mail. Under this arrangement, approximately 60 percent of their deliveries are successful.

²⁷¹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

²⁷² The courts, the MOJ, and the Ombudsman's Office also receive large numbers of complaints regarding the service of process related to the Postal Service.

²⁷³ Because service is in a specifically marked blue envelope, postal workers know the content and can warn their friends and relatives.

117. **Improvements in the mechanism for delivery could reap significant improvements in court efficiency.** The outdated MOU between the Postal Service and the MOJ could be revised, for example by switching to a pay-on-success structure. The use of contracted couriers generally provides better value and could be encouraged. For example, Box 8 above highlights the improved efficiency generated by an internal courier service contracted by the Novi Sad Misdemeanor Court. Others suggest that enforcement agents could assume the role in exchange for their fees becoming court expenses reimbursable to the winning party. In the longer term, an e-service feature could also be used.

118. **Recent amendments to the Civil and Criminal Procedure Codes could each improve the efficiency of the service of process.** The new CPC introduces much broader means of service, including several options for who may receive personal delivery.²⁷⁴ Successive amendments to the Law on Civil Procedure follows a different track, creating new forms of delivery and imposing deadlines for procedural milestones and penalties for parties engaging in dilatory practices.²⁷⁵ If implemented and monitored effectively, these reforms could transform the efficacy of delivery in the medium term and improve timeliness of disposition across the board. Progress should be monitored carefully with statistical data, and reforms calibrated over time to achieve desired results. Without reform to arrangements with the service providers, however, full implementation may be thwarted.

119. **Compared with other European countries, Serbia is not a top scorer for fast service of process but has seemingly improved.** According to the CEPEJ, in 2010 Serbia was one of eight countries where notification of a court decision on debt collection took the most time (11-30 days), but by 2012, Serbia had jumped to the 6-10 days category.²⁷⁶ Recent procedural reforms combined with improved mechanisms for service provision could improve Serbia's rankings.

ii. Scheduling and Hearings

120. **Several factors drive efficiency in the scheduling of hearings, including the number of hearings per case, the timeliness of their scheduling, and the frequency of cancellations and adjournments.** Judiciaries concerned about how these factors affect productivity require that their CMS records the number and dates of hearings, adjournments, and the lapsed time between a cancelled hearing and the new date.

²⁷⁴ Service may be made either at the recipient's residence or at his/her workplace. If the intended recipient or the legally defined alternative refuses service or declines to sign the receipt, service will nonetheless be considered executed the server records this information on the delivery slip. The new CPC also permits electronic delivery, which could be particularly effective in communicating with businesses, attorneys, and expert witnesses. These changes only apply to criminal cases entered after October 1st, 2013, meaning that backlogged cases will not benefit but efficiencies may be seen in the medium term.

²⁷⁵ The amendments to the *Civil Procedure Law* accord with the opinion of Venice Commission on draft civil procedure code form 26 July 2011 (DG-HL (2011) 10). The Venice Commission recommended that delivery of service be made to the specific person whenever possible. Where personal delivery is not possible, then the address from the official registry should be used.

²⁷⁶ In 2010, it took one to five days in 15 states, and six to 10 days the other 14 states. (See CEPEJ, 2012; 347.) In 2012, EU data was provided by 18 countries, of which eight states reported times less than five days, and five states between six to 10 days. Serbia reported a reduction to the six to 10 days category, although the accuracy of these data has not been verified. The countries with listing times between 11 and 30 days were Bulgaria, the Czech Republic, Slovakia, and Spain. Only Greece reported more than 30 days (CEPEJ, 2014).

121. **The European guidance is instructive.** In its Principles of Civil Procedure Designed to Improve the Functioning of Justice, the Committee of Ministers to the Council of Europe, recommend for civil cases:

‘not more than two hearings, one preliminary and the second for evidence, arguments and, if possible judgments, with no adjournments except when new facts appear and in other exceptional and important circumstances.’²⁷⁷

The CCJE qualifies the recommendation by noting the differences in practice among EU members and varying needs of case types, but it stresses the importance of the judges’ in controlling the timetable and duration of proceedings, setting firm dates, and exercising their power to refuse unwarranted adjournments. In some instances, courts have suggested limits on the number of hearings for any case. New procedural codes in many countries try to limit the number of hearings by consolidating those occurring at similar stages of a case’s trajectory. Unfortunately, there is often little follow-up to determine whether fewer hearings are held, or how the reforms impact on service delivery.

122. **Scheduling of hearings is generally processed manually, which inhibits efficiency.**²⁷⁸ A transition to electronic scheduling would allow tighter scheduling, help avoid ‘double booking’, and would be easier to monitor. Such reforms require active management by mid-level court administrators and clerks with the support and oversight from Court Presidents.

123. **Courts generally only schedule hearings in the mornings.** When asked why hearings are not scheduled in the afternoons, the answer is usually ‘it’s always been done that way’. Other responses noted that ‘people do not like to work in the afternoons’ or prosecutors and attorneys might not be available. Most of the modern judiciaries in Europe and elsewhere run a tight courtroom roster, particularly in lower courts, to maximize the use of valuable courtrooms, judges, and staff throughout the day. Commonly, courtrooms that are not used for full day hearings are scheduled for shorter hearings by one judge in the morning and another one in the afternoon. By tightening courtroom rosters in the Basic and Higher Courts in Serbia, particularly for civil cases, judges could increase the pace of hearings and reduce the length of proceedings while maximizing the use of limited courtrooms.²⁷⁹ Over time, schedules calibrate and more efficient habits are formed. Such reforms are often accompanied with electronic diaries (described above).

124. **Several months usually pass between case filing and the first hearing.** While some time interval is clearly required, stakeholders in interviews suggested that this time lag is excessive for first instance cases. Court users in the Multi-Stakeholder Justice Survey reported that the time lag in criminal cases is usually around four months, three months in civil and misdemeanor cases, and over two months for business sector representatives²⁸⁰ (see Figure 41).

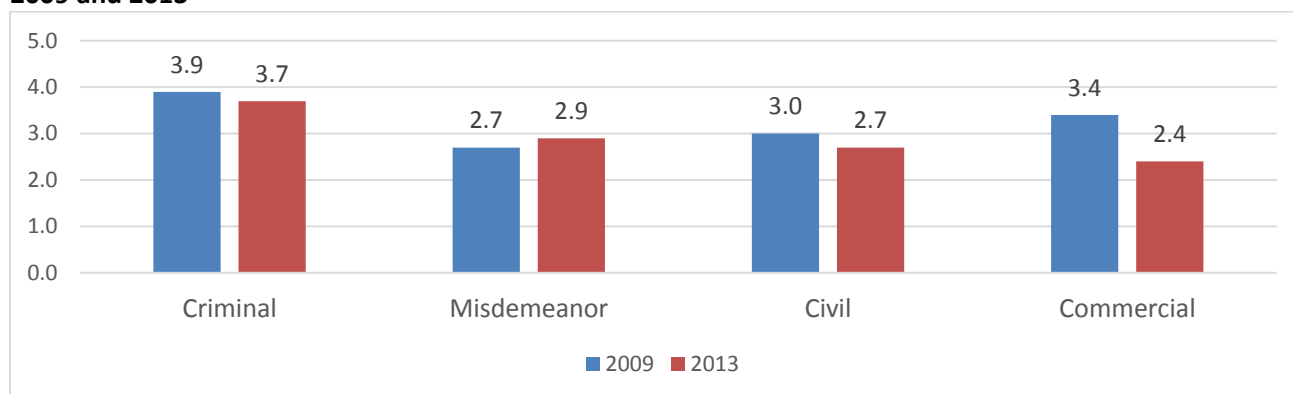
²⁷⁷ Council of Europe, Recommendation No. R (84) 5 of the Committee of Ministers to Member States on the *Principles of Civil Procedure Designed to Improve the Functioning of Justice*

²⁷⁸ Some courts also enter hearing dates in AVP.

²⁷⁹ For a further discussion on the concerns regarding scarce courtroom facilities, see the Infrastructure Chapter.

²⁸⁰ Compared to 2009, the time from case filing to the first appearing before court decreased only for business sector cases, while it remained the same for other types of cases.

Figure 41: Average Number of Months between Case Filing and First Hearing, as Reported by Court Users, 2009 and 2013²⁸¹



125. **Similarly, there is a time lag between each hearing.** Court users report that, on average, three months pass between hearings in first instance cases.²⁸² However, there is much variation across the country. In interviews, litigating attorneys who worked in courts throughout the country report that a court in Eastern/Southern Serbia could reschedule a hearing within several weeks. However, in courts dealing with the largest share of cases, this is more difficult. In Belgrade, it routinely takes three months or longer and stakeholders assume that the reason for delay in Belgrade is the large caseloads of judges. However, as shown in the Efficiency Chapter, the numbers of disposed cases per judge are high in Belgrade First Basic Court (1,472) and Second Basic Court (1,123), but not much higher than in Zrenjanin (1,017) or Bor (962) where one might have a closer hearing date. Therefore, the causes for scheduling delays may not be due solely to workload.

126. **Hearings sometimes close *sine die*,²⁸³ particularly in cancelled or adjourned hearings.** The next hearing date is set only after the hearing has finished and the parties are notified. This practice is never recommended and should be avoided (CCJE Opinion 6, 2004). The modern practice (reportedly used in Belgrade for criminal cases) is for each and every hearing to end with the setting of the next hearing date, circumventing the need to notify all parties (except of course those not present) by service of process, and enabling the parties to plan accordingly.

127. **Ready solutions are available, and practitioners and court users alike expect better scheduling.** Simple time management techniques could yield results, including the scheduling of afternoon hearings, the setting of hearing dates at the conclusion of each hearing, the automation of schedules, and the monitoring by Court Presidents and Court Managers of scheduling timeliness. The results could be significant, particularly in busy and backlogged courts.

²⁸¹ Survey Question: *When was the case filed (month and year)? / When did one of the parties appear before a judge for the first time (month and year)?* Population base: public and the business sector with experience with court cases that reported data. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

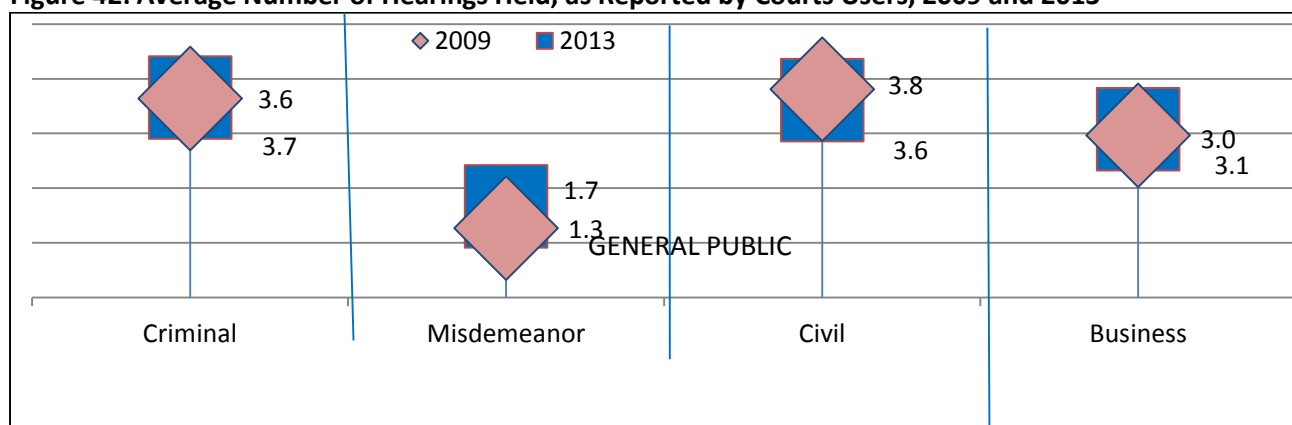
²⁸² This time lag has not changed since 2009.

²⁸³ Without a new date set for the next hearing.

iii. Average Numbers of Hearings

128. Users reported that four hearings were scheduled on average in first instance criminal and civil cases, two hearings in misdemeanor cases, and three hearings in business cases. The number of hearings has not changed since 2009 (see Figure 42). However, averages hide variations within case types.²⁸⁴

Figure 42: Average Number of Hearings Held, as Reported by Courts Users, 2009 and 2013²⁸⁵



iv. Average Number of Cancelled Hearings and Adjournments and their Reasons

129. The Serbian court system does not collect or monitor data on the number of cancelled or adjourned hearings. In Basic and Higher Courts, AVP can record these cancellations and adjournments, but court staff does not input the data and there are no reports that enable managers to analyze the results. This is out-of-step with European practice, where adjourned cases are monitored in over 40 countries.²⁸⁶

130. A substantial percentage of court hearings are cancelled or adjourned. According to estimates from judges, lawyers, and court users in the Multi-Stakeholder Justice Survey, more than 20 percent of cancelled hearings in first instance criminal and civil cases are cases involving businesses.²⁸⁷ In Misdemeanor Courts, the percentage of canceled hearings was lower at 12 percent (see Figure 43). Given that rescheduling can take up to three months, a single adjournment might lead to a six-month period of inactivity in a particular case.

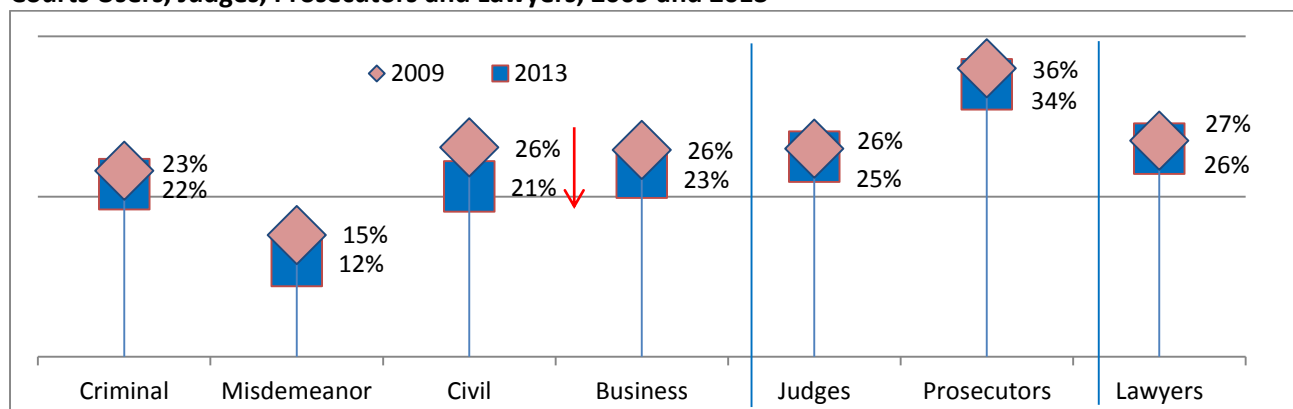
²⁸⁴ In criminal cases, the number of hearings ranged from one to 32 hearings, and in misdemeanor cases, it ranged from one to 10 hearings. For civil cases, the average was of one to 50 hearings, and from one to 30 hearings in business cases.

²⁸⁵ Survey Question: *How many total hearings were held in the first-instance court, not including those that were cancelled or adjourned?* Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

²⁸⁶ See *CEPEJ Evaluation Report, 2014* (based on 2012 data). The only countries which do not monitor adjourned hearings are Andorra, Germany, Iceland, Ireland, Luxembourg, Norway, and Sweden. Yet these seven jurisdictions do not experience such significant delays in resolution times as Serbia does. So Serbia would do well to monitor statistics on adjourned and cancelled hearings closely.

²⁸⁷ Prosecutors, however, estimated that a higher proportion – around one-third – of hearings were cancelled or adjourned in their cases.

Figure 43: Average Percentage of Hearings Not Held out of the Total Hearings Scheduled, as Reported by Courts Users, Judges, Prosecutors and Lawyers, 2009 and 2013²⁸⁸



131. **The obstruction of proceedings by a party is the most common cause for delay** (see Figure 44). While obstructions occur in any system, it is particularly severe in the Serbian courts. Obstruction takes several forms. Stakeholders report that the most common delay tactics include:

- a. Avoidance of service of process by parties and non-parties (see above).
- b. Absence from proceedings due to easily procured sickness certificates.
- c. Interference with witnesses to arrange their non-appearance or to influence their testimony.
- d. Abuse of procedural laws by attorneys.

Using courts as an instrument of delay is the antithesis of the justice service delivery, and loopholes should be closed tightly so the judiciary's resources can be focused on delivering justice.

132. **Non-parties are also a common cause for delay** (see Figure 44). The excessive reliance on expert witnesses is common and is reportedly caused by a fear among judges that the Appellate Courts will not support a judge's decision to decline the expertise of a witness, even if that witness adds little value. With more expert witnesses, proceedings take longer. Experts may also have good reasons for not appearing, such as poor scheduling by the court and backlogs of arrears owed to them. Some reportedly issue biased or low-quality reports that stimulate arguments between the parties. The blame for delay can be shared and various improvements could be identified across the board.

133. **A further frustration is the delay caused by transferring case files.** In cases which transfer between courts, it can take several months for the file to be transferred from one court to another, even when the two courts share the same building. This process clearly slows down the resolution of the dispute and is unsatisfactory from the perspective of the parties. During the two painful re-organizations of the court network in 2010 and again in 2014, there were serious problems in locating and transferring files between courts and between PPOs. On some occasions, files have been misplaced or lost altogether. With a disorganized filing system (as shown in the picture here) there is always room for mistakes and potential abuses. Such dysfunctions can be simply remedied through basic document management, the use of barcodes and increased use of available scanning technology.

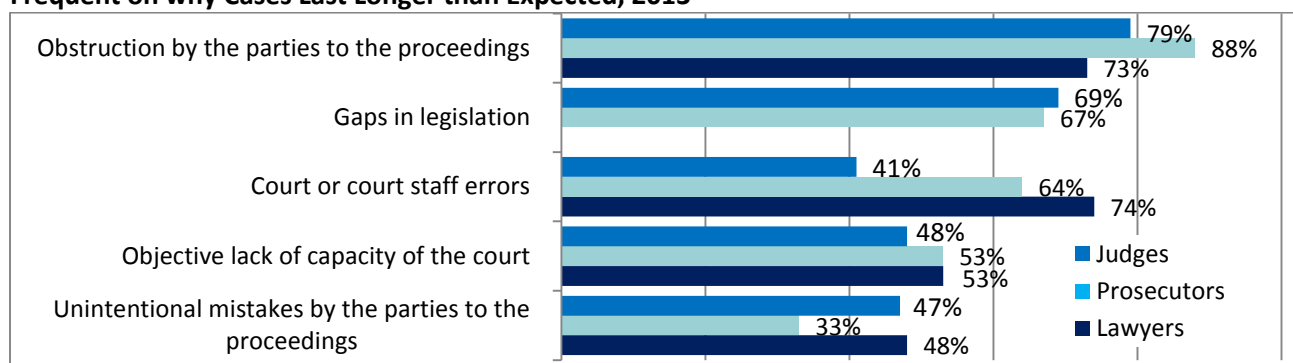


Image of a Registry Department in a Basic Court, 2014.

²⁸⁸ These data reflect the ratio between the reported number of scheduled hearings and the number of canceled hearings in proceedings reported by court service providers and lawyers. Survey Questions: *Estimate the percentage of hearings scheduled for your cases in the last 12 months that were not held.* Population base: users of court services, providers of court services (without Appellate), and lawyers who reported data. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

134. **Transfers of cases between judges has also caused delays.** Large-scale re-assignments of cases between courts and judges occurred in 2009/2010 and again in 2013/2014, as part of the two painful re-organizations of the court network. The transfers caused a significant amount of ‘churn’ and unnecessary work for the system, as court staff sent and received files and judges, prosecutors and assistants became familiar with materials on the file. Mass transfers also altered the incentives of judges to commence or continue cases, and several stakeholders reported that judges were ‘sitting on cases’ during the transition period. In focus group discussions, court users frequently complained that the case transfer was a common cause for delay. Now that the court network has stabilized, such large-scale transfers should be avoided in future. Transfers of cases can be useful, particularly when cases are transferred early in the case processing chain from overly-burdened courts to nearby less-busy courts. In future, however, such transfers should be targeted and should occur in a more orderly fashion to prevent delays.

Figure 44: Share of Judges, Prosecutors, and Lawyers who Report that the Listed Reasons are Occasional or Frequent on why Cases Last Longer than Expected, 2013²⁸⁹



135. **There is a connection between excessive numbers of hearings, adjournments, and delays.** A large number of hearings dilute the importance of each hearing resulting in a lack of preparation, non-appearances, and adjournments. As multiple actors are required to be notified of each hearing, a large number of hearings exacerbate the problems of service of process, causing adjournments and delays. In focus group discussions, users complain that a large number of hearings requires significant personal involvement and is time-consuming. Those working in private companies face challenges due to absences from work. All agree that more hearings increase costs and stress.²⁹⁰

v. Efficiency in Prison Transfers

136. **Stakeholders also reported that prison transfers cause delays in criminal hearings.** There are no court statistics to show the magnitude of the problem, but prison administration and other stakeholders report that such delays occur regularly.²⁹¹

137. **The lack of planning and coordination between the court and the prison administration means that transfers are not as smooth as they could be.** When the court does not plan efficiently and provides short notice to the Prison Administration, the latter is often incapable of producing the prisoner in time. Advance notice and two-way dialogue could overcome these challenges. A few courts have seen some positive results from ‘grouping transfers’ (i.e., scheduling hearings for detainees from the same prisons on the same day), and lessons could be learned from these experiences.²⁹²

²⁸⁹ Survey Question: How often, if at all, each of these reasons was the cause of the longer duration of cases? Population base: judges (other than appellate judges); prosecutors; lawyers. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

²⁹⁰ *Access to Justice Survey, World Bank MDTF-JSS, 2014.*

²⁹¹ Delays afflict the Basic Courts more than Higher Courts, and the experience is different across court locations.

²⁹² In Belgrade, for example, the Prison Administration has been proactive in managing its transfers. Using advanced notice and coordination with Belgrade courts, it managed to reduce delays and adjournments.

138. **Arrears can be the cause for delays, as several prisons are owed significant arrears by the courts.**²⁹³

As a response, some prisons now require advanced payments in order to cover the costs before producing the prisoners to the hearings, while other prisons are simply less responsive to the requests. With the new CPC implemented in October 2013, the transfer of inmates for hearings and interviews during the investigation phase will presumably be covered by the prosecutors' budget. However, there is no evidence that this has been taken into account in the preparation of the prosecution budget for 2014.

139. **To a lesser extent, delays are due to a combination of physical and material challenges.** Some prison administrations lack the needed vehicles and fuel to facilitate the transfers, and this is partly due to the arrears they are owed. Some courts also lack sufficient infrastructure to hold the prisoners on the day of the hearing, and anecdotal evidence suggests some prisoners are guarded in public waiting areas in proximity to the parties.

140. **There are ready solutions for each of these issues.** Basic improvements in planning, coordination, and financial management could improve the efficiency in transfers immediately. Courts could offer to be more flexible in working with the prison administration to schedule hearings in blocks or to stagger hearings time to enable prisons to deliver more efficiently. Dialogue between individual courts and prison officials could produce pragmatic solutions. Longer term solutions could include improved bail arrangements, upgrading of holding cells in some courthouses and introducing videoconferencing services some of the larger courts and prisons.

vi. Use of Modern Case Management Techniques

141. **Preparatory departments have the potential to transform the case management process by ensuring that hearings are ready to proceed and run smoothly.** Judges, court staff, and practicing attorneys interviewed acknowledged that these departments would be useful, particularly for ensuring that cases are ready for hearing. Since the introduction of these departments to the Court Rules in 2010, judicial staff is working well to ready cases for hearing and address procedural issues. However, many places do not use these departments and should consider prioritizing their creation (for discussion of preparatory departments, see Governance and Management Chapter).

142. **A type of pre-trial hearing to set schedules and resolve some initial issues has been introduced in recent amendments to the Civil Procedure Law and CPC.** This change could help a great number of hearings to run more smoothly. It will be important to track whether such hearings are held, whether they circumvent the need for subsequent hearings, and reduce disposition times.

143. **Hearings could also be further consolidated.** Under the current law, hearings are often disjointed and piecemeal even in the trial stage. Therefore, attempts to condense hearings²⁹⁴ may help improve this issue. Once the preparatory departments are capable of ensuring trial readiness, consolidated hearings could become the norm. Again, a better use of AVP and its integration would enable these reforms to be monitored to measure the impact of reforms.

144. **The use of hearings to convey or exchange information that might be otherwise provided in writing is another issue.** Written and e-mail exchanges, and telephone conferences on simple issues are common practices in modern judiciaries across Europe and elsewhere. Currently in Serbia, oral statements play a predominant role, including in party requests to admit or exclude certain evidence, call for new witnesses, presentation of legitimate documentary evidence, or other motions including for adjournments. Some of these communications could be effectively conducted in written form and could serve as a prelude to inform the hearing. Through the increased use of written communication, the court and the parties could

²⁹³ For further discussion, see the Arrears Section of the Financial Management Chapter.

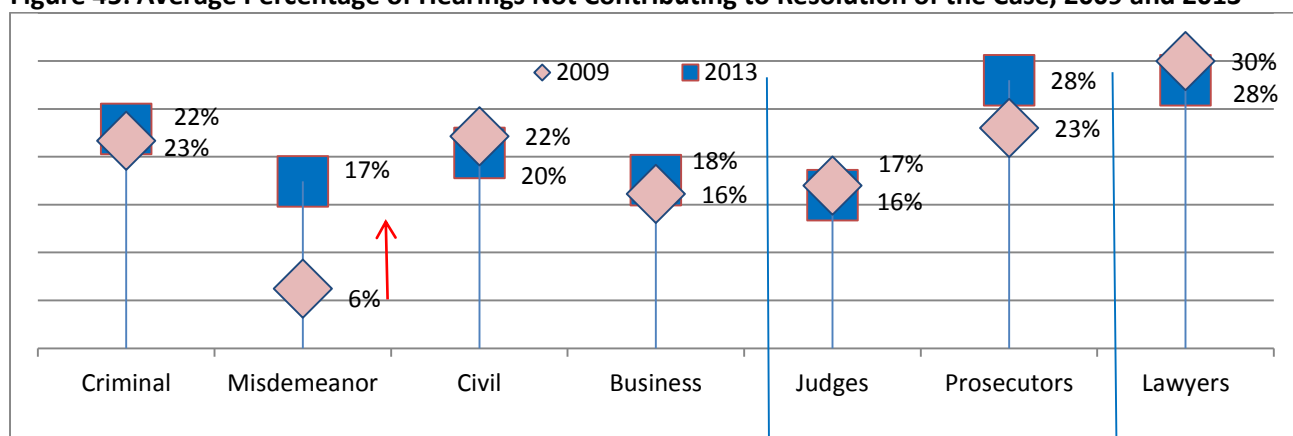
²⁹⁴ Primarily through the suggestions introduced in the *Civil Procedure Code*.

make a more efficient use of the time intervals between hearings.

vii. Efficiency in the Substantive Conduct of Hearings

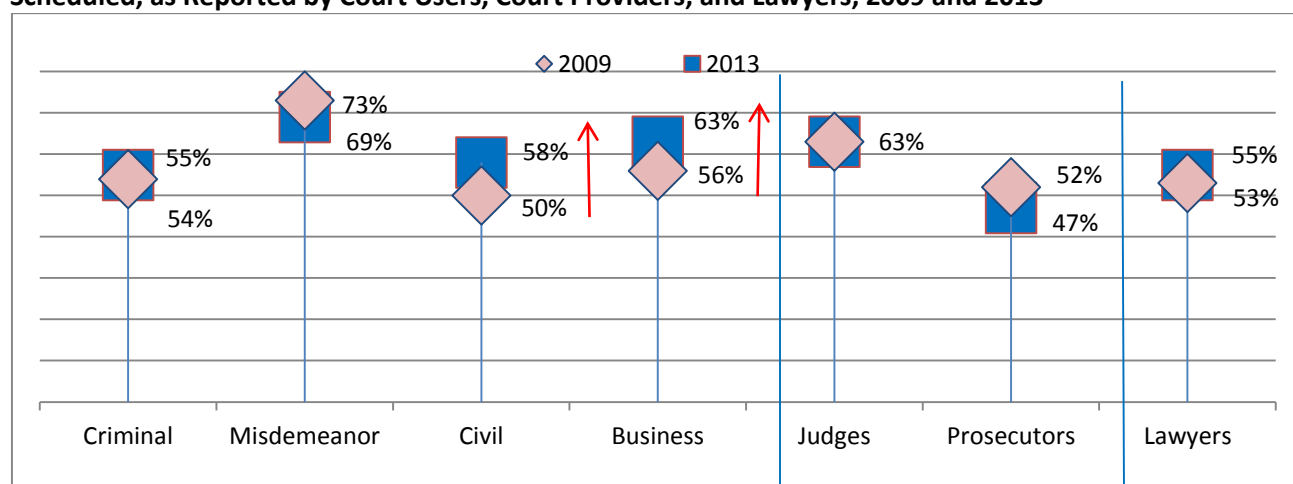
145. A substantial percentage of hearings are perceived to be inefficient, as shown in Figure 45 below.

Figure 45: Average Percentage of Hearings Not Contributing to Resolution of the Case, 2009 and 2013²⁹⁵



146. Based on the data collected on the number of canceled and inefficient hearings, an efficiency index can be calculated to show the share of efficient hearings (hearings contributing to the resolution of a case) in the total number of scheduled hearings.²⁹⁶ The efficiency indexes show that, on average, 55 percent of hearings were productive in criminal cases, and 58 percent in civil cases (see Figure 46).

Figure 46: Efficiency index: Mean Percentage of Hearings Contributing to Process Resolution out of Total Scheduled, as Reported by Court Users, Court Providers, and Lawyers, 2009 and 2013²⁹⁷



²⁹⁵ Court users: ratio between the reported number of scheduled hearings and number of hearings not contributing to case resolution in their proceedings; court providers: *Estimate the percentage of hearings held in the last 12 months that did not contribute to progress in resolution of court cases*) Population base: users of court services, providers of court services (without Appellate), and lawyers who reported data. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

²⁹⁶ Efficiency indices were calculated using data reported by judges, prosecutors and lawyers. They are based on the total number of hearings, the number of cancelled hearings and the number of hearings that did not contribute to the resolution of the case in the course of 2009/2013. Indexes are presented as average values (arithmetic means).

²⁹⁷ Courts users: ratio of reported number of canceled and inefficient hearings out of total scheduled hearings; court providers and lawyers: reported percentages of canceled and inefficient hearings subtracted from total of 100%. Population base: users of court services, providers of court services (without Appellate) and lawyers who reported data. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

147. **Analysis of these data shows that as the number of scheduled hearings increases, the number of productive hearings decreases.**²⁹⁸ This indicates that the extended duration of court proceedings is very likely not a consequence of specificities or complexity of given cases. Rather, the data reveal that the number of canceled and unproductive hearings is likely to rise with the extended duration of the proceedings.

148. **In hearings, the methods used for taking witness testimony are time-consuming and slow down the pace of hearings.** Often the party or expert witness is required to give their statement several times to enable the judge and typist to dictate the evidence into the minutes. Some experienced and proactive expert witnesses dictate their statements directly to the minutes, but this is not common. Basic training on the use of word processing software and the electronic exchange of documents, could significantly improve the speed and accuracy of this process. (In the longer term, the use of audio or A/V recordings should also be considered.)²⁹⁹

149. **Lawyers also play a role in slowing down hearings and causing inefficiency.** As lawyers are paid per hearing,³⁰⁰ they have a disincentive to deal with matters expeditiously. Frivolous claims are pursued without sanction and some lawyers are said to advise clients on how to obfuscate proceedings. Several stakeholders allege that lawyers drag out cases by encouraging (or at least not opposing) more procedural steps than necessary in an effort to increase billings. The Review team is unable to substantiate these claims.

150. **Recent amendments to the procedural codes seek to improve efficiency in the conduct of hearings.** Measures include:

- a. The parties only propose evidence to be collected, and the judge decides which evidence is required to determine the key facts of the case.³⁰¹
- b. The judge manages the hearing and interviews the parties, reviews the submitted evidence, and provides the parties with the right to speak.³⁰²
- c. The judge may fine a witness or an expert who does not appear when summoned, or otherwise impedes procedural activities or service delivery.³⁰³

151. **Despite their enhanced powers, adjournments and delays continue because judges are not yet assuming their new roles.** This reluctance to manage the case proactively is caused by several factors. Judges may not understand their enhanced powers and may fear reprisals from the parties. Judges may also find it easier to let parties have their way, particularly in environments where judges and attorneys fraternize. Frequent changes in procedural laws also make judges uneasy – several judges reported that they prefer to wait for a colleague-judge take the first step and see how the Appellate Courts reacts. Further, some stakeholders point to a general passivity – a common attitude of ‘let’s wait and see’ among judges.

152. **Several lower court judges reported that appellate judges are not supportive of lower court judges’ attempts to improve procedural efficiency, limit abuses and push cases ahead.** In their view, the Appellate Courts are likely to overrule a judge’s denial of requests for additional witnesses or evidence, and return the case for retrial to ‘get the case off their desk’.³⁰⁴ Evidently, improvements in the courts require a

²⁹⁸ There are identifiable correlations between the efficiency index, the number of scheduled hearings, and the duration of the case. See *Multi-Stakeholder Justice Survey*, World Bank MDTF-JSS, 2014.

²⁹⁹ For discussion of ICT training and A/V equipment, see the ICT Chapter.

³⁰⁰ Including for adjourned hearings and 50 percent for hearings cancelled at a short notice.

³⁰¹ Article 228-229, *Law on Civil Procedure*; Article 395, *CPC*.

³⁰² Article 326, *Law on Civil Procedure*.

³⁰³ Article 101 *Law on Criminal Proceedings*. Fines range from 10,000 RSD to 150,000 RSD for individuals, and from 30,000 RSD to 1,000,000 RSD for expert witnesses.

³⁰⁴ Similar behavior has been reported in several Latin American countries, where judges return cases repeatedly ‘for correction.’ The stated reason was to keep ‘a clean desk.’ In Serbia, either the appellate judges’ efforts are very successful, or the lower court judges are exaggerating the problem. As discussed above, Appellate Courts have low congestion ratios and high clearance rates.

more proactive monitoring and encouragement from the judiciary's leadership, the HJC, and disciplinary bodies. Clear support from upper level leaders will provide incentives to judges to change behaviors and will reduce their apprehensions.

viii. Efficiency in Joining Similar Cases

153. **The lack of joinder of similar cases also creates inefficiencies and delay.** Stakeholders noted that it is not common for a claim and counter-claim to be dealt with as separate cases even when they are highly related, and doing so would be appropriate and in the interests of the parties. Frequently, the claim and counter-claim are considered as two separate cases, which may or may not be allocated to the same judge or the same court.

154. **Criminal compensation provides a practical example.** Judges exercising criminal jurisdiction usually refuse to deal with compensation claims arising out of the proceeding. As a result, at the conclusion of the criminal case, the victim is required to initiate a new civil proceeding (including payment of additional court and lawyer fees), even for simple damages. This contributes to the inflated caseload, reduces access to justice for the parties, and prolongs the delay for the victim to recoup damages from the criminal conduct.

155. **Beyond claims and counter-claims and related proceedings, the lack of joinder of similar cases is another issue.** Some courts are clogged with large numbers of cases where multiple parties' cases deal with the same facts and law. The law on consumer protection envisages filing lawsuits aimed at protecting the collective interests of consumers, however Serbia's first-ever class-action lawsuit commenced only in 2014 and is already under legal challenge. Regarding military pensions, Belgrade First Basic Court received around 24,000 incoming cases in 2013, and the court expects to receive around another 17,000 in 2014. The Court President there reports that although the cases are not complex, current legislation requires that courts deal with each case separately, which is cumbersome for both judges and the court staff.

156. **While joinder will not be appropriate in all cases, it may be appropriate in many.**³⁰⁵ A separate resolution of claims and counter-claims can often double the length of the user's dispute, as one case is stayed until the other is resolved. In multiple cases, the issue may become 'stuck' for many years. Unfortunately, AVP does not track the joining of cases, and no hard data are available to enable analysis of the problem impacts.

157. **There are several likely reasons as to why joinders are not common.** First, productivity norms for judges incentivize the resolution of the large numbers of cases. There are no incentives to join cases in the interests of the parties because judges could double their workload for no benefit. Second, lawyers may not request joinders because multiple hearings improve their billings and therefore their revenues. Third, there seems to be limited guidance from the appellate jurisdictions as to when joinders are appropriate, making judges more reluctant.

158. **Encouragement to join cases appropriately could significantly improve procedural efficiency.** Legislation could require that claims and counter-claims be joined appropriately, and that the same courts deal with compensation proceedings arising out of criminal proceedings. Higher Courts could provide greater guidance, and judges could be encouraged by incentives such as productivity norms to add 'extra credit' for appropriated joined cases. Joined cases could reduce the duplication of hearings and enable courts to focus their time on resolving the substantive dispute and providing justice to the parties. By reducing the possibility that different judges make different decisions on the same law and facts, joined cases can also promote a more coherent approach to cases, reducing appeals and improving consistency in the application of the law.

³⁰⁵ As of March 1, 2014, the Law on Misdemeanors now facilitates the joining of cases in a manner similar to that allowed for under the CPC.

ix. Efficiency in the Appeal Process and the Extent of ‘Recycling’ of Cases

159. **A series of problems with appeal cases further undermine efficiency.** Many of the data above are based on first instance cases, but appeals are alarmingly common in Serbia.³⁰⁶ Stakeholders report that many appeals were frivolous, lodged by attorneys to assist their clients to delay enforcement or for some other procedural or tactical advantage.

160. **First, there are inefficiencies in the process of transferring a case from the first instance court to the appellate court.** Stakeholders report that the transfer of the case can take several months. It is common for hard-copy files to be lost. In the recent court re-networking in 2014 for example, thousands of appeals files have yet to be accounted for, causing delays for the parties in these cases. Such inefficiencies could be improved through basic record management, better use of existing ICT systems, and improved accountability among judges and court staff.

161. **Another common problem is the prevalence of retrials.**³⁰⁷ When first instance decisions are overturned, the appellate judge almost always sends the case back for retrial, rather than seeking to resolve the case.³⁰⁸ The result is a large percentage of incoming cases in first instances courts that do not represent true incoming cases. The practice is so prevalent that Serbian stakeholders have developed the term ‘old new cases’, and it occurs far more often than the law requires.

162. **This practice inflates caseload figures, duplicates workloads and frustrates court users and practitioners alike.** Successive appeals elongate the duration of the proceedings – from the court users’ perspective, the full journey of their case can be two, three, or four times as long as the indicator for time to disposition might suggest. Recycling to this extent is unusual within Europe.

163. **On a positive note, the ‘recycling’ problem is subsiding.** Recent reforms require that cases returning on their second appeal must not be sent back for further retrial. Instead, the appeal judge must substitute their own judgment.

164. **Additional measures could further encourage the most efficient use of the appeal system and ensure that only ‘hard cases’ are appealed.** Joint symposia among lower and Appellate Courts could be convened to exchange experiences on the abuse of process issues. Fines could be imposed on frivolous appeals, and feedback from lower courts to higher courts could be encouraged.

165. **Again, better data are essential.** The number of appeals, timeliness of appeals, and appeal outcomes should be tracked. Part of the problem is the inflation of caseload numbers, whereby a case that is appealed and retried is characterized in AVP as three separate cases. Better data collection and integration of ICT systems would enable appeals to be more thoroughly tracked to pinpoint and address inefficiencies.

e. Gender Impacts of Inefficiencies in the Court System

166. **The Review investigated whether the court system works less efficiently for women, and possibly for other groups.** The review found that there are some differences in the length of proceedings in criminal

³⁰⁶ This section deals only with the efficiency of processing appeals. For detailed discussion of appeals, see the Quality Chapter.

³⁰⁷ The problems that recycling creates are described eloquently in an editorial piece by the President of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, where the practice is also prevalent. See Do Appellate Courts Adjudicate or Train? Politika Newspaper, 4 March 2013, available at: <http://www.politika.rs/rubrike/Pogledi-sa-strane/Da-li-apelacioni-sudovi-sude-ili-obucavaju.sr.html>.

³⁰⁸ The impression derived from interviews is that higher instance judges are too quick to annul a decision and send it for retrial. Their rationale is that there is ‘no harm done’ by ordering a re-trial. There is also little incentive for the appellate judge to resolve the matter in their own court because their productivity norms measure only the number of cases resolved, and sending a case back to the lower court counts as a ‘resolved case’ in the appellate judges’ numbers.

cases of women defendants.³⁰⁹ There are also perceived differences in the frequency of canceled, unproductive, and efficient hearings, but again, only in criminal cases.³¹⁰ Other indicators revealed no gender differences.³¹¹

167. **However, inefficiencies arise in particular types of cases where women are more likely to be parties, such as divorce, custody, and domestic violence.** Process Maps highlight that cases of divorce and domestic violence can easily become ‘stuck’ and take longer than the time limits set by law.³¹² Lack of specialized case processing, combined with opportunities for parties to engage in procedural abuse for tactical advantage, leave parties – often women – at a disadvantage in the courts.

168. **For example, the Process Map for a divorce case shows that uncontested divorce proceedings proceed relatively smoothly and within the timeframes set by the law, but child custody and maintenance are often severely delayed.** Cases often become ‘stuck’ when the local Social Welfare Center takes a long time before giving its expert opinion (i.e., up to 6 months). Delays vary; for instance, the Center reportedly takes longer in Kragujevac than in Belgrade. Opportunities to improve the coordination and cooperation between the courts and Social Welfare Centers could be explored. Obstruction by one of the parties is also routinely problematic in these cases.

169. **In focus group discussions, women highlighted the stress that delays, repeated hearings, and errors cause in custody litigation.** For example, one woman noted in a single custody case that *‘as a result of an inefficient court, my children were forced to go through five different mental institutions where they were tested’*. Another woman stated that:

‘a judge in Pančevo was on my [custody] case for one year. We had a hearing every month, and only after a year he told me that he wasn’t competent for my case, so I had to go to another judge. And what about my costs for coming to the court, absence from work, what about that?’

170. **The maps and accompanying testimonies suggest that targeted measures to improve efficiency in family disputes could better ensure the equal treatment of women and men before Serbian courts.** These cases are often complex even in high performing European judiciaries. However, lessons from elsewhere in Europe abound including the use of specialized courts, streamlined procedures, and targeted initiatives to ensure priority treatment of children in case processing.

³⁰⁹ For example, the Multi-Stakeholder Justice Survey found that the average length of criminal cases is significantly longer for women than for men. Respondents estimated that criminal cases involving women lasted 16.2 months on average, compared to 10.7 months for cases involving men. However, this is more likely due to the types of criminal offences than the gender of the defendant. Differences have not been found in non-criminal matters.

³¹⁰ In the Multi-Stakeholder Justice Survey, the average percentage of reported canceled hearings for criminal cases was estimated at 23percent for men and 34percent for women.

³¹¹ In the Multi-Stakeholder Justice Survey, women actually evaluated the efficiency of judges to be slightly higher than did men: 30percent of women gave positive evaluations, compared to 20percent of men.

³¹² For Process Maps, see *Judicial Process Maps in Serbia, World Bank MDTF-JSS, 2014*.

f. Efficiency in the Delivery of Administrative Services³¹³

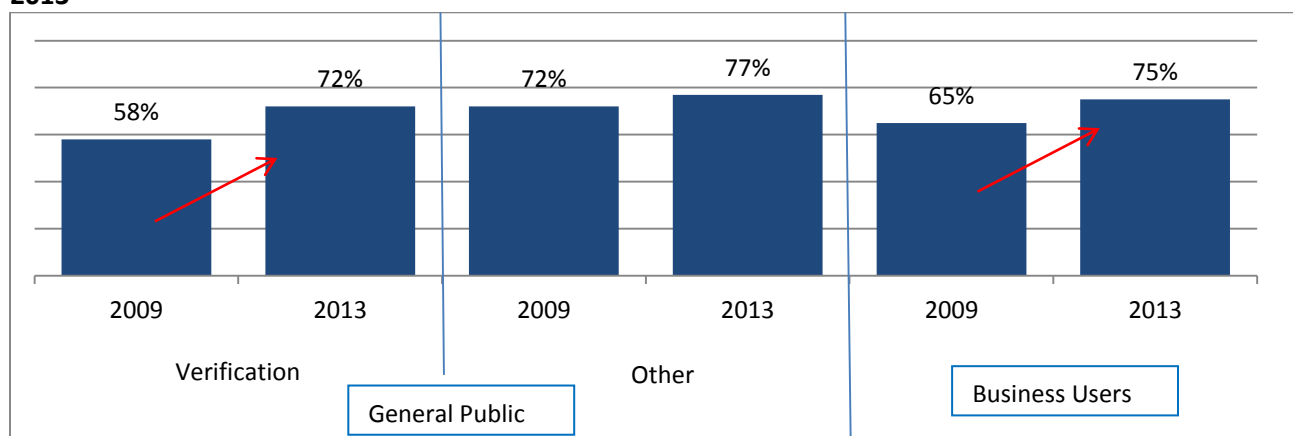
171. According to the Multi-Stakeholder Justice Survey, more than 70 percent of court users were satisfied with the efficiency with the administrative service they received, including the verification or certification of documents. In particular, there is a significant increase in satisfaction with services relating to the verification of documents and contracts since 2009 (see Figure 47).

172. Given these positive results, one may query what problem the introduction of notary services was intended to solve. Private notaries are common elsewhere in Europe.³¹⁴ In Serbia, their introduction was aimed at improving efficiency by taking from the courts a range of administrative tasks, focusing mainly on verification.³¹⁵ Private notaries are scheduled to commence in September 2014, and it would appear that private notaries will be able to compete with courts for these services. It is expected that private notary services will be faster but considerably more expensive. These data demonstrate that the courts are well placed to compete, at least with respect to verification tasks.



Image of a Queue for Administrative Services at a Basic Court, 2014.

Figure 47: Satisfaction Levels with Efficiency in Administrative Services among Court Users, 2009 and 2013³¹⁶



173. Court users also report that the time needed to complete an administrative task has decreased. The average time needed to verify documents and contracts has been reduced from 118 minutes in 2009 to 78 minutes in 2013. In terms of other administrative tasks, the average time has been reduced from 164 minutes to 91 minutes. In 2013, 48 percent of verification services were completed within 30 minutes, and more than 40 percent of other administrative services were as well. In 2009, only 25 percent of services were completed in that time.

³¹³ This section reviews several indicators and European benchmarks of efficiency in the delivery of administrative services by courts, corresponding to Indicator 1.4.10 of the Performance Framework.

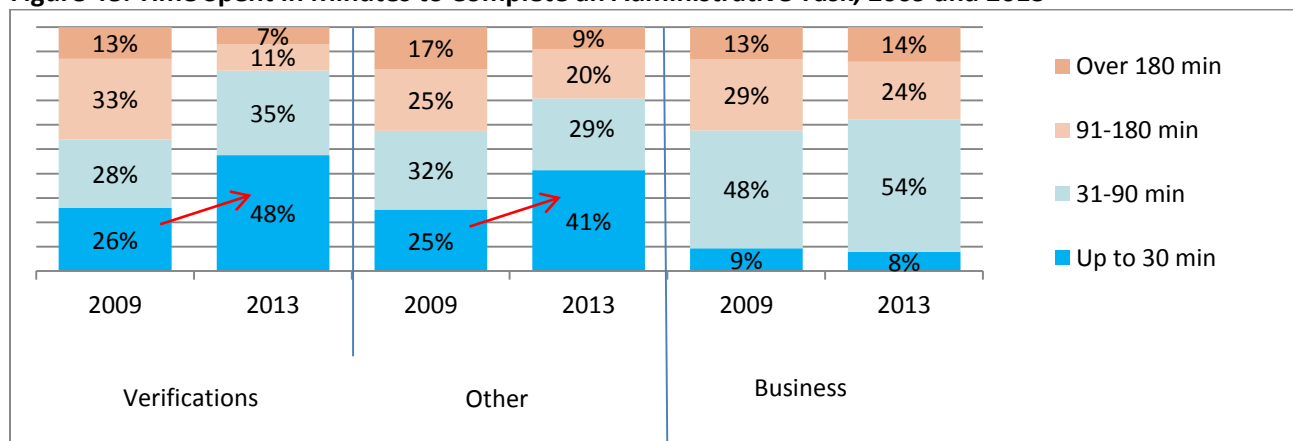
³¹⁴ Notaries are private professionals in 28 of the European countries that provide data to CEPEJ. In 27 of those countries, the profession is supervised by public authorities. See *CEPEJ Evaluation Report*, 2014 (based on 2012 data).

³¹⁵ The stated aim of the reform is to lighten the workloads of courts and improve efficiency of services. To date 94 notaries have been appointed, as part of a plan to appoint around 350 notaries in total and have one notary for every 25,000 people in Serbia.

³¹⁶ Survey Question: *How satisfied are you with the efficiency of the administrative court service? Efficiency entails no waste of time and the fast and quality completion of the task.* Scale: 1. Very dissatisfied, 2. Dissatisfied, 3. Satisfied, 4. Very satisfied. Population base: members of public and business sector with experience with court administrative services total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

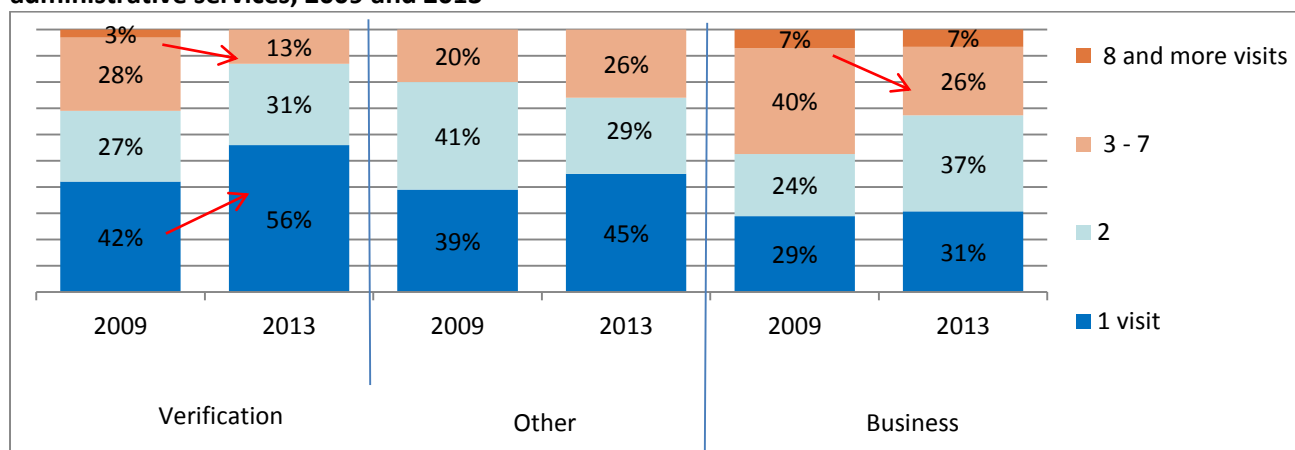
174. However, average times hide a significant variation in the range of reported time taken to complete an administrative task. A considerable percentage of court users reported spending between 90 and 180 minutes at the court to complete their administrative task, while a further group reported that it took them even more than 10 hours. Some representatives of business sector reported to have spent a number of working days on completion of one administrative task (See Figure 48).

Figure 48: Time Spent in Minutes to Complete an Administrative Task, 2009 and 2013³¹⁷



175. Multiple visits are generally still required for a user to complete an administrative task, and this has not changed from 2009 to 2013. Court users from the public reported that their task required on average 2 to 3 visits to complete. Users from the business sector reported having to visit the court on average 3 times. However, the percentage of users who could complete their task in one visit rose from 42 to 50 percent from 2009 to 2013. For the verification of documents and contracts, 56 percent of court users reported completing their verification task during one visit in 2013, a significant improvement since 2009 (see Figure 49).

Figure 49: Number of Courthouse visits required to complete administrative task as reported by users of administrative services, 2009 and 2013³¹⁸



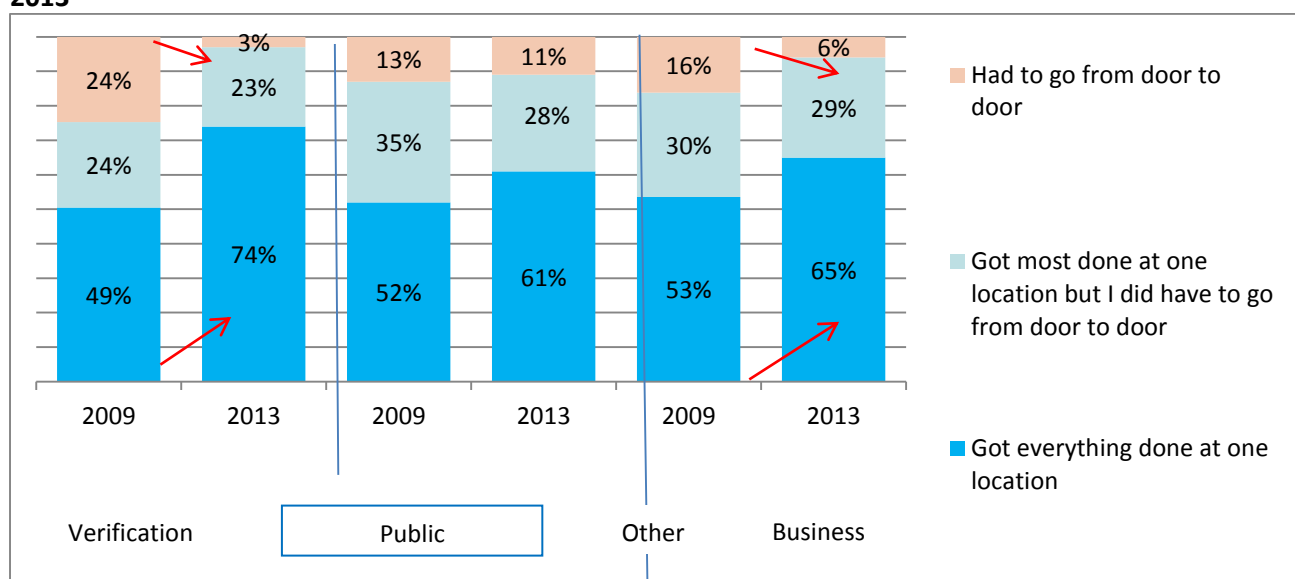
³¹⁷ Survey Question: Public: How much total time did you spend completing this task? (Including paying tax in bank or post office related to this task.) Business sector: Roughly estimate, how many total working hours your employees spent in the courthouse in completing this administrative task? Population base: general public and business sector with experience with court administrative services. Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

³¹⁸ Survey Question: How many times did you have to go to the courthouse to complete the task? Population base: members of public and business sector with experience with court administrative services total target population. Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

176. **The average time that a user spends at each visit is quite lengthy.** Both general court users and business users reported that on average, the time spent to complete a task is about 39-45 minutes. Only 5 percent of court users reported that the task took from 91 to 180 minutes, compared to 32 percent in 2009. However, 15 percent reported that their task took 181 minutes to 10 hours, compared to only 5 percent for this duration in 2009.

177. **Court users can now more often complete their administrative task at one location, instead of going from door to door.** In 2013, 74 percent of users reported completing their verification task at one location, an increase from 49 percent in 2009 (see Figure 50).

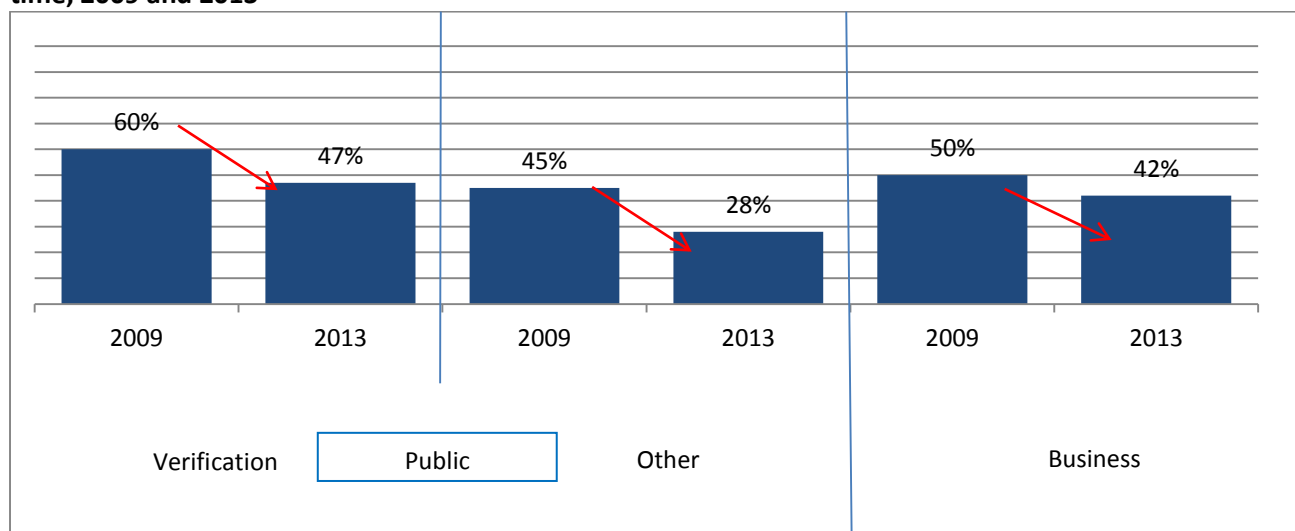
Figure 50: Share of Users who were Required to Go Door-to-Door for Administrative Services, 2009 and 2013³¹⁹



178. **While efficiency in administrative services has increased, there still is room for improvement.** In 2013, 47 percent of general users and 41 percent of business users still report that their administrative task could have been completed in shorter time. Over 20 percent of administrative services providers agree.

³¹⁹ Survey Question: *While you were completing your administrative task, did you have to go from door to door or were you able to complete the task at one location?* Population base: members of public and business sector with experience with court administrative services total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

Figure 51: Share of users of administrative services who report that the task could be completed in less time, 2009 and 2013³²⁰



179. **If courts and private notaries were able to compete for verification services, courts could improve timeliness in several ways.** In the Multi-Stakeholder Justice Survey, 41 percent of the administrative service providers themselves noted that tasks could be completed in less time via the simplification of procedures, 38 percent pointed to better technical equipment such as computers, and 29 percent pointed to a better allocation of work and better informing of the clients. Unsurprisingly, over 60percent also suggested salary increases. From the perspective of providers, there is efficiency to be gained.

³²⁰ Survey Question: *Could the administrative task have been completed in less time given its complexity?* Scale: 1. Yes, 2. No. Population base: members of public and business sector with experience with court administrative services total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

3. Quality of Justice Services Delivered

Chapter Summary

1. **As outlined in the Performance Framework, the quality of service delivery covers a range of dimensions ranging from quality of legislation to quality in case processing, decision-making, and appeals.** The integrity of the system is also a dimension of quality in the eyes of users. Poor quality has significant implications for efficiency of service delivery as well as for the access to justice services.
2. **The poor quality of legislation in Serbia causes a range of problems for the courts.** Lack of precision in legislative drafting creates ambiguity which is then exploited by parties. Overlapping and conflicting laws cause inconsistency of practice, while gaps in the law leave judges with little guidance. In all, 21 percent of judges and 19 percent of lawyers report poor quality legislation as the main reason for the poor quality of court services. Only 13 percent of judges and prosecutors considered Serbian laws to be fair and objective.
3. **Deficiencies in the policymaking and legislative process perpetuate these problems.** There has been a proliferation of new legislation in recent years, often developed without policy analysis, and with limited analysis or buy-in from the stakeholders responsible for their implementation. Ad hoc working groups are convened by the MOJ to consider and draft each new law, and their organizational methods are haphazard. There are too many working groups, and the deliberative process is time-consuming without producing the requisite quality of drafts. Working groups tend to debate concepts rather than conduct analysis based on policy criteria, and they tend not to rely on data to inform decision-making. They do not sufficiently consider the financial and operational implications of proposed legislation, as evidenced by a lack of policy analyses or fiscal impact analyses. Consultation processes are perfunctory. Legislation is routinely passed by the National Assembly under emergency procedures.
4. **Following the enactment of new legislation, there has been limited outreach and training to embed new behaviors.** In recent years, many laws have been ‘stillborn’, unable to be effectively implemented and requiring a new working group to start over again. This creates a constant and unproductive ‘churn’ of reform. Professionals have little time to apply the new legislation before they are revised. Many judges stall their decisions or continue to apply old legislation while waiting for appellate courts to provide guidance on new legislation. There is also evidence of reform fatigue, which is concerning at the outset of the Chapter 23 process. Legislative reform will continue through the accession process, but the quality of the working group process should be enhanced to prevent the Chapter 23 accreditation process from becoming a merely box-ticking exercise.
5. **When disputes arise, the application of the law is inconsistent across the country.** More than 80 percent of judges, prosecutors and lawyers express concerns about inconsistent or selective interpretation of laws and inconsistent jurisprudence. Process Maps highlight that the ‘law in practice’ differs from the ‘law on the books’ in certain cases and at certain locations.
6. **Current arrangements for case processing present several challenges in terms of quality.** The system lacks a standardized approach to routine aspects of case processing. There are no checklists, standardized forms or templates for routine aspects of case processing, nor is there a consistent approach to drafting routine documents, such as legal submissions, orders, or judgments. Meanwhile, there are few examples of specialized case processing for the types of cases that often warrant a tailored approach. Certain types of cases, such as small claims, complex fraud and gender-based violence, can tend to get ‘stuck’ in the system because they lack specialized case processing practices.

7. **In criminal cases, the quality of decision-making by judges and prosecutors varies.** Some innovations are showing promise, including the use by prosecutors of deferred prosecution³²¹ and plea bargaining. In deferred prosecution cases, arrangements to implement and monitor sanctions remain weak, causing prosecutors to rely disproportionately on cash payments as sanctions rather than more proactive rehabilitative measures, such as community work or psycho-social treatment. Monitoring is also inconsistently applied across the territory, largely due to the limited geographic reach of the Commissioner, undermining the principle of equality before the law. Plea bargaining procedures could be simplified by giving greater autonomy to Deputy Prosecutors. Sentencing appears inconsistent, and many stakeholders report that it is overly lenient, and prosecutors could play a more constructive role in compiling data on sentencing practices and trends and recommending sentences accordingly. Alternative sanctions could be strengthened by supporting the arrangements to implement and monitor sanctions. Alternative sanctions should be particularly encouraged in Misdemeanor Courts, where deferred prosecution and plea bargaining have only recently been introduced and where the prospects for rehabilitation for minor offenses is high.³²²

8. **More broadly, the Serbian judicial system struggles to fully comply with ECHR requirements, as evidenced by the large caseloads in Strasbourg.** Non-compliance tends to be found in a limited number of case types, highlighting specific problems relating to inconsistent application of the law and non-enforcement of the final decisions against state-owned enterprises. It thus appears that the bulk of Serbia's non-compliance relates to financial complaints against public entities, rather than structural problems in the judicial system. Friendly settlements offer some solution here. In an attempt to comply with the ECHR right to trial within a reasonable time, recent procedural reforms now enable parties to pursue a separate cause of action for delayed proceedings. These reforms are well-intentioned but run a high risk of producing unintended, or even perverse, consequences. Their implementation should be monitored closely and adjustments may be required.

9. **The appeals system is at the heart of Serbia's problems in terms of quality of decision-making.** Appeal rates are very high on average, as are reversal rates³²³ on appeal. Rates also vary markedly across court types, case types, and court locations. Without plausible explanation, some courts exhibit appeal rates and reversal rates that are double those of the court adjacent to it. Appeals from Basic Courts to Higher Courts (known as small appellation) are not well monitored in the system and, upon analysis, are particularly alarming. The perceived unfairness of the system, combined with its lack of uniformity and consistency, encourages court users to appeal. Attorney incentives may also play a hand in driving up appeals. At the same time, levels of trust in the appellate system among court users are low. On a positive note, recent procedural amendments to reduce successive appeals (known as the 'recycling' of cases) seem to be working. Nonetheless, appellate judges (notwithstanding their lighter caseloads) continue to remand cases back to the lower jurisdiction for re-trial more often than they are required to, rather than substituting their own judgment. Excessive remands duplicate workloads, inflate case numbers and perpetuate inconsistent practices by failing to provide adequate guidance to lower courts. The SCC plans to improve uniformity in the application of the law through a range of measures, including Certification Commissions. These efforts should be prioritized and augmented with a suite of basic quality-enhancing measures, which together could reduce appeal rates over time.

10. **Meanwhile, corruption remains a challenge for the Serbian judiciary.** Serbia lags EU Member States and neighboring countries on all comparative indices of perceived corruption in the judiciary. Court users admit that they engage in corruption to advance their cases.³²⁴ Bribery of court staff appears to be more

³²¹ Deferred prosecution is commonly referred to in Serbia as 'opportunity cases'.

³²² Plea bargaining in Misdemeanor Courts was introduced in August 2014, after the reporting period for the Functional Review. Its effectiveness could thus not be verified.

³²³ Reversal rates are commonly referred to in Serbia as 'abolishment rates'.

³²⁴ Around 10 percent of court users report that a bribe was solicited when they had dealings with a court. Figures on reported corruption are expected to be significantly under-stated.

common than bribery of judges, who likely rely on more subtle means. In addition to bribes, at least 19 percent of users report ‘pulling strings’ to influence the courts. Such informal means are more often used to affect the procedure rather than the outcome, suggesting that improvements in transparency and efficiency in case processing would reduce opportunities for malfeasance. Gift-giving is also common and goes largely unchecked. Surveys indicate that the perceived prevalence of corruption is declining across the system. However, in Misdemeanor Courts, public trust and confidence is falling.

11. **Perceptions of judicial independence in Serbia remain low.** A significant portion of judges (25 percent) and prosecutors (33 percent) report that the judicial system is not independent, compared with 50 percent for the public and business sector, and 56 percent of lawyers. The same view is reflected in Serbia’s poor rankings in terms of judicial independence on a range of global indices. Notably, perceptions of judicial independence have worsened since 2009, which reduces the credibility of the system and users’ trust and confidence in it.

a. Introduction

12. **This Chapter assesses the ability of the Serbian judicial system to deliver quality services to citizens, corresponding to Performance Measurement Area 2 of the Performance Framework.** Service quality has a range of dimensions including the uniform application of the law, user satisfaction with the justice services received, and consistency with ECHR standards and perceptions of integrity.³²⁵

b. Quality of Laws and Law-Making

13. **Clearly, the quality of justice depends on the quality of the law and system performance of the system.**³²⁶ This section looks at three dimensions of quality of laws corresponding to Indicator 2.1 of the Performance Framework: perceptions of the quality of existing laws, the law-making process, and the rollout of recent law reforms.

i. Perceptions about the Quality of Existing laws

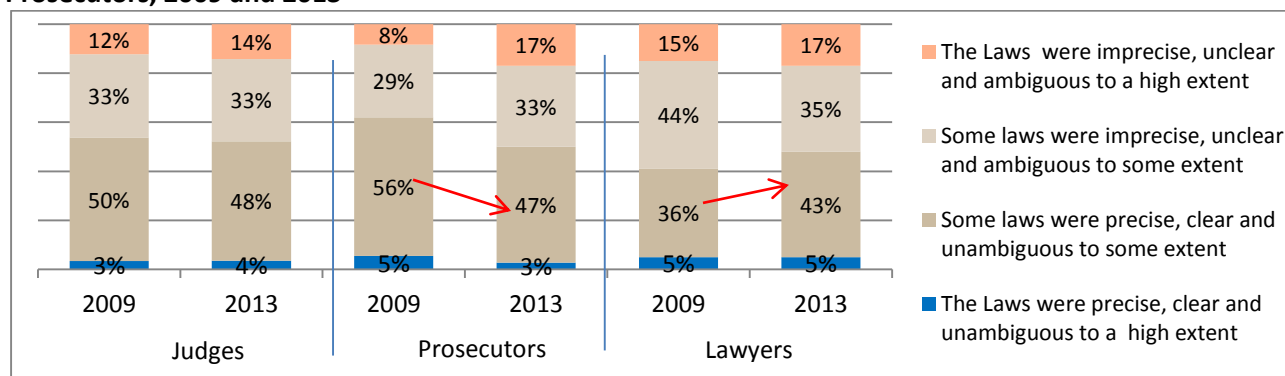
14. **In the Multi-Stakeholder Justice Survey, judges, prosecutors, and lawyers expressed some reservations about the precision and clarity of Serbian laws.** Only 4 percent of judges, 3 percent of prosecutors, and 5 percent of lawyers stated Serbia’s laws are precise or clear.³²⁷ The prosecutors’ perceptions of the laws have worsened since 2009, possibly driven by perceptions around the introduction of the CPC. Meanwhile, lawyers’ perception of the laws has improved (see Figure 52).

³²⁵ Legal frameworks and the ‘law on the books’ is not the focus of the Functional Review, but rather the implementation of law and the delivery of justice services in Serbia. As a result, this Chapter does not assess the quality of individual laws, nor does it evaluate the work of individual judges. No legal review was undertaken of individual judgments. While it is possible to conduct legal reviews of a representative sample of laws and court decisions such a methodology is beyond the scope of the Review.

³²⁶ If the quality of laws is poor, the judicial system will be unable to provide high quality services to citizens. Poor quality laws also create user dissatisfaction and can reduce trust and confidence in the judiciary. Ambiguous laws also create opportunities for undue influence and corruption. The quality of laws also affects efficiency and access. Poor quality laws can complicate case processing, which in turn lengthens the time it takes for courts to deal with those cases. Ambiguous laws also shift the burden of resolution to judges, leading to decisions, which in turn increases appeal rates, placing a further burden on the court system.

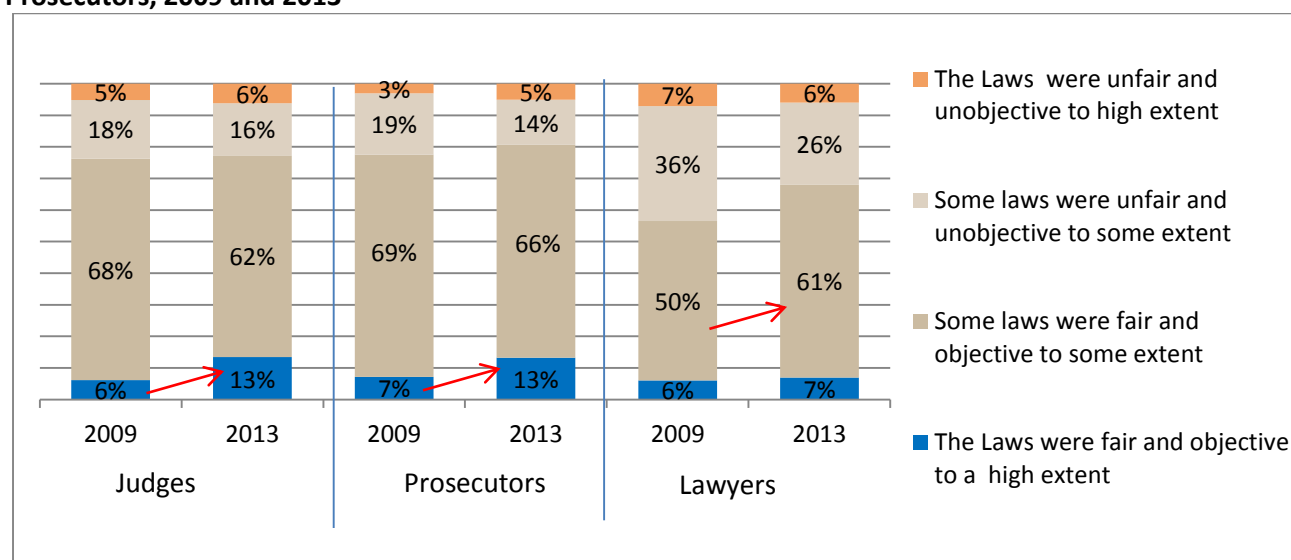
³²⁷ This view was corroborated by the general public, although they are not as well placed to make assessments. In the Argus 2014 Survey, 38 percent of the general public reported that laws are of bad quality and 58 percent reported that the laws in Serbia are worse than the laws in the EU. See *Perceptions of the Content of Chapter 23 and 24 of the Negotiations on the Accession of Serbia to the EU*, Argus Project, 2014 (the Argus Survey, 2014).

Figure 52: Extent to which Serbian Laws are Clear and Unambiguous, as Expressed by Judges, Lawyers and Prosecutors, 2009 and 2013³²⁸



15. Further, professionals expressed reservations about the fairness of Serbia's laws. Only 13 percent of judges and prosecutors considered laws to be generally fair and objective, although these perceptions are an improvement compared to 2009. Again, most professionals reported somewhere in the middle (See Figure 53).

Figure 53: Extent to which Serbian Laws are Fair and Objective, as Expressed by Judges, Lawyers and Prosecutors, 2009 and 2013³²⁹



16. The Survey also highlights how unclear laws can impact the quality of justice services. 21 percent of judges, 19 percent of lawyers, and 9 percent of prosecutors cited unclear laws as the main reason why the quality of judicial work is not higher.³³⁰

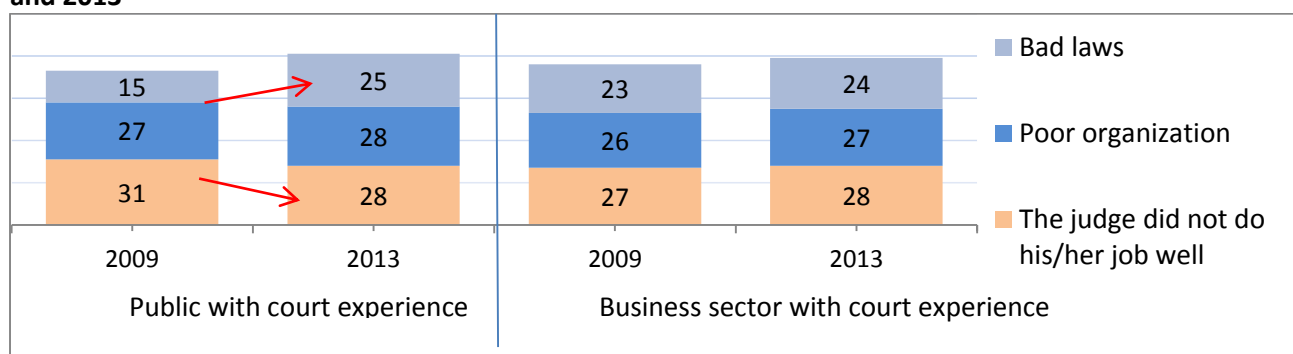
17. For court users, 'bad laws' were also to blame for why the quality of work was not higher in their own cases. 25 percent of the public and 24 percent of business representatives cited bad laws as the main reason. From 2009 to 2013, the perception appears to have become slightly worse.

³²⁸ Survey Question: *To what extent were Serbian laws precise, clear and unambiguous in last 12 months?* Population base: legal professionals total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

³²⁹ Survey Question: *To what extent were Serbian laws months fair and objective in last 12?* Population base: legal professionals total target population.

³³⁰ These figures reflect an improvement from 2009, but it is not clear whether this change is due to improved clarity of laws or whether other problems have since taken precedence as the 'main reason' holding back the quality of judicial work.

Figure 54: Court User Perception of why the Quality of Court Services was Not Higher in Their Case, 2009 and 2013³³¹



18. **In interviews, stakeholders noted that overlapping and conflicting laws cause problems for the courts.** One stakeholder in the Misdemeanor Courts cited discrimination law as an example: five or six laws prohibit discrimination in different ways, making it difficult for judges to reconcile and determine those cases. In the Commercial Courts, stakeholders also noted that several bankruptcy laws apply concurrently, causing confusion for judges, lawyers, and parties alike. Lawyers expressed concerns in interviews that different procedural laws apply to their clients, such that the same case could proceed differently in different locations. Several stakeholders highlighted the need for greater harmonization of existing laws, as well as the need to consider existing laws when drafting new ones. Other stakeholders noted there are gaps in the law, and that judges struggle to deal with these cases in the absence of clear guidance.

ii. Quality of the Law-Making Process

19. **All acknowledge that the law requires improvement, but there is concern that the pace and process of law drafting may undermine quality.** Several stakeholders identified poor drafting practices in recent years as contributing to unclear or ambiguous new laws, which have led to uncertainty about the application of laws by the courts.

20. **As one stakeholder noted, there is a ‘hyperinflation of law drafting’.** Significant efforts are being expended in the sector on the establishment and operation of a large number of working groups covering various aspects of reform. The MOJ advises that there are currently approximately 15 working operational groups. One member of the Secretariat for the Implementation of the Strategy informed the Review that in the future, there would be around 35 working groups for various aspects of the strategy. With a high number of disparate groups, the possibility rises that they may work at cross purposes with each other. Civic engagement in the process of law reform is minimal, and public debates were described by several stakeholders as perfunctory. Amendments are frequently passed through the legislature under emergency procedure.

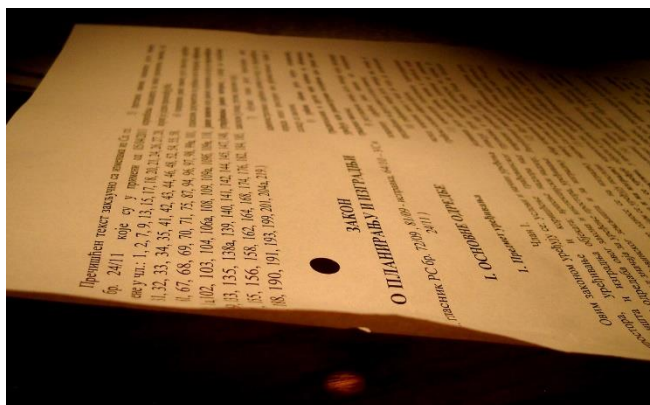
21. **This ‘hyperinflation’ of law-making has impacts for end users.** For example, the National Alliance for Local Economic Development (NALED) tracks 30 laws important for businesses and reports that over the last five years, these laws have been amended or overhauled 98 times in total. Businesses clearly struggle to keep apace. Focus groups with small businesses also highlight that the constant ‘churn’ of laws affects business operations.³³²

³³¹ Survey Question: Which of the following would you identify as the main reason explaining why you did not rate the quality of judicial work more highly? Population base: public and business sector with experience with court cases who evaluated quality of court service in that specific case less than high. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

³³² *Access to Justice Survey, World Bank MDTF-JSS, 2014.* See also the section on awareness of laws in the Access to Justice Chapter.

22. **Even a large and advanced legal system would struggle to develop and deliver such a large number of high quality laws simultaneously.** The large number of working groups in Serbia may represent an over-commitment, a lack of prioritization, or a lack of commitment to quality in law reform or legal drafting. It is not clear whether, in practice, the large number of legal reforms is part of the problem or part of the solution.

23. **Organizational methods within working groups have not always been clear.** Stakeholders who are members of various groups expressed frustration that working groups are not often given clear direction about the goals to be achieved by the law and the specific mandate and methods for their work. Some working groups are guided by prior analytic studies, and others simply debate their views. Meetings often run without agendas, so content is debated in long unstructured sessions and the dynamics of discussion



Title: *Rupa u zakonu*, submitted by an entrant to the Justice Competition, World Bank MDTF-JSS, 2014.

depend on who participates or is most vocal. Some working groups have been open for over two years and have yet to produce drafts for broader discussion. Some suggest that the existence of working groups create an impression of progress without the results of progress, in a manner that suits particular members of those groups.

24. **Representation on working groups may also be an issue.** Official working groups do not always include representatives from the populations or entities with the most expertise or those most directly affected by the legislation. For example, the Anti-Corruption Agency was not

included in the working group drafting the whistleblowing law, notwithstanding its relevant expertise. In the Working Group on Free Legal Aid, representatives from civil society and municipal legal aid centers were not initially included, though this was rectified. The HJC was not included in the working group amending the Court Rules. Working Groups usually contain only members based in Belgrade, and so the views of those outside of Belgrade are rarely expressed and country-wide consultation is rare. It is sometimes unclear whether working group members are, in practice, conveying their personal views or the official position of the organization they represent. Working groups also often do not include specialists in legislative drafting, and once the responsible ministry formally proposes the law to the Government, those giving technical opinions during the intra-agency consultative process frequently do not have the contextual understanding to know whether the proposed legislation, as drafted, will effectively achieve its intended objectives.³³³

25. **Working groups do not always consider the practical dimension of legal reform.** The financial and operational implications of proposed laws are not analyzed in detail, nor is an objective assessment made of the institutional capacity of the system to deliver changes and what processes should be amended to support the new laws.³³⁴ Often, this is left to by-laws, which may not be drafted by the same groups or may be drafted long after a law has taken effect. Laws that clearly have financial implications continue to be enacted with the clause 'this law has no financial impacts', thus creating an unfunded mandate that constrains implementation.³³⁵ Therefore, while many laws are best attempts to resolve a perceived problem,

³³³ OSCE Office of Democratic Institutions and Human Rights (2011), *Law Drafting and Legislative Process in the Republic of Serbia: an Assessment*. Legis Paper-Nr.: 200/2011 YA, at 21-24.

³³⁴ Some donors have attempted to encourage working groups to consider fiscal and operational impacts of proposed reforms. The MDTF-JSS conducted a fiscal impact analysis of policy options for the draft Free Legal Aid Law for the MOJ. See Serbian Free Legal Aid Fiscal Impact Analysis, World Bank MDTF-JSS, 2013. The EC's Strengthening Alternative Sanctions Project, which is implemented by GIZ, separately prepared a business case which attempts to document the benefits, risks, intended results and likely running costs of the new Probation Law. The approach and methodology of these types of analyses could be replicated by working groups considering future reforms.

³³⁵ For a further discussion on the implications of unfunded mandates, see the Financial Management Chapter.

the chances that they will produce unintended consequences – or simply not be implemented – is high.

26. **Consultation processes and public debates are often perfunctory.** Civil Society Organizations (CSOs) report that they receive very limited advance notice of public debates, even on complex draft legislation. Debates are unstructured and few suggestions are incorporated. Once tabled in Parliament, laws are routinely passed under emergency procedure, further limiting debate.

27. **Looking forward towards accession, change will be the only constant.** Further reforms are underway and the passage of many new laws will continue to be required. The challenge will be to ensure quality control in the law-making process.

iii. The Rollout of New Laws

28. **Stakeholders frequently expressed concern regarding the successive and continual reforms in the law over the last decade.** In recent years, laws have been passed, not implemented, then amended again, and confusion prevails regarding aspects of the law's application and its implementation arrangements. In interviews with judges and prosecutors in particular, legislation arose as a challenge to the quality of services delivered, but more out of concern that the constant amendment of legislation makes it difficult for practitioners to keep apace and implement the law fully and faithfully. Several judges acknowledge that they prefer to stall their decisions (or continue to apply old laws) while waiting for appellate courts to provide guidance on new laws.

29. **Beyond practitioners, court users also highlight flux as a concern.** In focus group discussions, potential court users highlighted that laws change so quickly that it is impossible for ordinary people to know what the law is. While legal reform will be inevitable through the Chapter 23 process, performance improvements will occur only if practitioners and users can keep pace with reforms and amend behaviors.

30. **The Judicial Academy could play a more proactive role in supporting the rollout and implementation of new laws.** Despite its institutional mandate for continuing training, the Judicial Academy is not usually integrated into the rollout of reforms and plays a low profile as a venue for trainings. To date, the Judicial Academy has provided some ad-hoc support to the roll-out of particular reforms, such as the new CPC and the new Law on Misdemeanors with donor support. However, its continuing training program should be both broader and deeper, and based on a comprehensive needs analysis aimed at transforming the capabilities of the judiciary.

31. **There should be a greater focus on dissemination and popularization of new laws, particularly given the pace of the reforms, the limited consultation, and the emergency passage of laws.** Awareness of new laws is low among the public, court users, and even among legal professionals (see Access to Justice Chapter). Yet they are the subjects and actors in the new laws and their understanding is needed for laws to be implemented effectively. Those leading legislative efforts could invest more in outreach activities to target the affected groups and users. Outreach efforts could also help improve stakeholder perceptions of the justice system, and build buy-in and trust in the reform process.

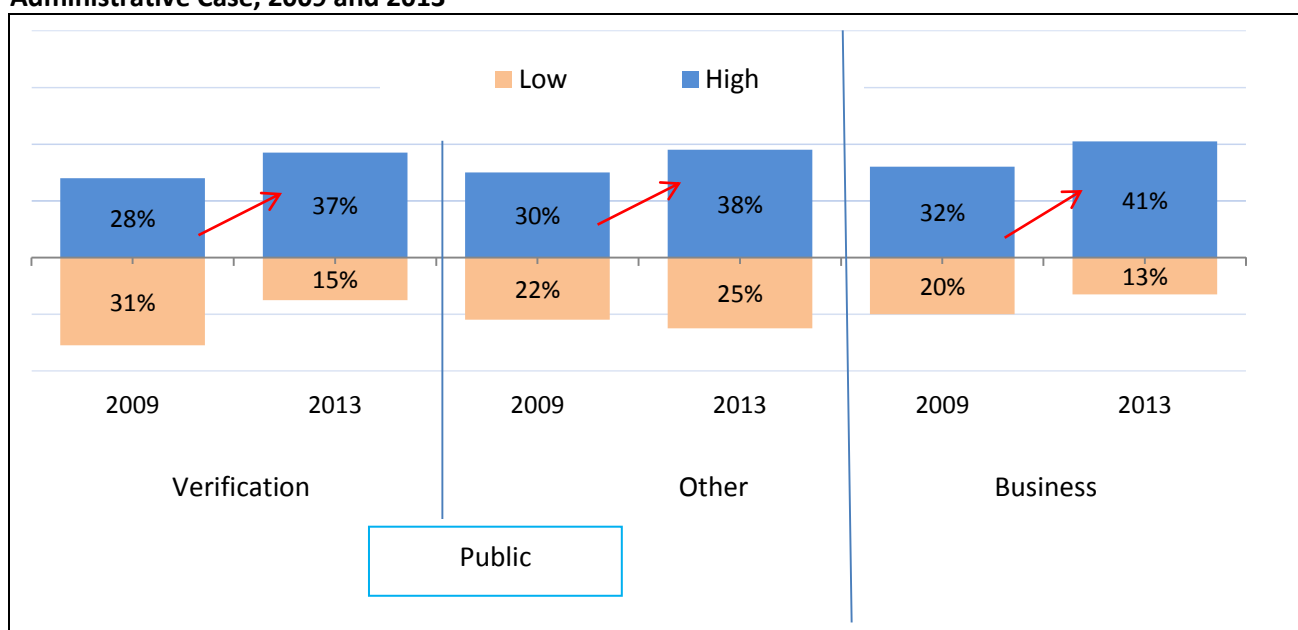
c. Quality of Administrative Services within the Courts

32. According to the Multi-Stakeholder Justice Survey, court users assess the overall quality of administrative services to be average³³⁶ (see Figure 55). Court users from the general population and the business sector who had to complete some administrative task related to their court case were more satisfied with the quality of the administrative services than with quality of court work related to their case.



Title: *Pisarnica*, submitted by an entrant to the Justice Competition, World Bank MDTF-JSS, 2014.

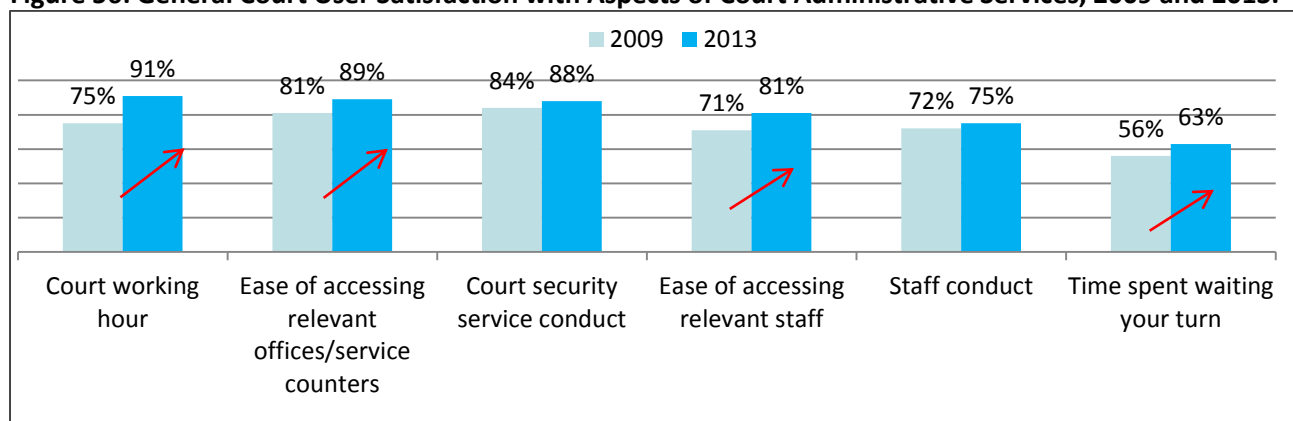
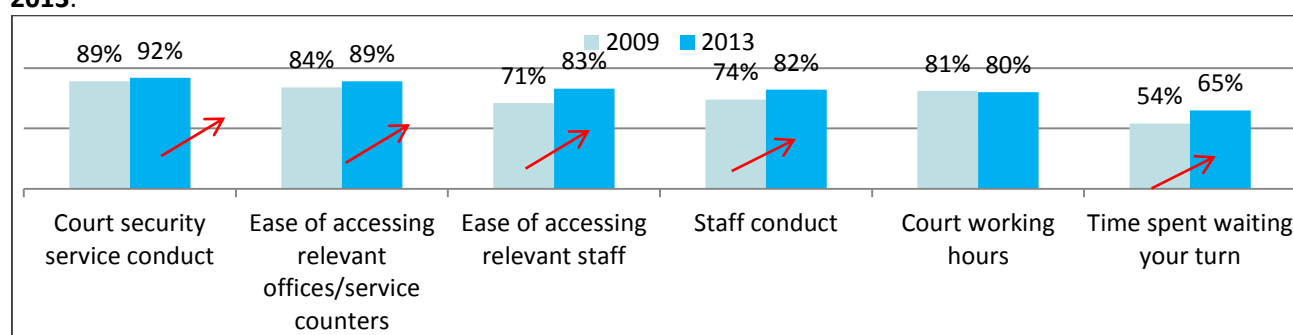
Figure 55: Perceptions of Users of Court Administrative Service of the Quality of Work in that Specific Administrative Case, 2009 and 2013³³⁷



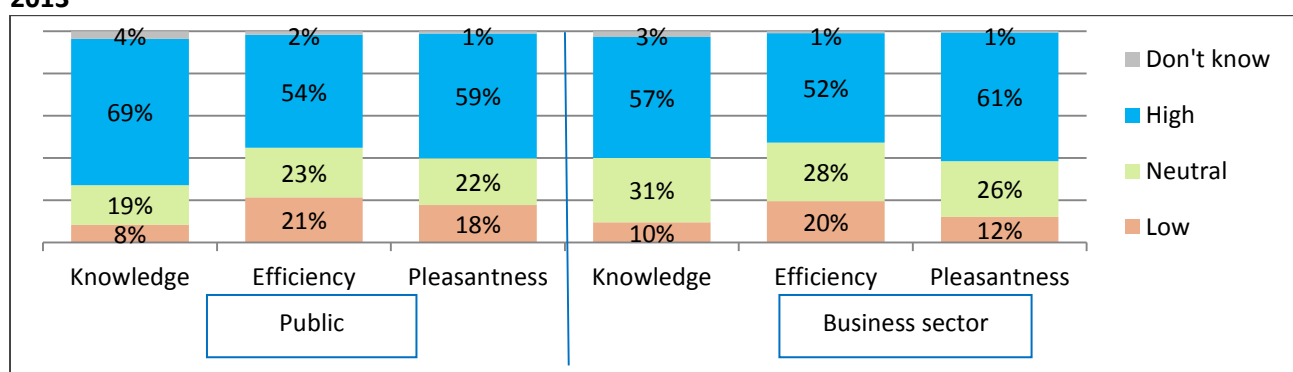
33. A great majority of users of administrative services were satisfied with different aspects of court performance, such as court working hours, accessibility of information and staff, conduct of staff, and time spent waiting for one's turn. Satisfaction increased on most aspects since 2009. Court users are least satisfied with the time spent waiting for their turn, but this too is improving. (See Figure 56 and Figure 57).

³³⁶ Less than 40 percent of general court users and more than 40 percent of business sector court users evaluate the quality of administrative services in 2013 as high. Between 15 percent and 25 percent of members of general population and 13 percent of business sector representatives evaluate quality as low. For the purpose of the analysis, administrative services are categorized into two groups: verification of documents and contract, and other tasks, including access to the archive, registry desk, receptions, and expedition of documents.

³³⁷ Survey Question: *What is your general impression of the quality of work of the judiciary in that specific administrative case?* Scale: 1. Very low quality, 2. Low quality, 3. Average quality, 4. High quality, 5. Very high quality. Population base: members of public and business sector with experience with court administrative services total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

Figure 56: General Court User Satisfaction with Aspects of Court Administrative Services, 2009 and 2013.³³⁸**Figure 57: Business Court User Satisfaction with Aspects of Court Administrative Services, 2009 and 2013.**³³⁹

34. **The image of the conduct and competence of service providers is also improving.** Most users of administrative services are satisfied with the knowledge, efficiency, and pleasantness of staff, and a higher percentage assess these characteristics as being at high or very high level than low level.

Figure 58: Court User Perceptions of Efficiency, Pleasantness, and Knowledge of Administrative Staff, 2013³⁴⁰

³³⁸ Survey Question: *Please recall the last time you went to the courthouse to get something done with respect to this concrete administrative task. Please rate your satisfaction on a scale of 1 to 4, where 1 represents 'very dissatisfied', 2 'dissatisfied', 3 'satisfied', and 4 'very satisfied'. How satisfied were you with...?* Population base: members of public with experience with court administrative services total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

³³⁹ Survey Question: *ibid.* Population base: members of business sector with experience with court administrative services total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

³⁴⁰ Survey Question: *Please rate the staff in the court administrative services with respect to the following features. Please rate the level of ... of the staff you interacted with on a scale of 1 to 5, where 1 represents 'very low level' and 5 'very high level'.* Population base: members of public and business sector with experience with court administrative services total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

d. Quality in Case Processing

35. This section reviews several indicators and European benchmarks relating to quality of case processing, corresponding to Indicator 2.3 of the Performance Framework.

i. Use of Standardized Forms, Templates and Checklists

36. Stakeholders routinely reported that the absence of a consistent approach to routine documentation was a key factor undermining consistency in case processing. USAID SPP reports they have attempted to introduce templates and checklists for court users (either attorneys or unrepresented litigants) in various parts of case processing. However, the uptake has generally been poor. Individual Court Presidents may encourage them for a time out of personal initiative. For example, the Vrsac Basic Court developed a ‘user checklist’ to assist parties in navigating the case process. The team in Vrsac reported that raising the level of awareness of parties had the effect of raising the quality of interaction between court staff and parties (see the Efficiency Chapter). However, there is no common approach nor has any endorsement been made by the Appellate Courts, SCC, or HJC.

ii. Extent of an Implementation Gap (the ‘Law on the Books’ vs. the Law in Practice)

37. To measure the extent of an ‘implementation gap’ between the ‘law on the books’ and the law in practice, Process Maps have been used to compare *de jure* and *de facto* case processing.³⁴¹ These maps are discussed in detail in a Companion Piece to the Functional Review entitled, *Judicial Process Maps in Serbia, World Bank MDTF-JSS, 2014*. The conclusions highlight what works well, where problems occur, and the likely costs to the parties.

38. In terms of what works well, the maps reveal that the procedure in practice often reflects the law on the books. For example, in the case of divorce proceedings relating to family violence, the mapping process identified that the protection measures against family violence appear to work very well and are timely. Similarly, in the case of mutual consent to divorce, the mapping process highlighted that these are resolved easily and as the law intended.

39. However, the maps highlight that the *de facto* case processing requires users to undertake additional steps not envisaged by the law, and takes longer than anticipated under the law. Across the board, all maps highlight that cases routinely become ‘stuck’ at the stage of the identification of addresses and service of process.³⁴² Other problems include low-quality work by expert witnesses, as well as delays in the receipt of witness reports and allegations that expert witnesses are paid by parties to provide partial advice. In domestic violence cases, concerns predictably include low reporting of family violence and lack of cooperation or coordination with police, as well as sentencing leniency. Across the board, the most significant problems identified concern the non-enforcement of both civil and criminal judgments, which undermine the quality of justice.

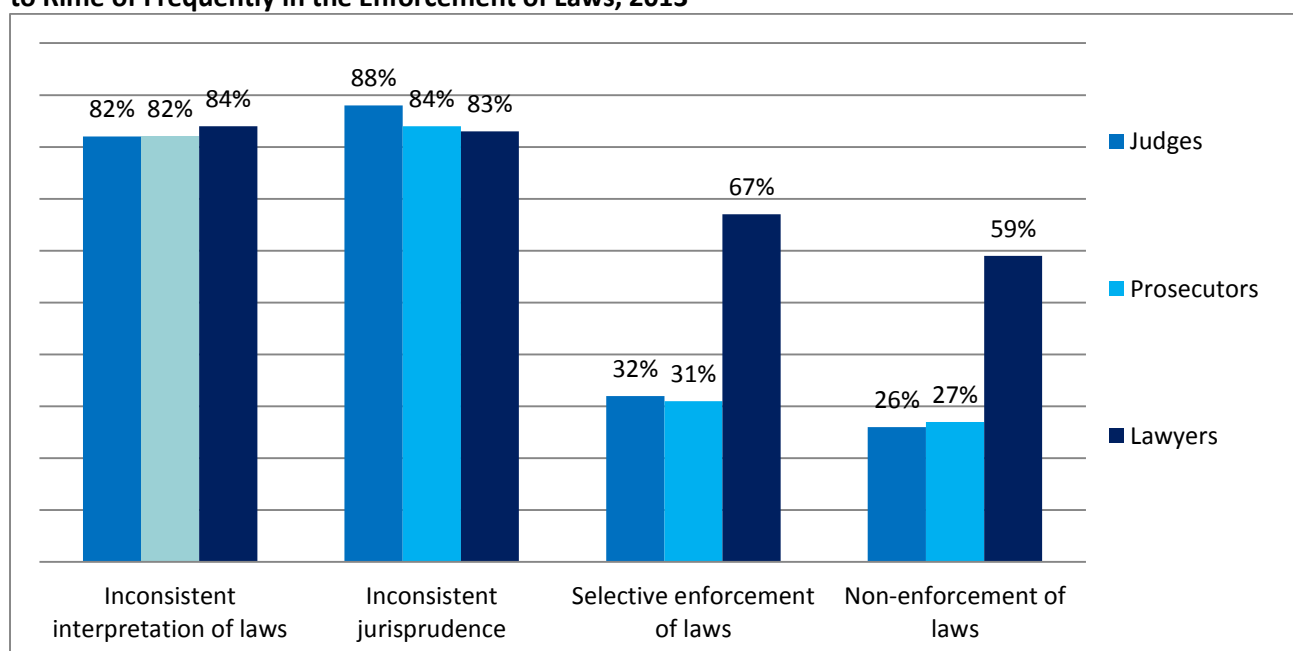
³⁴¹ See *Judicial Process Maps in Serbia*, World Bank MDTF-JSS, 2014. Judicial maps follow a specific type of case. They outline the process that is required under the law (a *de jure* map) and the process as it is undertaken in practice (a *de facto* map) and compares them. Assessments are made based on the detailed interviews with legal experts and practitioners who specialize in the type of case in question. These Process Maps were conducted for four proceedings: a divorce case, a domestic violence case, an eviction, and the enforcement of a utility bill.

³⁴² For further discussion of identification of addresses and service of process, see the procedural efficiency section of the Efficiency Chapter.

iii. Consistency in the Implementation of Law and Perceptions of the Quality of Judicial Work

40. **There is widespread concern within the judiciary regarding inconsistent interpretation of laws and inconsistent jurisprudence.** In the Multi-Stakeholder Justice Survey, 80 percent of judges, prosecutors and lawyers stated that inconsistent interpretation of laws and inconsistent jurisprudence happen at least from time to time, if not often. More than two-thirds of lawyers reported that selective implementation of laws and non-enforcement of laws occurs frequently. However, only about one-third of judges and prosecutors shared this view (see Figure 59) Judges, prosecutors and lawyers also reported mixed feelings about whether these four problems are improving or worsening over time.

Figure 59: Share of Judges, Prosecutors, and Lawyers who Estimate that Listed Problems Occur from Time to Time or Frequently in the Enforcement of Laws, 2013³⁴³



41. **Unsurprisingly, the general public reports a lack of confidence that the law will be implemented effectively.** In the Argus 2014 Survey, 64% of the general public assessed that the enforcement of the law is poor, and only 7% assessed it to be good.³⁴⁴

³⁴³ Survey Question: What is your view of the enforcement of laws in Serbia in the last 12 months? *How often did the following four problems occur in the enforcement of laws?* Scale: 1=never, 2=rarely, 3=from time to time, 4=frequently. Population base: legal professionals total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

³⁴⁴ See *Argus Survey, 2014.*

42. **Inconsistency and selectivity can result from challenges in case processing.** This affects some types of cases more than others. An example of the challenges arising in processing abuse of office cases is at Box

Box 9: Challenges in Processing Abuse of Office Cases

Abuse of office cases provide an example of a type of case that is particularly challenging to process. Stakeholders report that challenges arise due to a range of factors relating to the quality of laws, the efficiency of the courts, capacity and integrity, all of which affect the quality of case processing.

First, the law is not clear. The definition of a 'responsible officer' under article 359 of the Criminal Code has been loose and included both public officials and owners and managers of private companies. The definition of wrongful conduct is also loose, and encompasses anything from misrepresentation to fraud and corruption cases to embezzlement, inside trading and the operation of Ponzi schemes. Article 359 has thus been used as a fallback alternative charge in a large number of cases.

Second, necessary skills are lacking. The processing of white-collar crime cases requires sophisticated investigative skills, including forensic accounting skills, which are often lacking in prosecution or police offices. Further, many judges are not familiar with accounting concepts and have little experience in dealing with white-collar crime cases. Limited training has been provided. So, actors along the criminal chain find it difficult to engage with the complexity of the evidence.

Third, a feeling of inertia has developed. Judges report a level of discomfort in dismissing these cases, for fear that they may be perceived as unduly influenced or 'soft on corruption', and also express discomfort in convicting defendants of this offence. They report that they are unsure how appellate courts will react, so the better thing to do is 'wait and see'. Prosecutors report a dislike of these cases, due to the above challenges, plus the low conviction rates. Defendants in these types of cases also tend to abuse procedure or cause delays for tactical advantage, and some may also engage in informal means to affect the process.

As a result, many of abuse of office cases become backlogged. For example, the Higher Court in Kragujevac reports that the majority of its backlog consists of article 359 cases. Among the backlogged cases is an emblematic group of cases of alleged fraud against professors and students at the Law Faculty of Kragujevac, which have been beset by a series of procedural delays.

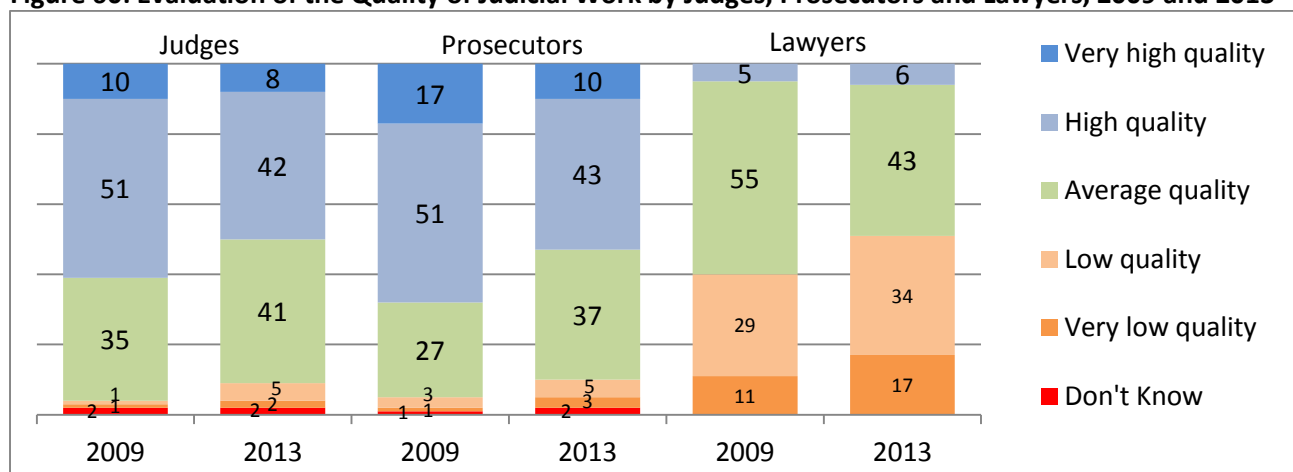
In 2013, the Criminal Code was amended to create separate offences for public and private actors, but the implementation challenges remain.

9.

43. **There has also been a reported decrease in the quality of judicial work, as reported by judges, prosecutors and lawyers.** Lawyers are particularly dissatisfied with the quality of work of judges they appear before.³⁴⁵ By contrast, 67 percent of prosecutors rated the quality of judges as high or very high in 2009, and 54 percent in 2014.³⁴⁶ Perhaps self-servingly, but still not very positive, 61 percent of judges rated quality as high or very high in 2009 and 50 percent in 2014, and 7 percent of judges perceived the quality of judicial work to be low. With only half of judges reporting that the quality of judicial work is high, there is clearly some room for improvement.

³⁴⁵ No lawyers rated the quality of judicial work as 'very high' in 2009 and 2013, and only 5 percent of lawyers in 2009 and 6 percent in 2014 rated the quality of judicial work as 'high.' 40 percent of lawyers found the quality to be 'low' or 'very low' in 2009, and in 2014, 51 percent of lawyers expressed the same.

³⁴⁶ Only 4 percent of prosecutors in 2009 and 7 percent in 2013 rated the quality of judicial work as 'low' or 'very low.'

Figure 60: Evaluation of the Quality of Judicial Work by Judges, Prosecutors and Lawyers, 2009 and 2013³⁴⁷

iv. Use of Specialized Case Processing for Particular Case Types

44. **There are few examples of specialization in case processing in the Serbian judiciary.** Commercial Courts have specialized their case processing somewhat, and stakeholders report that this has improved the quality and consistency of both case-processing and decision-making. Misdemeanor Courts are a type of specialized court, but within their jurisdiction is a broad range of cases from customs and tax offences to traffic infringements, yet few mechanisms exist to tailor case processing to these very different types of cases.

45. **The most conspicuous absence of tailored case processing relates to small claims in Basic Courts.** Among the 235,475 civil litigious cases incoming to the Basic Courts in 2013 is a significant proportion of claims for which the value is under 300EUR.³⁴⁸ Procedural rules for these small claims are the same as for other civil litigation, except for a few requirements unrelated to timeliness. As outlined in the Efficiency Chapter, the average time to disposition for civil litigious cases in the Basic Courts was 277 days, with wide variations in days ranging from 181 in Pancevo Basic Court, to 429 in Belgrade Second Basic Court. Although the official definition of a backlogged case in Serbia is two years, one would expect small claims to be dealt with much quicker.

46. **Stakeholders pointed to a range of ways in which small claims become 'stuck' in the larger litigation process in Basic Courts.** Several stakeholders report that judges are reluctant to decide on a case without reliance on an expert witness, but the cost of engaging the expert witness may outweigh the value of the claim. Others report they languish because attorneys are not as active in pursuing them. Stakeholders also report that parties who self-represent in these cases have limited understanding of civil procedure laws, which are complex and continually changing. A streamlined process for small claims would seem warranted.

47. **In the Basic Prosecution Offices, deputy prosecutors report that they 'do everything the same way'.** Cases are assigned according to the plan approved by the Chief Prosecutor, and some limited exceptions are made in cases where particular skills are needed, such as juvenile delinquency and cyber-crime. Deputy Prosecutors report that they would prefer to specialize further and develop skills to ensure better quality in case processing, particularly for the investigation and prosecution of fraud cases and gender-based violence cases. For discussion of internal organization, see the Governance and Management Chapter.

³⁴⁷ Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

³⁴⁸ Due to limitations in the definitions of case types and statistical reports, it is not possible to identify precisely how many small claims are pending, or their age structure, outcomes, appeal rates, or other pertinent data.

v. Coordination in Case Processing

48. **Stakeholders report that there are few mechanisms for cooperation in case processing.** In advanced judiciaries, Court Presidents may convene ‘court user forums’, where stakeholders such as police, prosecutors, lawyers, social workers, bailiffs and frequent court users, such as large creditors, would periodically meet with court management to raise issues and discuss opportunities to coordinate their work. Where mechanisms do exist, they have been based on personal initiative and have not generally lasted beyond the term of an individual Court President.

49. **One example where coordination is required to ensure quality in case processing relates to overlapping criminal offences.** Elements of specific offences could be qualified as both criminal and misdemeanor offences - or as both criminal and commercial offences -, ³⁴⁹ and any justice system must develop a mechanism to resolve this overlap. In Serbia, police often submit both misdemeanor and criminal charges for the same incident, and do not inform the prosecutor of the duplication. Whilst it is not possible to estimate how many ‘double’ processes occur, stakeholders reported that such duplication is not uncommon.

50. **Overlapping charges cause problems for defendants and can lead to ECHR violations.** This issue arose before the European Court of Human Rights (ECtHR) in the case *Maresti v. Croatia*.³⁵⁰ In that case, Croatia was held to have violated Article 4 of Protocol No. 7 because Maresti was prosecuted twice for the same offence. The ECtHR noted that it was obvious that the police had lodged a request for criminal proceedings to be brought against the applicant before the Misdemeanor Court, and had also submitted a report on the same incident with the State Attorney's Office without informing either of the duplication. Bearing in mind the similar legal heritage and practice of Serbia and Croatia, there is a concern that such rights violations could occur in Serbia. For further discussion of Serbia's ECHR compliance, see below.

51. **Overlapping offences also cause inefficiency within the court system.** The same incident burdens both the courts - once for the misdemeanor offence, with its procedure and legal remedies, and again for criminal offence with its procedure and legal remedies. Ultimately, resolution would require a further decision by the Appellate Court to dismiss one charge in favor of the other. Double-charging thus unnecessarily increases caseloads, lengthens the duration of proceedings, and increases costs for the parties and the courts. The court in Zrenjanin, however, has found an easy and affordable way to avoid this problem, see Box 10 below.

Box 10: Inter-Sectorial Coordination Improves Service Delivery: A Case from Zrenjanin

In Zrenjanin, the relevant institutions have developed a simple and good practice to resolve this problem in family violence cases. With some support from CIDA, the Prosecutor's Office in Zrenjanin brought together representatives of the police, public prosecution, centers for social work, misdemeanor courts, and others to organize weekly meetings to discuss all family violence cases in the jurisdiction. By coordinating their work, they're able to avoid double charging to prevent violation of non bis in idem rights while also promoting the rights of victims and witnesses by ensuring that family violence does not 'fall through the cracks'. This kind of inter-sectorial cooperation at the local level is inexpensive and easy to implement – strengthening, quality, efficiency, and access in the delivery of justice services in Zrenjanin.

³⁴⁹ For example, family violence cases may involve elements of violence as well as obstructing an official in the performance of security or public order maintenance.

³⁵⁰ *Application no. 5575907*, Strasbourg, 25 June 2009.

e. Quality of Decision-Making in Cases

i. Use of Standardized Judgment Writing Tools

52. **There is no template or common approach to judgment writing.** A judgment-writing component is included in the Judicial Academy's continuing training program for 2014, but the training is general and does not teach a standardized approach. As part of the initial training at the Judicial Academy, trainees receive compulsory training on writing of various types of judgments and other court decisions in civil, non-litigious, enforcement, and criminal cases; and in their final evaluation, they are evaluated on judgment-writing skills by their mentor judges.³⁵¹ There have also been some individual initiatives by Higher Court judges to create and distribute their preferred templates. Yet no consistent approach has ever been endorsed by the four Appellate Courts, the SCC or the HJC. As a result, each judge drafts his or her judgments differently, often by dictating the judgment following a personally preferred style or individualized template based on personal experience.

53. **There may be considerable value in standardizing judgment writing.** Stakeholders, particularly attorneys but including appellate judges, report frustration at the diversity of styles, structure and methodologies applied by judges, as well as the variability in quality seen in judgments. In their view, a more standardized approach – at least to the structure of judgments – would assist readers to follow the judge's reasoning in any given case.

54. **The absence of a standardized approach to judgment writing has a ripple effect through the system, causing a lack of standardization in other routine documents.** For example, there is no standard template for drafting legal submissions, and attorneys adopt their own individual styles.³⁵²

ii. Consistency of Decision-Making with the ECHR

55. **Decisions of the ECtHR provide an indication of the quality of justice services in Serbia vis-à-vis the human rights standards outlined in the ECHR.** However, assessments against this indicator should be treated with some caution for several reasons.

- a. There is a lengthy lag between a rights violations and its determination by the ECtHR. This is due to several factors, including the time it takes for a violation to exhaust local remedies and the significant backlog of cases in Strasbourg. As a result, performance against this indicator is a good indicator of past performance in ECHR compliance, but may not reflect well on the current quality of justice services.
- b. Data may also be skewed, as some victims of rights violations are more likely to avail themselves of the ECtHR than others. Some interest groups such as unions fund the legal costs of ECtHR complainants, so the kinds of disputes they bring to the court may be over-represented. By contrast, indigent unrepresented defendants who lack the means for legal representation in domestic courts are fairly unlikely to pursue a case in Strasbourg.

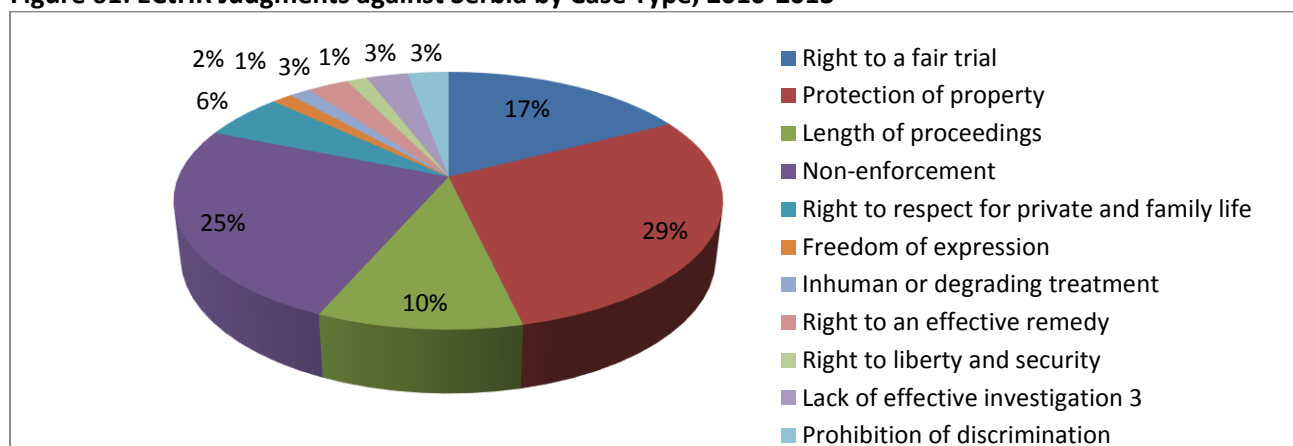
56. **The statistics of the ECtHR in Strasbourg suggest that the Serbian justice system is struggling with being in full compliance with the standards of the ECHR.** Between 2010 and 2013, the number of cases where Serbia has been found in violation of the right to a fair trial within reasonable time and similar protections under the ECHR has been increasing. Out of a total number of 69 judgments of the ECtHR finding Serbia in breach of the ECHR, 17 percent of violations related to the right to a fair trial and 10 percent to an excessive length of proceedings. 25 percent of violations concerned failures to enforce final court and

³⁵¹ For example, in one of the Judicial Academy trainee assessment reports, trainee judgments were said to be 'systematically written, clear, concise and well explained.'

³⁵² Stakeholders reported that, in some cases, judges have been known to cut and paste attorney submissions, adding neither structure nor analysis. The absence of a standardized approach invariably increases the chance of appeal in any given case.

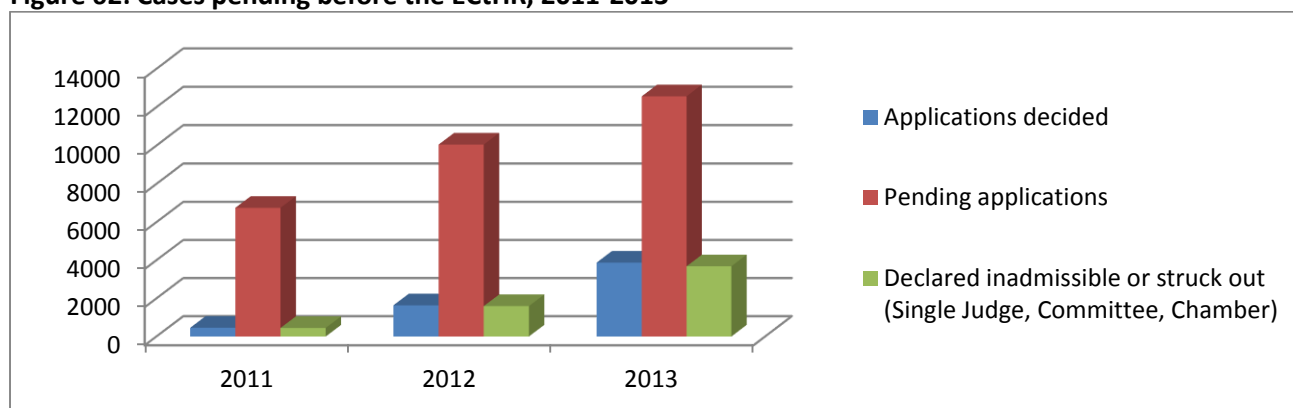
administrative decisions. Other violations were found for the right to an effective remedy. Serbia has also been sentenced for a lack of effective investigation, and inhuman or degrading treatment.

Figure 61: ECtHR Judgments against Serbia by Case Type, 2010-2013³⁵³



57. There also is a noticeable increase in the overall number of Serbian cases pending before the ECtHR. Serbia now has the highest number of pending cases at the ECtHR (11.3 percent of the caseload in 2013). This is only surpassed by far larger countries, such as Russia (16.8 percent), Italy (14.4 percent), and Ukraine (13.3 percent). Since 2011, the number of pending cases has increased from 6,752, to 10,053 in 2012, and to 12,569 in 2013. However, due to an increasing backlog of the ECtHR, the figures on decided applications are significantly lower, starting from 461 in 2011, 1,637 in 2012, and 3,887 in 2013. Almost 97 percent of the decided applications are declared inadmissible or struck out.

Figure 62: Cases pending before the ECtHR, 2011-2013³⁵⁴



58. Only a small number of applications decided by a judgment resulted in judgments finding at least one violation of articles of the ECHR (8 out of 12 in 2011; 10 out of 39 in 2012; 21 out of 193 in 2013). Among these, it is common for the ECtHR to also find a violation of the right to a fair trial.

59. There is a noticeable increase in the number of friendly settlements. In 2011, there were 49 friendly settlements; but by 2013, the number of settlements had risen to 679. Reaching a friendly settlement is an effective way in which Serbian authorities can resolve matters without the need for cases to go to hearings.³⁵⁵ The negotiation of friendly settlements is likely to be a useful litigation strategy for the State, given that awards for non-pecuniary damages can be quite high. Friendly settlements are also good

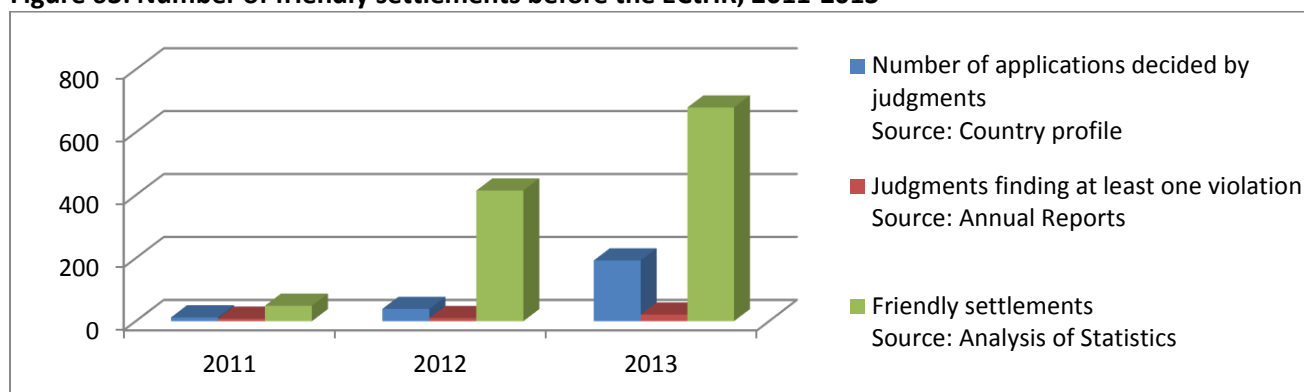
³⁵³ ECtHR official statistics, based on decisions finding at least one violation.

³⁵⁴ Serbia Country profile, last updated: March 2014 and ECtHR Annual Reports 2011 and 2012.

³⁵⁵ Details concerning friendly settlements are confidential, but are believed to relate to cases concerning state-owned enterprises.

for applicants as they prevent further delay in resolving their case and receiving compensation.

Figure 63: Number of friendly settlements before the ECtHR, 2011-2013³⁵⁶



60. **Non-compliance tends to be found in a limited number of case types highlighting specific problems.** Among the pattern of violations of Article 6, a few currently stand out, most notably complaints surrounding the restructuring of state-owned enterprises and the payment of military allowances. This indicates that non-compliance is not systemic across the board, and that problem areas may be addressed through targeted interventions.

Box 11: Article 6, ECHR

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

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

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defense;
- (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;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

61. **Around 5,500 out of 12,569 pending applications alone relate to inconsistent application of the law, a commonly-found type of violation.** The 5,500 applications are based on a similar factual scenario, namely the claims of military allowances owed to reservists in 1999, where many reservists remain unpaid, while reservists residing in seven municipalities were paid, allegedly due to executive pressure.³⁵⁷ After examining the merits of the leading case, the ECtHR ordered the Serbian Government to take all appropriate measures to secure non-discriminatory payment of the military allowances in question to all those who are entitled. Non-compliance seems to be driven by fiscal rather than legal considerations.

³⁵⁶ ECtHR official statistics, 2014.

³⁵⁷ See *Vuckovic and Others v. Serbia*, Application no. 17153/11, Judgment (preliminary objection), Strasbourg, 25 March, 2014.

62. **With approximately 2,400 cases pending in 2012, another commonly found type of violation relates to non-enforcement of the final decisions against socially-owned enterprises.** Between 2004 and 2009, the ECtHR rendered a number of judgments³⁵⁸ which found a violation of the applicants' right to a fair trial due to the failure of Serbian authorities to take appropriate measures needed to enforce domestic judgments ordering socially-owned enterprises to pay salary arrears and employment benefits. In 2010, there were approximately 3,570 domestic judgments rendered against socially-owned enterprises in this respect with an aggregate amount of approximately 2.7 billion RSD (costs and interest not included). The Council of Europe's Committee of Ministers therefore decided to monitor the implementation of general measures to address this particular issue.³⁵⁹ It asked the Serbian authorities to establish the exact number of unenforced decisions for this type of cases. In March 2012, the Serbian Government introduced a regulation in order to register the final decisions ordering state-owned companies to pay employment arrears resulting in approximately 55,000 applications being filed as of September 2012. This scale indicates that the underlying problem may be primarily fiscal and economic rather than rooted in dysfunctions of the judicial system.



Title: *Serbia 2020*, submitted by an entrant to the Justice Competition, World Bank MDTF-JSS, 2014.

63. **There are also complaints regarding the excessive length of other types of proceedings, but these are less numerous.** In 2010, there were approximately 294 applications pending before the ECtHR concerning the excessive length of other types of proceedings. Excessive length of proceedings affects civil cases more than criminal cases. Examples of case types include child custody cases where excessive delay can entrench an existing situation and thus violate rights.³⁶⁰

64. **The Serbian authorities have been invited to implement a range of general measures, and significant progress has been made on many legislative measures.** The Constitution has been amended to enshrine the right to a fair trial. Legislative measures have included amendments to the Family Law to provide that disputes involving children are resolved urgently. Laws on mediation have been enacted. Laws on civil procedure and related regulations have been amended to improve service of court documents.

65. **The implementation of non-legislative measures has been more mixed.** Efforts to reduce backlogs continue, but a case-weighting system has not been introduced. The court network has been reformed and an automatic case processing (AVP) in Serbian courts is underway but the completion of its IT network remains. The introduction of continued training as a requirement for appointments of judges has been introduced but continuing training is not comprehensive.

66. **Reforms to implement general measures will continue, though their impact on effective ECHR compliance is unknown.** The baseline and targets for these reforms have not been measured, and the impacts have not been monitored. While the intent of legal reforms is good, much will depend on implementation, and while the impacts are likely positive, it is difficult to tell the extent to which they are

³⁵⁸ Groups of cases against state-owned enterprises: *EVT v Serbia* 3102/05; *Kacapor and others* 2269/06, *Crnišanić* 35835/05, *Grišević* 16909/06 and others, *Vlahović* 42619/04, and others cases.

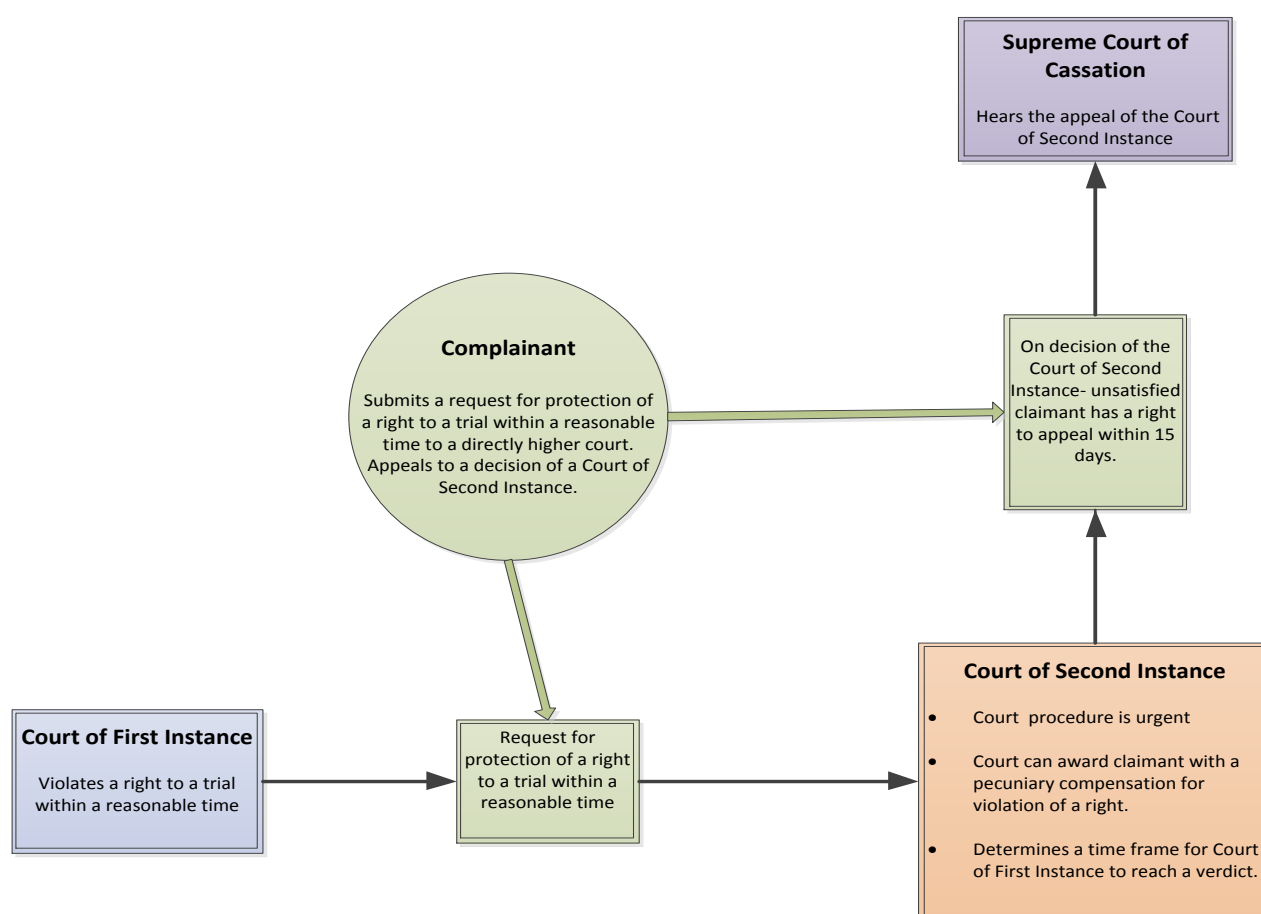
³⁵⁹ In its *EU Progress Report 2013*, the EC noted that enforcement of rulings is particularly needed in cases of compensation of workers from state-owned enterprises, administrative decisions, and the resumption of payment of pensions earned in Kosovo. Judicious handling of these mass claims could have a significant effect on the ECHR caseload.

³⁶⁰ One example cited by stakeholders is where a party exercises undue influence to delay proceedings and thus entrench the status quo regarding the child's custody. This provides a tactical advantage because by the time the judge eventually decides the merits of the case, they may be reluctant to reverse the status quo in the interests of the child. Thus excessive delay violates both trial rights and family and child rights.

contributing to better compliance with the reasonable time requirement.

67. As of January 2014, citizens in Serbia are now able to submit a request for protection of the right to trial within a reasonable period of time to courts of ordinary jurisdiction. Recent amendments to the Law on the Organization of the Courts³⁶¹ introduced this new mechanism for protection of human rights into the Serbian legal system. According to the new rules, the Courts of Second Instance can now determine if there has been a violation of the right to trial within a reasonable time, award compensation, and set timeframes for first instance courts to deliver judgments. Unsatisfied parties can ultimately appeal to the SCC.³⁶²

Figure 64: Protection of the Right to a Trial within a Reasonable Period of Time



68. At first glance, the new legislation gives the impression of aggressive reform – an initiative to ‘crack down on slow judges’ and to improve efficiency in case processing. The mechanism is based on similar reforms in Italy (Pinto Law)³⁶³ that are also applied in Croatia, Romania and Slovenia. In Serbia, stakeholders report that the recent reform is producing an atmosphere of ‘crackdown’ and that regular reporting of backlogs and trials within a reasonable period of time are putting pressure on judges to resolve older cases. Whether this produces the intended result, however, is not yet certain.

³⁶¹ Republic of Serbia Official Gazette no. 101/2013.

³⁶² Previously, parties appealed to the Constitutional Court. Under the new law, it appears that they may still appeal to the Constitutional Court, but appeals will be inadmissible unless parties have previously availed themselves of the Pinto mechanism. The Constitution Court has a considerable backlog of cases. In 2013, the Constitution Court had 23,755 constitutional appeals, and resolved 8,013 cases, leaving 15,742 pending cases at the close of 2013.

³⁶³ IMF Working Paper No. 14/32, *Judicial System Reform in Italy— A Key to Growth*, Gianluca Esposito, Sergi Lanau, and Sebastiaan Pompe, February 2014.

69. **Based on experience elsewhere in Europe, Pinto-style proceedings have shown mixed results.** In Italy, rather than speeding up court proceedings and lowering the number of applications before the ECtHR, it resulted in a caseload increase of already burdened domestic courts, late payment of compensations, and an increase in the length of proceedings.³⁶⁴ It temporarily reduced the number of complaints to the ECtHR, because complaints had further avenues to exhaust local remedies. However, by the end of 2011, approximately 5,000 out of 14,500 pending applications before the ECtHR against Italy were related to the so-called ‘Pinto proceedings’.³⁶⁵ Furthermore, in 2011, the Italian Government spent €200 million as a pecuniary compensation to injured parties, an amount which could have been used to conduct necessary institutional reforms instead and improve the efficiency of the judicial system as whole.³⁶⁶ Pinto-style reforms appear to work well in systems which, in general, function well and where the violation of the right to trial within a reasonable time is an exceptional circumstance attributable to improper administration of an individual case.³⁶⁷ Remedies such as a motion for setting a deadline or a supervisory appeal also appear to work better than pecuniary compensation. However, if a judiciary suffers from large and generalized backlogs in courts, these proceedings may provide too blunt an instrument of reform. In such conditions, the remedy has the effect of allowing a party to ‘jump the queue’ (either directly by ordering the case to be put on a priority list or indirectly by setting deadlines which could, due to the existing backlogs, not be complied with unless the judge prioritizes that case over others). This however jeopardizes the right to equality before the law and results in other litigants having to wait longer for their turn.

70. **There is a risk that the recent reform in Serbia may produce unintended results, similar to Italy’s experience.** Stakeholders reported to the Review team that this dual system has created confusion among lawyers and parties and has opened new avenues for procedural abuses by attorneys seeking to take advantage of the bifurcation to for tactical advantage. The dual system also artificially inflates case numbers and workloads, and some suggest it is already providing an excuse for higher courts to generate backlogs and slow down resolution times. It is too early for the impact of the reforms to be assessed, but they should be closely monitored to measure their results, and to prevent them becoming a distraction to the courts’ core function of resolving parties’ disputes.

iii. Deferred Prosecution as an Alternative Sanction

71. **The use of deferred prosecution is becoming an increasingly common option for alternative sanction in criminal cases.**³⁶⁸ In a 2012 study, deferred prosecution was applied mostly for crimes such as endangering public transport, non-payment of alimony, and the destruction and damage to the property of another.³⁶⁹ In nearly two-thirds of deferred prosecution cases (63.5 percent), the sanction imposed was the payment of money to the benefit of a humanitarian organization, fund, or public institution. In about one-quarter (23.7 percent) of deferred prosecution cases, the sanction was to rectify the detrimental consequence caused by the commission of the criminal offence or to indemnify the damage caused. Less common was the payment of alimony in 5 percent of cases, participation in psych-social treatment in only 1.7 percent of cases, and community service in only 1.3 percent of cases.

³⁶⁴ Interim Resolution CM/ResDH(2009)42.

³⁶⁵ See Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Strasbourg, 18 September 2012

³⁶⁶ See ‘The Execution of the ECtHR Judgments in Italy: measures to reduce domestic excessive length of proceedings’, Elena Bossi, Leiden, June 2012.

³⁶⁷ See *The Right to Trial within a Reasonable Time and Short-Term Reform of the European Court of Human Rights*, Roundtable organized by the Slovenian Chairmanship of the Committee of Ministers of the Council of Europe, 2009.

³⁶⁸ Although introduced in 2001, prosecutors began applying these powers more frequently from 2009, when the RPPO issued instructions outlining which offences it could cover.

³⁶⁹ In 2012, the Prosecutors Association (PAS) conducted research on its implementation and received data from 11 PPOs in the then-existing court network of 34 basic PPO. The following data on deferred prosecution is drawn from the data obtained from that survey.

Box 12: How Does Deferred Prosecution Work in Practice in Serbia?

Often referred to as ‘the principle of opportunity’, the public prosecutor is empowered to defer the prosecution of certain types of cases* and thus divert them out of the court system by offering suspects alternative conditions in lieu of a sentence. Conditions may include one or more of the following:

- a. rectify the detrimental consequence caused by the commission of the criminal offence or indemnify the damage caused;
- b. pay a certain amount of money to the benefit of a humanitarian organization, fund or public institution;
- c. perform certain community service or humanitarian work;
- d. fulfil maintenance obligations which have fallen due;
- e. submit to an alcohol or drug treatment program;
- f. submit to psycho-social treatment to address the causes of violent conduct; or
- g. fulfil an obligation determined by a final court decision, or observe a restriction determined by a final court decision.

In practice, the prosecutor halts the prosecution for a specific time (which may not exceed one year) during which time the suspect must fulfil the obligation/s undertaken. Should the suspect not comply, the prosecution automatically re-commences with little further paperwork required. Competence for oversight of the fulfilment of obligations is performed by the Commissioner with the authority to execute criminal sanctions, in accordance with a regulation issued by the relevant minister responsible for the judiciary.

* The prosecutor may defer criminal prosecution for offences punishable by a fine or a term of imprisonment of up to five years. Deferred prosecution is not available in certain types of cases, such as family violence.

72. **Deferred prosecution potentially offers a range of benefits for quality sentencing.** It allows the offender to remain in the community and avoids a break in family ties and obligations, while the offender rectifies their wrongdoing to the victim and/or contributes to the community. By enabling forms of treatment, such as psycho-social, drug or alcohol treatment, it seeks to deal with the root causes of offending and promote crime prevention and rehabilitation and reintegration of the defendant into the community.³⁷⁰ However, the notion is perceived by some as a ‘privilege’ – a way of paying off a sentence or even paying off the State.

73. **Deferred prosecution has not yet fulfilled its potential because the Commissioner overseeing these cases lacks the requisite capacity.** In particular, the Commissioner lacked the geographic reach, with only 15 offices across the 25 Higher Court regions. As a result, the application of deferred prosecution is not consistent throughout the territory. In some places, defendants may access it, while in other places they are denied simply because they reside in a place that has no Commissioner’s Office (or, perhaps worse, some defendants may receive it but the sanction is not monitored or enforced). Further, the Commissioner lacked the institutional mechanisms and staff to monitor effectively the implementation of sanctions. This explains why donations (which are easy to administer) are a high proportion of sanctions, whereas psycho-social treatment and community service has been ordered rarely even though these are among the conditions that may reap the most practical benefit for the rehabilitation and reintegration of the defendant into society. With the introduction of the new CPC and the Law on Probation, the Commissioner’s role should be enhanced with offices around the country. This may increase the use of deferred prosecution, particularly in cases of community service and treatment. Funding is likely to be required to enable the Commission to fulfill this important role, and this should be provided.

74. **Nonetheless, some local-level arrangements are already working well.** A number of Basic Courts and Basic Prosecutor Offices have taken the initiative to work together with local institutions, such as hospitals, treatment centers and charities, to develop MOUs and elaborate protocols for the implementation

³⁷⁰ Deferred prosecution also has the potential to improve efficiency, as it reduces the number of cases requiring processing by the court, and thus frees up court and prosecution resources for more serious crimes.

by defendants of the agreed undertakings.³⁷¹ In Vrsac for example, the Basic Prosecutor's Office reported to the Review team that these MOUs work well for two reasons: first, their local nature makes it easy for the bodies to find practical ways to work together to ease any bottlenecks. Second, the MOUs are signed by the heads of local organizations, such as the chief of a local hospital and the President of a Basic Court, which secures effective cooperation.

75. **Looking forward, deferred prosecution arrangements would benefit from more support within the judicial system.** The increased capacity of the commissioner should help to enable prosecutors to offer a more diverse range of conditions. Further, the RPPO could issue more detailed instructions to encourage the use of these powers in certain types of cases or with certain types of suspects (such as youth or marginalized groups), and to extend its use beyond the payment of money to more proactive rehabilitative efforts. Increasing public awareness of deferred prosecution would also reduce the misconceptions of it as a 'privilege' while also highlighting the importance of restitution to victims and of rehabilitation and reintegration of defendants in the interests of the community.

76. **Unfortunately, deferred prosecution and plea bargaining do not exist in Misdemeanor Courts because prosecutors are rarely work on misdemeanor cases.** Yet the approach could arguably do most good with these types of minor cases, particularly where the prospects for early remorse and rehabilitation of the offender are high. In their absence, alternative sanctions should be strengthened in Misdemeanor Courts to provide Misdemeanor judges with the flexibility to make orders that increase the prospect for rehabilitation and reintegration.³⁷²

iv. Plea Bargaining



Title: *Justicia*, submitted by an entrant to the Justice Competition, World Bank MDTF-JSS, 2014.

77. **Plea bargaining agreements enable prosecutors in Serbia to negotiate charges and sentences in exchange for a guilty plea by the defendant.** The plea bargain has been touted as a tool that enables the effective and efficient disposal of cases in a manner that reduces the burden on courts and prosecutors, freeing up their time and resources which can then be devoted to contested cases.

78. **It is still too early to assess the effectiveness of plea bargaining in Serbia.** The concept was introduced via amendments to the CPC in 2009 and was augmented via further amendments to the CPC in 2013. The rollout of the new CPC will enable such assessments in the coming years.

79. **Some stakeholders already noted that the plea bargaining process could be more effective.** Lawyers argued that deputy prosecutors lack autonomy to make decisions, and that their internal approval processes prolong the

negotiation process. Some prosecutors have also noted that their internal approvals process can be cumbersome at times, but that recent instruction from the RPPO will assist

in future cases. Meanwhile, other prosecutors argue that plea bargaining will never reach its potential until

³⁷¹ MOUs may outline how funds will be paid to humanitarian organizations and foundations, the minimum amounts to be paid, and can also secure the cooperation of local hospitals and clinics to admit patients.

³⁷² For further discussion, see Quality in Sentencing below.

sentencing policies are more stringent.³⁷³ According to prosecutors, lenient sentences, including sentences that go below mandatory minimums, reduce their 'bargaining chips' and undermine any leverage they may have to negotiate an efficient and effective outcome.

80. **Data are not available on the number of plea bargains as a percentage of criminal cases.** Data collection in this area would be useful to enable the intended effects of the reform to be measured, and for future improvements to be identified.

81. **What is already clear is that plea agreements have become increasingly common in Serbia.** In 2012, the Higher and Basic Public Prosecutor, the Prosecutor's Office Organized Crime, and War Crimes Prosecutor concluded a plea agreement with a total of 869 defendants (an increase of 100 percent compared with 2011). Of the total number of signed plea agreements in 2012, the court adopted the 706 agreements, an increase of 97.20 percent compared with 2011, with the rest presumably pending with the courts. With the entry into force of the new CPC in October 2013, plea bargaining is further increasing. According to statistical data from the RPPO, the number of plea agreements signed in February 2014 was 100 more than those signed in January 2014, suggesting that the trend towards using plea bargaining is getting stronger.

82. **By contrast, there has been negligible uptake of plea agreements in Misdemeanor Courts.** In the three years since the reforms were introduced under the new Misdemeanor Law, only one plea agreement has been signed in Vojvodina in November 2013. This is unfortunate, when plea bargains could be particularly useful in resolving cases of tax and customs violations. In August 2014, amendments were introduced to encourage plea bargaining in misdemeanor cases, and it is hoped that uptake will improve.³⁷⁴

83. **To enable assessments of effectiveness, sufficient data on plea bargains should be collected and monitored.** Plea agreements should be monitored and tracked by the number offered and signed agreements, the criminal offence and location, the decision by the court to adopt or reject, and most importantly the reasons for any rejections. Over time, such data will enable a better analysis of its effectiveness. The views of key stakeholders in the process should also be sought to fine-tune implementation.

v. Quality in Sentencing

84. **Several stakeholders reported that the quality of justice is undermined by lenient or unpredictable decision-making.** No quantitative data were put forward to substantiate this view, and the Review Team is not aware that such data are collected within the judicial system.

85. **Criminal laws frequently include broad sentencing ranges, allowing judges to exercise wide discretions.** The law provides mandatory minimums for certain offenses, but stakeholders advise that they are not mandatory in practice. For example, in several corruption-related cases in Misdemeanor in Courts 2013, sentences were issued below the mandatory minimum.

86. **Several prosecutors argue that judges routinely err on the lenient side of the sentencing range.** Some argue that leniency is a response to undue influence or corruption. Others suggest that poor infrastructure and a lack of security at courthouses have a chilling effect on judges and prosecutors alike.³⁷⁵

³⁷³ For further discussion of sentencing, see Quality of Sentencing below.

³⁷⁴ The Functional Review captures data and analyses up to 30 June 2014, so no assessment could be made of the effectiveness of these amendments.

³⁷⁵ According to this line of reasoning, judges and s are less likely to impose a harsh sentence because they sit face-to-face with defendants in their chambers or offices, outside proper courtrooms and without adequate security.

87. **Lawyers, on the other hand, argue that the problem is not so much leniency as it is unpredictability.** According to this line of reasoning, similar types of defendants in similar types of cases may receive varying sentences, some far more lenient than others, and the actual sentence imposed is subject to the whim of the presiding judge.

88. **Stakeholders also highlight that non-custodial sentences are infrequent, erratic and inadequately monitored and enforced.** The lack of non-custodial options is due in part to the lack of geographic reach and institutional mechanisms and capacity of the Commissioner responsible.³⁷⁶ This is unfortunate, given the chronic problems of overcrowding in Serbian prisons.³⁷⁷ The Commissioner will also require more flexible staffing arrangements to ensure that within each court area it is able to service small urban centers and rural communities.

89. **Perceptions of leniency and unpredictability also drive up criminal appeals.** Appeals against sentencing are far more common than appeals against conviction. The RPPO instructs prosecutors to appeal against lenient sentences, which contributes to a relatively high rate of prosecution-initiated appeals. Meanwhile, lawyers report that they advise their clients to ‘throw the dice’ and appeal decisions ‘because you never know how the Appellate Court will respond’.

90. **Looking forward, prosecutors could play a more constructive role in recommending sentences to judges.** In advance justice systems, it is common for the prosecution service to compile information on sentencing practices and trends, which prosecutors then use to inform their sentencing recommendations. This is a ‘soft’ but often effective way to mold more consistent sentencing practice over time, and are often relied upon, formally and informally, by judges and other stakeholders. A simple method is to produce summary tables, which note the sentences that courts have imposed in certain types of cases in recent years, as well as key mitigating or aggravating circumstances of particular cases. Over time, such tables provide rich detail and trends, which nuance broad sentencing ranges. Sentencing tables can become useful tools for prosecutors in the process of considering sentences, and something that the RPPO could consider developing.

91. **More could also be done to promote alternative sentencing, including probation, community service work, home detention and psycho-social treatment.** As discussed above in the section on deferred prosecution, the rehabilitation and reintegration prospects of these types of sentencing arrangements are promising, and arrangements for deferred prosecution could be applied by analogy to alternative sentencing to improve the overall quality of sentencing by the Serbian judiciary. Further, among those who view community work is unattractive, its prospect may increase the enforcement of financial penalties. The passage of by-laws and regulations on these topics, accompanied with training, would assist the judiciary to use alternative sanctions more often.

92. **In Misdemeanor Courts in particular, alternative sanctions should be used far more commonly than they are to promote rehabilitation for minor offences.** Recent legislative amendments have introduced Misdemeanor Orders, though they have only been used for fines to date. It may be possible to apply this new instrument for broader types of sanctions to improve the appropriateness of sentencing in misdemeanor cases.

³⁷⁶ For further discussion on the need to strengthen the reach and capacity of the Commissioner, see the deferred prosecution section above.

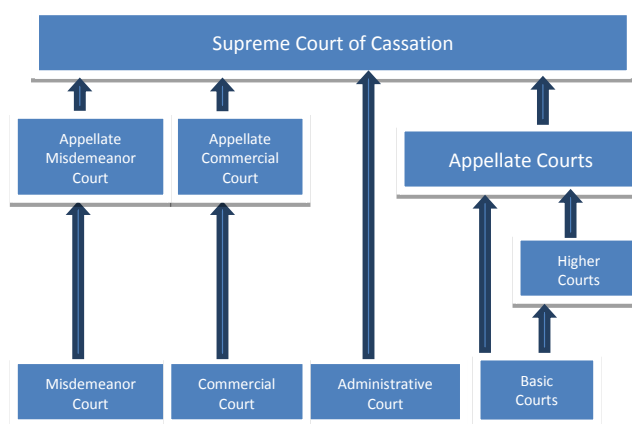
³⁷⁷ For discussion of pre-trial custody issues and overcrowding in prisons, see for example *Detention Procedure Assessment for Serbia: Pre-Disposition Stages*, American Bar Association, 2013.

f. Effectiveness of the Appeal System in Ensuring Quality of Decision-Making

93. Although appeals are an important mechanism for accountability and control,³⁷⁸ system-wide data on appeal and reversal rates can indicate poor quality in decision-making.³⁷⁹ Appeals also relate to efficiency, as appeals prolong the overall duration of a case and increase caseloads.³⁸⁰ In general terms, a steady and high-performing judiciary is likely to have low appeal rates and high rates of reversal of decisions gravitating around 50 percent,³⁸¹ and decisions to reverse comprise a combination of amended decisions and remanded decisions.

94. This section analyses available appeals data through three dimensions: appeals by court type and case type, and then appeals by location, corresponding to Indicator 2.5 of the Performance Framework. The section then analyzes the possible reasons that drive up appeals and options to improve the appeal environment.

95. Making assessments about appeals is a delicate area of performance measurement in Serbia. While this is an important indicator monitored for Chapter 23, it is also an area on which stakeholders expressed strong and varying views. Several stakeholders report that the biggest problem in Serbia's judiciary is its 'appeals problem'. Yet (or perhaps because of this), hard data within the system are difficult to track.



Title: Court System in Serbia

96. Appeals data are particularly fragmented within the system, and the issue of appeals highlights all the weaknesses of existing case management approaches, including inflation and duplication of case numbers, fragmentation and lack of electronic exchange between ICT systems and lack of coordination between courts. The Review team was required to undertake detailed and very time-consuming data processing and analysis in cooperation with several judges to develop this section, suggesting that such data are not routinely analyzed.³⁸² It is essential that the system improve data collection and analysis in this important field.

³⁷⁸ The appeals process is designed to build contestability into the system, and some contestability demonstrates that the system is working as intended.³⁷⁸ Further, for short 'surge' periods, high appeal rates may be common in periods of law reform, as new laws take time to become 'settled'. High reversal rates for short periods may even be a good sign, suggesting that appellate courts are 'cracking down' on lower instance courts to ensure greater uniformity in the law's application.

³⁷⁹ This section looks only at aggregate appeals figures, not individual appeals. On its own, the filing of an appeal does not indicate the quality of the particular decision – it indicates only that one party (or both) was sufficiently dissatisfied with the decision to pursue the action further.

³⁸⁰ Retrials and successive appeals prolong the duration to an even greater extent. Appeals can seriously affect efficiency when the system is prone to 'recycle' or 'ping-pong' cases. This has been a problem in Serbia in the past, but is improving due to recent procedural reforms that require appellate courts to substitute their own judgments on the second appeal. For further discussion of the impacts of appeals on efficiency, see the Efficiency Chapter.

³⁸¹ In that ideal scenario, only the 'hard cases' are appealed and, because they are 'hard cases', the likelihood that the higher court will reverse the decision is high. By contrast, consistently high appeal rates may suggest inconsistency and lack of uniformity in the application of the law, as well as broader user dissatisfaction with the quality of decisions delivered. High remand rates may suggest that lower instance courts are unsure how to decide cases involving new laws that they are routinely erring in their decision-making that the law is being applied inconsistently across the jurisdiction, or that courts of appeal are particularly stringent in their application of the law. Taken together, high appeal rates with low remand rates may suggest that litigants are using the courts as an instrument of abuse or delay.

³⁸² Some stakeholders even suggested to the Review Team that appeals data are 'purposefully' fragmented in order to hide the problems that exist in the Serbian judiciary.

i. Appeals by Court Type and Case Type

97. **As expected, the Higher Courts and Appellate Courts receive the most appeals, and some types of cases are more likely to be appealed than others.** The following analysis tracks appeals by court type, and then offers some views on reasons for the perceived ‘appeals problem’ in Serbia.

a. Appeals from Basic Court Decisions

98. **Precise data on lodged appeals from the Basic Courts to the Higher Courts and Appellate Courts are not available.**³⁸³ The Review team has carefully estimated the number of appeals lodged from Basic court decisions, which required significant data processing and consultations with relevant stakeholders.³⁸⁴

99. **Most appeals from the Basic Court go directly to the Appellate Court for review (big appellation), while some go to the Higher Court for review (small appellation).** It is estimated that appeals against Basic Court decisions comprise around 90 percent of the Appellate Court’s inflow.³⁸⁵

100. **Appeals against Basic Court decisions in civil litigious cases are high, with an appeal rate of around 22.84 percent.**³⁸⁶ Most of the appeals pertain to ‘P’ (civil litigation) and ‘P1’ (labor law disputes) case codes, where the appeal rate against merit decisions is estimated to be around 45 percent.

101. **Appeals rates against Basic Court decisions in criminal matters are also high at 23 percent.**³⁸⁷ Of appeal decisions made in 2013, around 66.42 percent were confirmed, 19.66 percent were remanded to the lower court, 12.05 percent were amended, and 1.85 percent were partially amended. Criminal cases for which the maximum penalty is 10 years appear to be more likely to be appealed, with an estimated appeal rate of 36 percent.³⁸⁸

102. **Appeals against civil non-litigious cases appear to be very low, with an appeal rate of around 1 percent.**³⁸⁹ This is due to fact that non-litigious cases do not involve a dispute between the parties, so

³⁸³ Various deficiencies were identified in the existing statistical reports formats in the AVP and the SCC databases. Further, current reports do not provide information on lodged appeals, but only on decided appeals, which do not necessarily equate to lower instance decisions made in the same reporting period. Additionally, appellate court statistics do not distinguish between cases received from Basic Courts and cases received from Higher Courts, nor do they use the same case typologies as the lower courts, or indicate whether resolved appeals relate to ‘merit’ decisions or ‘non-merit decisions’, which are subject to different avenues and rules for appeal. Both merit and non-merit decisions may be appealed in a range of ways. However, the Laws on Civil and Criminal Procedure do not distinguish between these decisions. Generally, merit decisions are decisions concerning the substance of the matter, whereas a decision reached ‘in the other way’ could be a procedural decision, such as the dismissal of the lawsuit in a civil proceeding due to death of the party. A decision reached ‘in the other way’ could also mean that the same case has already been adjudicated or settled.

³⁸⁴ For the purpose of calculating appeal-ratios and percentages, the Review team used the number of resolved appeals, which should be reasonably similar to number of lodged appeals, due to the fact that clearance rates in the higher-instance courts are approximately 100percent (i.e. the number of received and resolved cases are similar).

³⁸⁵ Based on interviews with judges and attorneys and by analyzing statistical data of the Appellate Court in Belgrade, as the largest one in the country, appeals from Basic Courts to Appellate Courts appear to make up roughly 90percent of Appellate courts’ inflow (GŽ, GŽ1 and GŽ2 case codes), while the remaining case inflow originates from Higher Courts. The calculated figures closely correspond with the number of resolved appeals and clearance rates in the Appellate Courts which are only slightly lower than 100percent (slightly higher in Nis and Novi Sad and slightly lower in Belgrade and Kragujevac). The number of Higher Court appeals received by the Appellate Courts was estimated both based on the number of High Court appeals cases resolved by the Appellate Courts (8,438) and as 10percent of Appellate Courts inflow (8,321). Comparing these figures confirms the 10%: 90percent ratio with a very small (1%) margin of error.

³⁸⁶ In 2013, there were 223,882 Basic Court civil litigious decisions and 51,140 resolved appeals in the Higher Courts and Appellate Courts, indicating an appeal rate of around 22.84percent for Basic Court’s civil litigious decisions.

³⁸⁷ In 2013, 117,565 criminal cases were decided and 26,973 appeals were resolved, which comprises 22.94percent of resolved cases.

³⁸⁸ Comprising ‘K’ case types. In 2013, 57,627 ‘K’ cases were decided and 20,876 appeals were resolved, resulting in an estimated appeal rate of 36.22percent of total resolved cases.

³⁸⁹ Of the 173,515 civil non-litigious cases, which were decided in 2013, only 1,204 appeals were resolved indicating an appeal rate of 0.69percent of resolved cases.

unfavorable decisions by the court are less likely to happen. Also, not all non-litigious decisions of the Basic Courts can be appealed, so the number is somewhat deflated.

103. **Appeals against enforcement decisions are also very low.**³⁹⁰ Out of this number, 69.56 percent were confirmed, 36.2 percent were remanded to the lower court, 2.5 percent were amended, and 0.7 percent were partially amended. An additional 28,733³⁹¹ decided cases should also be included in the analysis on enforcement appeals as this number represents cases in which a panel of three judges decides on objections on certain procedural decisions in enforcement proceedings.

Table 12: Basic Court Appeals in 2013: Internal, Higher, and Appellate Courts³⁹²

Basic Court Decisions		
Total Resolved Cases in Basic Court, 2013		1,146,239
Merits percent Merits	824,796	71.96%
Non-Merits percent Non-Merits	321,443	28.04%
Total Resolved Appeals to Basic Court Decisions in 2013		81,396
Confirmed percent Confirmed	54,617	67.10%
Remanded percent Remanded	16,117	19.80%
Amended percent Amended	6,806	8.36%
Partially amended percent Partially amended	3,856	4.74%
Resolved Civil Litigious Cases, Subject to Appeal		223,882
Resolved Appeals Related to Litigious Cases in 2013		51,140
Confirmed percent Confirmed	34,745	67.94%
Remanded percent Remanded	9,612	18.79%
Amended percent Amended	3,474	6.79%
Partially amended percent Partially amended	3,309	6.47%
Resolved Criminal Cases (Including Enforcement Decisions), Subject to Appeal		117,565
Resolved Appeals Related to Criminal Cases in 2013		26,973
Confirmed percent Confirmed	17,917	66.42%
Remanded percent Remanded	5,304	19.66%
Amended percent Amended	3,251	12.05%
Partially amended percent Partially amended	501	1.85%
Resolved Civil non-litigious Cases, Subject to Appeal		173,515
Resolved Appeals Related to Civil non-litigious Cases in 2013		2,043
Confirmed percent Confirmed	1,204	58.93%
Remanded percent Remanded	752	36.8%
Amended percent Amended	50	2.44%
Partially amended percent Partially amended	37	1.81%
Resolved Enforcement Cases, Subject to Appeal		495,958
Resolved Appeals Related to Enforcement Cases in 2013		1,240
Confirmed percent Confirmed	751	60.56%
Remanded percent Remanded	449	36.2%
Amended percent Amended	31	2.5%
Partially amended percent Partially amended	9	0.7%

³⁹⁰ In 2013, 495,958 enforcement cases were decided and 1,204 appeals were resolved by an internal panel of judges.

³⁹¹ Comprising 'lpvl', 'lpvlv' and 'lpvlvk' case types.

³⁹² Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

b. Appeals from Higher Court Decisions to the Appellate Court

104. **The appeal rate from Higher to Appellate Courts is relatively low and the remand rate is moderate.** In 2013, of the 44,381 civil and criminal related decisions made by the Higher Courts, an estimated 8,300 cases were appealed to the Appellate Courts³⁹³ representing around 8.8 percent of those decisions. Of the appeals decided in 2013, 66.07 percent were confirmed, 14.08 percent were remanded to the lower court, 8.04 percent were amended, and 4.17 percent were partially amended.

105. **Of the High Court decisions that are appealed, most relate to criminal matters.** Civil cases are estimated to comprise only around 15.5 percent of the caseload.³⁹⁴ Of civil appeals resolved in 2013, 57.58 percent appeals were confirmed, 23.33 percent were remanded to the lower court, 7.3 percent were amended, and 8.49 percent were partially amended. Certain criminal cases are much more likely to be appealed, particularly in the 'K' case category, where approximately 65.62 percent of decisions get appealed. Other criminal cases do not show such a high percentage of appealed decisions and are more similar to civil cases with an appeal rate of approximately 18.68 percent.³⁹⁵ Of appeals cases resolved, 67.48 percent were confirmed, 12.83 percent were remanded to the lower court, 8.41 percent were amended and 3.43 percent were partially amended.

106. **A large number of these appeals appear to lack merit. In civil litigation** cases, 57.58 percent of appeals are rejected, and in criminal cases 67.48 percent. This may suggest that appeals are being pursued for instrumental purposes, for example to prolong the enforcement of the decision (see below).

Table 13: Higher Court Appeals in 2013: Internal and Appellate Courts³⁹⁶

Higher Court Decisions		
Total Resolved Cases in Higher Court, 2013		119,962
Merits percent Merits	89,085	74.3%
Non-Merits percent Non-Merits	30,877	25.7%
Number of Appeals on Higher Court Decisions Resolved in 2013 by Appellate Courts		8,057
Confirmed percent Confirmed	5324	66.07%
Remanded percent Remanded	1193	14.8%
Amended percent Amended	648	8.04%
Partially amended percent Partially amended	336	4.17%
Resolved Litigious and Non-litigious Cases Subject to Appeal		7,566
Resolved Appeals Related to Litigious and Non-litigious Cases in 2013		1,177
Confirmed percent Confirmed	681	57.58%
Remanded percent Remanded	310	23.33%
Amended percent Amended	86	7.3%
Partially amended percent Partially amended	100	8.49%

³⁹³ Figures are estimated based on the assessment that the Appellate Courts' case inflow consists of approximately 10 percent of Higher Court decisions, as outlined above. This figure is roughly equivalent with the total of 8,057 appeals to Higher Court decisions that were decided by Appellate Courts in 2013.

³⁹⁴ Total number of decision in civil litigious and non-litigious cases, which were appealed to Appellate Court. Of the 7,566 cases resolved by the Appellate Court in 2013, only 1,177 were civil matters.

³⁹⁵ Total number of decision in criminal cases, which were appealed to Appellate Courts. Out of 36,815 cases decided in criminal matters in 2013, 6,880 appeals were resolved in Appellate Courts, which represent a 18.68 percent of decided cases.

³⁹⁶ Megadata Table, World Bank. (Available at: <http://www.mdtfiss.org.rs/en/serbia-judicial-functional-review>).

Resolved Criminal Cases Subject to Appeal	36,815	
Resolved Appeals Related to Criminal Cases in 2013	6,880³⁹⁷	
Confirmed percent Confirmed	4,643	67.48%
Remanded percent Remanded	883	12.83%
Amended percent Amended	562	8.41%
Partially amended percent Partially amended	236	3.43%

107. **Existing statistical reporting formats published by the Supreme Court of Cassation do not show the number of appeals lodged.** Instead, they show the number of decided appeals in the reporting period, and the outcomes of these decisions (confirmed, remanded, amended and partially amended). Furthermore, these statistics include decisions related to appeals lodged not only in the reporting period, but two or three years prior as well. Additionally, the Appellate Court statistics do not make distinctions between cases received from Basic Courts and cases received from Higher Courts.

c. Appeals of Commercial Court Decisions

108. **In the commercial jurisdiction, appeal rates are moderate and remand rates are also moderate.** In 2013, of the total of 99,975 Commercial Courts decisions made, 12,395 were appealed to the Appellate Commercial Courts, representing around 12.4 percent of the Commercial Court's decisions for that year.³⁹⁸ Of the 10,147 appeals decisions made by the Appellate Commercial Court in 2013, 74.1 percent were confirmed, 19.51 percent were remanded to the lower court, 5.76 percent were amended, and 0.66 percent were partially amended. Again, the low rate of amended and partially amended decisions is some cause for concern.

Table 14: Commercial Court Appeals in 2013 to Appellate Commercial Court³⁹⁹

Commercial Court Decisions		
Total Resolved Cases in Commercial Court, 2013	99,975	
No. Appealed to Appellate Commercial Court	12,395	
Appeal rate: Commercial Court to Appellate Commercial Court	12.4percent	
Appeals Resolved in Appellate Commercial Court in 2013	10,147	
Confirmed percent Confirmed	7,516	74.1%
Remanded percent Remanded	1,980	19.5%
Amended percent Amended	584	5.8%
Partially amended percent Partially amended	67	0.7%

d. Appeals of Administrative Court Decisions

109. **In the administrative jurisdiction, appeal and remand rates are low.** In 2013, 686 Administrative Court decisions were appealed to the SCC representing approximately 3.8 percent of all Administrative Court decisions for that year. Of the 180 administrative appeals decided by the SCC in 2013, 91.11 percent of the decisions were confirmed.⁴⁰⁰ This suggests that there is a higher level of uniformity and consistency in the administrative law field than in other fields in Serbia. It may also suggest that a large number of appeals are lodged without merit, for example by institutions with overly-zealous appeal policies.

³⁹⁷ Also including certain cases relating to corruption, organized crime, war crime and cybercrime.

³⁹⁸ In 2012, the appeal rate was lower, at 9.1%. This is because there was a dramatic fall in incoming cases and dispositions in the Commercial Courts, but about the same number of appeals in 2012 and 2013.

³⁹⁹ *Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).*

⁴⁰⁰ A further 1.67percent was amended and 7.22percent were remanded to the lower court.

Table 15: Administrative Court Appeals in 2013 to Supreme Court of Cassation⁴⁰¹

Administrative Court Decisions		
Total Resolved Cases in Administrative Court, 2013	18,132	
No. Appealed	686	
Appeal rate	3.8%	
Appeals Resolved in Supreme Court of Cassation in 2013	180	
Confirmed percent Confirmed	164	91.1%
Remanded percent Remanded	13	7.2%
Amended percent Amended	3	1.7%
Partially amended percent Partially amended	0	0.0%

e. Appeals of Misdemeanor Court Decisions

110. **In the misdemeanor jurisdiction, appeal rates are low and remand rates fairly high.** In 2013, 27,302 decisions of the Misdemeanor Court were appealed to the Appellate Misdemeanor Court, representing approximately 4.9 percent of all of the Misdemeanor Courts' decisions rendered for that year. At the Appellate Misdemeanor Court, 26,834 appeals were resolved.⁴⁰² Of them, 60.83 percent were confirmed, 9.66 percent were amended, 27.73 percent were remanded to the lower court, and 1.79 percent were partially amended. The percentage rates are roughly comparable to the 2012 data ⁴⁰³ (see Table 16 below).

111. **The appeals data are unsurprising, and likely reflect a balanced performance in the Misdemeanor and Appellate Misdemeanor Courts.**⁴⁰⁴ However, one surprising finding is the low amendment rate. In only approximately 10.5 percent of cases, the Appellate Misdemeanor Court replaced the first instance decision with its own. Misdemeanor cases should be relatively straightforward, so the Appellate Misdemeanor Court would be well placed to amend the decision and save the parties and the Misdemeanor Courts the necessity of a retrial. Reasons for this low amendment rate should be further explored, and options developed to equip the Appellate Misdemeanor Courts better to amend decisions.

Table 16: Misdemeanor Court Appeals in 2013 to Appellate Misdemeanor Court⁴⁰⁵

Misdemeanor Court Decisions		
Total Resolved Cases in Misdemeanor Court, 2013	562,612	
No. Appealed to Appellate Misdemeanor Court	27,302	
Appeal rate: Misdemeanor Court to Appellate Misdemeanor Court	4.9percent	
Appeals Resolved in Appellate Misdemeanor Court in 2013	26,834	
Confirmed percent Confirmed	16,323	60.8%
Remanded percent Remanded	7,440	27.7%
Amended percent Amended	2,592	9.7%
Partially amended percent Partially amended	479	1.8%

⁴⁰¹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁴⁰² Not all of the appeals decisions resolved in 2013 would have been filed in 2013. It is likely that these appeal decisions include a mix of cases dating from 2011, 2012 and 2013.

⁴⁰³ In 2012, the figures were higher, but not proportionately so, suggesting that the reason is due to the fall in incoming cases in the Misdemeanor Courts. In 2012, the Misdemeanor Courts decided 601,648 cases, of which 33,341 were appealed, representing a 5.5percent appeal rate. Of the appeal decisions rendered, around 27percent were remanded to the lower court.

⁴⁰⁴ Low appeal rates are likely because these cases are based largely on facts and evidence provided by the police, customs, various inspections, tax administration etc. People may decide to use the right to appeal only if they have material evidence to suggest that the facts or evidence were wrong, and thus they would have a reasonable success upon appeal. People may also be deterred from appealing because the time, effort and costs associated with appeal outweigh the penalty received at first instance, particularly given that many parties are self-represented before Misdemeanor Courts.

⁴⁰⁵ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

ii. Appeals by Location

112. **The Review analyzed variations in appeal rates across the various Basic and Higher Courts.** Significant variation in appeals data can indicate a lack of uniformity in the application of the law across the territory.

113. **Outcomes of appeal vary across the Basic Courts.** In the Novi Sad appellate region for example, Basic Court decisions are remanded back to the Basic Court in around 16.5 percent of appeals, whereas in Nis nearly 50 percent are more often remanded back to the court in around 22 percent of appeals. Within regions, appeals from Higher Courts vary. Basic Court decisions in Negotin are remanded back to the court in 12 percent of appeals, but down the road in Bor, they are remanded back to the court in 30.71 percent of appeals. Basic Court decisions in Cacak are remanded back to the court in 15.7 percent of appeals, whereas in Novi Pazar they are remanded back to the court in 28.5 percent of appeals. Basic Court decisions in Novi Sad are remanded back to the court in as few as 12.8 percent of appeals, whereas in Zrenjanin decisions are remanded back to the court twice as often, in 25.6 percent of appeals. In Table 17 below, the Basic Court with the highest percentage of remanded back to the court decisions is marked in red, while the court with the lowest number of appeal decisions is marked in green.

Table 17: Appeal Outcomes across the Basic Courts, 2013⁴⁰⁶

Table 27: Appeal Outcome across the Basic Courts, 2013							
BASIC COURT	Appeals resolved in 2013 ⁴⁰⁷	Confirmed	Remanded	Amended	Partially amended	Remand rate	Resgional remand rate
BELGRADE							
Belgrade First	13,162	9,144	2,815	892	311	21.39%	20.20%
Belgrade Second	3,331	2,629	463	156	83	13.90%	
Negotin	1,028	825	125	38	40	12.16%	
Pozarevac	2,027	1,277	481	173	96	23.73%	
Loznica	1,164	784	235	71	74	20.19%	
Sabac	1,437	955	247	135	100	17.19%	
Smederevo	1,055	614	259	96	86	24.55%	
Valjevo	2,535	1,657	517	159	202	20.39%	
Bor	521	308	160	47	6	30.71%	
Zajecar	1,439	992	294	113	40	20.43%	
KRAGUJEVAC							
Cacak	1,484	1,029	234	60	161	15.77%	21.46%
Jagodina	1,209	815	284	85	25	23.49%	
Paracin	1,230	803	320	81	26	26.02%	
Kragujevac	5,546	3,827	1,042	401	276	18.79%	
Kraljevo	1,902	1,096	514	182	110	27.02%	
Krusevac	1,943	1,114	452	228	149	23.26%	
Novi Pazar	1,244	720	355	143	26	28.54%	
Pozega	1,196	860	204	60	72	17.06%	
Prijepolje	325	220	79	14	12	24.31%	
Uzice	848	563	148	43	94	17.45%	

⁴⁰⁶ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁴⁰⁷ Total number of cases appeal decisions made in relation to the decisions of Basic Courts, including appeals against merits decisions and non-merits decisions, and including decisions made by both Higher Courts (small appellation) and Appellate Courts (large appellation).

NIS							22.06%
Kosovska Mitrovica	218	127	62	12	17	28.44%	
Leskovac	3,428	2,284	682	303	159	19.89%	
Nis	6,369	4,132	1,252	610	375	19.66%	
Pirot	843	556	155	95	37	18.39%	
Prokuplje	1,596	846	439	182	129	27.51%	
Vranje	3,642	2,145	960	426	111	26.36%	
NOVI SAD							16.55%
Novi Sad	8,008	6,205	1,026	749	28	12.81%	
Pancevo	1,829	1,110	339	159	221	18.53%	
Vrsac	788	431	168	77	112	21.32%	
Sombor	2,597	1,783	389	180	245	14.98%	
Sremska Mitrovica	2,083	1,291	390	331	71	18.72%	
Subotica	1,846	1,283	332	172	59	17.98%	
Kikinda	617	374	130	94	19	21.07%	
Zrenjanin	1,858	917	475	182	284	25.57%	

114. **Outcomes on appeal also vary across the Higher Courts.** Remand rates are fairly consistent across the appellate regions, ranging from 17.8 to 22.3 percent. However, appeals within regions vary more widely. Higher Court decisions in Smederevo are remanded back to the court in 12.7 percent of appeals, but in Negotin they are remanded back to the court in 21.31 percent of appeals. Higher Court decisions in Uzice are remanded back to the court in 14.9 percent of appeals, whereas in Cacak they are remanded back to the court nearly twice as often, in 27.2 percent of appeals. Higher Court decisions in Nis are remanded back to the court in as few as 16.4 percent of appeals, whereas in Vranje decisions are remanded back to the court nearly twice as often in 30.5 percent of appeals. Higher Court decisions in Novi Sad are remanded back to the court in as few as 14.7 percent of appeals, whereas down the road in Zrenjanin, decisions are remanded back to the court in 27.1 percent of appeals.

Table 18: Appeal Outcomes across Higher Courts, 2013⁴⁰⁸

HIGHER COURT	Appeals Resolved in 2013 ⁴⁰⁹	Confirmed	Remanded	Amended	Partially Amended	Remand rate	Regional Remand rate
BELGRADE							
Belgrade	1,561	940	294	173	154	18.83%	18.46%
Negotin	94	62	20	7	5	21.28%	
Pozarevac	126	94	23	7	2	18.25%	
Sabac	251	169	50	25	7	19.92%	
Smederevo	110	85	14	7	4	12.73%	
Valjevo	137	94	24	15	4	17.52%	
Zajecar	170	122	27	18	3	15.88%	

⁴⁰⁸ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁴⁰⁹ Total number of appellate decisions made in relation to the decisions of Higher Courts, including appeals against merits decisions and non-merits decisions.

Kragujevac							20.39%
Cacak	228	132	62	21	13	27.19%	
Jagodina	291	190	74	22	5	25.43%	
Kragujevac	361	235	72	44	10	19.94%	
Kraljevo	308	220	48	37	3	15.58%	
Krusevac	263	179	41	37	6	15.59%	
Novi Pazar	279	174	65	40	-	23.30%	
Uzice	168	131	25	8	4	14.88%	
NIS							22.31%
Kosovska Mitrovica	-	-	-	-	-	0.00%	
Leskovac	251	148	61	38	4	24.30%	
Nis	561	406	92	43	20	16.40%	
Pirot	117	72	35	8	2	29.91%	
Prokuplje	81	45	22	4	10	27.16%	
Vranje	187	102	57	23	5	30.48%	
Novi Sad							17.80%
Novi Sad	1,211	900	178	51	82	14.70%	
Pancevo	280	203	47	28	2	16.79%	
Sombor	256	173	53	21	9	20.70%	
Sremska Mitrovica	448	295	84	63	6	18.75%	
Subotica	378	252	79	38	9	20.90%	
Zrenjanin	321	222	74	23	2	23.05%	

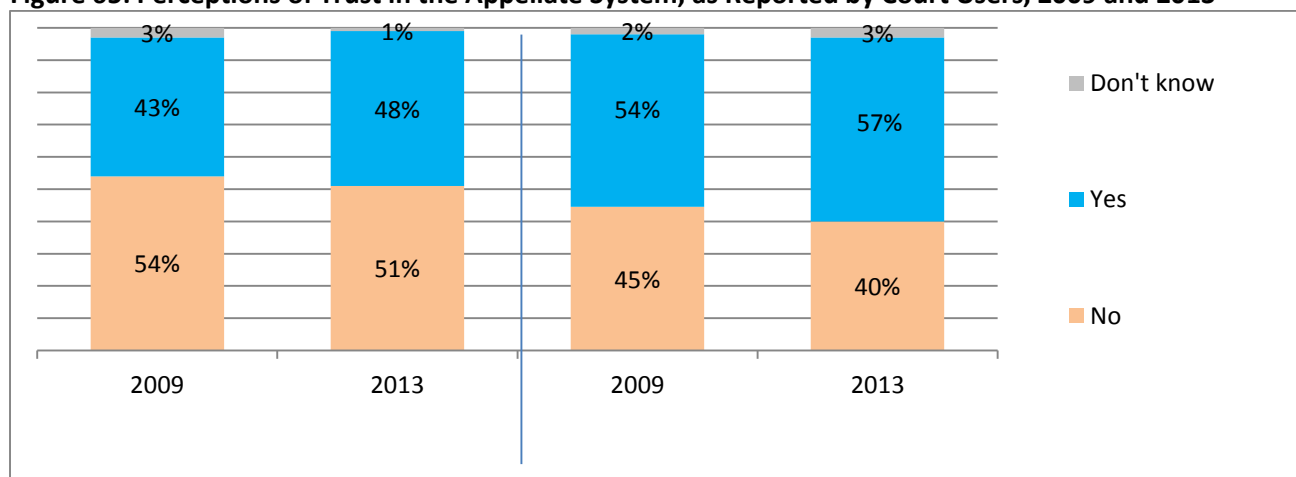
iii. User Perceptions of Appeals

115. **The Multi-Stakeholder Justice Survey provides some additional insights to the statistical data outlined above.**⁴¹⁰ According to survey data, around one-third of court proceedings with the public, in which first instance judgment was rendered between January 2011 and November 2013, were appealed.⁴¹¹ For the business community, 38 percent were appealed. In comparison with cases in which first instance judgment was rendered in the period starting January 2007 up to the end of 2009, the percentage of appeals involving the public decreased by 3 percent. By contrast, the percentage of appeals involving the business community increased by 5 percent.

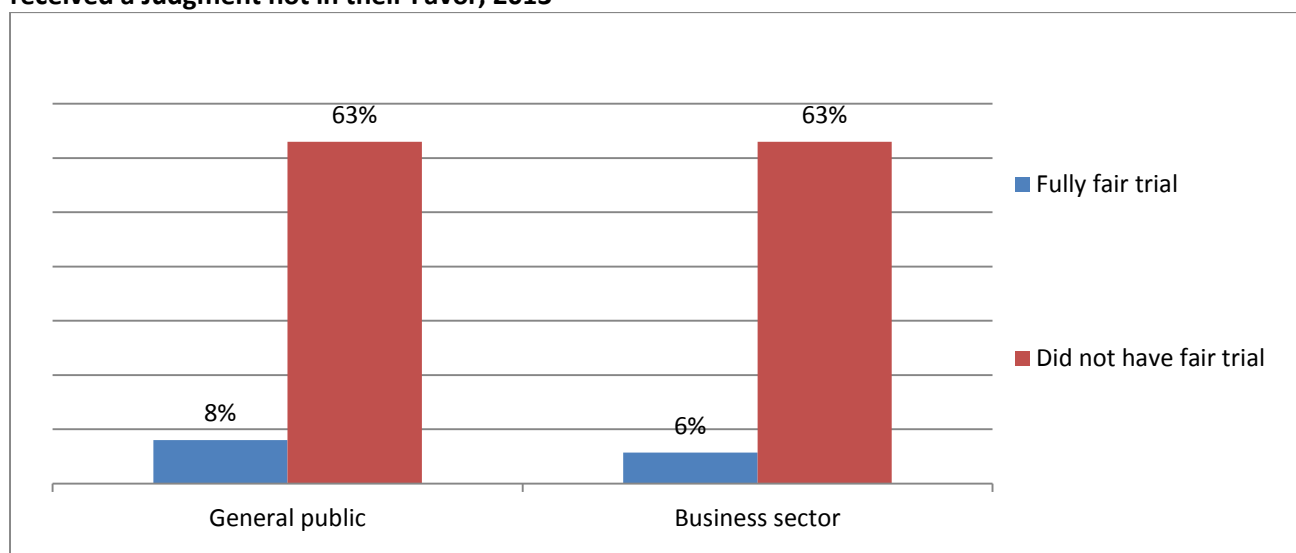
116. **Trust in the appellate system among court users is low.** In 2013, less than half (48 percent) of the public with recent experience in court cases stated that they trust the appellate system. Meanwhile, a slightly higher 57 percent of business sector representatives with court case experience stated that they trust the appellate system. What remains unclear from these perceptions is whether this lack of trust either encourages or discourages court users to lodge appeals.

⁴¹⁰ The Survey asked the public and business community about their views on appeals they experienced, regardless of court type or level.

⁴¹¹ Notably, court users in prisons were not surveyed, so no survey data were received from criminal defendants in prisons.

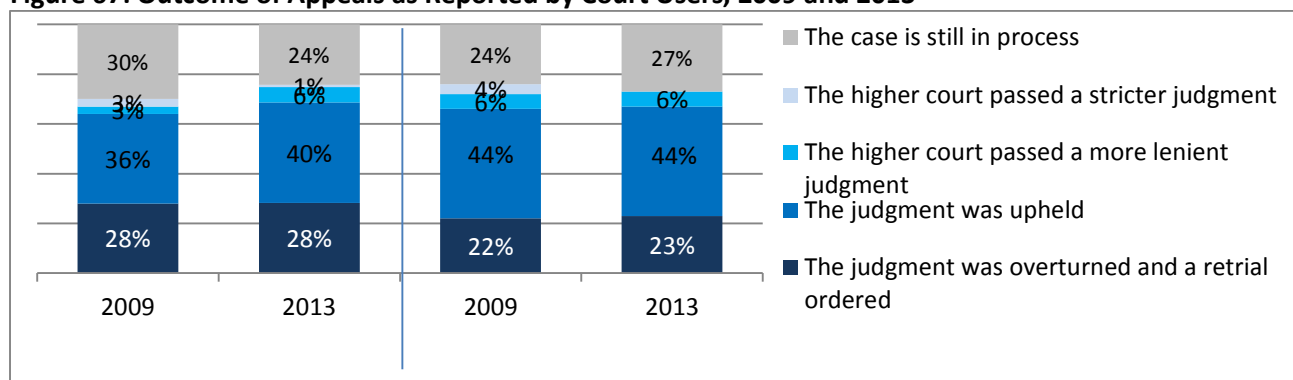
Figure 65: Perceptions of Trust in the Appellate System, as Reported by Court Users, 2009 and 2013⁴¹²

117. **The decision of a party to file an appeal related strongly to that party's perception of the fairness of the first-instance trial.** Court users who received a judgment that was not in their favor were on average 10 times more likely to file an appeal if they considered the decision to be not fully fair. In contrast, court users who received a judgment that was not in their favor but who considered the decision to be fair appealed in only 8 percent of cases for general court users and 6 percent of cases for business users.

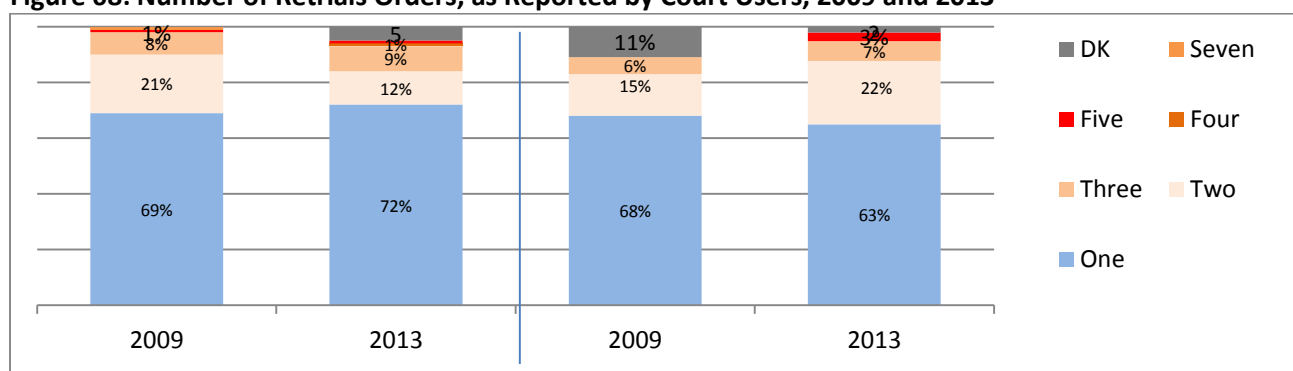
Figure 66: Relationship between Perceived Fairness and Decision to Lodge Appeal among Court Users who received a Judgment not in their Favor, 2013

118. **In most cases, court users reported that the second-instance court upheld the judgment.** However, in 28 percent of cases with the public the judgment was overturned and a retrial was ordered. In 22 percent of cases with the business sector the judgment was overturned and a retrial was ordered (Figure 67). In very few cases did the Appellate Court amend the lower court's decision.

⁴¹² Survey Question: *Do you trust the appellate system to deal appropriately with your case?* Population base: public and business sector with experience with court cases. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

Figure 67: Outcome of Appeals as Reported by Court Users, 2009 and 2013⁴¹³

119. **When a retrial is ordered, in most of the cases court users reported that a retrial occurs only once.** This was the case for over 70 percent of retried cases with the public, and over 60 percent of retried cases with business sector. However, a retrial was ordered twice in 12 percent of cases with the public and 22 percent of cases with business sector. Re-trials were ordered three or more times in around 10 percent of the cases, although it is not clear whether these are successive appeals on the same or different issues.

Figure 68: Number of Retrials Orders, as Reported by Court Users, 2009 and 2013⁴¹⁴

120. **Fortunately, recent procedural reforms limited the possibility of successive retrials.** Under new criminal and civil procedural laws, and after the second appeal, the appellate court is obliged to replace the lower court's judgment with its own. Over time, this should reduce the overall number of appeals in the system and limit this 'ping-pong' effect, which causes much frustration for practitioners and court users. As a result, the figures above are unlikely to be replicated in the future⁴¹⁵ (see Figure 68).

iv. Factors Explaining High Appeal Rates and High Variation in Appeals

121. **High appeal rates suggest a range of problems.** Overwhelmingly, the issue is likely to be perceived lack of uniformity in the law among, which encourages parties to appeal. However, there are additional factors.

122. **Some suggest that appeal rates are high because the court fees for lodging appeals are low, creating little disincentive for litigants to 'throw the dice' and lodge an appeal without merit.** However, the data do not strongly support this theory. A party's decision to lodge an appeal is likely also to consider

⁴¹³ Survey Question: *What was the decision of the higher court after the first appeal was submitted following the first instance court judgment?* Population base: public and business sector in whose case and appeal was filed either by the respondent or other party in the proceeding. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

⁴¹⁴ Survey Question: *How many times was a retrial of your case ordered?* Population base: public and business sector in whose case a retrial of the case was ordered higher court. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

⁴¹⁵ For further discussion of the efficiency of appeals and successive appeals, see the Efficiency Chapter.

lawyer's fees, which represent a large portion of the overall cost of legal action and are higher on appeal. Further, if it were true, one would expect to see higher appeal rates in misdemeanor cases and for criminal cases than civil cases because the fees for lodging criminal appeals are significantly lower.⁴¹⁶ The figures show that when criminal appeals are lodged, it is more likely to be at the request of the Prosecutor than the defendant, likely due to prosecutorial appeal policies.

123. Lawyers may play a hand in driving up appeal rates. In the Multi-Stakeholder Justice Survey, unrepresented litigants were far less likely to appeal their cases. Attorneys have a financial incentive to draw out their clients' case,⁴¹⁷ and can also advise on the likelihood of success on appeal and the tactical advantages of appeals, including delays in enforcement.⁴¹⁸ Ex-officio attorneys appointed by the state are reported to do so more than private attorneys, perhaps because their work goes largely unmonitored. Some parties (and their attorneys) may be pursuing frivolous or vexatious appeals for instrumental purposes (i.e. to harass the other party or to prolong the inevitable final judgment).⁴¹⁹

124. Some suggest that appeal rates are high because of cultural reasons, but again the data do not support this. Had there been a general Serbian cultural preference to use the court (and its appeal process) as an instrument of retribution, one would expect high appeal rates across all cases, including for example in misdemeanor cases.⁴²⁰

125. Looking forward, appeals in criminal cases will likely continue and may rise with the introduction of the new CPC. Stakeholders report confusion regarding the application of the law in adversarial proceedings, creating fertile ground for criminal appeals. Appeals against sentences, which are more common than appeals against conviction, will not abate without other mechanisms that provide greater consistency in sentencing.⁴²¹

126. Yet the low remand rate on appeal suggests that appeals do not often 'pay off' for the appellant. In civil litigious cases, the 67.9 percent of the 51,140 civil litigious second instance decisions made in 2013 by the Higher and Appellate were confirmed,⁴²² 18.8 percent were remanded to the lower court, 6.8 percent were amended, and 6.5 percent were partially amended.

127. Of particular concern across Serbia is the reluctance of appellate courts to replace the lower instance decision with their own. In only a small percentage of cases are higher instance courts amending the decisions of lower courts. One would expect in smaller cases that the appellate judges could, in the interests of justice and in compliance with the law, save the parties the trouble of re-litigating the matter back in the lower instance court. Doing so would also assist other judges and courts, and over time would increase uniformity in the law's application.

128. Several reasons may explain the reluctance of appellate judges to replace decisions with their own. One explanation is that appellate judges are highly driven by productivity norms, which require monthly clearance targets. This creates an incentive for judges to deal with their appeals cases quickly, and it

⁴¹⁶ For criminal cases, the range of fees for lodging an appeal varies between 590 to 980 RSD. In civil cases, the fee for lodging an appeal is significantly higher and varies with the value of the case from between 1,900 to a maximum cap of 97,500 RSD.

⁴¹⁷ Attorneys are compensated according to the prescribed Attorney Fee Schedule and receive from 16,500 RSD to 60,000 RSD for writing an objection to indictment or motion to reverse a decision on detention.

⁴¹⁸ In criminal cases, depending on the severity of the crime, lawyers may charge from 33,000 RSD up to 120,000 RSD for writing and lodging an appeal. In civil cases, writing an appeal in divorce cases costs 33,000 RSD. In other types of civil cases the costs are estimated at up to 90,000 RSD.

⁴¹⁹ This is consistent with the high appeal rate and low remand rate.

⁴²⁰ If the 'cultural hypothesis' was correct, one would expect lower remand rates across the board because litigants would be driven by animus to appeal without regard to case type or likely success.

⁴²¹ For discussion of the role of sentencing tables to nuance broad sentencing ranges, see the section above on quality in sentencing.

⁴²² Not all of the appeals decisions resolved in 2013 would have been filed in 2013. It is likely that these appeal decisions include a mix of cases dating from 2011, 2012 and 2013.

takes longer to amend the original decision than to send the case back for re-trial.⁴²³ Similarly, lower instance judges may prefer re-trials to amendments as they benefit in their productivity norms as well. Each returning 'recycled' case is treated as an 'incoming case', and judges are already familiar with the cases and can make a new decision relatively quickly by following directions given by the appeals judge.⁴²⁴ The decision is later counted again as a resolved case in the lower court.

129. Reasons for geographic variation are also likely to be due to lack of uniformity in the application of the law across the territory. While it is true that even neighboring courts of the same jurisdiction may have a different mixes of cases, and this can affect appeals in a given year, however, the more likely explanation is that similar cases are decided differently in different locations.⁴²⁵ Interviews with judges, prosecutors, attorneys and other stakeholders corroborated this view, and many examples and anecdotes were provided to the Review Team where like cases are treated differently around the country. For example, stakeholders highlighted a recent instance where three Misdemeanor Courts decided similar cases relating to public officials' failure to lodge asset declarations. The three courts each took a different approach, resulting in three different merits decisions.

130. This lack of uniformity manifests in several ways. First, there is variation in the quality of first instance decisions in particular courts, which can drive up appeals and remand rates from those locations as appellate courts rectify the work of particular lower courts. Second, variation in the quality of appeal decisions, where courts exercising appellate jurisdiction have greater or lesser capacity, or are more or less lenient in their decision-making. Variations in practice and approach to case management can also play a factor – judges in Novi Sad, for example, claim their more proactive approach to case management reduces the appeal rates and reversal rates of their cases, as files are dealt with expeditiously, leaving less room for error.

131. The argument that some places are simply 'bad' is not supported by the data. For example, Cacak's Basic Courts had the lowest remand rate in 2013 in the Kragujevac region but its Higher Court had the highest. Similarly Negotin's Basic Courts had the lowest remand rate in the Belgrade region but its Higher Court had the highest. In the Novi Sad region, the Novi Sad Basic and s both had the lowest remand rates in region, and the Zrenjanin Basic and Higher Court both had the highest remand rates in the region. It is also notable that the Belgrade Basic and Higher Court were well within the range, which goes against the anecdotes that Belgrade attorneys unnecessarily drive up appeals more often than attorneys in other places. Rather than resting on generalizations, the reasons for geographic variation are more likely to be nuanced. Interviews suggest that the reasons may well be related to the practices of individual courts at both first instance and appellate level, and the approach of individual Court Presidents to promoting high quality in case management and decision-making.

132. Looking forward, efforts to improve consistency and uniformity in the application of the law should be a top priority.

⁴²³ Some stakeholders also report that Appellate Court judges resolve such cases so quickly as to suggest a cursory application of the law, but this could not be verified.

⁴²⁴ Decisions to abolish a case and return it for re-trial include a written explanation/elaboration by the appellate judge of the reasons for abolishment, and instructions to rectify the error.

⁴²⁵ It's possible that an individual court could receive a high number of a particular type of case – either by chance or due to an incident occurring in that location – that is more prone to appeal.

v. Efforts to Enhance Uniformity in the Application of the Law

133. **Efforts are underway to improve uniformity, led by the SCC in its authority as the most authoritative court.** The SCC proposed Certification Commissions, whereby panels of judges and other experts will endorse particular decisions as contributions to jurisprudence. Some concern was voiced by stakeholders that this mechanism will be insufficient to guide jurisprudence and achieve consistency because the work of the Commissions is not binding. However, it is a good start, particularly if combined with other measures. The SCC is also hosting meetings of judges to discuss procedures and issues, so the uniformity of court practice is formalized.

134. **To complement these efforts, more meetings of judges and heads of department should occur to review recent cases and trends.** For example, some Appellate Misdemeanor Court judges hold weekly meetings to review recent cases, and they report that this practice is useful to keep abreast of legal developments. Appellate Courts are also beginning to host periodic meetings of the Basic Court Presidents and Heads of Department in their jurisdiction to discuss recent cases and reforms. These activities are low cost and can help to promote uniformity. Such efforts should be intensified and expanded.⁴²⁶

135. **Case Law and Preparatory Departments can also enhance consistency.** Larger Serbian courts also have what they call Case Law Departments, managed by a judge designated by the Court President, which follow and study recent domestic and international court cases, and inform judges, judicial assistants, and trainees about the results. While those subjects interviewed for this report indicated several courts do have active case law departments, the practice is not consistently applied and there has been little collaboration between the case law departments of various courts.

136. **In certain substantive topic areas, Bench Books may be valuable to guide court practice.** Given the recent overhaul of the new CPC, a criminal procedure Bench Book for criminal trials may improve consistency of practice and reduce the number of criminal appeals. Bench Books could be prepared by a committee of relevant stakeholders and form the basis of ongoing training.

137. **Other simple advancements would enhance consistency and gradually normalize the appeals system.** These include: standardized judgment writing; the use of forms, checklists and templates; greater access to information about laws, procedures and cases, as well as legal research tools; public outreach and proactive rollout of new laws; and intensified continuing training for judges. These basic measures should be prioritized. See Recommendations and Next Steps. Should they be monitored over time and found insufficient, further consideration could be given to more structural reforms to unify the application of law.

g. Integrity in Justice Service Delivery

138. **Integrity and perceptions of it link directly to the quality of decision-making by courts.** This section outlines indicators and European benchmarks which correspond to Indicator 2.6 of the Performance Framework.

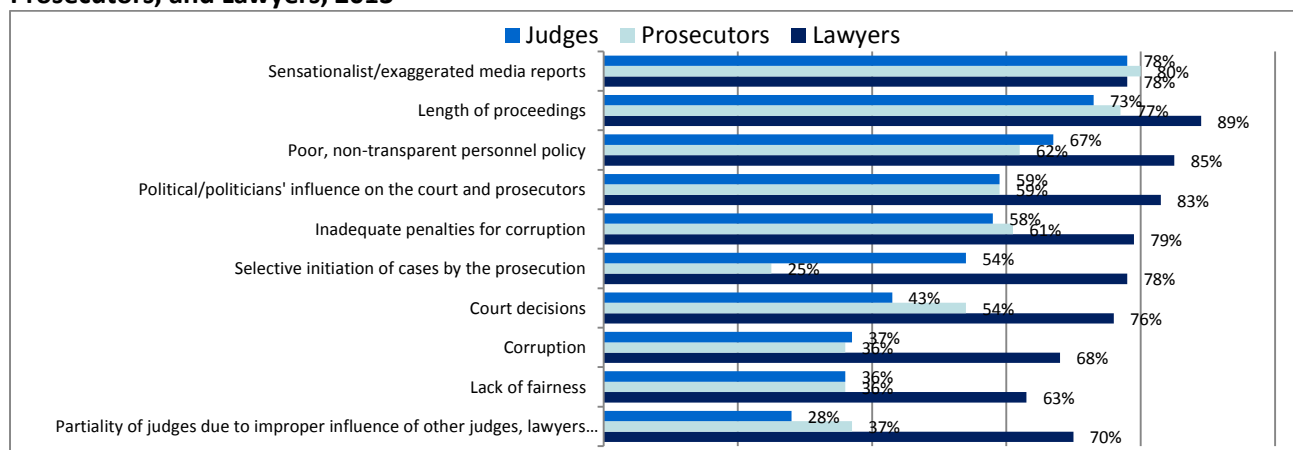
i. Perceptions of Integrity and Reasons for Lack of Integrity

139. **Stakeholders commonly report that the judicial system lacks integrity in the delivery of justice services, though the term may mean different things to different individuals.** For judges, prosecutors, and lawyers, several factors undermined integrity. A striking 89 percent of lawyers, 73 percent of judges, and 77 percent of prosecutors report integrity was primarily undermined by the length of proceedings. However, more than 50 percent of judges and prosecutors also report that poor and non-transparent personnel policy,

⁴²⁶ For the need to conduct intensive continuing training, see the Human Resources Chapter, and for the value of colloquia among judges, see the Governance and Management Chapter.

political influence, and inadequate penalties for corruption undermine the integrity of the judicial system. In comparison to judges and prosecutors, a considerably higher percentage of lawyers believe all the listed factors undermine the integrity of judiciary.⁴²⁷

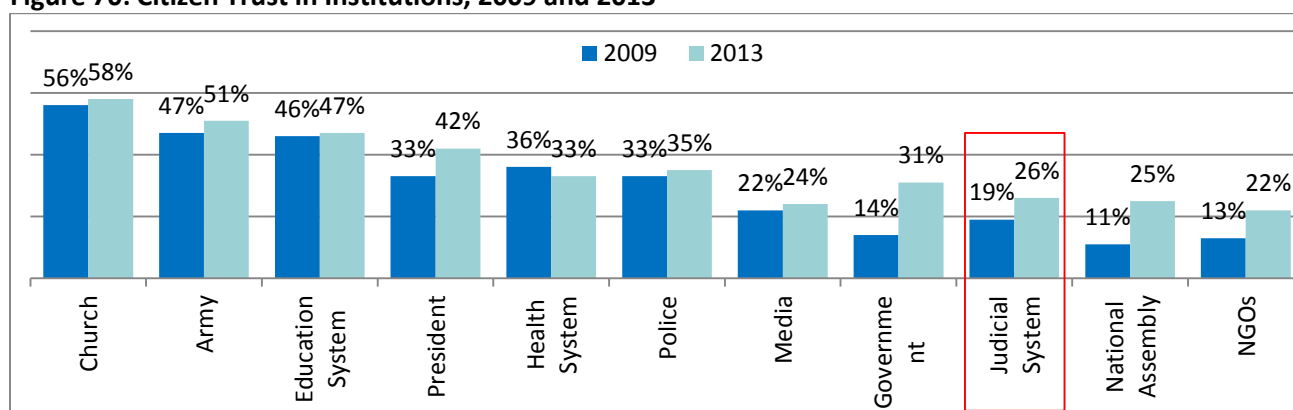
Figure 69: Perceptions of Factors that Undermine the Integrity of the Judicial System among Judges, Prosecutors, and Lawyers, 2013⁴²⁸



ii. Perception of Trust and Confidence

140. **The judicial system is one of the least trusted institutions in Serbia.** According to the Multi-Stakeholder Justice Survey, only 26 percent of the citizens trust the judicial system (see Figure 70).⁴²⁹ On a positive note, perceptions of trust have improved, and this increased trust was observed in other state institutions as well, with the exception of health system. Trust increased more among court users than the public, suggesting that experience in using the court system can build trust (see Figure 71).

Figure 70: Citizen Trust in Institutions, 2009 and 2013⁴³⁰

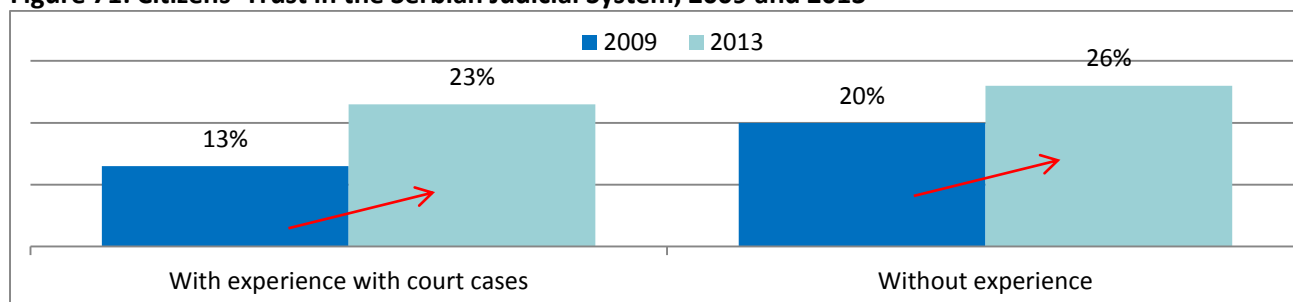


⁴²⁷ Similar views are conveyed in a recent UNDP survey. See Impressum, *Judicial Reform through the interaction of Citizens and States (Judicial Studies Series Volume II)*, UNDP Survey, 2013.

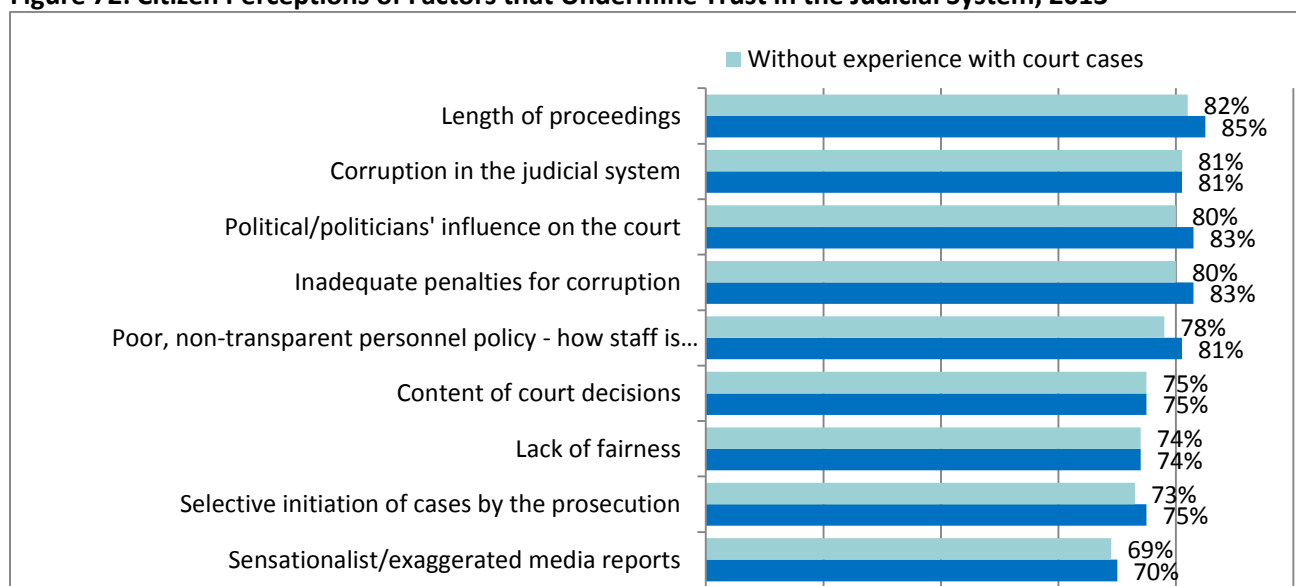
⁴²⁸ Survey Question: *To what extent did the following factors undermine the integrity of the judicial system in the last 12 months? Scale of 1 to 4, 1= 'not at all', 2 'mostly no', 3='to an extent', 4 = 'to great extent'.* Population base: legal professionals total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

⁴²⁹ Similarly in the Argus Survey 2014, 70 percent of the general public reported that they do not trust the courts and 71 percent reported that they do not trust the prosecution service. See Argus Survey, 2014.

⁴³⁰ Survey Question: *Rate the degree in which you trust the following sectors and institutions in the last 12 months? Scale from 1 to 5, 1 = 'not at all' and 5 = 'fully'.* Population base: public total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

Figure 71: Citizens' Trust in the Serbian Judicial System, 2009 and 2013⁴³¹

141. **A variety of factors undermine citizen trust in the judicial system.** Over 80 percent of respondents selected length of proceedings, corruption, political influence, inadequate penalties for corruption, and poor and non-transparent personnel policy as causes for their lack of trust in the judicial system. Over 70 percent also named content of court decisions, lack of fairness, and the selective initiation of cases (see Figure 72). Several – though not all – of these factors are within the judiciary's control and align with the goals of the NJRS, suggesting that continued efforts to improve performance in line with Chapter 23 standards should improve trust and confidence over the medium to longer term.

Figure 72: Citizen Perceptions of Factors that Undermine Trust in the Judicial System, 2013⁴³²

⁴³¹ Survey Question: *Rate the degree in which you trust the following sectors and institutions in the last 12 months? Scale from 1 to 5, 1 = 'not at all' and 5 = 'fully'.* Population base: public total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

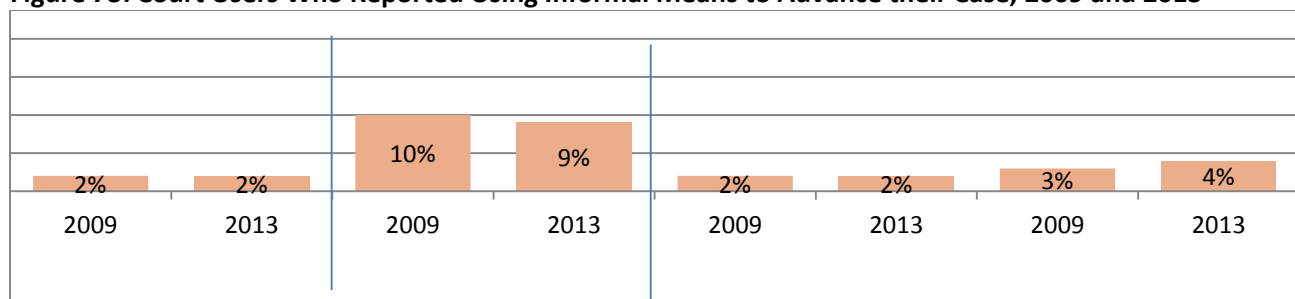
⁴³² Survey Question: *To what extent did the following factors undermine the trust of the citizens in the judicial system in the last 12 months? Scale from 1 to 5, 1 = 'not at all', 2 = 'mostly not', 3 = 'to an extent', 4 = 'to a great extent'.* Population base: public total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

iii. Extent of Reported Corruption and Use of Informal Means

142. **Court users admit that they engage in corruption and other informal means to advance their cases in the Serbian judiciary.** The data below are likely to vastly under-represent the extent of corruption,⁴³³ but nonetheless provides some insights into corruption occurring within the justice system.

143. **In the Multi-Stakeholder Justice Survey, 9 percent of court users in misdemeanor cases reported using informal means to advance their case.** In civil cases, 4 percent reported corrupt behavior and in criminal cases, 2 percent reported corrupt behavior.

Figure 73: Court Users Who Reported Using Informal Means to Advance their Case, 2009 and 2013⁴³⁴



144. **According to the 2013 ACA Court User Survey, around 10 percent of court users reported that a bribe was solicited from them.**⁴³⁵ Among those, 90 percent said the request was made indirectly, for example by staff who were unnecessarily stalling a process or indirectly pointing out that procedures may be hastened through the payment of money, while the remaining 10 percent were asked openly to pay a bribe. Court users report reacting differently when bribes were expected. On average, 33 percent of respondents who found themselves in such a situation reported that they 'had given what was requested', while 66 percent ignored the request, or at least reported so.

145. **Bribery of court staff appears to be more common than bribery of judges.** Among those who reported paying a bribe to someone in court, 66 percent of respondents paid it to the court administration, while 17 percent paid it to a judge and 17 percent paid it somebody else (lawyer, expert witness, bailiff etc.). Again, it is not known whether the 'somebody else' is the ultimate recipient or an intermediary. Several stakeholders reported that lawyers and court staff solicit money purportedly for bribes which they do not pass on.

146. **The ACA findings are broadly similar to the findings of the UNDP's Corruption Benchmarking in Serbia Survey.**⁴³⁶ In their December 2012 report, 5 percent of respondents reported giving a bribe to a judge

⁴³³ For example, in the *Social Assessment Survey for Serbia*, commissioned by the World Bank, only 11 percent of respondents reported that they paid informally for health services, while 88 percent stated that informal payments are occasionally, often, or very often present in the health system. For more on socially desirable answering in surveys, see example Roger Tourangeau, Lance J. Rips, and Kenneth Rasinski. 2000. *The Psychology of Survey Response*. Cambridge University Press. Whilst under-stated, the data reported for the Functional Review are closer to representing a sense of the picture than police statistics, which capture only those instances that are reported to authorities and are negligible, or prosecutions and convictions for corruption cases, which are even rarer. For an analysis of corruption case processing, see *Corruption Policy in Serbia*, from Black Box to Transparent Policy Making, by Petrus Van Duyne, 2012.

⁴³⁴ Survey Question: *Did you ever find yourself in circumstances in which you resorted to informal means – made an additional payment, offered a gift, pulled strings... – to have your case adjudicated more efficiently.* Population base: public and business sector with experience with court cases. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

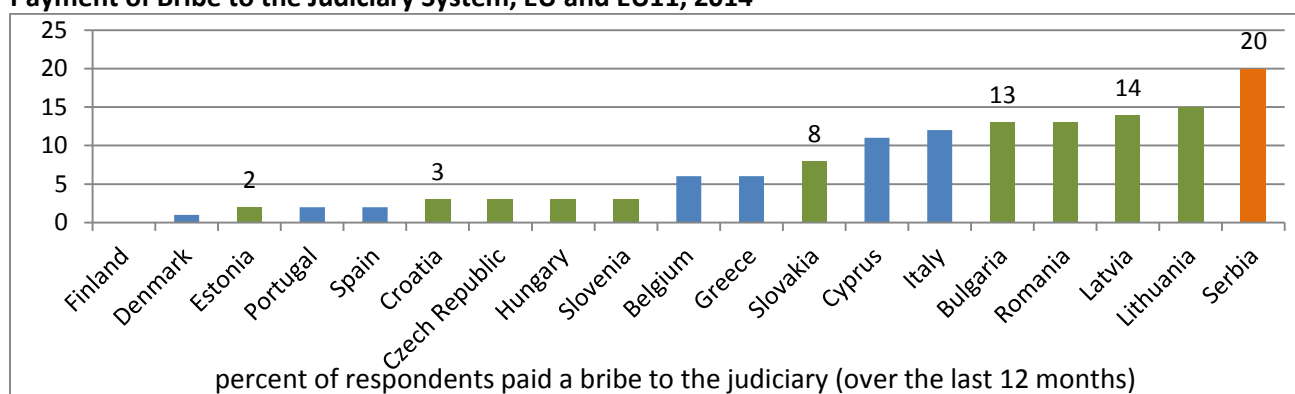
⁴³⁵ See *Integrity Plan Verification from the Perspective of Court Service User Survey*, Anti-Corruption Agency, 2013 (2013 ACA Court User Survey).

⁴³⁶ See *Attitudes of Serbian Citizens towards Corruption*, Eighth Research Cycle, question no. 5, posted at <http://www.rs.undp.org/content/serbia/en/home/presscenter/articles/2014/02/12/presentation-of-the-eighth-corruption-benchmarking-survey-in-serbia/>.

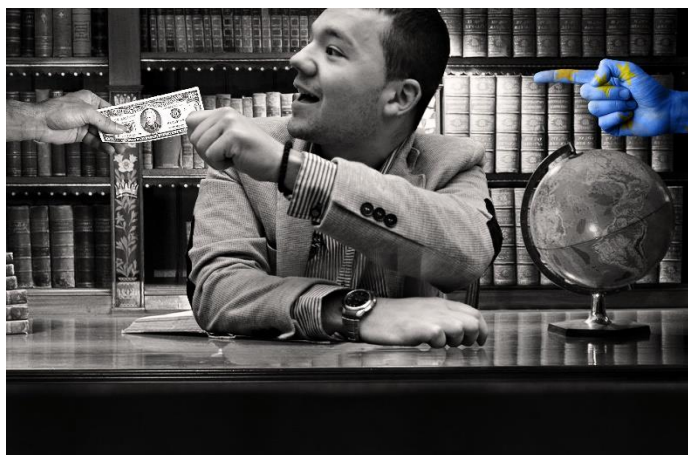
in the last three months, but this decreased to 1 percent in June 2013 and 0 by December 2013.⁴³⁷ However, bribery to public administrative clerks was much more pervasive.⁴³⁸ In December 2012, 9 percent of respondents reported giving a bribe to a public administration clerk, and this rose to 14 percent in June 2013 and 19 percent in December 2013.

147. **Comparing these various reports in Serbia against the experience in the region, Serbia appears to have an issue with corruption in the court system.** In the Transparency International Global Corruption Barometer 2013, 20 percent of respondents reported that they paid a bribe to the Serbian judiciary, without specifying the value of the bribe or to whom or it was handed. This is a worse outcome than the EU11 States.

Figure 74: Transparency International Global Corruption Barometer, Percentage of Respondents reporting Payment of Bribe to the Judiciary System, EU and EU11, 2014⁴³⁹



148. **In addition to basic bribery, other informal means are reportedly used.** In the 2013 ACA Survey, 19 percent of all court users surveyed reported that they had tried to affect some procedure in court through informal channels, such as ‘pulling strings’ with court staff. 10 percent of court users admitted trying to affect content of court decision. The remaining 9 percent reported trying to influence the proceedings in some way.



Title: Mito, submitted by an entrant to the Justice Competition, World Bank MDTF-JSS, 2014.

149. **Gift giving is also reported to be a common practice.** In addition to reports of bribery, the ACA Court User Survey found that an additional 22 percent of service users said that they had given gifts of their own accord at least once. Gifts were reported to be given usually after ‘the job was done’, as a token of gratitude for the ‘favor’.⁴⁴⁰

150. **Attempts to unduly influence the judiciary come from a range of sources and via a range of means.**

⁴³⁷ Similarly, 5 percent of respondents reported giving a bribe to a prosecutor, but this decreased to 0 in June and December 2013. 3 percent of respondents reported giving a bribe to a lawyer, but this decreased to 1 percent in June 2013 and 0 in December 2013. The period is too short to discern any longer-term trends of bribery in the judiciary.

⁴³⁸ These figures refer to administrative clerks across all of Serbian institutions, not just those in courts. However, they provide some indication of the prevalence of corruption at clerk desks, and the perceived relationship between clerks and users of government services in Serbia.

⁴³⁹ *Transparency International Global Corruption Barometer 2013* measures the direct experiences of bribery and details views on corruption in the main institutions across 107 countries via a survey of more than 114,000 respondents.

⁴⁴⁰ For further discussion of rules on gift giving, see the Governance and Management Chapter.

In the Multi-Stakeholder Justice Survey, judges and prosecutors were asked about situations in which an individual tried to resort to informal means to affect their work,⁴⁴¹ although the same questions were not posed to court staff and lawyers to enable a comparison.

151. **In 2013, the most common sources identified by judges were employees of the court, lawyers, and politicians.** The experience was similar for prosecutors who reported that the most common sources of undue influence were lawyers, politicians, and other employees. It is unclear whether the reference to ‘other employees’ and ‘lawyers’ suggests that these actors seek to influence judges on their own initiative, or act as intermediaries.

Figure 75: Share of judges who report the following sources as having attempted to resort to undue means to affect their work, 2013⁴⁴²

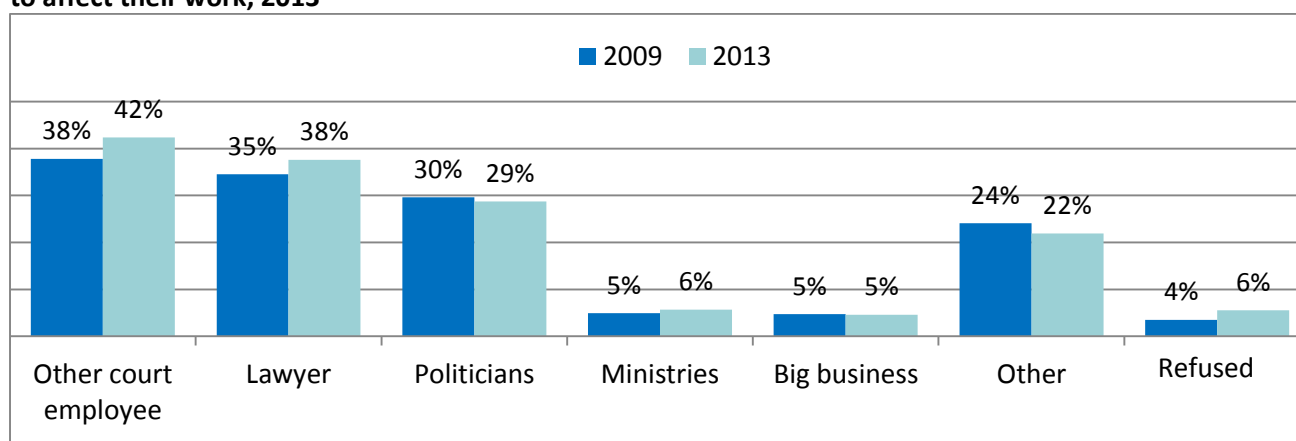
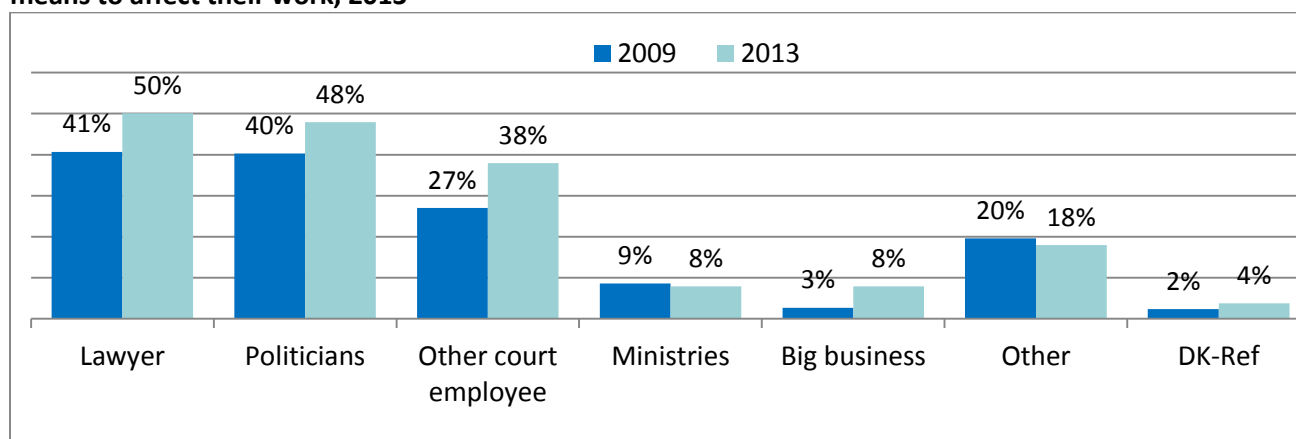


Figure 76: Share of prosecutors who report the following sources as having attempted to resort to undue means to affect their work, 2013⁴⁴³



152. **In interviews, several stakeholders also noted the prevalence of self-censorship in decision-making among judges and prosecutors.** By its nature, self-censorship is not induced by a specific exertion of executive power but is exercised on the discretion of a judge and prosecutor in an environment where

⁴⁴¹ Data received from judges and prosecutors are thought to be underreported and somewhat imprecise, given the sensitivities in obtaining the information. As a result, the ‘other’ category includes a range of sources. The same questions were not posed to court staff and lawyers, so a comparison cannot be made between groups.

⁴⁴² Survey Question: Multiple choice; *who tried to resort to informal means in order to affect your work?* Population base: Judges who claimed to find themselves in a situation in which someone tried to resort to informal means to affect their work. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

⁴⁴³ Survey Question: Multiple choice; *who tried to resort to informal means in order to affect your work?* Population base: Prosecutors who claimed to find themselves in a situation in which someone tried to resort to informal means to affect their work. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

judicial independence is not fully realized. The Functional Review was unable to measure the extent of such self-censorship.

153. In relation to the means put forward to affect the judge's work, the most commonly identified were 'other', political influence, and threats. For prosecutors, the means were political influence, threats and 'other'. 9 percent of judges and 10 percent of prosecutors reported offers of gifts, and 8 percent of reporting judges and 6 percent of prosecutors reported pecuniary compensation.

Figure 77: Share of judges who report the following means were offered to affect their work, 2013⁴⁴⁴

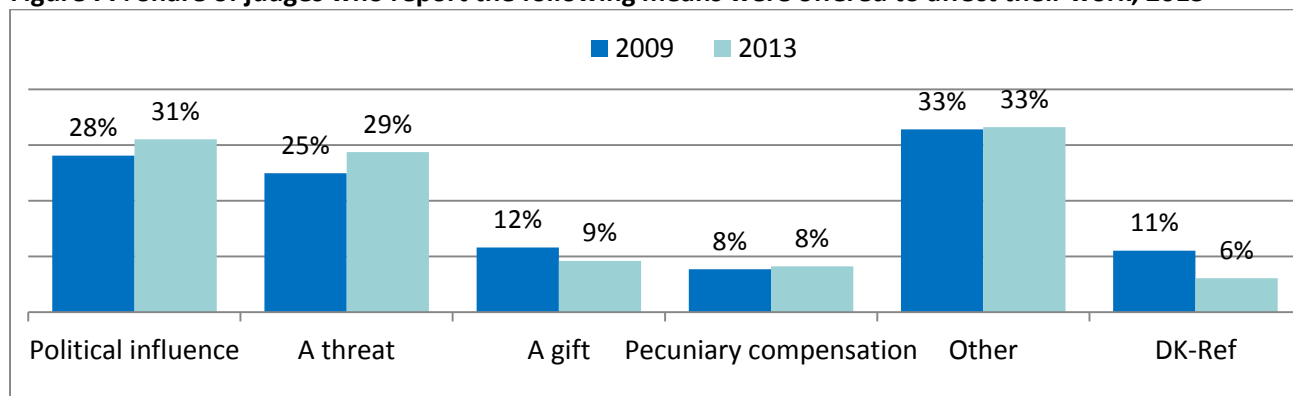
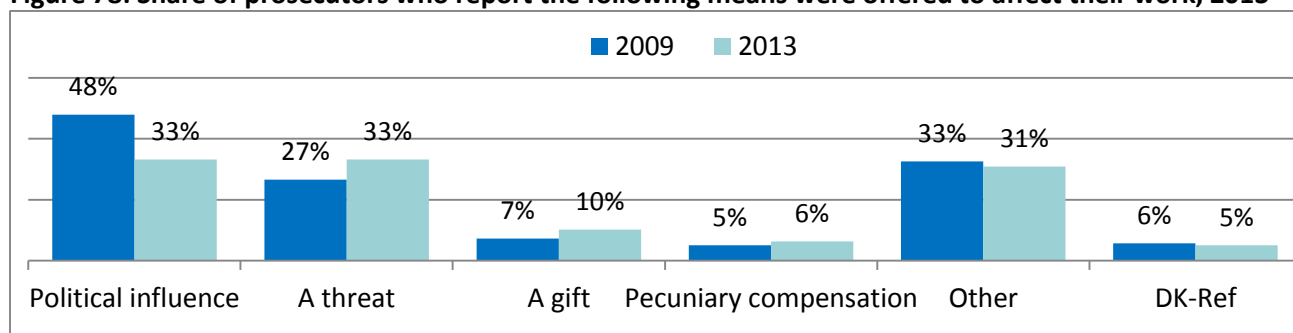


Figure 78: Share of prosecutors who report the following means were offered to affect their work, 2013⁴⁴⁵



154. Though a limited sample, the survey may suggest that attempts to influence judges and prosecutors are more sophisticated, while simple bribery may be more common among court staff. The ACA and the Ombudsman's Office expressed a similar view.

155. Looking forward, recent across-the-board cuts to the nominal salaries of state employees may increase the prevalence of corruption in courts. In particular, spikes in petty corruption may be expected, as lower-paid court staff may seek informal means to recoup lost wages.

iv. Perceptions of Corruption

156. There remains a perception of widespread corruption within the Serbian judiciary. 51 percent of the citizens, 41 percent of judges and 52 percent of prosecutors report that corruption is present in the

⁴⁴⁴ Survey Question: Multiple choice; *what was the means?* Population base: judges who claimed to find themselves in a situation in which someone tried to resort to informal means to affect their work. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

⁴⁴⁵ Survey Question: Multiple choice; *What was the means?* Population base: prosecutors who claimed to find themselves in a situation in which someone tried to resort to informal means to affect their work. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

judiciary⁴⁴⁶ (see Figure 79). Businesses also report that corruption creates an obstacle to their operations.

157. **However, perceptions of corruption are improving.** In 2013, the percentage of those who reported that corruption is present in judicial system decreased across all groups. However, a substantially greater decrease was reported among judges and prosecutors than among lawyers and court users.⁴⁴⁷ As a result, views among stakeholders about the extent of corruption became divergent, as Figure 80 and Figure 81 below show.⁴⁴⁸

Figure 79: Perception of Corruption in the Judiciary among Judges, Prosecutors and Lawyers, 2009 and 2013⁴⁴⁹

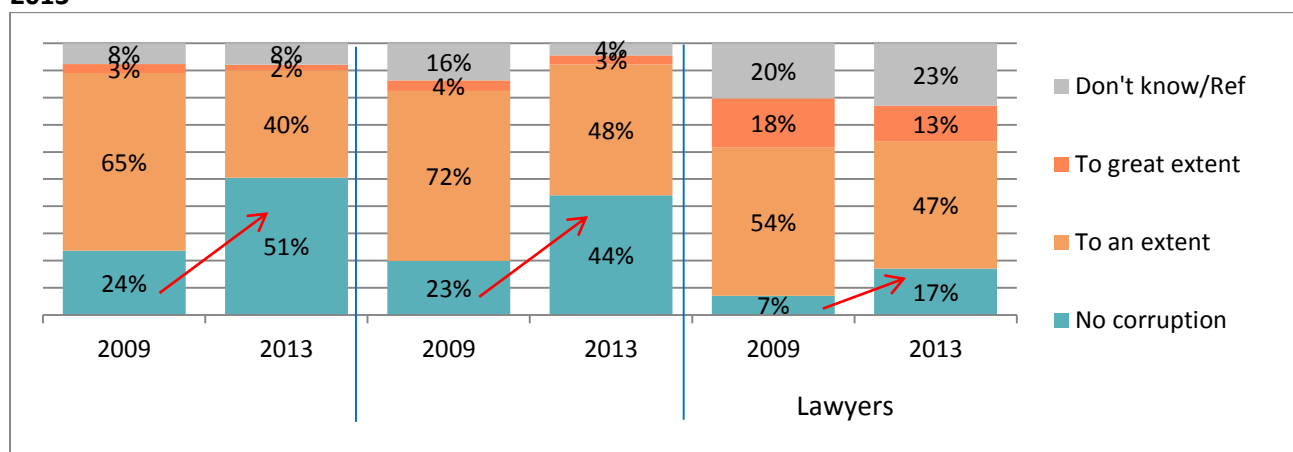
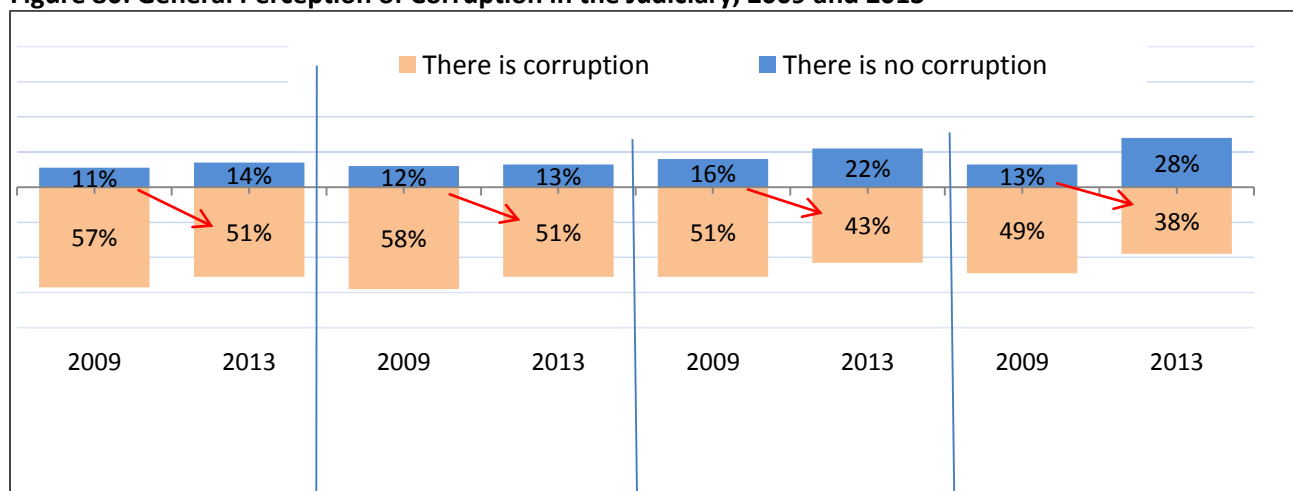


Figure 80: General Perception of Corruption in the Judiciary, 2009 and 2013⁴⁵⁰



⁴⁴⁶ However, there is a significant discrepancy regarding the perceived degree of its presence. While the majority of the citizens report that corruption is present to a considerable degree, only 3 percent of judges and 2 percent of prosecutors concede that it is considerable. The lawyers' perceptions are somewhat closer to those of court users.

⁴⁴⁷ Similarly, the percentage of respondents who reported that corruption undermined the integrity of the judiciary also decreased since 2009 by 14 percent among prosecutors, by 9 percent among judges, and by 7 percent among lawyers.

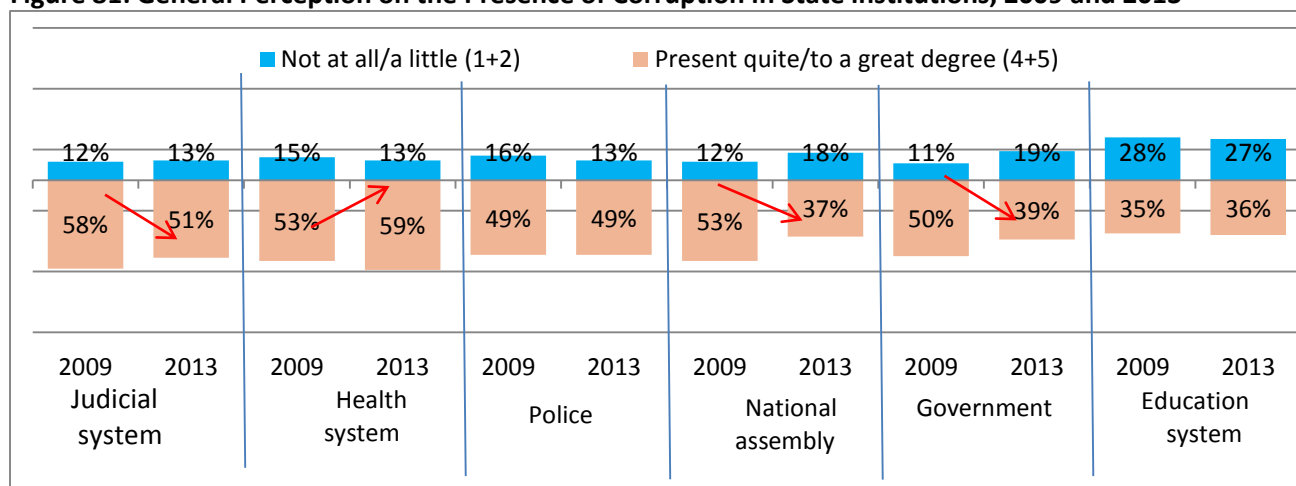
⁴⁴⁸ Meanwhile, 27 percent of citizens and 22 percent of business representatives reported that corruption is present to a great extent.

⁴⁴⁹ Survey Question: *Was there corruption in the judicial system in the last 12 months?* Scale: 1 = *There was no corruption*, 2=*To an extent*, 3=*To great extent*. Population base: legal professionals total target group. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

⁴⁵⁰ Survey Question: *In your opinion, how present is corruption in judicial system?* Scale from 1 to 5, 1 = *'not at all'* and 5 = *'to a great degree'*; 1 and 2=*there is no corruption*, 4 and 5 *there is corruption*. Population base: public and business sector total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

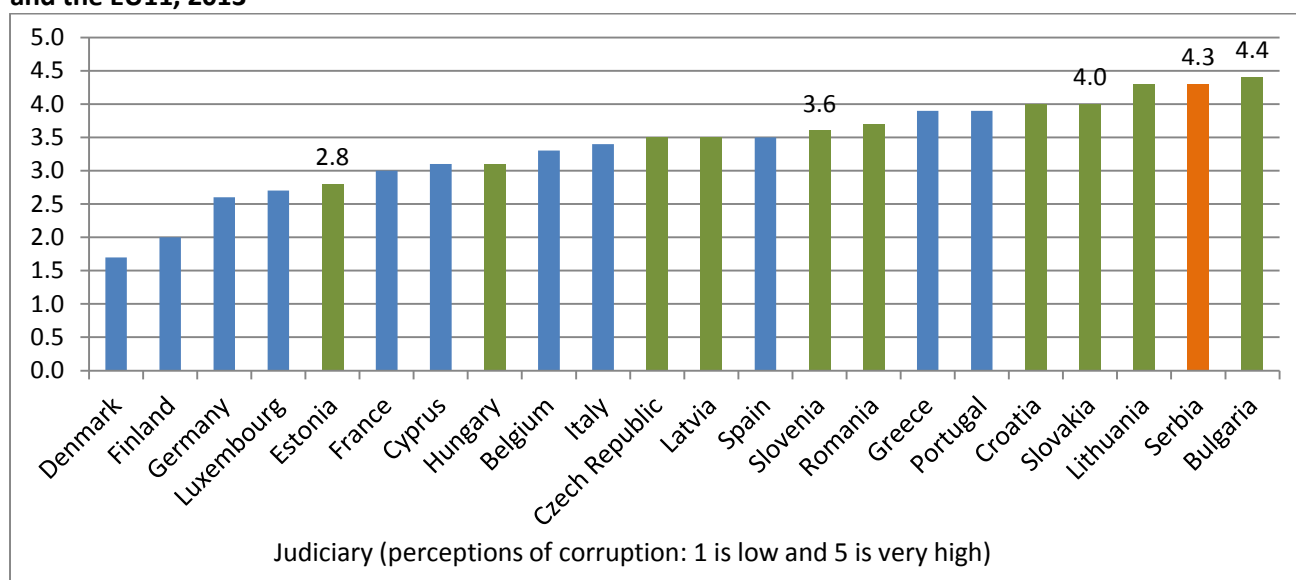
158. For citizens, the judiciary is second only to the health system as the institution most affected by corruption⁴⁵¹ (see Figure 81). These are the only two institutions where the majority of citizens report that corruption is present to a considerable degree.

Figure 81: General Perception on the Presence of Corruption in State institutions, 2009 and 2013⁴⁵²



159. In comparison with the EU, EU11, and its neighboring countries, Serbia appears to have a problem with corruption. According to the Transparency International's Global Corruption Barometer 2013, Serbia ranks 72nd out of 175 countries. In comparison to the EU11, Serbia has the second highest rate of perceived corruption, second only to Bulgaria and on par with Lithuania (see Figure 82). Serbia's judiciary also ranks the worst in comparison to neighboring countries in the region, including both EU and non-EU members.

Figure 82: Transparency International Global Corruption Barometer, Perceptions of Corruption in Serbia and the EU11, 2013⁴⁵³

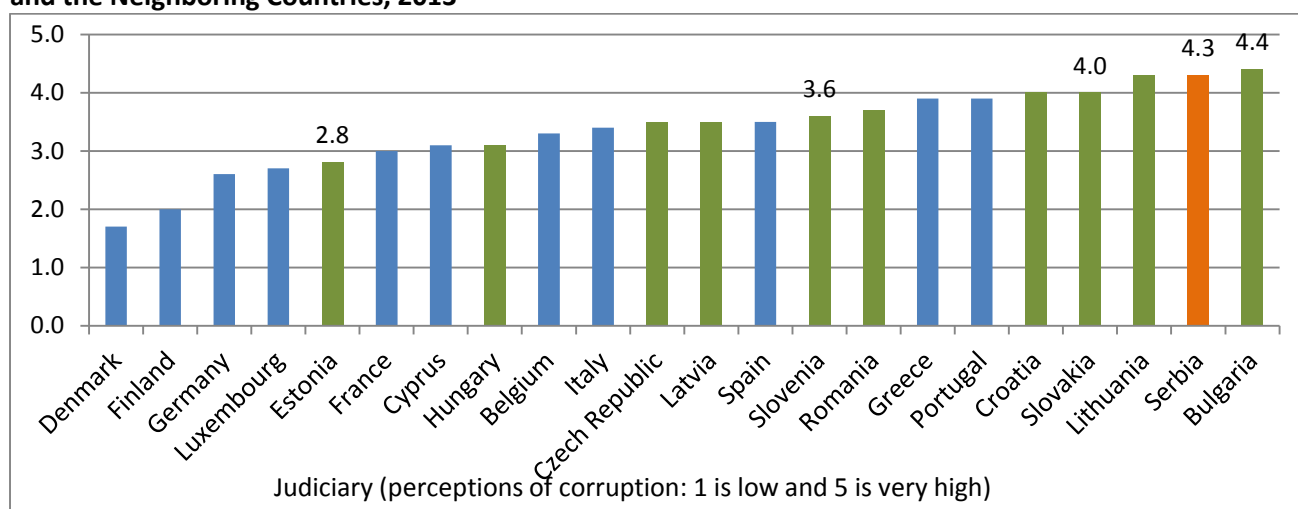


⁴⁵¹ The share of citizens who report that corruption is present in judicial system decreased from 58 percent in 2009 to 51 percent in 2013. Meanwhile, the percentage of those who report that corruption is present in the health care system increased from 53 percent to 59%.

⁴⁵² Survey Question: How present is corruption in the following sectors and institution? Scale from 1 to 5, 1 = 'not at all' and 5 = 'to a great degree'; 1 and 2 = there is no corruption, 4 and 5 = there is corruption. Population base: public total target population. Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

⁴⁵³ Transparency International Global Corruption Barometer, 2013.

Figure 83: Transparency International Global Corruption Barometer, Perceptions of Corruption in Serbia and the Neighboring Countries, 2013⁴⁵⁴



160. **The World Justice Project Rule of Law Index 2014 examines perceptions of corruption in both civil and criminal cases.**⁴⁵⁵ In civil cases, Serbia scores 0.40 and ranks behind all EU11 countries, and second only to Albania as the worst in the region. In criminal cases, Serbia scores 0.41 and ranks second-last compared to the EU11, after Bulgaria, and second-last in the neighboring region, after Albania.

Figure 84: World Justice Project, Perception that Civil System is Free of Corruption (1 = no corruption), Serbia and EU and EU11, 2014⁴⁵⁶

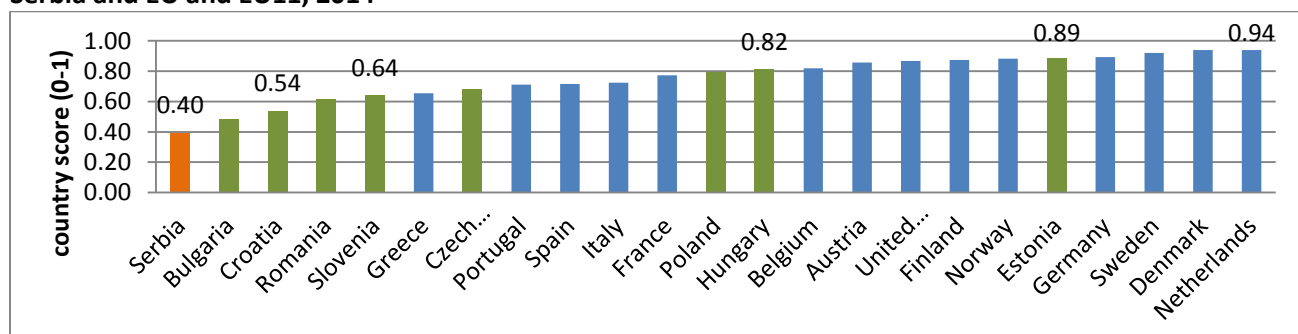
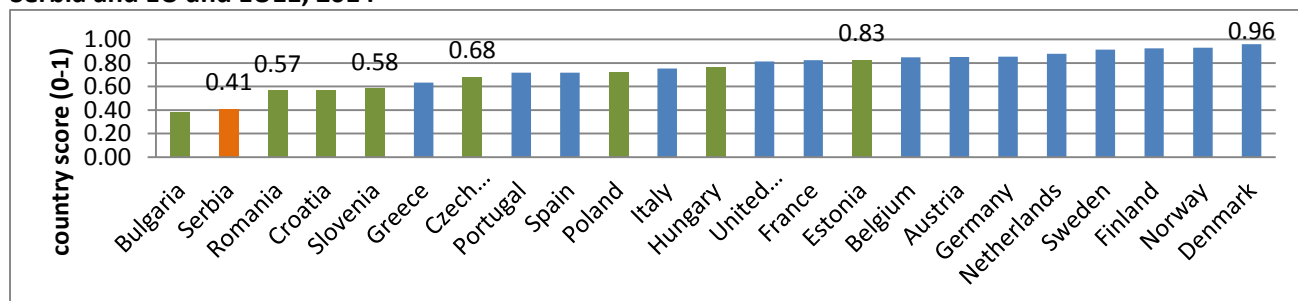


Figure 85: World Justice Project, Perception that Criminal System is Free of Corruption (1 = no corruption), Serbia and EU and EU11, 2014⁴⁵⁷



⁴⁵⁴ Transparency International Global Corruption Barometer, 2013.

⁴⁵⁵ The 2014 WJP Rule of Law Index measures how the rule of law is experienced in everyday life in 99 countries around the globe, based on over 100,000 household and 2,400 expert surveys worldwide. The set of countries surveyed did not include Slovakia, Latvia, and Lithuania, Ireland, Cyprus, or Montenegro.

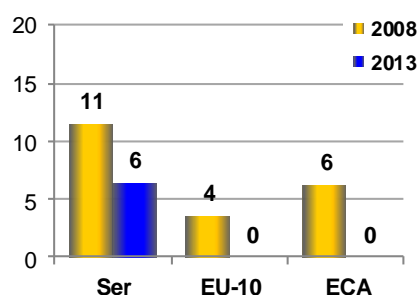
⁴⁵⁶ The World Justice Project, Rule of Law Index, 2014.

⁴⁵⁷ The World Justice Project, Rule of Law Index, 2014.

161. Similarly, in the Life in Transition Survey,⁴⁵⁸ Serbia is ranked 20th out of the 29 Central and South Eastern European Countries. Around 6 percent of respondents in that survey reported that unofficial payments are usually or always needed in civil courts. This compares to 5 percent in Slovenia, 6 percent in Croatia, 7 percent in FYR Macedonia, 8 percent in Bulgaria, and 10 percent in Romania.

162. Lastly, according to the Business Environment and Enterprise Performance Survey (BEEPS), around 6 percent of firms reported that bribery is frequent in dealing with courts.⁴⁵⁹ The BEEPS shows a significant improvement in perceptions of corruption since 2008, although not quite approaching EU11 levels (see Figure 86).

Figure 86: Unofficial Payments, Percentage of Firms Stating that Bribery is Frequent in Dealings with Courts, 2008 and 2013⁴⁶⁰



v. Judicial Independence and Perceptions of Judicial Independence

163. A range of legal safeguards exists to protect the independence of the judiciary. Further reforms are underway to remove vestiges of dependence, including the removal of the Parliamentary approval of appointments.⁴⁶¹

164. Notwithstanding the legal protections, a significant portion of judges and prosecutors report that their system is not independent in practice. Around 25 percent of judges and 33 percent of prosecutors report that the judicial system is not independent.⁴⁶²

165. Lawyers and court users are even more skeptical of the independence of the judiciary. Around 50 percent of the members of general public and business sector, and 56 percent of lawyers report that judicial system is not independent.⁴⁶³ Among the general public and business sector, those with recent court experience are more likely to consider the judiciary not independent. Discouraging as this may be, court users' perceptions have actually improved since 2009.

⁴⁵⁸ The Life in Transition survey is carried out by the EBRD in collaboration with the World Bank. Around 39,000 households across 34 countries, predominantly from the former communist east, were surveyed regarding how transition has affected their lives and were asked about their views on democracy, the role of the state, and their prospects for the future. Data is from 2010. Available at <http://www.ebrd.com/pages/research/economics/data/lits.shtml>.

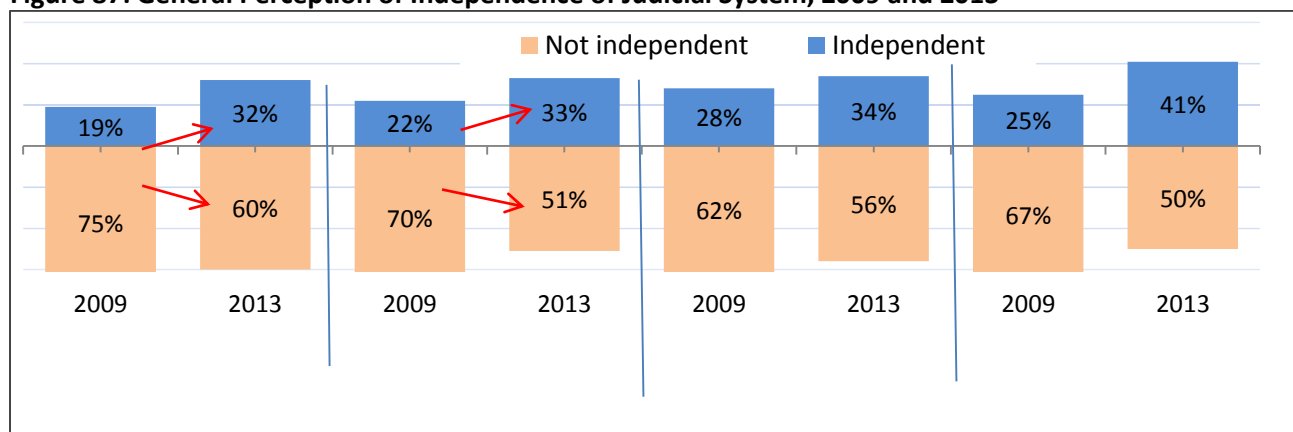
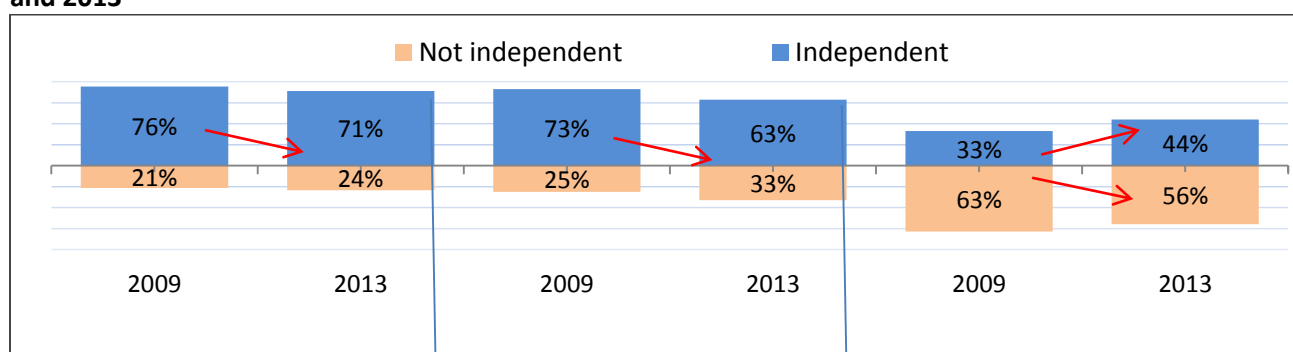
⁴⁵⁹ The EBRD-World Bank BEEPS is a joint initiative of the European Bank for Reconstruction and Development and the World Bank. The 2013 BEEPS sample for Serbia included 360 firms.

⁴⁶⁰ BEEPS, World Bank, 2013.

⁴⁶¹ For further discussion, see the Governance and Management Chapter.

⁴⁶² Further, the share of judges who report that system is independent has decreased by 5 percent since 2009, while the share of prosecutors who report that the system is independent has decreased by 10 percent. This may be explained by the increased number of judges and prosecutors who participated in the survey who had been 're-appointed' and harbor concerns about that process. To the extent that independence is a state of mind, the perception is itself telling.

⁴⁶³ Respondents to the Argus Survey 2014 were even more pessimistic. There, only 12 percent of the general public reported that the judiciary as independent from political influence and the influence of interest groups. See also the section below on perceptions of impartiality and fairness.

Figure 87: General Perception of Independence of Judicial System, 2009 and 2013⁴⁶⁴**Figure 88: Perception of Independence of Judicial System among Judges, Prosecutors and Lawyers, 2009 and 2013⁴⁶⁵**

166. **Judges, prosecutors and lawyers point to a range of institutions influencing the judiciary's independence.** The majority of judges, prosecutors, and lawyers expressed the belief that the media, politicians and political parties are the most responsible for jeopardizing the independence of judicial system, but other institutions have their share of responsibility as well. More than 35 percent of judges and prosecutors argue that specific ministries and the government jeopardize the independence of the judiciary. The general public also report that the influence of political parties impedes independence and reform.⁴⁶⁶ In interviews, stakeholders reported several methods through which independence is undermined, most notably politicization in the appointment and promotion processes for judges and prosecutors, as well as commentary by government officials and influential figures in ongoing cases.

167. **The 2014 World Economic Forum's Global Competitiveness Report⁴⁶⁷ ranks Serbia's judiciary 129th out of 148 countries for judicial independence.** With the exception of the Slovak Republic, Serbia lags behind all EU Member States and non-EU neighboring countries in the region. The results are similar in the

⁴⁶⁴ Survey Question: *To what extent was the judicial system in Serbia in the last 12 months truly independent from the executive authorities - politics?* Scale of 1 to 4, 1 = 'Not independent', 2 = 'mostly not', 3 = 'mostly independent', 4 = 'fully independent'. Population base: public and business sector total target population. Source: Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

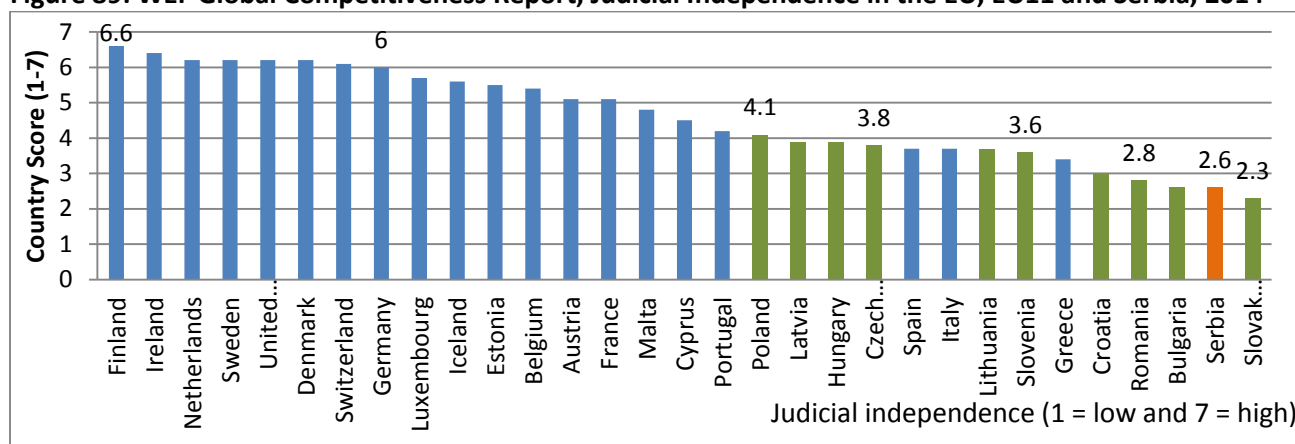
⁴⁶⁵ Survey Question: *To what extent was the judicial system in Serbia in the last 12 months truly independent from the executive authorities - politics?* Scale of 1 to 4, 1 = 'Not independent', 2 = 'mostly not', 3 = 'mostly independent', 4 = 'fully independent'. Population base: legal professionals total target population. Source: Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

⁴⁶⁶ See Impressum, *Judicial Reform through the interaction of Citizens and States (Judicial Studies Series Volume II)*, UNDP Survey, December, 2013. The report states that "even more troubling was the sentiment that judicial reform was largely 'pre-textual', meant to superficially satisfy the requirements of EU integration, but in fact designed as a vehicle for securing political control over the judiciary".

⁴⁶⁷ The *Global Competitiveness Report* assesses the competitiveness landscape of 148 economies via over 15,000 Executive Opinion surveys with 15,000. Its definition of independence includes influences on judicial decision-making from members of government and firms.

2014 Bertelsmann Transformation Rule of Law Index,⁴⁶⁸ where Serbia ranks last behind the EU11 with a score of 6.0 out of 10 for judicial independence.⁴⁶⁹

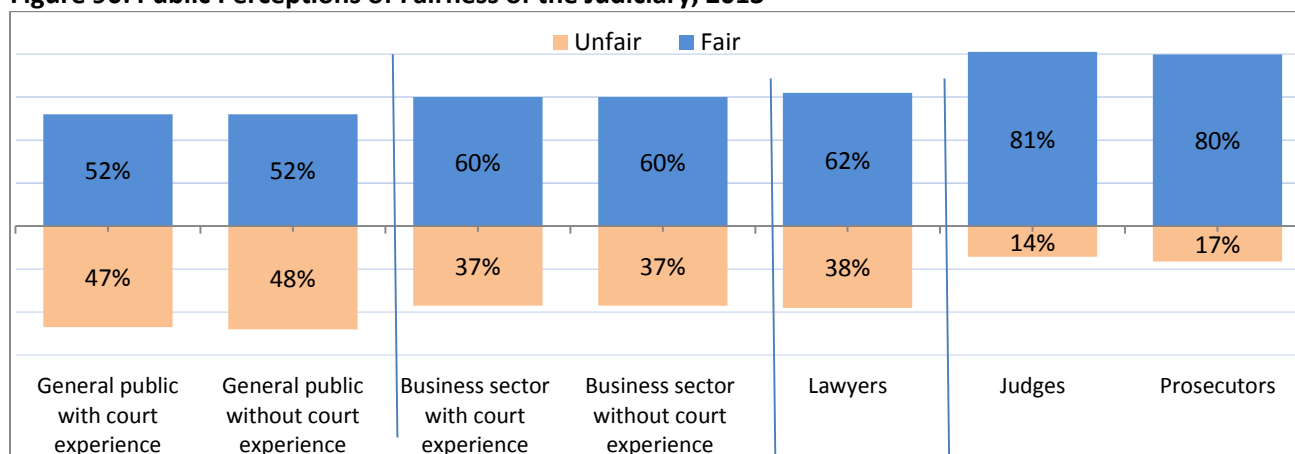
Figure 89: WEF Global Competitiveness Report, Judicial Independence in the EU, EU11 and Serbia, 2014⁴⁷⁰



vi. Perceptions of Impartiality and Fairness

168. **Perceptions of fairness diverge depending on perspective.** Only 52 percent of the public and around 60 percent of business representatives consider the judicial system to be fair. This view is consistent across court users, non-users, and lawyers alike. In the Argus Survey, the view was even more pessimistic, where only 11 percent of the general public reported that they consider the judiciary to be impartial.⁴⁷¹ Nonetheless, about 80 percent of judges and prosecutors evaluated the system as fair. On one positive hand, court users with experience in court cases evaluate the fairness of their own trial more positively than the fairness of the judicial system in general (See Figure 91).

Figure 90: Public Perceptions of Fairness of the Judiciary, 2013⁴⁷²



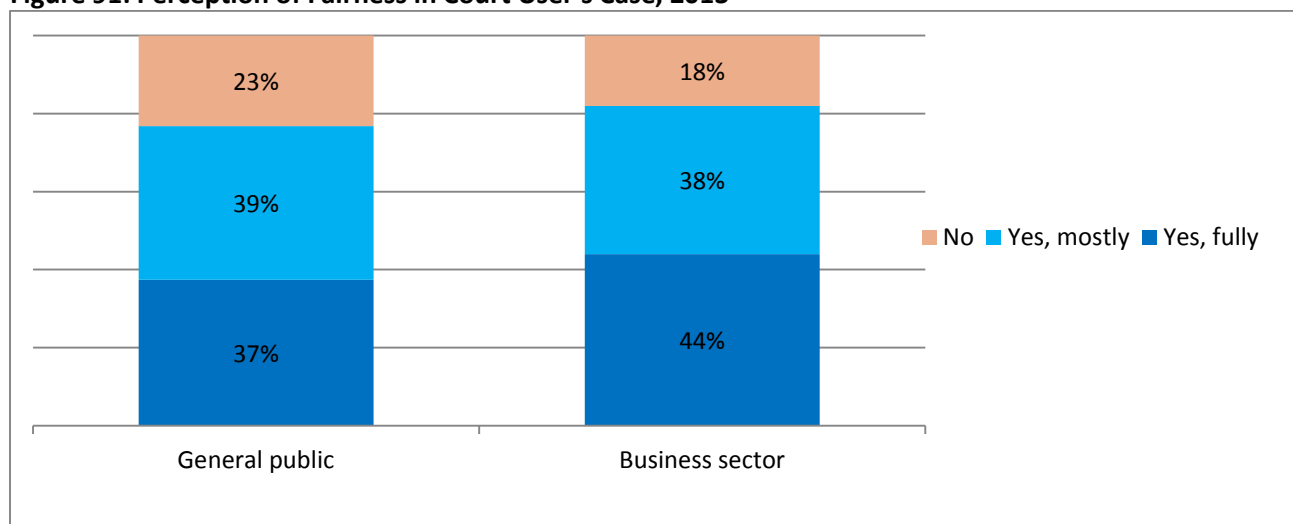
⁴⁶⁸ The Bertelsmann Stiftung's Transformation Index (BTI) analyzes and evaluates the quality of democracy, a market economy and political management in 129 developing and transition countries. It measures successes and setbacks on the path toward a democracy based on the rule of law and a socially responsible market economy (<http://www.bti-project.org/index/>).

⁴⁶⁹ The lowest score in the EU11 is Hungary, which scored 7.0. Romania, Bulgaria, Croatia, Latvia, and Slovakia scored 8.0. Lithuania, Slovenia, Poland, and Czech Republic each scored 9. Estonia received top marks with 10. Serbia's score of 6.0 has remained unchanged since 2009.

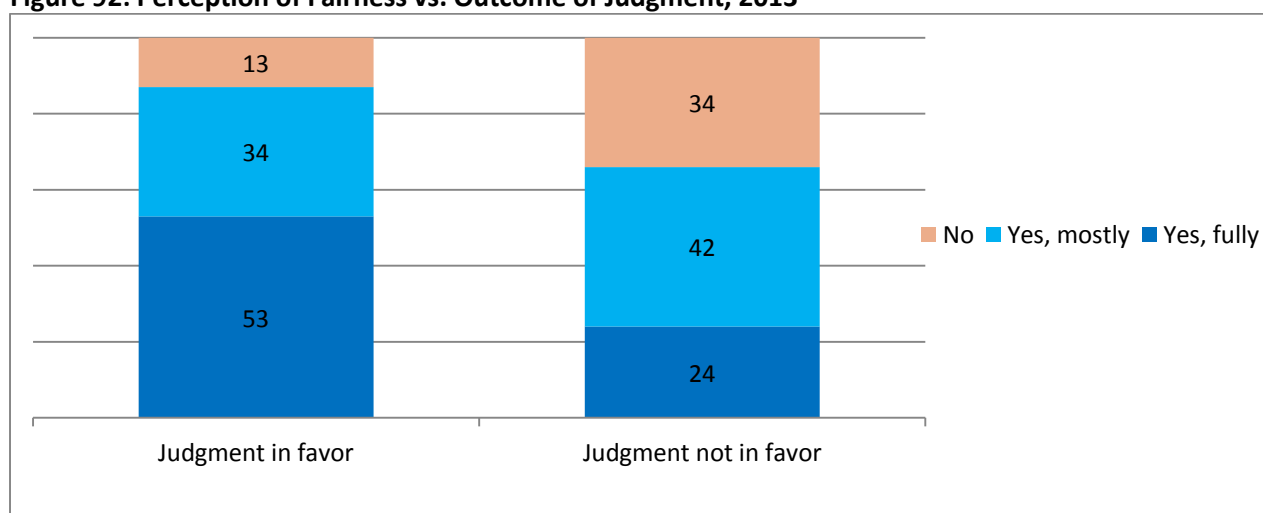
⁴⁷⁰ WEF Global Competitiveness Report, 2014.

⁴⁷¹ See Argus Survey, 2014.

⁴⁷² Survey Question: *In your opinion, how fair was the judicial system in the last 12 months (2013)?* Scale from 1 to 4: 1=very unfair, 2=mainly unfair, 3=mainly fair, 4= very fair. Population base: total target population. Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

Figure 91: Perception of Fairness in Court User's Case, 2013⁴⁷³

169. **Naturally, the evaluations by court users were biased by the outcome of the judgment in their case.**⁴⁷⁴ However, the majority of those for whom the judgment was not in favor still evaluate the trial as fair, and around 20 percent as fully fair (see Figure 92). Interestingly, court users who were self-represented regarded the process in their case to be fairer than those who engaged an attorney.⁴⁷⁵

Figure 92: Perception of Fairness vs. Outcome of Judgment, 2013⁴⁷⁶

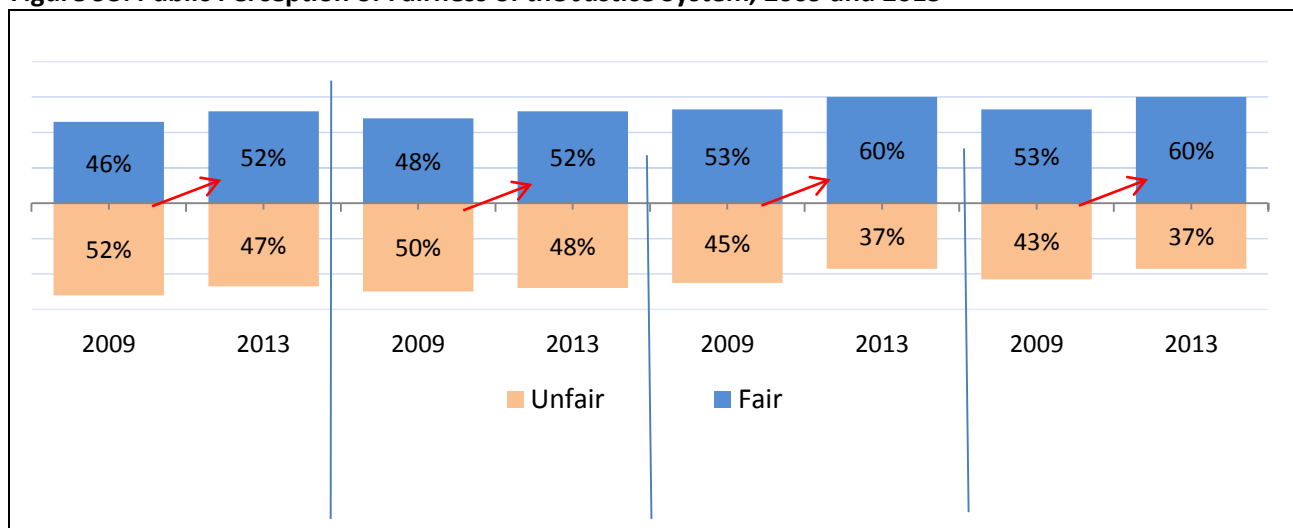
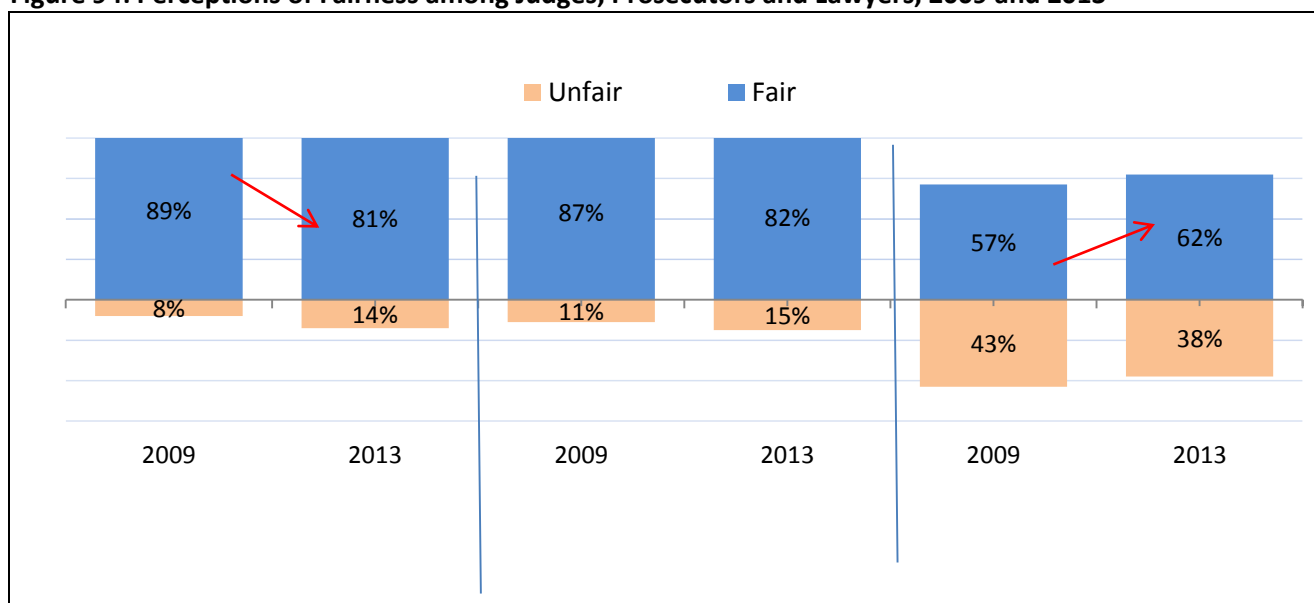
170. **Perceptions of fairness are improving among the public and court users.** While the majority expressed more negative than positive perceptions in 2009, the trend reversed by 2013. Still, most reported the system as only 'partly fair' rather than 'fully fair' (see Figure 93). Among professionals, judges and prosecutors reported that fairness is deteriorating, while lawyers were more positive (see Figure 94).

⁴⁷³ Survey Question: *Notwithstanding the outcome of the court proceedings, what do you think of the first-instance proceedings themselves? Did you have a fair trial? Scale from 1 to 3: Fully, mostly, no.* Population base: public and business sector with experience with court cases. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

⁴⁷⁴ This bias has been accounted for throughout survey results reported in the Review.

⁴⁷⁵ Stakeholders suggest that this difference is more likely to be due to low public trust in attorneys and attorney behavior towards clients, rather than a reflection on the conduct of the judiciary.

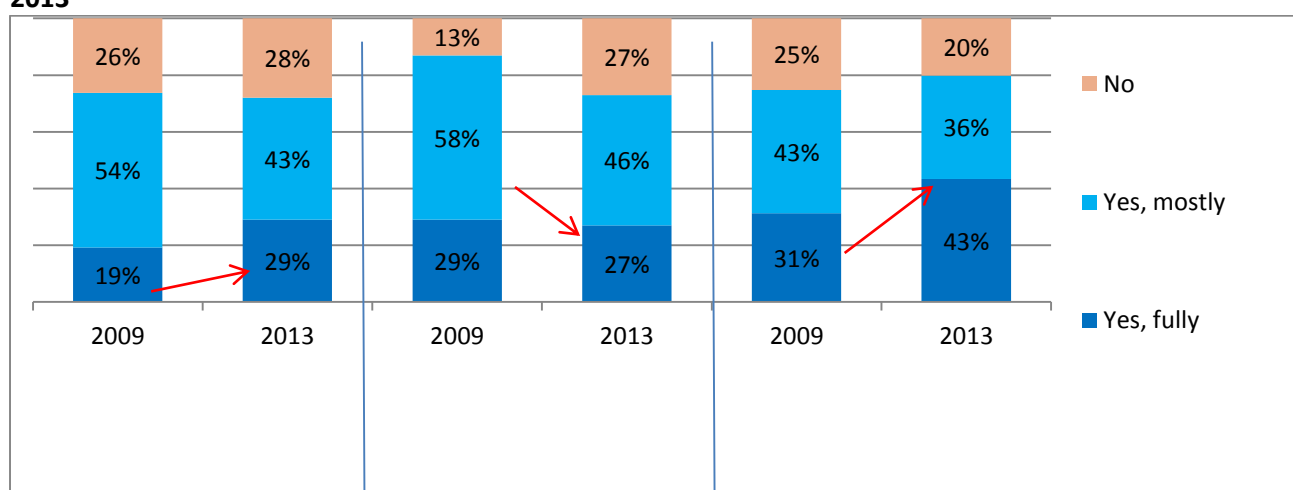
⁴⁷⁶ Survey Question: *Notwithstanding the outcome of the court proceedings, what do you think of the first-instance proceedings themselves? Did you have a fair trial? Scale from 1 to 3: Fully, mostly, no.* Population base: public with experience with court services. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

Figure 93: Public Perception of Fairness of the Justice System, 2009 and 2013⁴⁷⁷**Figure 94: Perceptions of Fairness among Judges, Prosecutors and Lawyers, 2009 and 2013⁴⁷⁸**

171. **There is also considerable variation in perceptions of fairness among case types and court types.** In civil and criminal cases, perceptions of fairness improved with more respondents evaluating the system as ‘fully fair’. However, the perceptions of fairness in misdemeanor cases decreased significantly. In 2009, 87 percent of court users expressed they received a ‘fair’ or ‘very fair’ trial regardless of the outcome, but the number dropped to 73 percent in 2014. Also, there was a pronounced increase in court users expressing the view that they did not receive a fair trial in misdemeanor courts, regardless of the outcome. Misdemeanor Courts should closely consider why the users’ perceptions fell dramatically within a few years, particularly in light of their reforms, innovations and considerable donor support.

⁴⁷⁷ Survey Question: *In your opinion, how fair was the judicial system in the 2009 / last 12 months (2013)?* Scale from 1 to 4: 1=very unfair, 2 =mainly unfair, 3=mainly fair, 4= very fair. Population base: public and business sector total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

⁴⁷⁸ Survey Question: *In your opinion, how fair was the judicial system in the last 12 months (2013)?* Scale from 1 to 4: 1=very unfair, 2=mainly unfair, 3=mainly fair, 4=very fair. Population base: legal professionals total target population. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

Figure 95: Court User's Evaluation of Fair Trial, notwithstanding the Outcome of their Case, 2009 and 2013⁴⁷⁹

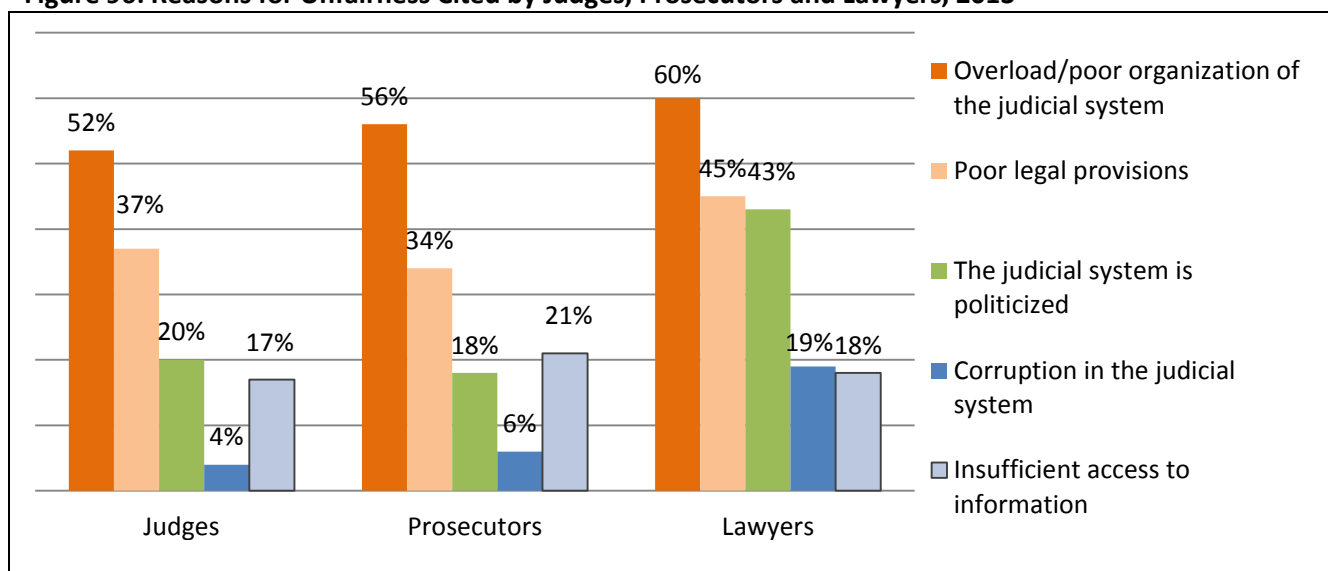
172. **Attitudes towards fairness have a significant influence on court users' decisions to file an appeal against the decision in their case.** Among court users who received a decision that was not in their favor but continued to report the trial to be fair, only 8 percent of the public and 6 percent of business sector filed an appeal. However, where court users reported the trial to not be fair, 63 percent of the public and 63 percent of business sector filed an appeal. The response of court users to perceived unfairness is rational, but it also highlights how improvements in perceptions of fairness can reduce appeals and improve quality and efficiency.

173. **Overload and poor organization were reported to be the most responsible.** The majority of judges, prosecutors, and lawyers agree that the primary reason for unfairness lies here. Prosecutors are increasingly concerned, and in 2013, 25 percent more prosecutors named overload and poor organization as the reasons for insufficient fairness in the judicial system.⁴⁸⁰ This highlights the positive relationship between efficiency and quality – improvements in the Serbian judiciary's efficiency would produce more fairness in justice services in the view of those practicing in the system.

174. **Politicization and corruption were also cited among the primary reasons, but stakeholders diverged in their emphasis on this point.** More lawyers and court users than judges and prosecutors cited politicization and corruption as influencing factors in unfairness. Also, the percentage of naming corruption somewhat decreased among all three groups (see Figure 96).

⁴⁷⁹ Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

⁴⁸⁰ The survey did not seek explanations for why overload and poor organization cause unfairness. In interviews, stakeholders reported that overload results in the selective application of the law, because parties with contacts or influence can 'move their case to either the top or the bottom of the pile, depending on their request'. Stakeholders also reported that poor organization results in uneven practices, which produce unfairness for court users 'depending on which court they enter, which day or which judge they get'.

Figure 96: Reasons for Unfairness Cited by Judges, Prosecutors and Lawyers, 2013⁴⁸¹

175. **Socio-economic status was also often cited as a reason for unfair treatment.** 25 percent of judges, 22 percent of prosecutors and 40 percent of lawyers reported that the public is treated unequally by virtue of their socioeconomic status.

176. **Laws are also perceived to be part of the unfairness problem.** More than one-third of judges and prosecutors, and 45 percent of lawyers named the poor legal provision as a source of unfairness. In particular, biased laws were identified as a cause of unfairness, and a significant number of judges, prosecutors, and lawyers in the survey reported that unfair and biased laws negatively affected the fairness of the judiciary system. This should give some food for thought to the various working groups drafting laws, including to their composition and consultation mechanisms. Overcoming these perceptions could improve opinions of the justice system more broadly while creating more buy-in for laws to be implemented effectively (for a further discussion on law-making, see section above).

⁴⁸¹ Survey Question: Multiple choice; most often selected reason (*What is the chief reason why you did not grade fairness of the judicial system as totally fair?*) Population base: legal professionals who did not evaluate fairness with the highest grade. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

4. Access to Justice Services

Chapter Summary

1. **Lack of affordability is the most serious barrier to access to justice services in Serbia.** Court and attorney costs represent a significant proportion of average income in Serbia. Pursuing even a simple case is unaffordable for many. Citizens do their best to avoid the courts: nearly 63% of the general public reported that, if they had a dispute which they thought should be settled in the court, they would decide against pursuing it; and fear of costs was the most common deterrent. Over half of recent court users surveyed considered the court-related costs in their particular case to have been excessive. The schedules for court and attorney fees are also quite complex, so court users struggle to estimate likely costs.⁴⁸²
2. **Lack of affordability of justice services also causes a drag on the business climate.** Over one-third of businesses with recent experience in court cases reported that the court system is a great obstacle for their basic business operations, and an additional 30 percent reported that courts are a moderate obstacle. Businesses also report that the courts are becoming increasingly inaccessible to them due to high court and attorney fees. Small businesses face particularly challenges in navigating the court system, including high costs, cumbersome processes, lengthy delays, inadequate enforcement, and constantly changing legislation.
3. **On further examination however, it is not absolute costs to users but perceived value for money which undermines access to justice.** Although court users complain about costs (and non-users report that costs deter them), the Multi-Stakeholder Justice Survey found that recent court users who were satisfied with the quality of services delivered were far less likely to consider the costs to be excessive.⁴⁸³ These data therefore suggest that improvements in quality and efficiency in service delivery could improve access to justice, by increasing the perceived value for money for potential court users, while also improving user satisfaction.
4. **Attorneys play an important role in helping court users to navigate the system, but their fee structure is inconsistent with European practice and creates perverse incentives which undermine access to justice and efficiency and quality and service delivery.**⁴⁸⁴ Self-represented litigants struggle to proceed alone without lay formats, checklists or practical guides, and unsurprisingly therefore, they are less likely to succeed. Attorneys are paid per hearing or motion, which encourages protracted litigation. Fees are awarded based on a prescribed Attorney Fee Schedule, which prohibits from charging less than 50 percent of the rates prescribed. This arrangement is out of step with European practice.⁴⁸⁵ Serbia's prescribed fees are also highly inflated and unrealistic, and in practice many attorneys charge less than the mandatory minimum because rates are beyond user willingness to pay. State-appointed attorneys (known as ex-officio attorneys) may be appointed for indigent clients but there are concerns regarding the mechanism for their selection and a lack of quality control.
5. **A court fee waiver is available for indigent court users but its implementation is haphazard, resulting in inconsistent access to justice for the indigent.** There is very limited understanding among the public of the court fee waiver program. There are no guidelines or standardized forms for judges who grant a

⁴⁸² There is also a cap on court fees, which distorts incentives by encouraging court users to pursue unmeritorious claims in high-value cases.

⁴⁸³ 75 percent of court users who reported low quality of services also reported that the costs were excessive; while the 29 percent of court users who reported that quality was high did not consider the costs to be excessive.

⁴⁸⁴ 71 percent of citizens with court experience found attorney-related costs to be one of the most insurmountable barriers to access to the judicial system.

⁴⁸⁵ Mandatory minimum fees have been found by the European Court of Justice to violate the EC Treaty. Further 42 of the 47 countries monitored by CEPEJ allow free negotiation between lawyers and clients.

waiver and their decisions go unmonitored. Stakeholders report that some Court Presidents informally discourage their judges from waiving fees, as fees are a source of revenue for courts. Waivers may improve access to justice in some areas but without data its impact cannot be monitored.

6. **Legal aid programs are provided by an incomplete patchwork of services across the country.** Municipal Legal Aid Centers cover around one-third of the country and around one-half of Serbia's total population. Yet, most citizens are unaware of any free legal services that might be provided in their municipality.

7. **Reforms are currently underway to expand legal aid in line with EU practice by providing both 'primary legal aid' (legal information and preliminary advice) and 'secondary' (legal representation) to the poor and certain vulnerable groups.** While the aims of the reform are admirable, there remains a high risk that these laws, like other reforms in recent years, will become 'stillborn' if fiscal and operational implications are not carefully planned or if implementation arrangements are weak. Despite several years of deliberation in working groups, there remain some concerns with the latest draft of the law. The current draft creates a bias in favor of secondary legal aid, to be provided predominantly by attorneys, while doing little to encourage primary legal aid, which would be provided by CSOs, municipal legal aid centers, and law faculties. Yet, the efficient delivery of primary legal services is likely to have the greatest benefit in terms of increasing access to justice for the largest numbers of Serbian citizens and could be delivered at much lower unit costs. It will be important to ensure that primary legal aid is adequately funded and delivered consistently throughout the country. Meanwhile, proposals for secondary legal aid could be considered more cautiously. A Fee Schedule will also need to be developed for the compensation of service providers for both primary and secondary aid. Based on previous analysis, the fees for these services should be far lower than the current Attorney Fee Schedule.⁴⁸⁶ Quality assurance mechanisms will also be required and this is another area of high implementation risk.

8. **Recent legislative amendments seek to promote mediation but there are significant implementation challenges.** Due in large part to previously failed reforms, there is limited awareness of mediation among judges, attorneys, court staff, and court users. Among those who are aware of mediation services, few report it to be a useful means of dispute resolution. A significant outreach initiative to potential court users will be required, along with intensive training for judges, prosecutors, lawyers, and court staff. Further incentives should be built in to the institutional framework to encourage the use of mediation and integrate it into the court system.

9. **Awareness of law and practice is limited, even among professionals.** Judges, prosecutors, and lawyers struggle to conduct research and keep abreast of new legislation, cases, procedures, and practices. Before 2014, the only legal databases with consolidated legislation were maintained by private companies on paid subscription basis. Few courts publish their court decisions, so access to these even among judges is very limited. On a positive note, the Official Gazette recently launched a free online database, and this should improve access to legislation. Efforts to raise awareness and build the capacity among professionals to conduct legal research could reap significant rewards in terms of consistency of practice across the jurisdiction.

10. **Among the public, awareness of law and practice is even more limited.** Continuous changes in legislation and scarce outreach of reforms combine to prevent the public from understanding their rights and obligations, or how to uphold them in court. Businesses report that access to laws – and frequent changes in legislation and regulations – causes uncertainty that affects their business operations. A significant injection of outreach and awareness-raising of legal reforms among the public, particularly among potential court users, is required. Existing court users also struggle to access information related to their

⁴⁸⁶ Further analysis will be required to ensure that service delivery arrangements provide sufficient incentive for high-quality service delivery without inflating costs or creating distortions in the market.

own case. Examples exist in Croatia and elsewhere of court portals which could be applied in Serbia to enable court users to access information related to their case in a manner consistent with privacy laws.

11. **Women experience the judicial system differently from men in a few ways.** Women report more than men that justice services are inaccessible. More often than men, women find attorney fees to be cost-prohibitive. Women are also more likely to experience barriers to access to justice and inefficiencies in justice service delivery because they are more likely to be parties to certain types of cases, such as custody disputes and gender-based violence, which exhibit specific problems relating to procedural abuse and delay.

12. **Equality of access for vulnerable groups poses specific challenges.** The majority of citizens surveyed reported that the judiciary is equally accessible regardless of age, socio-economic status, nationality, disability, and language. However, those citizens who are over 60 years of age, live in rural areas or have the least amount of education find the judicial system particularly inaccessible, suggesting that targeted interventions are warranted. Individuals with intellectual and mental health disabilities experience serious disadvantage through the process by which they are deprived of their legal capacity. Members of the Roma community, refugees and internally displaced persons also report low awareness of their rights, as well as concerns regarding fair treatment before the courts. For these groups, there is a case for strengthening the dissemination of information to relevant CSOs and community leaders about the functioning of the judiciary and basic legal rights. The experience of the LGBT community is slightly different: though they appear more than the abovementioned groups to be aware of their legal rights, they remain deterred from filing cases due to fear of reprisal and perceived discrimination.



Title: Svetlost pravde obasjaće i mene, submitted by an entrant to the Justice Competition, World Bank 2014

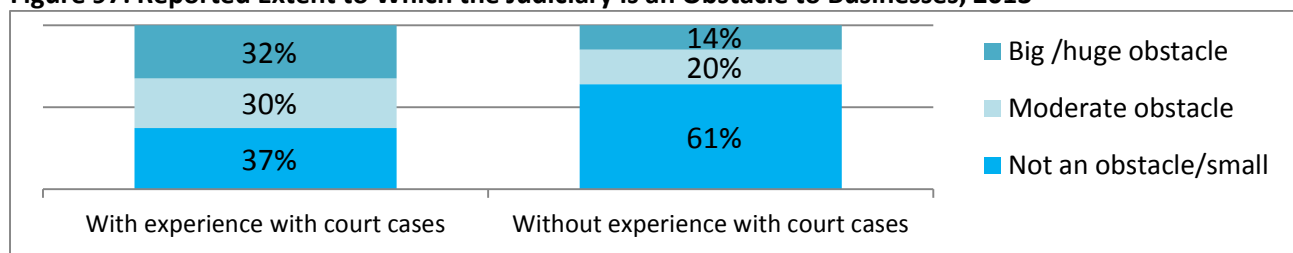
a. Introduction

13. **The focus of this Chapter of the Performance Assessment is on access to justice services, including relevant financial, informational, and geographic barriers to such access.**⁴⁸⁷ The EC emphasizes the importance of enhanced access in justice system reform, and relevant European standards discussed below detail how effective access requires a fair and speedy trial, certain and swift enforcement procedures, access to legal representation, and the promotion of alternative dispute resolution mechanisms.

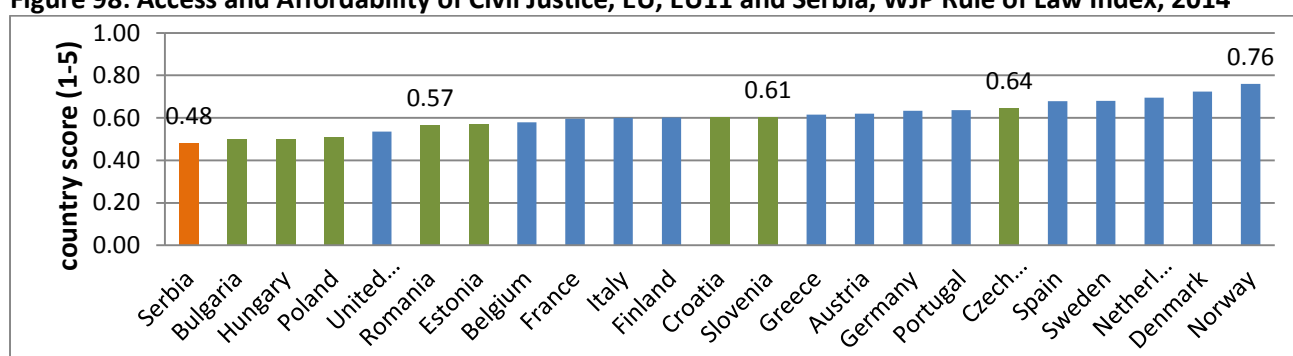
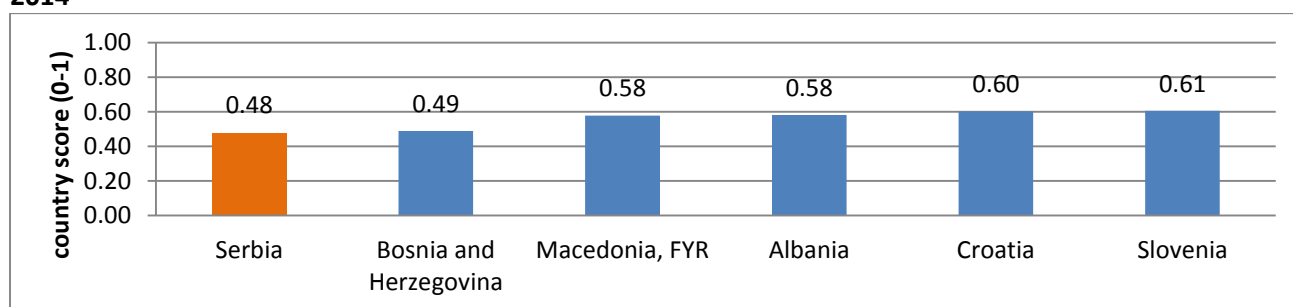
14. **Access to justice is also an economic development concern, as constraints on access to justice appear to create a drag on businesses.** Around one-third of business sector representatives with experience with court cases reported the judicial system to be a great obstacle for their business operations and 30 percent as moderate obstacle (see Figure 97).⁴⁸⁸

⁴⁸⁷ In lay terms, 'justice' is often perceived as a broader concept stretching beyond the determination of disputes settled through formal mechanisms to encompass concepts such as human rights protection and social justice. It may also refer to access to non-judicial bodies, such as ombudspersons, or to grievance and complaint mechanisms related to the delivery of government services. Those broader concepts, important as they are, fall outside the scope of the Review.

⁴⁸⁸ Representatives of companies without experience with court cases are less likely to assess the court system as an obstacle to their business operations, but even in this case 14 percent consider the judicial system a great obstacle for their business operations, and 20 percent as moderate obstacle

Figure 97: Reported Extent to Which the Judiciary is an Obstacle to Businesses, 2013⁴⁸⁹

15. **In comparison with the rest of Europe, Serbia appears to have a problem with access to justice.** According to the World Justice Project's Rule of Law Index 2014, Serbia ranks the lowest among the EU and non-EU neighboring countries in terms of accessibility and affordability of the civil justice system (see graphs below).

Figure 98: Access and Affordability of Civil Justice, EU, EU11 and Serbia, WJP Rule of Law Index, 2014**Figure 99: Access and Affordability of Civil Justice, Regional Countries and Serbia, WJP Rule of Law Index, 2014**

16. **As demand for access to justice services may be unlimited, prioritization is therefore important.** This Chapter views access via a series of dimensions, such as geographic, informational, and financial. Within that frame, this Chapter focuses on core needs that would address the most significant barriers to access for the poor and vulnerable groups while meeting minimum European requirements.

17. **Access to justice can be challenging to measure in that it requires investigation beyond the data that are found 'in the system', and considers barriers preventing individuals from accessing the system.** It is important to capture the experiences and behavior of those who typically do not make it into the system.⁴⁹⁰ To do so, the Review complements the statistical data found in the system with analysis from secondary sources, robust surveys, focus group discussions, and extensive interviews and field visits. The

⁴⁸⁹ See *Multi-Stakeholder Justice Survey*, 2014.

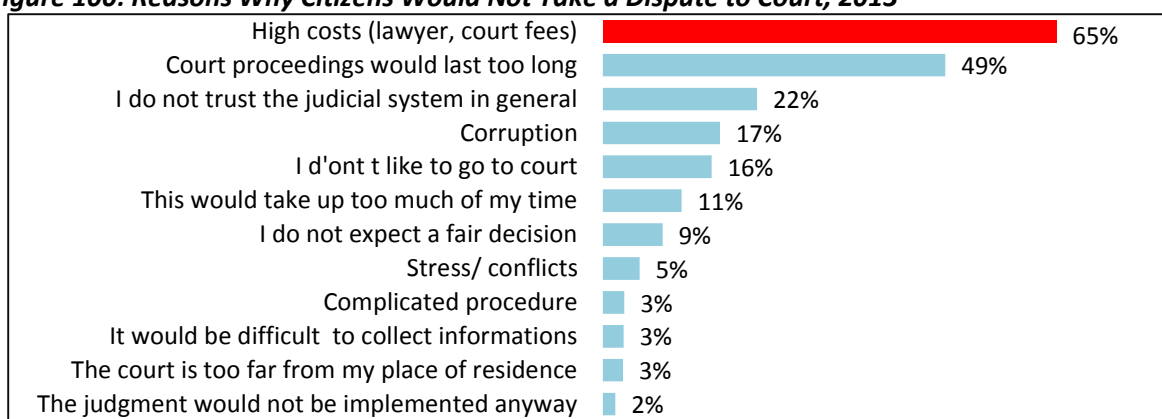
⁴⁹⁰ For a discussion on the need for targeted research on access to justice issues, see *Paths to Justice: A Past, Present and Future Roadmap*, Centre for Empirical Legal Studies, University College London, 2013. See also *Paths to Justice: What People Do and Think about Going to Law*, Hazel Glen, Hart Publishing, 1999.

Chapter seeks to assess the system from an unseasoned court user's perspective – an average Serbian citizen experiencing a justice problem, and weighing whether the courts offer a pathway to solve it.⁴⁹¹

Box 13: What Deters People from Using Court Services?

According to the 2014 Access to Justice Survey, citizens do what they can to avoid the court system. Nearly 63 percent of respondents indicated that, had they had a dispute that they thought should be settled in court, they would nevertheless decide against pursuing it or would seriously consider not doing so. Court and lawyer costs, concerns about likely delay in court proceedings, and lack of trust in the judicial system are the primary reasons cited as deterring individuals from using court services. In the 2013 Multi-Stakeholder Justice Survey, members of the public with experience in the court system cited similar concerns with access to justice.

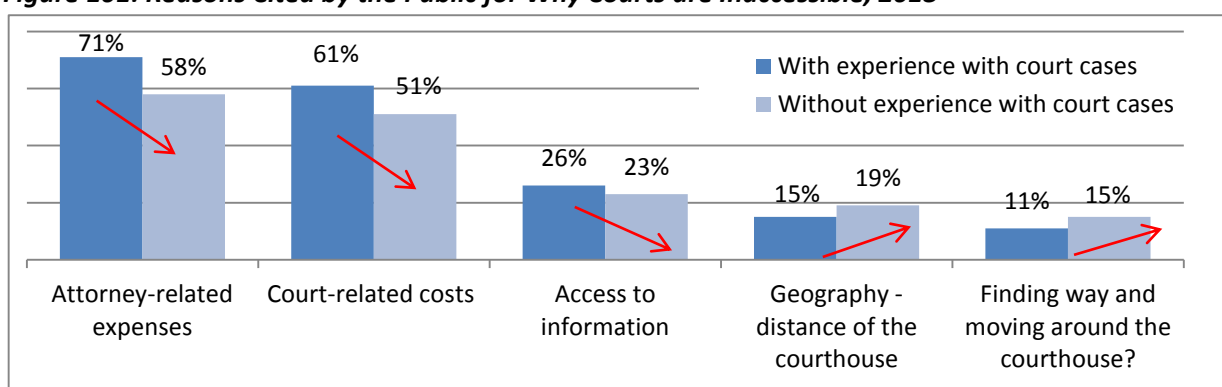
Figure 100: Reasons Why Citizens Would Not Take a Dispute to Court, 2013*



*Access to Justice Survey, World Bank MDTF-JSS, 2014

Notably, members of the public with court experience expressed greater concern with nearly every aspect of court accessibility than those without court experience. This suggests that improving access to justice requires going beyond merely demystifying courts or raising awareness about access to court services. Rather, it requires efforts that substantively address the barriers actually experienced by court users. Each of the reasons that citizens cite is addressed in this Chapter.

Figure 101: Reasons Cited by the Public for Why Courts are Inaccessible, 2013*



*Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014

⁴⁹¹ Perspectives on access to justice routinely differ among individuals inside the system (such as judges and court staff), those working with the system (such as lawyers), and those outside it. For example, the 2013 Multi-Stakeholder Justice Survey found differences between the perceptions of accessibility between judges/prosecutors, in excess of 80 percent of whom rated the system as accessible, and the public, with a less than 60 percent rating for accessibility. However, individuals within the system, particularly judges and prosecutors, may not be well placed to assess the access to justice. The latter became familiar with the system and seasoned to its idiosyncrasies. They are not experiencing the system as a user, hence the need to gather data from the general population.

b. Affordability of Justice Services (Financial Access to Justice)

18. This section assesses system performance against the agreed indicators and standards outlined in **Indicator 3.1 of the Performance Framework**. As financial access is a particular concern in Serbia, several indicators are measured.

19. **Financial access to the court system is the largest barrier to access to justice for most Serbians.** Box 14 below gives an indication of average total costs for court users in 2013.

Box 14: How Much on Average Do Court Users Pay?¹

Misdemeanor Cases	150EUR
Civil Cases	550EUR
Criminal Cases	550EUR
Cases involving business representatives	1,800EUR

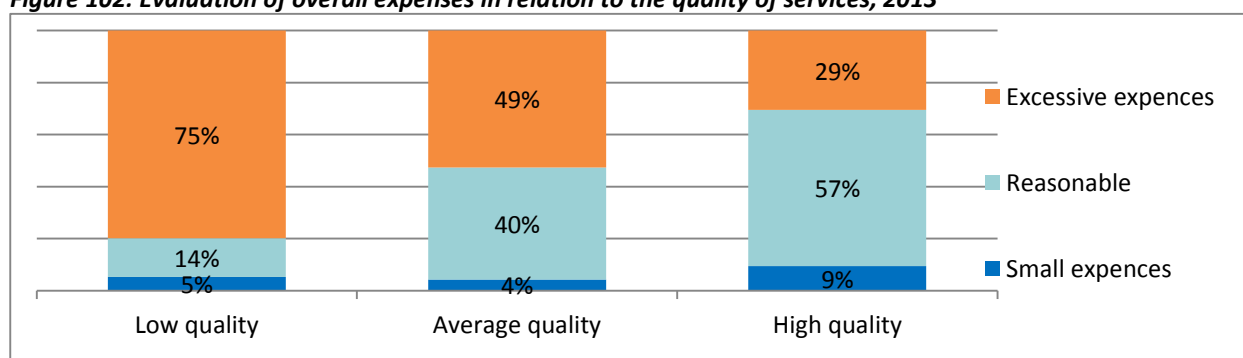
Average total costs as reported by court users in the Multi-Stakeholder Justice Survey 2013 including all court fees, lawyers' fees, and travel costs, but not including fines.

20. **On further examination, however, it is not absolute costs but perceived value-for-money which drives court users' concerns.** Box 15 below highlights the clear relationship between access to justice and quality of services delivered.

Box 15: Costs vs. Quality – An Insight into Court Users' Perceived Willingness to Pay

Whilst court users complain about the costs of going to court, they are far more willing to pay if they are satisfied with the quality of justice services delivered. As shown in Figure 98, 75 percent of court users who report that the quality of services they received was low also reported that the costs were excessive. By contrast, the 29 percent of court users who reported that quality was high considered the costs to be excessive.

Figure 102: Evaluation of overall expenses in relation to the quality of services, 2013



Access to Justice Survey, World Bank MDTF-JSS, 2014

The above results lead to the conclusion that improvements in quality would increase not only user satisfaction but also access to justice. These results highlight the interaction between efficiency, quality and access. Users who experience a lengthy time to resolution are likely to have paid more and be less satisfied with the service. By contrast, users who receive a prompt high-quality service are more likely to be satisfied and to perceive value in that service.

21. **Justice services entail many individual costs to the user.** The section below examines court-related costs, lawyer-related costs, and specific financial access issues facing lower-income Serbians, including court fee waivers, court-appointed attorneys, and legal aid.

22. **Serbia does not have a system of private insurance for legal costs, so court users must pay fees out-of-pocket.** Serbia is among only 13 countries monitored by the CEPEJ where such a system does not exist.⁴⁹²

i. Affordability of Court Fees

23. **Court fees are set out in the Law on Court Fees.⁴⁹³ Fees are based on the stated value of the claim, up to a cap of 97,000 RSD.⁴⁹⁴** Fees are paid on every motion submitted,⁴⁹⁵ every decision rendered,⁴⁹⁶ and every court settlement reached in all litigious processes and commercial disputes. In uncontested proceedings, a nominal fee of 390RSD applies in some instances, though higher fees apply for uncontested processes involving property, such as inheritance procedures or division of property. Fees are also charged in criminal cases initiated by a private party, and Serbia is one of only eight countries monitored by the CEPEJ that charges such fees.⁴⁹⁷

24. **Court users cite the court-related costs as a considerable obstacle to access to the judicial system in Serbia.** In the 2014 Access to Justice Survey, focus groups stressed that court processes (particularly litigation) are considered very expensive even by educated citizens in Belgrade who are active in the economy. In the 2009 and 2013 Multi-Stakeholder Justice Surveys, the public with experience in court proceedings identified court costs as the most significant constraint as well. (See Table 19 below.)

25. **Notably, businesses report that the courts are becoming increasingly inaccessible to them due to high costs.⁴⁹⁸** In 2013, nearly 20 percent more businesses without court experience reported that court costs impact their access to courts compared with 2009. Approximately 7 percent more business entities with court experience reported in 2013 that court costs impeded accessibility than in 2009.

26. **Half of the public and business representatives surveyed considered court-related costs in their particular case to have been excessive.** These figures remain approximately the same as from 2009, except in misdemeanor cases. The Misdemeanor Court is increasingly unaffordable to users. In comparison with those who did not have experience with a court case, a considerably higher percentage of experienced citizens cite high costs, suggesting that perceptions of high fees are not a myth but based on the experience of users.

27. **The majority of survey respondents state that costs of their own court case represented a burden on their personal budget.** Compared to 2009, these figures remained constant with the exception of misdemeanor cases where, in 2013, a higher percentage of users stated that costs of their court case were a significant burden on their budget.

⁴⁹² See *CEPEJ Evaluation Report*, 2014 (based on 2012 data). Six EU Member States lack such a system, including Croatia, Ireland, Latvia, Malta and Romania. A further six countries that report data to CEPEJ lack a system, including Armenia, Macedonia, Moldova, Montenegro, Russia and Turkey.

⁴⁹³ Law on Court Fees (*Official Gazette of the Republic of Serbia No. 28/94*).

⁴⁹⁴ Fees range from 1,900 to 97,500 RSD in litigation and executive procedures, and 3,900 to 390,000 RSD in disputes before commercial courts. Fees are periodically amended for inflation or changes in currency exchange rates. In 2014, for instance, if the value of a claim is 10,000 RSD, a lawsuit fee will be 19 percent of that amount. If 100,000 RSD, the fee will be 5.9%, 3.93 percent for 1 million RSD, and 0.00975 percent for 10 million RSD. Regardless of the value of the claim, the fee cannot exceed 97,500 RSD before civil courts, and 390,000 RSD before commercial courts. Criminal proceedings not initiated by the Prosecutor also incur fees, though these are below 1,000 RSD.

⁴⁹⁵ E.g., initial claim, answer to the claim, counter-charges in litigious cases and in commercial disputes, motion for execution, securing of a debt, appeal, appeal for revision, and appeal for retrial.

⁴⁹⁶ E.g., first instance judgment, decision in trespass cases, decision on the dismissal of the claim or motion for execution, decision of the first instance court on the dismissal of the appeal.

⁴⁹⁷ See *CEPEJ Evaluation Report*, 2014. Court fees are charged to commence private prosecutions in Croatia, Cyprus, Greece, Monaco, Montenegro, Portugal and Switzerland.

⁴⁹⁸ In the 2009 Multi-Stakeholder Justice Survey, business representatives found the judiciary to be more financially accessible than the public. However, there has since been a sharp increase in companies finding the Serbian judiciary inaccessible due to court-related costs.

28. **These perceptions are rooted in reality, particularly for those from less affluent parts of the country.** As seen in Table 19 below, court fees for a divorce case, among the least costly in terms of court fees, would require the average person in Novi Pazar to pay 76 percent of their monthly net income in court fees alone. When attorney fees are included, even at the commonly discounted rate, the Novi Pazar resident would be required to pay nearly five times (523 percent) of their monthly net income to cover the total costs of the case. While a much wealthier Belgrade resident would pay only 20 percent of their average monthly net income in court fees for a divorce proceeding, once attorney fees are included, costs for a divorce would exceed the average Belgrade resident's monthly net income.

Table 19: Divorce Costs as a Share of Average Income⁴⁹⁹

Region	Net Monthly Income per Capita	Court Fees ⁵⁰⁰	Attorney Fees ⁵⁰¹	Total Fees	Court Fees as share of Income	Total Fees as share of Income	Total Fees (incl. only 50% Attorney Fees) as share of Income
Novi Pazar	6,970	5,320	62,250	67,570	76%	969%	523%
Belgrade First	27,110	5,320	62,250	67,570	20%	249%	134%

29. **By contrast, court fees become relatively inexpensive in high-value civil cases.**⁵⁰² There is a cap on court fees at 97,000 RSD (1,100 EUR), and stakeholders report that the cap distorts incentives when the cost of the claim is high by encouraging very wealthy individuals or large companies to pursue unmeritorious claims, exploit procedural inefficiencies or mount frivolous appeals. This anomaly could be rectified by removing the cap and simplifying the court fee structure based on the percentage of the claim.

ii. Timing of Court Fees and Related Expenses

30. **The Law on Civil Procedure envisages that each party pays court fees before they submit an initial claim or answer.** The court will not suspend litigation for failure to pay fees; however, many potential or unseasoned court users may not be aware of the rule. In any event, the existence of significant upfront fees may deter access to the courts.

31. **While court users report that the highest percentage of the overall costs of court proceedings relate to court fees, litigants may incur other significant costs.** These include expert witness fees, witness expenses,⁵⁰³ translation costs, and costs of placing ads on the court bulletin board. Users also incur personal costs, including their own travel and time off from work to visit lawyers and participate in proceedings. One participant in the focus groups noted that:

*'(...) I can't do my job and do this [pursue the case in court] at the same time, so I lose money. That's why it's very expensive, really time consuming and burdening.'*⁵⁰⁴

32. **Expenses such as those of expert witnesses must generally be paid in advance by the party who suggested their appearance before the court.** In those instances, the court will proceed with the case without the report of the expert witness unless/until the expert fees are paid.⁵⁰⁵ Some may be willing to

⁴⁹⁹ Sources: Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>); Court Fee Schedule; Attorney Fee Schedule.

⁵⁰⁰ Fees assuming one filing fee and one first instance judgment fee.

⁵⁰¹ Attorney Fee assumes filing fee, two hearing fees, one postponed/adjourned hearing fee.

⁵⁰² 97,000 RSD is the maximum fee for cases involving claims 1 million RSD or more.

⁵⁰³ Transportation costs to court and lost income on the day of witnessing.

⁵⁰⁴ Access to Justice Survey, World Bank MDTF-JSS, 2014.

⁵⁰⁵ The only exception applies where certain facts need to be established by the court *ex-officio*. In these cases, the burden of presenting and covering the costs of the evidence shall be taken over by the court.

produce an opinion before they are paid, however, given the growing problems with arrears, fewer and fewer experts are willing to do so (for further discussion on the impacts of arrears, see the Financial Management Chapter). Other expenses related to evidence, including those of other witnesses, shall be paid in advance or shortly after presentation of respective evidence.⁵⁰⁶ These costs and their timing add further disincentives for parties to pursue cases.

33. **Upfront costs further deter users because of the expected delay in recouping them.** According to the Access to Justice Survey, when respondents who had not taken cases to court were asked why they would not do so, the most common reason cited was the expectation that proceedings would last too long (49 percent).⁵⁰⁷ Serbia has also experienced periods of higher inflation in recent years, leaving court users out of pocket because of the delay. The expectation of a long delay in recouping costs if the party is successful may in itself deter access.

34. **Constitutional Court cases pose slightly different access problems.** Individuals who file an appeal to the Constitutional Court of Serbia (the last legal remedy that has to be used before a case can be brought before the ECHR) are not required to pay court fees but are generally required to cover their own attorney costs. In addition, prescribed attorney fees for Constitutional Court proceedings are very high.⁵⁰⁸ The inability to recoup these expenses would deter many potential court users from pursuing their claims.

35. **Many courts maintain an online fee calculator that enables potential litigants to estimate their court fees before filing a case.** This conforms to the CCJE standard⁵⁰⁹ that '(...) technology should be developed whereby litigants may (...) obtain full information, even before proceedings are instituted, as to the nature and the amount of the costs they will have to bear'. It is arguable whether these calculators alone can empower users to be informed about their costs up front, given that they don't provide all necessary information and explanations of the complexity of the fee schedule, including its dependence on the value of the claim and the type of case. As a result, parties seeking to understand the likely fees still need to visit the court to have court staff assist them. The online fee calculators would be more helpful if they contained explanations as to when a specific fee has to be paid and whether it should be paid by a plaintiff, a defendant, or both parties.

iii. Accessibility of Court Fee Waivers

36. **The Civil Procedure Code allows for court fee and cost waivers for parties who are financially unable to cover court-related costs.**⁵¹⁰ As demonstrated in Table 19 above and confirmed in surveys, lower income individuals are deterred from courts because of costs, and fee waivers may be critical to enable their access. Particularly in labor-related civil proceedings involving unpaid wages, a court fee waiver may determine whether the person can proceed with their claim or not. However, there is very limited understanding of the court fee waiver option among the public, therefore many potential users would be deterred from the courts unaware they could access this benefit.

Box 16: Inconsistent Application of Court Fee Waivers

In 2013, a lawyer assisted two indigent clients in Vojvodina in their claims for review of their legal capacity. The lawyer reported to the Review team that the two parties had identical circumstances – no income, no property and living in the same psychiatric hospital. Identical claims were submitted to two different judges of the same court requesting a waiver for the costs of medical examinations. One was accepted while the other was rejected. The second matter is currently awaiting appeal.

⁵⁰⁶ For example, costs of a witness shall be paid in advance or within eight days after his or her testimony.

⁵⁰⁷ Access to Justice Survey, World Bank MDTF-JSS, 2014.

⁵⁰⁸ According to the Attorney Fee Schedule, a constitutional appeal costs 45,000RSD if it contains one claim, while every further claim costs 50 percent of this amount.

⁵⁰⁹ CCJE Opinion No. 6, 2004.

⁵¹⁰ The court also has discretion to allow only a partial waiver under which only court fees are waived and the party pays other expenses.

37. **The court fee waiver program is largely undocumented.** Official statistics and information on the number and amount of fee waivers granted by courts is lacking. Information about fee waivers is not recorded in AVP,⁵¹¹ and manual registers of waivers are not kept. The only recording of fee waivers is by individual judges in their orders, therefore aggregation of data is not possible. It is possible that court fee waivers represent a ‘positive story’ where the court system is improving access to justice for poorer court users. However, it is difficult to measure any impact without better data.

38. **The court fee waiver program is unstructured and largely goes unmonitored, resulting in divergent practices.** There are no guidelines or standardized forms on granting a waiver. As a result, court practice varies according to information provided in interviews with attorneys and judges. Two different courts could rule on fee waiver requests entirely differently for persons in similar circumstances. Some courts report they apply a ‘rule of thumb’ that the higher the court fees, the more that should be provided in support of the claim; while other courts apply no such rule. In some locations, the judge or the presiding judge of a panel decides, in others the judge confers with the Court President. In some locations, two judges of the same court could rule differently, as shown in Box 16. The lack of structure and guidance on fee waivers creates an inherent inconsistency in access to justice across the court system.

39. **Though practice varies, stakeholders report that courts tend to consider the party’s property, income.** Courts may also consider the party’s financial dependents as well as the value of the claim.⁵¹² In practice, interviewees indicated that judges would usually grant a waiver if the party submits an official statement to show they are unemployed and own no real estate. Recipients of social welfare may also be free from the duty of pay related costs of procedure, but again this is applied inconsistently.

40. **Stakeholders reported that some Court Presidents informally discourage their judges from approving fee waivers as fees form a significant proportion of courts’ budgets** (for further discussion of budgets, see Financial Management section). It is not possible to verify this claim, but if proven accurate, would suggest that extrinsic factors are influencing the access to justice of individual users and that practice is indeed inappropriately divergent.

iv. Affordability of Attorneys

41. **Parties in most cases choose to hire a private attorney for representation.** The law requires only in some procedures that a party be represented by an attorney,⁵¹³ but in civil cases 65 percent of court users reported hiring an attorney, while 53 percent did so in criminal cases. There is also a high ratio of lawyers-to-population in Serbia.

42. **Hiring an attorney is advisable if not necessary, due to the complexity and ambiguity of law and practice.** Further, court users report they are strongly discouraged by peers to ‘go alone’ because the lawyer’s relationship with the judge may determine the outcome of a case. As stated by a participant in a focus group *‘the price of the lawyer also includes acquaintance with the judge.’*⁵¹⁴

⁵¹¹ AVP can calculate court fees based on the case value and enter a comment about fees. However, there is no field or checkbox to indicate whether court fee waivers were requested or approved. In any event, many courts do not enter the court fee fields at all. They have little incentive to do so since there is no corresponding AVP report to make good use of the information by managerial staff. To improve the practice, a clerk could enter ‘\$0’ as a court fee and make a reference to the judge’s decision in the comment box. Alternatively, a waiver field could be introduced into AVP.

⁵¹² For example, if the value of the claim is very high, the fee would therefore be high. A waiver (a partial waiver) may be granted to a person who would not normally qualify, particularly if they are responding to a lawsuit.

⁵¹³ The *Civil Procedure Law* requires representation by an attorney in proceedings initiated by extraordinary remedial appeals. The *Criminal Procedure Code* also prescribes a number of specific circumstances (e.g., the defendant is tried in absentia, is hearing impaired) in which counsel is mandated. Finally, all minor defendants must have defense counsel. Applicants do not have to be represented by an attorney in proceedings before the Constitutional Court and the Administrative Court.

⁵¹⁴ *Access to Justice Survey, World Bank MDTF-JSS, 2014.*

43. **Attorney fees and costs are highly regulated.**⁵¹⁵ The Attorney Fee Schedule specifies fees for each type of proceeding and each legal action or motion.⁵¹⁶ Parties can negotiate, but fees must not be greater than 500 percent nor less than 50 percent of the tariff rate. In practice, assessments of payments reveal that the Attorney Fee Schedule is unrealistic.⁵¹⁷ Stakeholders reported it is common for parties to pay 50 percent of the tariff rate. In poorer areas outside of the cities, particularly in the South and East of Serbia, rates are likely to go below the 50 percent threshold.

44. **The Attorney Fee Schedule is out of step with European practice and should be removed.** In 42 of the 47 Member States of the Council of Europe, lawyers' remuneration is freely negotiated.⁵¹⁸ The European Court of Justice has found that the mandatory minimum fee violate Article 49 of the EC Treaty.⁵¹⁹ To align national legislation with the Acquis, there is a strong trend among EU Member States and Candidate Countries to move away from fixed tariffs. During its accession process, Croatia amended the Law on Attorneys Service in 2008 to provide greater flexibility to attorneys in setting fees. Similarly in 2004, Romania eliminated minimum fees and strictly prohibited price fixing.⁵²⁰ Existing EU Member States have moved in the same direction.⁵²¹ Where fixed prices have been removed, several EU Member States have maintained recommended fee schedule for services, which may be set by either the professional body or the MOJ. These are justified on the basis of being a guide for consumers and judges in awarding costs, as well as a default scale in cases of where no agreement on fees is reached between the lawyer and the client. However, the EC advocates that both fixed and recommended fee scales are restrictive and anti-competitive forms of regulation and should be abolished at the earliest opportunity. The EC also argues that relevant information on the costs of legal services for consumers could be provided through alternative means far less restrictive of competition, such as the publication of historical and survey-based price information by independent parties, such as consumer organizations.⁵²²

45. **Further, attorneys are paid per hearing or motion on the Fee Schedule, which is in conflict with CCJE opinion that 'the remuneration of lawyers and court officers should be fixed in such a way as not to encourage needless procedural steps.**⁵²³ Attorneys who accept payment by the case are rare.

46. **Attorney fees are very high compared to the average per capita income in Serbia, particularly in criminal and civil cases.**⁵²⁴ The recent Fiscal Impact Analysis of Free Legal Aid Options conducted by the World Bank indicates that the average attorney's fee in a criminal case is 118,000RSD, while that for a civil

⁵¹⁵ CEPEJ 2012, based on 2010 data. In around 41 or EU Member States, remuneration between private parties is freely negotiated.

⁵¹⁶ Attorneys are entitled to all expenses as well as fees in case, such as transportation and accommodation costs, compensation for absence from office, per diem, and telephone bills.

⁵¹⁷ The Fiscal Impact Analysis of the draft Free Legal Aid Law drew on census data, case file reviews and interviews with attorneys to assess payment arrangements.

⁵¹⁸ See CEPEJ Evaluation Report, 2014 (based on 2012 data). Only Cyprus, Germany, Slovenia and UK-Northern Ireland prevent free negotiation of rates.

⁵¹⁹ In the *Cipolla Case* (C-94/04 - Cipolla and Others), the Court considered that the prohibition of derogation by agreement from the minimum fees set by the fee scale was a restriction within the meaning of Article 49 EC Treaty (free movement on persons and services), as the rules in question were liable to render access to the Italian legal services market more difficult for lawyers established in a Member State other than Italy. The Court held that the prohibition deprived those lawyers of the possibility, by requesting fees lower than those set by the scale, of competing more effectively with lawyers established in Italy on a stable basis, who therefore had greater opportunities for winning clients than lawyers established abroad.

⁵²⁰ Lawyers in Romania negotiate fees freely with clients, and these may be hourly fees, fixed fees or success fees.

⁵²¹ After prolonged debate, Italy moved away from its model in 2006, under which tariffs developed by the Lawyers' National Council and approved by their MOJ were binding. Italy eliminated minimum fees and allowed lawyers to decide their fees freely and link fees to the outcomes of their services. In 2003, Switzerland abolished its mandatory fee schedule under cartel laws.

⁵²² See *Competitive Restrictions in Legal Professions*, OECD, 2007, at p298.

⁵²³ CCJE Opinion No. 6 (2004) on *Fair Trial Within a Reasonable Time*.

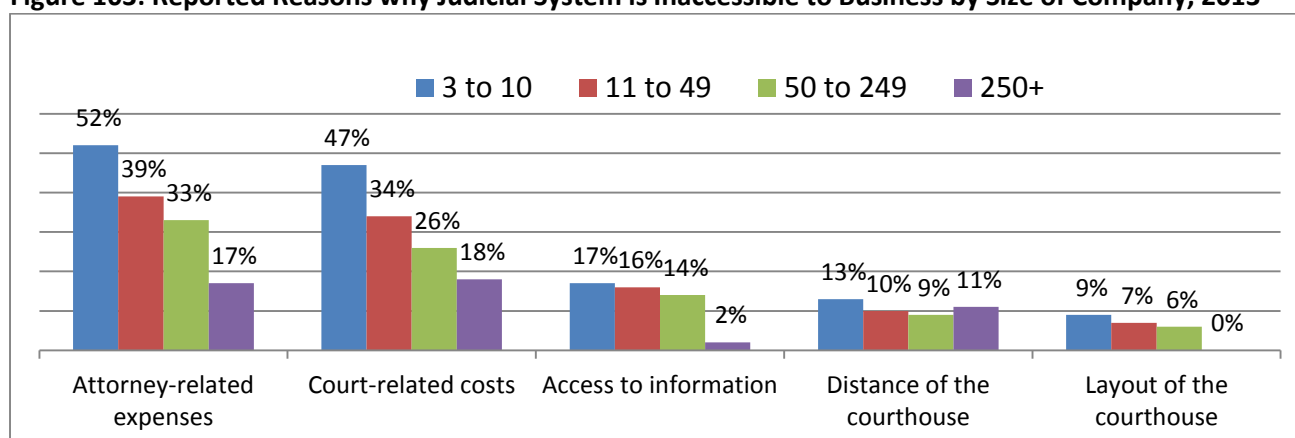
⁵²⁴ *Justice in Serbia: A Multi-Stakeholder Perspective*, World Bank MDTF-JSS, 2011. In misdemeanor and business sector cases, court costs were higher than attorney fees, while in criminal and civil cases attorneys' fees far exceeded court costs.

case is 75,000RSD.⁵²⁵ The average criminal advocate fee is thus 17 times that of the average monthly net income of a resident of Novi Pazar, and more than four times that of the average monthly net income of a Belgrade resident.

47. **According to the 2013 Multi-Stakeholder Justice Survey, 71 percent of the citizens with court experience found attorney-related costs to be one of the most insurmountable barriers to access to the judicial system.**⁵²⁶ Perceptions of affordability have deteriorated since 2009. 76 percent of respondents reported fear of inability to cover attorney-related costs strongly affects their decision on whether to bring a dispute to a court. Strikingly, the percentage of companies that find the judicial system inaccessible in terms of attorney-related costs rose by 18 percent from 30 percent to 48 percent in the period between 2009 and 2013.

48. **Attorney fees create a barrier to access to justice for business, particularly small businesses.** 52 percent of companies with 3 to 10 employees cite that attorney-related fees make the judicial system inaccessible, while 47 percent cite that court fees make the system inaccessible. Although these percentages decreased with size of the company, they remained obstacles even for larger companies (see Figure 103).

Figure 103: Reported Reasons why Judicial System is Inaccessible to Business by Size of Company, 2013



49. **There are also concerns regarding the variable quality of attorneys.** Several stakeholders report hearing large numbers of complaints regarding the quality of attorneys⁵²⁷. Mechanisms for redress regarding the conduct of an attorney are opaque, and discipline of attorneys by any of the Bar Associations is rare.⁵²⁸ Stakeholders were unable to point to any instance – of ex-officio attorneys or private attorneys – where an attorney has been sanctioned for malpractice. In a positive step however, attorneys are now required to hold professional liability insurance, and each Bar Association is able to pay for collective insurance for its members. So claims by former clients against negligent attorneys may be more likely in the future.⁵²⁹

⁵²⁵ *Serbian Free Legal Aid Fiscal Impact Analysis, World Bank MDTF-JSS, 2013*. This data were collected through expert interviews and advocate fee sheets submitted as compensation claims collected at random from 27 Basic Courts and 22 Higher Courts. Initial costs estimates were based on an identification of cost elements in these fee sheets.

⁵²⁶ When asked to assess the accessibility of the judicial system in terms of attorney-related costs, only around 20 percent said that the system is accessible.

⁵²⁷ See for example, the Annual Reports of the Ombudsman's Office for 2011, 2012 and 2013.

⁵²⁸ Stakeholders were able to point to rare instances of civil claims made by former clients against attorneys for compensation or damage for losing a case when the attorney did not appear at the trial. In each case, stakeholders reported that the claimant was unsuccessful.

⁵²⁹ See amendments to the *Law on Attorneys*, 2011.

v. Use of Ex-Officio Attorneys

50. **Court users report that attorneys were appointed ex-officio in 17 percent of criminal cases and 2 percent of civil cases.** Although the law requires ex-officio appointment in some cases,⁵³⁰ no official data are collected on the number of appointments or the types of cases where ex-officio appointment is most common.

51. **Stakeholders expressed some concern regarding the integrity of the process for identifying ex-officio attorneys.** The respective Bar Associations maintain lists of attorneys who specialize in criminal law and are available for work.⁵³¹ However, practice differs regarding the use of this list. In the past in Belgrade, the Bar Association had a telephone number that police, courts or prosecutors could call and be directed to an attorney. This practice was perceived well by stakeholders. Unfortunately, the practice ceased in 2013 amidst uncertainty regarding the leadership and management of the Bar. Outside of Belgrade, no such hotline has ever existed. Instead, the police make a series of phone calls looking for an attorney, relying either on the list (often an old copy) or their personal contacts. Since the introduction of the new CPC, there has been some limited change in practice, but this has not addressed the problem. Prosecutors in Belgrade reported that they are required to make calls looking for an attorney.⁵³² They express discomfort with this process, given their high workloads and potential exposure to criticism and conflict of interest. Meanwhile in most if not all locations outside of Belgrade, police calls remain the standard practice.



Title: *Pursuit of Justice*, submitted by an entrant to the Justice Competition, World Bank MDTF-JSS, 2014.

52. **Stakeholders expressed similar concern regarding undue influence in the appointment of attorneys.** In some locations, the police, prosecutor, or the court reportedly narrow the list of attorneys and appoint only those who will encourage confession and lessen the workload of the case. It is not possible for the Review to substantiate these claims, but, if proven, such practices would deny defendants of the right to legal assistance of their own choosing under Article 6 (3) of the ECHR. The same concern has been expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on several occasions. In 2011, it reported that:

*'As had been the case during the 2007 visit, several detained persons who had benefited from the services of ex-officio lawyers complained about the quality of their work; in particular, the ex-officio lawyers apparently met their clients only once (in court), and often tried to convince them to confess to the offence for which they were being charged. Once again, the delegation heard allegations that the choice of a particular lawyer had been imposed on the persons concerned by the police.'*⁵³³

⁵³⁰ Criminal defense is mandatory in cases where the defendant is detained or where the offence is punishable by eight years imprisonment or more. Where the defendant is indigent, defense counsel may be appointed by the court in cases punishable by imprisonment of three years or more, or where reasons of fairness so require. In a very small range of instances, representation is required in civil cases.

⁵³¹ It is not clear, however, how often these lists are updated.

⁵³² However, it seems this practice, too, is inconsistent. In places under the jurisdiction of the First Basic Prosecutor's Office, the police are more likely to call attorneys, while in the Second Basic Prosecutor's Office, the prosecutors do it themselves. See *Report of the National Preventive Mechanism Team under the Optional Protocol to the Convention Against Torture*, 2014.

⁵³³ See *Report to the Government of Serbia from the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT Report), 2011, at paragraph 22.

53. **The work of ex-officio attorneys is not monitored to ensure quality control.** Information regarding appointments is not entered into AVP, or if entered, it is as a ‘general remark’ not suitable for running analytic reports. Some stakeholders report that the quality of work by ex-officio attorneys is lower than party-funded attorneys due to their limited accountability. Several stakeholders allege that ex-officio attorneys are more likely to pursue unmeritorious claims and appeals to increase their billings. In the absence of data or quality control mechanism, the Review team is unable to substantiate these claims.

vi. Accessibility for Unrepresented litigants

54. **Court users report that they represent themselves in around 30 percent of criminal cases and 30 percent of civil cases.**⁵³⁴ No official data are collected on the number of defendants who self-represent.⁵³⁵

55. **Self-representation would be very challenging in the Serbian context and place unrepresented court users at some disadvantage in terms of their access to justice.** Judges usually guide or support self-represented litigants to ensure fairness. However, there is limited information or guidance for self-represented litigants, such as lay guides, checklists (see discussion of informational access below). The challenge is borne out in the results. In the 2013 Multi-Stakeholder Justice Survey, respondents who represented themselves had judgments go against them in a higher percentage of cases (60 percent) than people represented by a private lawyer (44 percent). The introduction of an adversarial system under the new CPC is likely to deepen the challenge in criminal proceedings. Initiatives to improve access to laws and court procedure (see below) would better enable users to navigate the court system. Initiatives to simplify case processing in the kinds of cases where users self-represent, such as in Misdemeanor Courts and in the pursuit of small claims in Basic Courts, could also improve access to justice for large numbers of people, while producing quality and efficient outcomes. For a further discussion on small claims, see the Efficiency Chapter.

vii. Legal Aid Programs for the Indigent

56. **The right to an attorney when fundamental rights are at stake is enshrined in international standards.** The further right to an attorney provided at state cost when a person cannot afford an attorney is outlined in the EU’s Charter of Fundamental Rights,⁵³⁶ the ECHR,⁵³⁷ and the United Nations’ Principles on Access to Legal Aid in Criminal Justice Systems. In Serbia, the Constitution guarantees the right to legal aid, but does not define ‘legal aid’ or who can provide it.

57. **Current legal aid providers deliver an incomplete patchwork of services across Serbia.** Around 46 municipalities have Municipal Legal Aid Centers (MLACs), and an additional 10 municipalities deliver legal aid without an MLAC. Together, these cover around one-third of the country and around one-half of Serbia’s total population. However, the remaining municipalities do not provide the mandated services either because of funding or capacity constraints or because they do not prioritize the service. In Vojvodina, 28 of the 47 municipalities offer legal aid to the citizens.⁵³⁸ Only six of these municipalities provide legal aid that includes representation before courts and administrative bodies, and the rest provide limited advice or

⁵³⁴ This is a decrease from 32 percent in criminal cases, but an increase from 25 percent in civil cases in 2009.

⁵³⁵ AVP was designed to record the identity of parties, their lawyers, and how much the lawyers are paid. However, courts do not systematically provide this information, and there is little incentive for them to do so as there is no standard report generated by AVP to aggregate and analyze the data.

⁵³⁶ Title VI Art. 47 paragraph 3 ‘Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.’

⁵³⁷ ECHR Art. 6 paragraph 3 ‘... 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.’

⁵³⁸ See *Pravna pomoć u jedinicama lokalne samouprave*, Provincial Ombudsman of the Autonomous Province of Vojvodina (Novi Sad, 2013), page 18.

information. Outside of Vojvodina, the situation is likely to be worse. Law Faculty Clinics and CSOs also provide some legal aid services in specific topics, such as refugee law and human rights protection.

58. **National data is not collected on the number of instances of legal aid, nor on how much money is spend on legal aid service provision.** Among the 47 countries monitored by the CEPEJ, Serbia is one of only four countries where it is impossible to identify the budget allocated for legal aid.⁵³⁹ Based on the municipal survey across Serbia in 2012, the 56 or so municipalities that provide legal aid of any form responded to 73,000 requests for assistance, offered advisory services 57,000 times, made 29,000 free submissions, 17,000 paid submissions, and 17,000 written submissions. Requests for assistance equaled slightly more than 2 percent of their collective populations. This was accomplished with a staff of around 80 legal advice providers and 20 support staff. In total, there were 911 requests per provider, 565 requests for submissions, and an estimated 379 actual court cases filings per provider.⁵⁴⁰

59. **Most citizens are unaware of any free legal services that might be provided in their city or municipality.**⁵⁴¹ In the Access to Justice Survey, 58 percent of respondents across Serbia reported that they were not aware of any service that provided legal aid. An additional 25 percent indicated that no organization in their city or municipality provides free legal assistance to citizens. Namely, 82 percent of the respondents could not name a single organization or institution that provides legal aid free of charge, even when an MLAC is present in their municipality. Some of those who named an organization did so incorrectly – for example, 4 percent named the Ombudsman Office as an institution providing free legal aid, when it does not.

60. **Where services are provided, they are perceived by clients to be of good quality.** In the Access to Justice Survey, 93 percent of the respondents who used legal aid services were satisfied with those services, a resoundingly positive endorsement.⁵⁴²

61. **Rates of use of free legal aid, types of services provided, and satisfaction with services provided are not tracked or assessed at a central level.** Data are fragmented and neither collected nor analyzed – some legal aid providers do not keep records at all.

62. **Reform is underway to expand legal aid consistently with EU standards.** A Working Group to draft a Free Legal Aid Law has been working on-and-off for several years.⁵⁴³ A working group is aiming to finalize the draft, although that group met once in 2014. Key features of the draft law are outlined below, and some and remaining ‘sticking points’ and risks are highlighted.

- i. Primary legal aid (such as an initial consultation and the provision of general information and initial advice, as well as the drafting of documents) would be provided for all case types except commercial cases by a host of service providers, including MLACs, CSOs, trade unions and Law Faculties. All persons providing primary legal aid must be law graduates. However, no state funding is to be provided for this primary legal aid service, and there is no requirement for municipalities to establish MLACs. Delivery would presumably rely on international donor support or funding from individual municipalities. This is

⁵³⁹ See *CEPEJ Evaluation Report*, 2014 (based on 2012 data). The other countries where legal aid expenditures are unknown are Armenia, Montenegro and Ukraine.

⁵⁴⁰ This is based on the assumption that a portion of drafted submissions does not ultimately reach the court as an incoming case. Based on interview estimates conducted for the FLA Fiscal Impact Analysis, it was suggested that approximately two-thirds of submissions become incoming cases. *Serbian Free Legal Aid Fiscal Impact Analysis: Volume, Costs and Alternatives*, World Bank MDTF-JSS, 2013.

⁵⁴¹ *Access to Justice Survey*, World Bank MDTF-JSS, 2014.

⁵⁴² *Access to Justice Survey*, World Bank MDTF-JSS, 2014.

⁵⁴³ A draft Legal Aid Bill was open for public debate in December 2013, and many comments were received, particularly from CSOs. However, the service delivery model, namely the use of one-stop-shops through the Ministry for Labor and Social Welfare, proved unfeasible so the draft required further reworking.

an area of high risk for implementation, because there is a high likelihood that primary legal aid would be underfunded. It is also likely that, without support, those municipalities that do not already have MLACs will not open them. Under the current scenario then, primary legal aid would continue to be provided inconsistently across the territory and underfunded compared with needs.

- ii. Secondary legal aid (such as representation in courts and mediation) would be provided for certain types of cases only, focusing predominantly on criminal defense. It would be delivered by those providers who are eligible to represent clients in court, as per the procedural rules that govern the time of case in question. In effect, this means that Bar Association attorneys will be the predominant providers of secondary legal aid. It is not clear whether trade unions or some other professional organizations may also be in a position to represent their members. It is also not clear how representatives would be chosen or allocated to cases. This aspect of the policy also poses high implementation risks. Relying on Bar Members for the bulk of service delivery would significantly increase program costs beyond what the justice system can likely afford in a challenging fiscal environment.⁵⁴⁴ Further, Bar Members do not always have expertise in the types of cases where the poor need assistance, whereas associations and CSOs often have staff dedicated to specializing in this work, several of whom have law degrees and Bar exams, but are not members of a Bar Association. There is thus concern that Bar Members would deliver a lower-quality service for a higher-than-affordable price. Also, it is unclear how users would be aware of secondary legal aid services and referred to service providers in areas where primary legal aid does not exist.
- iii. Persons eligible to receive secondary legal aid would be individuals who already receive social benefits, as well as members of certain vulnerable groups (such as victims of domestic violence). Eligibility to receive social benefits would be determined through the database of the Ministry for Labor, Employment, Veteran and Social Policy (MLEVSP). However, it is not clear how any additional grounds of eligibility (for example based membership of a vulnerable group) would be determined.
- iv. The MOJ would develop a FLA Fee Schedule for the compensation of secondary legal aid providers. The Fiscal Impact Analysis of Free Legal Aid advises that this Fee Schedule should be significantly lower than the existing Attorney Fee Schedule, which has proven to be unrealistic.⁵⁴⁵ There is some concern regarding the costing arrangements for all these service providers, and planning will be required to avoid the accumulation of arrears.⁵⁴⁶
- v. Quality standards would be proposed and a quality control procedure would be established by a unit that would be created within the MOJ to perform oversight and assure efficacy of legal aid service delivery. Both primary and secondary legal aid providers would be required to be listed in a Registry of FLA Providers, to be managed by the MOJ. The providers will be required to keep records on their services and report annually to the MOJ on the scope and form of provided assistance. For primary legal aid providers, this would increase their bureaucratic overheads, even though they would receive no funding from the State.⁵⁴⁷ It is unclear how the quality of legal aid service providers will be checked, and how data would be collected and monitored, particularly in secondary legal aid cases.

⁵⁴⁴ Were the official tariff amount paid to attorneys in Basic Court cases expanded to all those eligible for legal aid, the cost is estimated at between 2.4 and 4.8 billion RSD per year. However, the cost of providing the same services through free legal aid (making a number of assumptions about eligible providers, the range of services provided, eligible recipients, and the administrative structure and the likely impact of quality controls) is estimated to be significantly less (estimated at approximately 600 m RSD per year).

⁵⁴⁵ See *Serbian Free Legal Aid Fiscal Impact Analysis: Volume, Costs and Alternatives*, World Bank MDTF-JSS, 2013.

⁵⁴⁶ Article 32, draft FLA Law suggests that only attorneys, notaries and mediators will be compensated by the state for the costs of secondary legal aid services and that the costs of all other services shall be borne by the providers. Such an arrangement may well undercut the purpose of the law and may result in primary legal aid services not being provided.

⁵⁴⁷ See Article 10, draft Free Legal Aid Law.

63. **Of most concern, there appears to be an imbalance in the implementation and funding arrangements between primary and secondary legal aid under the current draft of the proposed law.** Efficient delivery of primary legal aid is likely to have the greatest benefit in terms of increasing access to justice for the largest numbers of people. It will be important to ensure that this aspect of the reform is adequately funded (although costs need not be high) and delivered consistently throughout the country, including in municipalities that lack MLACs. Meanwhile, proposals for secondary legal aid are likely to impact fewer users and could be very costly. The proposal appears not to have applied lessons from the current arrangements for ex-officio attorneys,⁵⁴⁸ so the quality of secondary legal aid services may be questionable. As a result, under the current arrangement both primary and secondary legal aid will face significant implementation challenges.

64. **Refinement, finalization, and operationalization of the draft FLA Law should be a priority.** After years of languishing in successive working groups, it will be important for a simple and effective law to be passed that is consistent with the minimum requirements of Article 6 ECHR and can be applied consistently throughout the country. The law will need to be costed and funds allocated to enable implementation of both primary and secondary legal aid. The oversight unit at the MOJ would also need to monitor implementation carefully, including by collecting and analyzing data on cases, beneficiaries, providers and service quality, and should be prepared to propose corrective measures for the continual improvement of the program. Without significant financial and operational planning and oversight, there is a risk that the reform may become ‘stillborn’ like others before it.

65. **Lessons from legal aid systems in the region may be instructive in the final phase of refinement.** A comparative analysis of legal aid systems was conducted by the MDTF-JSS in 2013, particularly highlighting Lithuania and Brcko, Bosnia, as two locations where legal aid has been implemented in a simple, effective, and fiscally responsible manner.⁵⁴⁹ It is increasingly common in advanced justice systems for legal aid to be provided on a user-provider payment system or voucher system, so that once a beneficiary is deemed eligible, the person can choose their own legal aid provider, rather than be allocated one. Such reforms have been known to improve both access and quality while enhancing user satisfaction and engagement in the process.

66. **If implemented effectively, the FLA law has the potential to transform access to justice, comply with Chapter 23, and improve the perceptions of the judiciary in the public.** It will not address the concern that courts are too expensive for average Serbians, but it would help to ensure that those most needy have improved access. Given the recent fall in incoming cases before all courts (particularly sizeable falls in Basic Courts), the court system has the capacity to absorb such an increase in demand that may arise. The effectiveness of legal aid delivery would also be greatly enhanced by the range of efficiency and quality initiatives discussed elsewhere in the Chapter. For example, establishing a simplified small claims procedure that encourages self-representation through a streamlined user-friendly process would significantly reduce the demand for free legal aid and enable scarce resources to be focused on meeting core needs to comply with Article 6 of the ECHR.

c. Access to Information

i. Access to and Awareness of Laws

67. **Access to and awareness of laws, a pre-requisite to access to justice, is limited in Serbia.** Prior to 2014, the only legal databases where statutes in their complete form were available were those established and maintained by private companies. Private databases were available for an annual membership of

⁵⁴⁸ For discussion of ex-officio attorneys, see the Quality Chapter.

⁵⁴⁹ See *Comparative Analysis of Free Legal Aid Options, World Bank MDTF-JSS, 2013*.

approximately 400EUR.⁵⁵⁰ The National Assembly publishes legislation only as adopted without inserting changes in existing statutes. Ministries and other institutions that can adopt regulations do not always publish them.

68. **The beginning of 2014 brought a significant change in availability of laws and other regulations.** On January 1st, 2014, the Official Gazette (Službeni Glasnik) launched its online database where all legislation, including regulations adopted by bodies other than the National Assembly (e.g., ministries and courts), are available free of charge. The extent to which the new Official Gazette's legal database will increase effective availability of legislation remains unknown.

69. **Nonetheless, court users struggle to find access information.** In the 2013 ACA Court User Survey of court users, nearly half of all respondents reported that they had no information or were for the most part uninformed about the procedure that brought them to court.⁵⁵¹ The Survey also found that for those court users who were informed about the proceedings, over 40% reported that they got their information from direct contact with court staff, and 23% took information from other peoples' experiences. Focus groups suggested that people, regardless of their education, general awareness, or computer literacy often do not know where to find regulations and miss practical information concerning their rights or procedures for their protection. Those who have used the internet to obtain information on law and procedure say their search was time-consuming and frustrating because they had to visit a number of websites that sometimes offered unclear or different information from what is actually practiced.⁵⁵²

70. **Frequent changes of legislation also undermine individuals' access to justice.** Seasoned lawyers also find it difficult to know what the current law is, given the frequent changes. Judges acknowledged to the Review team that they too struggle to be up to date with the constant amendments, especially when laws may be interpreted in more than one way and the interpretation of an official authority (such as a court or ministry) is lacking. For citizens, the challenge is compounded to the extreme.

71. **Businesses report that frequent changes in laws and regulations create problems for their operations.**⁵⁵³ In focus group discussions, business representatives complain that laws are not accompanied by information that is easily available to companies, and high attorney fees deter them from seeking legal advice. As stated by the owner of an office supply company:

"The most severe problem in small companies is lack of information, since we are simply not able to deal with these things, with different new regulations popping out every day, we are simply stunned. We don't have legal departments, so that we can tell them – here are these invoices, do collect this money or sue them. We have to do it on our own, and I can't do my job and do this at the same time, so I lose money. That's why it's very expensive, really time consuming and burdening. And lawyers also charge a lot for it, with fees and everything".

72. **Farmers report similar problems, and complain that they find out about legislative changes too late.** As one farmer in a focus group stated, 'provisions should stay the same for a longer period of time, so that peasants get informed about them and know what to do if they have a problem, how to react'.⁵⁵⁴

⁵⁵⁰ For instance, the Paragraph Lex legal database, the most widely used, in 2014 charges new users RSD 44,990 (on April 2, 2014, approximately USD 537 or EUR 389) for its annual legislation package, while old users pay RSD 41,470 to renew their annual membership. See http://www.paragraf.rs/images/cenovnik_pravna_baza.pdf.

⁵⁵¹ See ACA Court User Survey, 2013.

⁵⁵² Access to Justice Survey, World Bank MDTF-JSS, 2014. For further information on websites and content, see **Annex 4**.

⁵⁵³ See also the section on quality of law making in the Quality Chapter. NALED tracks 30 laws important for businesses and reports that over the last five years, these laws have been amended or overhauled 98 times in total.

⁵⁵⁴ Access to Justice Survey, World Bank MDTF-JSS, 2014.

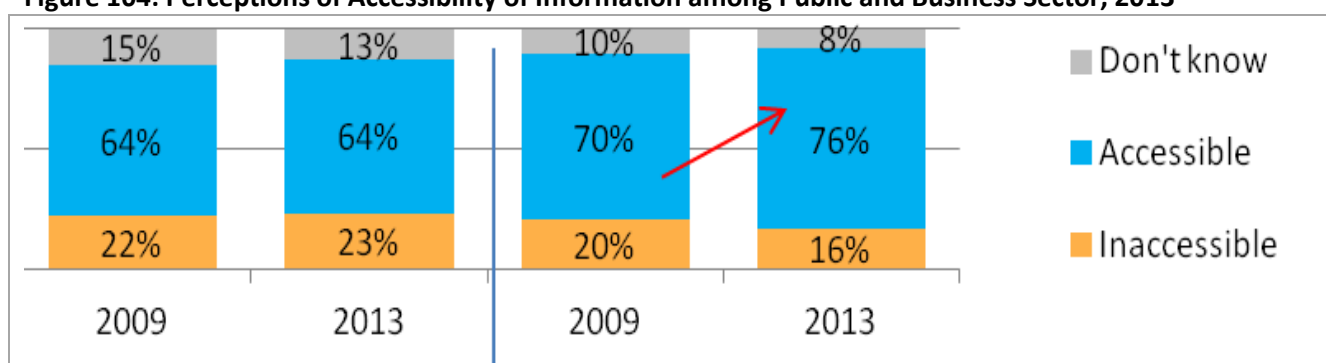
73. **Individuals and companies would welcome free access to practical guidelines, authoritative interpretations, and commentaries following new legislation.** Where they exist, useful commentaries on legislation by relevant experts are not available free of charge. Even the above mentioned Official Gazette's database, which now provides all laws and regulations free of charge, provides commentaries on legislation only to subscribed and paying users.

ii. Access to Court and Case Information

74. **Access to court information is a necessary pre-requisite to enable a court user to engage with the logistical and procedural aspects of their case.** Ensuring that users are better informed can reap significant benefits in terms of efficiency. As outlined in the Efficiency Chapter, the Vrsac Basic Court prepared checklists of information for users, which has smoothed and improved efficiency in case processing.

75. **In the Multi-Stakeholder Justice Survey, 64 percent of the public and 76 percent of business sector respondents reported that the judicial system is accessible in terms of general access to information.** Respondents agree that access to information on how to initiate judicial proceedings is not a significant barrier in efforts to file a case in court. On a further positive note, and in contrast with 2009, a higher percentage of business representatives report that information is accessible (see Figure 104 below).

Figure 104: Perceptions of Accessibility of Information among Public and Business Sector, 2013⁵⁵⁵



76. **However, the availability of information on misdemeanor proceedings is worsening.** In 2013, 24 percent of respondents complained it is hard to collect information about misdemeanor cases, compared with only 6 percent of respondents in 2009.⁵⁵⁶ Access to information in misdemeanor cases is particularly important because the users in these cases usually research and represent themselves. Easily accessible information in lay formats could thus also improve the efficiency and quality of proceedings in Misdemeanor Courts.

77. **Access to information is a particular challenge for seniors and the least educated citizens.**⁵⁵⁷ In the Multi-Stakeholder Justice Survey, 58 percent of the elderly and 63 percent of the least educated expressed that difficulties in finding the necessary information influences their decision to initiate a judicial procedure or not.⁵⁵⁸ This information should be borne in mind when planning how to make information on procedures more accessible.

78. **Information on how to enter complaints against the courts is also not easily accessible.** For further

⁵⁵⁵ Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

⁵⁵⁶ The proportion of those saying it was easy to obtain information declined in civil cases as well (from 61 to 48 percent), but this was accompanied by an increased proportion of those who let their lawyer collect information (from 25 to 33 percent).

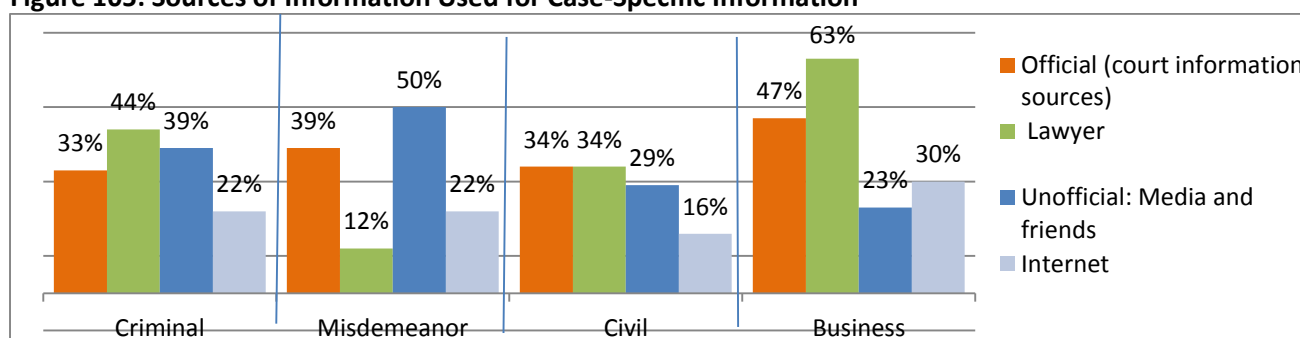
⁵⁵⁷ In the 2011 Census, 'elderly people' refers to those over 60 years of age, composing around 24.7 percent of the population. 'Uneducated people' refers to those with nil or incomplete primary education, composing around 13.7 percent of the population.

⁵⁵⁸ Access to Justice Survey, World Bank MDTF-JSS, 2014.

discussion about complaints mechanisms, see the Quality Chapter.

79. **Respondents use several sources of information when looking for information about their case. This varies in frequency depending on the type of case.** In criminal cases, lawyers are the most common source of information at 44 percent, followed by unofficial sources such as friends and media, and then official court sources of information. Unofficial sources of information prevail in misdemeanor cases (50 percent), followed by official court sources (39 percent). In civil cases, lawyers and official court sources of information are used most frequently (34 percent). As for the business sector, lawyers are the prevailing source of information (63 percent), and somewhat less than half of companies (47 percent) use official court sources.

Figure 105: Sources of Information Used for Case-Specific Information⁵⁵⁹



80. **Respondents to both Multi-Stakeholder Justice Surveys indicated that among official sources of information, court staff and the registry desk were used most often.** Over 70 percent of respondents in the public and business sector that used official information sources were satisfied.⁵⁶⁰ Little mention was made of using printed materials from the court (e.g., informational brochures or leaflets), with only 3 percent of respondents relying on these sources of information. It may be that such information is not readily available at courts. During field visits, the Review team sought without success to obtain such brochures and leaflets on basic procedures.

81. **Victims of crime are at a particular disadvantage when accessing information and navigating the court system.** All EU Member States (except Latvia) offer a free-of-charge service to inform and help victims of crime, in recognition of their vulnerability and specific justice needs. Among those countries monitored by the CEPEJ, Serbia is also one of only five states that lacks such a service.⁵⁶¹ In Serbia, such services are provided on a voluntary basis by a patchwork of local CSOs.

82. **There is considerable room for improvement in making information available online.** Some courts have rich websites (for instance the Leskovac Basic Court), while others do not have a website at all. Some CSOs also offer useful practical information. Providing online information enables potential users to conduct research without assistance, prevents unnecessary travel to the courthouse, and can improve the efficiency of court processes. In 2013, only 24 percent of survey respondents⁵⁶² indicated using the internet for information since websites do not contain useful information and litigants do not know how to access these websites. In 2012, internet penetration in Serbia was approximately 60 percent,⁵⁶³ but this will invariably rise in the medium term and the Serbian judiciary should be prepared for when it occurs. In the meantime, offline versions should also be readily available, particularly for rural, elderly, and the least educated groups.

⁵⁵⁹ *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

⁵⁶⁰ *Justice in Serbia: A Multi-Stakeholder Perspective*, for the World Bank, September 14, 2011, pg. 41.

⁵⁶¹ See *CEPEJ Evaluation Report, 2014*. The four other jurisdictions that lack a system to inform and help victims of crime include Andorra, Armenia, Latvia and Montenegro.

⁵⁶² *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014*. This is an increase from 16 percent in 2009.

⁵⁶³ *IPSOS Media, 2012*

For discussion of online resources, see the ICT Management section.

83. **Availability of court information saw significant progress with the introduction of a web portal, the Sudova Srbije.** The portal provides information on the status of ongoing procedures in first instance courts, including hearing dates. Due to privacy constraints, the portal can only be accessed by those who know the case number, which causes some confusion for parties and lawyers alike.⁵⁶⁴ Further, the portal does not currently provide information about matters before appellate courts and the SCC. None of the four appellate courts or the SCC post daily schedules online. Hence, parties to proceedings are not in a position to know when an appellate court or the SCC will hold deliberations in their case. The Constitutional Court, which used to announce its daily schedule, have since abandoned this practice. Croatia's 'e-case' portal provides greater coverage as well as more detailed information. It has better managed the privacy constraints by providing the initials of the parties and their case file numbers to enable easy identification. Reforms similar to 'e-case' would be readily implementable and would improve access to court information in Serbia.

84. **Court notice boards could also provide better information to court users.** As court users often are required to wait in public areas for hearings or services, this provide a low-cost and easy-access option for raising awareness to anything from changes in procedure, lay guides, checklists, lay formats of annual reports etc. Court staff, under the direction of the Court President, could be more proactive in enhancing the visibility of notice boards and ensuring that they provide accurate and relevant information for court users.

iii. Access to Court Decisions

85. **The SCC is the only court with regular publication of all its decisions.** The Constitutional Court has made many of its decisions available online for the public. Other courts do not regularly publish their judgments, although some, in particular appellate courts, make some particularly important decisions or excerpts from decisions available on their websites. Selected decisions are also periodically published in the Official Gazette. However, the number of decisions available online remains limited. Only the Constitutional Court's website has a search engine that allows keyword searching. A search engine for the SCC's website is currently under construction.

86. **The Act on Free Access to Public Information allows all individuals can request a court to provide them with its decisions.**⁵⁶⁵ In general, courts fulfill this duty though in some cases, delays occur especially if a request involves a large number of decisions. Parties to court proceedings can always ask courts for decisions made in their case and also have access to their case files.

d. Access to Alternative Dispute Resolution

87. **Evidence from numerous countries shows that the effective use of mediation can enhance the efficiency of dispute resolution, reduce the number of pending cases, and help keep cases from returning to the judicial system.** Estimates from Serbia's Free Legal Aid Working Group members indicate that the cost of a case concluded through mediation will be approximately 25 percent of that of a case completed through litigation, with significant savings to the courts and to parties.⁵⁶⁶ Such a reduction in costs indicates that mediation may directly enhance access to justice by allowing more affordable dispute resolution.

88. **The EU actively promotes methods of alternative dispute resolution, including mediation.** Standards require member states to encourage training of mediators and to urge judges to invite parties to

⁵⁶⁴ In December 2013 the Commissioner for the Protection of Personal Data ordered the MOJ remove all names and addresses from the portal.

⁵⁶⁵ The War Crimes Chamber of the Belgrade High Court does not make its judgments available to the public, notwithstanding orders to do so by the Commissioner for Free Access to Public Information.

⁵⁶⁶ *Serbian Free Legal Aid Fiscal Impact Analysis*, World Bank MDTF-JSS, 2013.

try mediation first. The EU also highlights certain safeguards, such that mediation must take place in an atmosphere of confidentiality, and that mediators cannot be obliged to give evidence in court about mediations.⁵⁶⁷

89. **In 2005 a legal and institutional framework for mediation was established in Serbia,⁵⁶⁸ but mediation was never fully embraced.** Despite the judiciary's poor reputation, backlogs, and efficiency challenges, the alternative course was not perceived to be more attractive. Over time, the number of mediation cases in Serbia has reportedly decreased.⁵⁶⁹

90. **Mediation has not been effectively incorporated into the regular proceedings of all courts.** Instead, the system sits astride the regular system and depends on individual judges, attorneys, or parties to propose its use of their own initiative. To be effective, a court-annexed mediation system should be integrated into the case flow, and a system developed to divert cases to mediation at the appropriate time. Further, there is an absence of public awareness and understanding of the concept of mediation and its potential benefits, so court-annexed mediation programs experience difficulties in finding citizens interested in using mediation services. Lastly, there has been an absence of cooperation between stakeholders in the field of mediation.⁵⁷⁰

91. **Awareness of mediation is somewhat limited, although it is more commonly known in business circles.** According to the 2013 Multi-Stakeholder Justice Survey, only 17 percent of general court users and around 53 percent of business users know what mediation is, and these levels of awareness have been constant since 2009.

92. **Some limited mediation does occur outside of the court system.** The National Bank of Serbia, the Commissioner for the Protection of Equality, the Association of Mediators, and the Chamber of Commerce and Industry all offer mediation for some types of disputes. However, a recent evaluation of the use of mediation in Serbia indicated that these efforts are ad-hoc and used only sporadically.

93. **Mediation also suffers from a perception problem, largely because previous reforms offered promise but were 'stillborn'.** Among the general and business court users who heard about mediation, the majority considers it useful, but they are more likely to think that it is just partly useful rather than very useful. Furthermore, there has been a decrease in its perceived effectiveness. Among those who are aware of mediation in the 2013 Multi-Stakeholder Justice Survey, 36 percent of the general court users considered mediation very useful, a decrease of 15 percent from 51 percent in 2009. Conversely, 7 percent more people in 2013 consider it to be not useful at all. People who claimed to have had a dispute they thought should be settled in the court but decided against such action rarely choose to settle the dispute by mediation procedure. Only 1 percent of general population (out of those who had a dispute but decide not to settle it in the court for any reason) opted to settle the dispute by mediation process, while in business sector mediation was chosen by only 2 percent in 2009, and 0 in 2013.

94. **Nonetheless, court users – and potential users – appear to want alternatives outside of the court system, indicating that a well-designed mediation system would attract demand from potential court**

⁵⁶⁷ See for example, https://e-justice.europa.eu/content_eu_overview_on_mediation-63-en.do

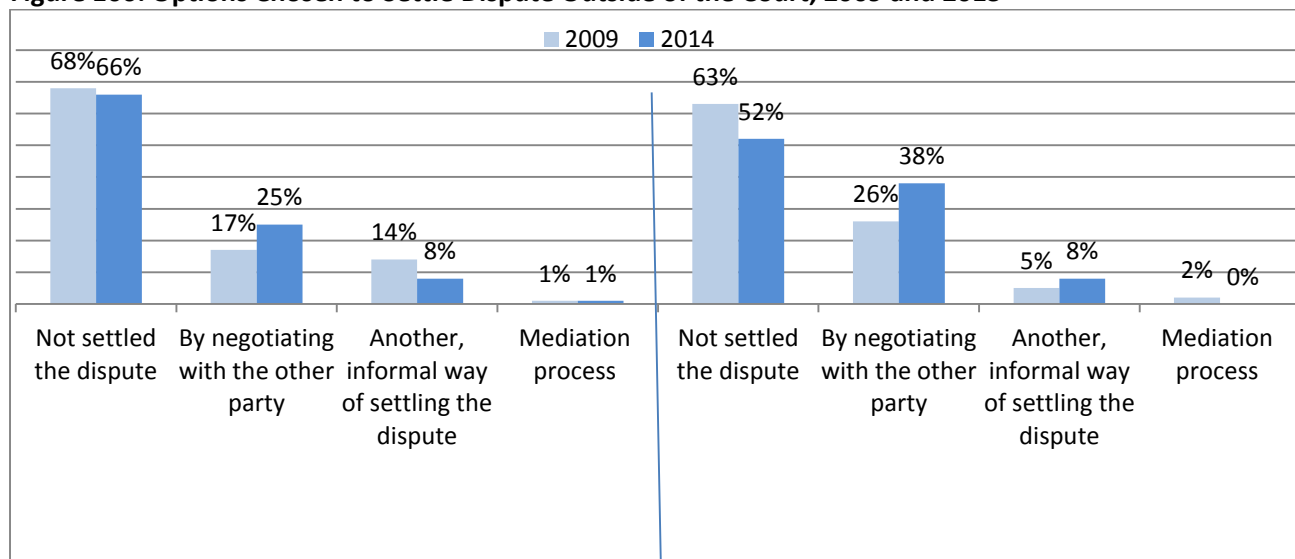
⁵⁶⁸ The 2005 Law on Mediation enabled mediation in all disputes unless a law stipulated the exclusive authority of a court or other relevant body. Mediation could be initiated either before or after the initiation of court proceedings, or independent of any formal proceedings. Court-annexed mediation services in the Basic Courts and certain courts of special jurisdiction could be used in civil matters, such as property, family, commercial and employment disputes. In criminal matters, court-annexed mediation could be used to facilitate an agreement between the victim and a juvenile offender (victim-offender mediation). Civil and criminal mediators were mostly sitting judges, but occasionally included trained professionals. In family disputes, particularly in cases involving parental rights, mediation was generally carried out in collaboration with social welfare centers. In 2006, the 'Republic Mediation Centre' was established to organize mediation services, organize training and expert conferences, and publish relevant materials.

⁵⁶⁹ *Recommendations for Development and Implementation of Mediation in Serbia*, Blažo Nedić, Jelena Arsić, 2011.

⁵⁷⁰ *Mediation in Serbia, Achievements and Challenges, Partners for Democratic Change*, Serbia, 2012.

users. In the Multi-Stakeholder Justice Survey, 33 percent of the public and 46 percent of business representatives who had a dispute prefer to negotiate with the other side or resolve it informally somehow (see Figure 106 below). Similarly, in the 2014 Access to Justice Survey, the majority of people reported having a dispute but opting not to take a suit to court. Of them, 23 percent said they negotiated their dispute on their own with the other party, and a further 5 percent found an informal way to settle the dispute. The remaining 72 percent said the dispute was still outstanding.⁵⁷¹

Figure 106: Options Chosen to Settle Dispute Outside of the Court, 2009 and 2013⁵⁷²



95. **Recognizing the problems of the previous ‘stillborn’ reforms, the MOJ formed a number of working groups between 2010 and 2014 to consider amendments, and in May 2014, a new law on mediation was adopted by the Serbian Parliament.** Under the new law, the Republic Mediation Center has been disbanded and mediation is expected to be brought under the umbrella of the courts. Judges are now expected to act as mediators outside of their working hours and using court facilities. The 2014 Mediation Law allows for parties to be relieved from paying court fees if mediation is successful before the end of first hearing. As with the first law, mediation may be used under the new law in any dispute unless a law stipulates the exclusive authority of a court or other relevant body. In particular, mediation is seen as suitable for property, family, commercial, administrative, environment, consumer, and labor cases. In relation to criminal and misdemeanor cases, mediation may be used for damage and compensation requests.

96. **However, the new law on mediation has not addressed the institutional shortcomings that were present under the first law.** Other than providing for some fee relief and expanding the scope of cases for which mediation is seen as suitable, the new law does not address the problems identified above. The role to be played by attorneys and parties is not clear, though practice around the world suggests that lawyers need not always be involved. If lawyers do participate, consideration will need to be given to the extent to which it may charge for mediation or whether legal aid would be.⁵⁷³ It will be necessary to monitor the potential misuse and failure of parties to comply with mediated available agreements.⁵⁷⁴ By-laws, to be

⁵⁷¹ Access to Justice Report, World Bank MDTF-JSS, 2014.

⁵⁷² Survey Question: How did you settle the dispute?) Population base: members of public and business sector who reported to had a dispute they thought should be settled in the court but decided against such action. Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

⁵⁷³ CCJE also calls for legal aid to be available for mediation (and other ADR) phases of a case, not just when cases enter the trial phase.

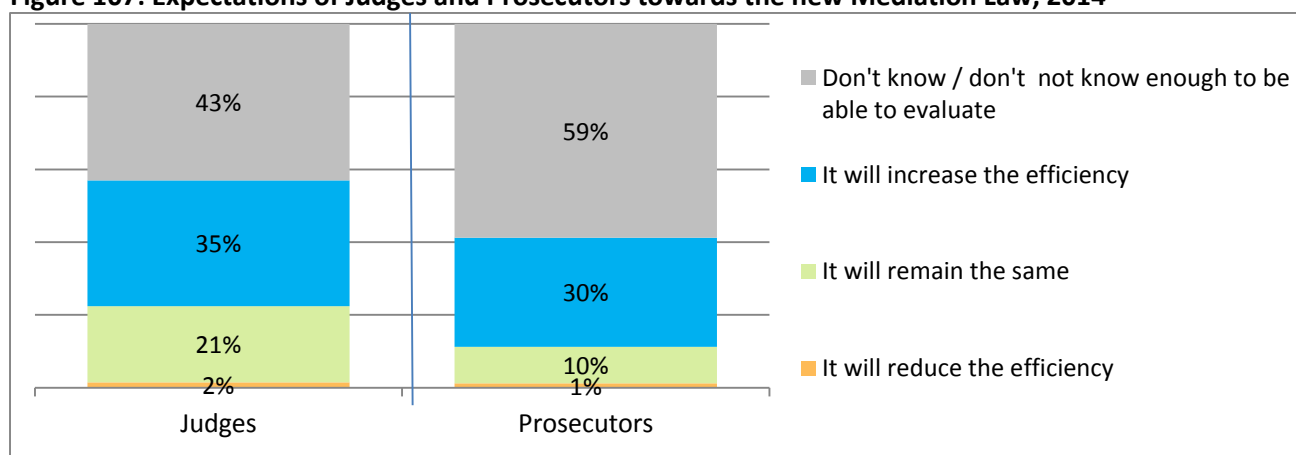
⁵⁷⁴ Under the new law, settlements at mediation are as enforceable as court decisions. Enforceability of non-utility bill enforcement has been improving but issues remain. Deeper analysis is necessary to help improve performance in this important area. See

developed within the next six months, may assist but the challenges of implementation are likely to be significant with this model and should be carefully managed in the rollout. Legal changes need to be supported by extensive outreach, regulatory considerations, and incentives to encourage the use of mediation.

97. **The judiciary can expect some challenges in implementing a system where judges become mediators.** The Multi-Stakeholder Justice Survey found that Serbian judges are not very supportive of mediation (see Figure 107 below). A significant behavioral change and training would thus be required for them to become champions of the process. The extent to which judges were consulted through this process is also unclear, and no additional incentives were provided for judges to perform this further work outside of normal hours, potentially creating a systemic vulnerability towards gift giving or malfeasance by parties. Although mediation requires a very different skill set from judging, there remains no special training for judges who mediate disputes. Further, as European standards require that judges should not hear a dispute on which they have previously mediated,⁵⁷⁵ careful confidentiality and conflict of interest rules will need to be managed.

98. **Currently, judges and prosecutors report ambivalence about the proposed law.** It is therefore timely for a significant investment in outreach, awareness raising, and training of judges and court staff. The proper functioning of the system presumes that all the actors in the system have basic knowledge of mediation. Although some courts employ mediation coordinators, they are often individuals who perform judicial functions and therefore cannot be expected to oversee effectively the administration and management of cases referred to mediation in addition to their regular judicial duties. Partners in Serbia suggest a tiered approach to training for mediators, attorneys, prosecutors, judges, and non-judiciary people who will have some participation in mediation (e.g., business leaders, media, CSOs, and other stakeholders).⁵⁷⁶

Figure 107: Expectations of Judges and Prosecutors towards the new Mediation Law, 2014⁵⁷⁷



99. **Support for mediation by the Court Presidents and other managers, and understanding of their**

Efficiency Chapter.

⁵⁷⁵ See for example Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on *Certain Aspects of Mediation in Civil and Commercial Matters*.

⁵⁷⁶ *Mediation in Serbia, Achievements and Challenges*, Partners for Democratic Change, Serbia, 2012, pg. 63.

⁵⁷⁷ Survey Question: *Prepared is a draft of the new law that stipulates establishing of a completely new mediation system, which includes license for mediators, founding of a chamber, and standardization and accreditation of mediator training programs. In your opinion, how will enactment of the new Law on Mediation affect the efficiency of the judicial system? Scale: .1 It will reduce the efficiency, 2. It will remain the same, 3. It will increase the efficiency, 3. I do not know enough to be able to evaluate.* Population base: total target population. It should be noted that some amendments were made to the draft law between late 2013 when this question was posed and May 2014 when the law was enacted. These changes may thus influence current perceptions. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

role in the mediation process, will be vital for the successful use of court mediation. The CCJE calls for judges to encourage consensual settlement,⁵⁷⁸ and elaborates that ‘understanding the respective roles of judges and lawyers in the framework of friendly settlements by conciliation or mediation is a vital factor for developing this approach.’ These factors are not yet present in Serbia.

100. Familiarity among the judges, court staff and the public is an issue, but it may not be the primary barrier. In a recent crowd-sourcing survey,⁵⁷⁹ of those who answered the question about mediation, a minority of respondents indicated they were prepared to use mediation, with some doubting its efficiency. Impediments to use of mediation cited by participants included:

- a. insufficient incentives to use mediation, since some parties could simply afford to wait while the civil litigation drags for years on end;
- b. insufficient incentives for lawyers to recommend mediation because of its likely impact on their litigation fees;
- c. lack of trust by parties in the impartiality and fairness of the mediator; and
- d. unwillingness of the judiciary to direct parties to mediation, mainly due to inertia and resistance to change.

101. A case referral and management system for mediation is a critical step to optimize the benefits of mediation and improve both quality and efficiency in the courts’ performance. Implementation of mediation in courts will require clear criteria, such as the criteria for selection of cases suitable for mediation, administrative procedures,⁵⁸⁰ and statistical monitoring and reporting. It may be worth considering how best to incentivize judges to refer certain types of cases to mediation, perhaps via a ‘reward’ or ‘bonus’ earned via productivity norms. Mediation could for instance be counted as part of the individual judges’ workload, and incentivized in evaluations and promotions for judges and Court Presidents.

e. Access to Allied Professional Services

102. A vast array of professionals other than attorneys – including bailiffs, interpreters, expert witnesses, and mediators – support the delivery of justice. Access to information on these providers and the ability to retain them at a reasonable cost is needed to access the courts effectively. To ensure access to these professionals, litigants need to be able to identify them easily by geographic area and needed topic area (e.g., a Romanian speaker in a certain vicinity), understand likely fees, and) know if there are pending complaints against them.

103. Information available on registries varies in quality and scope. The MOJ has created registries for most enforcement agents and expert witnesses⁵⁸¹ and a registry of interpreters is included on the Association of Interpreter website as well as elsewhere. Interpreter and expert witness registries appear to be adequate to make a selection by specialty or language (see Matrix on Access to Allied Professional Services at **Annex 5**). However, it can be difficult to access fee information,⁵⁸² and the process for registering a complaint against one of these professionals with an individual judge is not described online. The only mechanism to complain would be to approach the individual judge in the case.

⁵⁷⁸ CCJE Opinions No. 6 (2004) and 16 (2013).

⁵⁷⁹ Impressum, *Judicial Reform through the interaction of Citizens and States (Judicial Studies Series Volume II)*, UNDP Survey, December 2013. A crowd-sourcing survey notifies people that a survey is available to be completed on-line. Respondents are self-selecting and they may choose which questions to which they will respond. This crowd-sourcing survey was hosted for one month on the website of the B92 news agency. Most respondents did not respond to the full list of questions. Of the 1,656 responses received, 173 answered the question about mediation.

⁵⁸⁰ Such as timing of the mediation referral, the content of the case file which is referred to mediation and management of cases where an agreement is reached through mediation as well as those where no agreement was reached.

⁵⁸¹ Registries will be available for private notaries and mediators once notarial registration and mediation are implemented. Individual courts also maintain registries of expert witnesses.

⁵⁸² This is referenced in the rulebook on remuneration of expenses in court proceedings, but is not available on the MOJ website.

f. Geographic and Physical Access to Justice Service

i. Geographic Access to Court Locations

104. **Geographic barriers to access to justice are not a significant concern in Serbia, particularly in light of its manageable size and population.** Around 73 percent of citizens and 85 percent of business representatives do not consider distance to the courthouse to be a problem. The elderly and the least educated are the only cohorts to indicate in a sizeable minority that the distance to the courthouse makes the judiciary less accessible.

105. **Average distance to a courthouse has reduced even further due to changes to the court network, effective 1 January 2014.** An earlier UNDP survey found that the 2010 re-networking had somewhat hindered access to courts for some parts of the population, increased costs for the parties and their lawyers, and adversely affected lawyers working in smaller communities.⁵⁸³ However, the recent expansion increased the number of Basic Courts to 66 from 34. The expansion of courts was largely achieved by converting 'Court Units' to 'Basic Courts', thus almost doubling the number of Basic Court locations that hear criminal proceedings and hold hearings on a daily basis.

106. **Further expansion of the court network would be unnecessary.** Future efforts to improve physical access to justice services would be best addressed using online strategies, such as e-filing. As internet penetration improves, geographic distance will become less relevant than before. The development of streamlined online processes can bring a range of court services directly to the user.

ii. Physical Layout of Court Locations

107. **The layout of courts is generally accessible for court users.** Notwithstanding suboptimal physical



Image of multi-lingual signs at Vrsac Basic Court, 2014.

conditions, in both the 2009 and 2013 Multi-Stakeholder Justice Surveys, respondents mentioned they did not generally cite physical access as a barrier to the delivery of court services. This suggests that access to justice efforts should focus on substantive access to services. Nonetheless, infrastructure upgrades have the potential to improve public perceptions of access to justice by signaling a modernization in justice service delivery and easing constraints for those who work within courts.⁵⁸⁴

108. **Persons with disabilities experience particular challenges in accessing courthouses.** Respondents to the UNDP survey⁵⁸⁵ indicated that physical inaccessibility of judicial facilities is a primary barrier to access to justice for this group. Their concerns relate to the primary entrance to buildings, movement throughout facilities, and adaptability of information for those with visual, audio or learning disabilities.

109. **Further, in a few locations, navigation within courthouses can be challenging as signage is limited and the layout is not intuitive.** In these locations, it is common for court users to roam the halls looking for courtrooms or counters. This puts disabled court users at a particular disadvantage, but also affects general court users. Increased use of clear navigation signs would be a low-cost initiative for these locations that would also save the time of court staff and likely increase user satisfaction. In areas where languages other

⁵⁸³ Impressum, *Judicial Reform through the Interaction of Citizens and States, Judicial Studies Series Volume II*, 2013.

⁵⁸⁴ For further discussion, see the Infrastructure Chapter.

⁵⁸⁵ Impressum, *Judicial Reform through the Interaction of Citizens and States*, for UNDP, December 2013, pg. 39.

than Serbian are common among court users, multi-lingual signs should be used.⁵⁸⁶

g. Equality of Access for Vulnerable groups

110. **56 percent of the citizens surveyed consider the judiciary equally accessible to all citizens, regardless of their age, socio-economic status, nationality, disability, and language.** However, 38 percent of reported that it is not equally accessible to all. Similarly, 59 percent of business sector representatives consider the judicial system equally accessible to all companies, while 35 percent of the latter do not share this opinion.

111. **Compared with population average, citizens with less education (elementary school and lower) and citizens over 60 years of age perceive the judicial system as less accessible to them in all aspects, including costs.** Citizens who live outside urban areas experience more difficulties in obtaining necessary information, finding their way in the courthouse, and distance of the courthouse. These responses point to the need for providing specific assistance to targeted populations.

112. **Individuals with intellectual and mental health disabilities experience significant disadvantage in their access to justice services.** The process by which individuals can be deprived of their legal capacity is not as stringent as European and international standards require.⁵⁸⁷ Research conducted in 2011 indicates that a hearing by a judge is conducted in only around 12 percent of all cases.⁵⁸⁸ This appears to contradict the requirement that such hearings may be dispensed for exceptional cases only.⁵⁸⁹ In 94 percent of deprivation of capacity cases, individuals are deprived of all their legal capacities. This contradicts the CoE Principles Concerning the Legal Protection of Incapable Adults, which states that different degrees of incapacity should be recognized, and that measures of protection should not automatically result in a complete removal of legal capacity.⁵⁹⁰ Recent amendments in May 2014 to the Act on Non-Contentious Proceedings introduced periodic re-assessments of capacity at least once every three years, a move towards compliance. Stakeholders expressed concern that social welfare centers, which act as legal guardians in many cases, are under-resourced and may visit their wards less than once per year. The procedure for wards to challenge their deprivation of liberty and re-assess their capacity is also opaque, and it is not clear whether individuals can apply on their own behalf. Some CSOs are supporting applicants to do, so citing ECHR jurisprudence, though those without CSO support would likely be unable to contest their status.

113. **Gender disparities are minimal: there is no significant difference between the proportion of men and women who would decide to bring a case to court when they think that court was the proper forum for resolution.** Approximately 8 percent of men and 2 percent of women decided not to bring a case to court even though they believed court was the proper forum.⁵⁹¹

114. **The only significant difference between women and men respondents in perceived barriers to access was found in lawyer-related costs.** Considerably, more women (81 percent) than men (71 percent) stated that lawyer-related costs would be relevant to their decision to take a dispute to court. This is also the only problem women mentioned more than the population as a whole.

⁵⁸⁶ See also the Infrastructure Chapter.

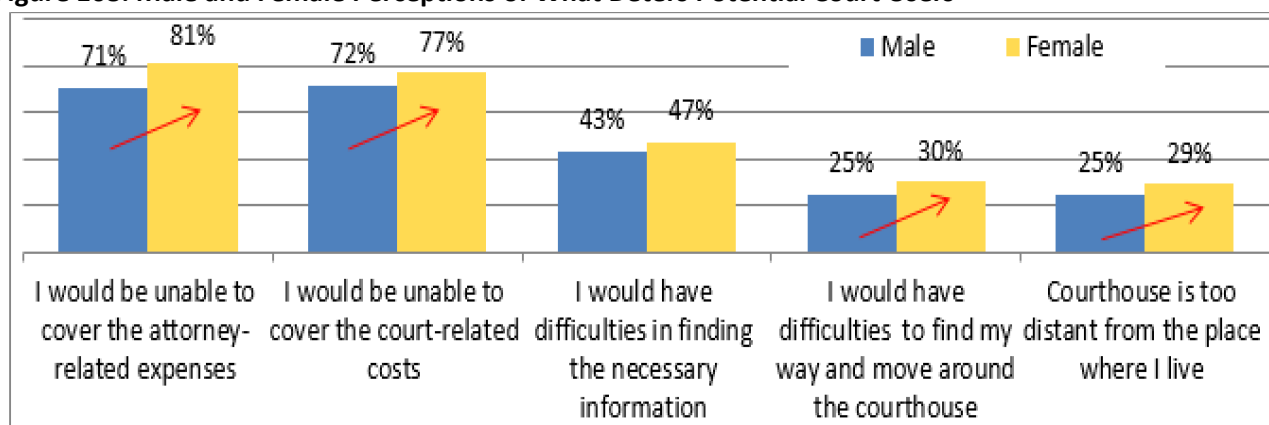
⁵⁸⁷ See 'Principles Concerning the Legal Protection of Incapable Adults', adopted by the Committee of Ministers of the Council of Europe in 1999, Recommendation No. R (99) 4, adopted by the Committee of Ministers of the Council of Europe on 23 February 1999. See also the *Convention on the Rights of Persons with Disabilities*, 2006.

⁵⁸⁸ Research conducted by the Mental Disability Rights Initiative of Serbia and the Belgrade Centre for Human Rights, 2011.

⁵⁸⁹ See, for example, ECtHR judgment in *Shtukurov v. Russia* (Application No. 44009/05), para 73. See also written comments submitted to the ECtHR by the European Group of National Human Rights Institutions in *D.D. v. Lithuania* (Application No. 13469/06).

⁵⁹⁰ See CoE Principle 3 and ECtHR judgment in *Shtukurov v. Russia*.

⁵⁹¹ *Access to Justice Survey, World Bank MDTF-JSS*, 2014.

Figure 108: Male and Female Perceptions of What Deters Potential Court Users⁵⁹²

115. **Members of focus groups from the Lesbian, Gay, Bisexual, and Transgender population (LGBT) are less likely than others to file cases to protect themselves or punish those who have harmed them.** Most cases related to violation of LGBT rights have been started with active participation of an NGO. Anonymity in court cases is a common reason, and many LGBT citizens, especially those in small communities, are reluctant to ‘come out’ in a public forum. Others are afraid of retaliation from their alleged harassers, and experienced activists who follow court proceedings are deeply pessimistic.⁵⁹³

116. **Members of the Roma community, refugees, and internally displaced persons (IDPs) share the opinion that courts do not treat all members of the public equally.**⁵⁹⁴ As courts do not collect data on users’ personal characteristics, the Review is unable to substantiate whether this perception is rooted in reality or due to an outdated perception retained from the past. There may be a case for strengthening the dissemination of information to relevant CSOs and community leaders about the functioning of the judiciary and basic legal rights directed to these groups to break down perceived barriers.⁵⁹⁵

⁵⁹² Access to Justice Survey, World Bank MDTF-JSS, 2014.

⁵⁹³ Access to Justice: Survey, World Bank MDTF-JSS, 2014.

⁵⁹⁴ Justice in Serbia: A Multi-Stakeholder Perspective, September 14, 2011, pg. ix, 81.

⁵⁹⁵ UNDP Survey (2013) Impressum, Judicial Reform through the interaction of Citizens and States (Judicial Studies Series Volume II), pg 54.

Part 2: Internal Performance Assessment

Part 2 of the Functional Review assesses the inner workings of Serbia's judicial system and the extent to which these contribute to, or impede, service delivery. Part 2 examines how governance and management arrangements operate and then analyzes how financial and human resources, ICT, and infrastructure are managed. Assessments are made against the indicators and references outlined in the Performance Framework (at **Annex 2**).

1. Governance and Management

Chapter Summary

- 1. Effective management of the judicial system is hindered by difficulties in measuring system performance.** Data are scattered across fragmented information systems with gaps, overlaps, and inconsistencies. Data collection tends to be manual, which absorbs a lot of time and staff resources and is prone to errors. Reports are not often tailored to management needs, and so do not adequately inform decision-making. Analytical capacity across the sector is inadequate, and so the foundation for management decisions remains weak. There is not a single management entity in the system able to substantiate how the system actually performs or use data to identify areas for performance improvement. The system lacks a unified vision of what good performance should look like, or a performance framework around which stakeholders unite to set goals and targets. As a result, it is very difficult for the system to manage for results.
- 2. Effectiveness in strategic management is limited.** The adoption of the NJRS 2013-2018 and its Action Plan represents a significant milestone for the Serbian judiciary. Their content is comprehensive, and progress is being made against several milestones. However, the Action Plan may be overly ambitious and it will be difficult to implement effectively within the five-year timeframe. The NJRS also focuses heavily on enacting legislation more than ensuring the effective implementation of existing and new legislation to change behavior on the ground. Yet the latter is the more important task and it requires an organizational and managerial approach more than a legal one. The NJRS and Action Plan also lack a clear focus on how reforms will affect court users, who should be the ultimate beneficiaries of the reforms. A Strategy Implementation Commission exists, but lacks a work plan and a secretariat and is not driving reform implementation. In the resulting vacuum, it is not clear among the many fragmented stakeholders who is leading the system's reform effort or driving for performance improvement. At this rate, at best by 2018 Serbia may have enacted relevant legislation but behaviors will not have changed and performance will not have improved on the ground.
- 3. A range of key governance and management functions are currently being transferred between various bodies.** In the past, these functions were almost entirely entrusted to the MOJ. In the somewhat poorly sequenced and inconsistently implemented transition towards more responsibility for the HJC and SPC, some fragmentation, overlaps and redundancies have occurred and impeded the effective management of system performance. Moving towards the full transition of responsibilities, it will be important to adequately prepare the Councils for their new functions by the end of 2015.

4. **Limited management capacity in the Councils hinders their ability to meet the challenges ahead.** Each Council has established an organizational plan and taken steps to implement it. Each is able to administer only their most basic requirements. The Administrative Office of the HJC is already sizeable, but many positions are held by junior clerical staff and lawyers who see their roles in narrow terms. The Councils lack managerial capacities to drive performance improvements across the sector. For example, neither institution currently has a system to evaluate or re-engineer work processes, even though such work will be critical to improving system productivity.
5. **The internal organization within courts needs to be improved if the system is to reach and sustain higher levels of performance.** To date, the Councils have undertaken little work to assess whether the internal organization of each court or PPO is optimal. No analysis has been conducted on how organizational variations affect productivity or other aspects of performance. The Councils do not carry out process re-engineering to produce high-quality outputs more rapidly, with less effort, and at lower costs. The Court Book of Rules provides extensive guidance, but it is outmoded. Current efforts to update the Book of rules are focused narrowly on the minimum requirements to comply with the new procedural codes, suggesting that reformers are yet to appreciate the significant benefits to be reaped by simplifying and modernizing processes. Individual Court Presidents use their own systems based on personal initiative or with the support of donors. A simple case-weighting system would assist to equalize caseloads and manage workloads, but much can be done in the meantime through effective monitoring of data from existing systems.
6. **Inside each court, the managerial abilities of Court Presidents are pivotal to success.** Stakeholders report that the performance of an individual court depends largely on its Court President's enthusiasm and willingness to address management issues. However, most Court Presidents have received no training on management and few incentives exist to encourage a modern and proactive approach to management. Courts lack specialized staff to assist in management tasks and often lack basic management tools. Greater use of managerial reports from the various case management systems, in particular the analysis of Ageing Lists, would assist greatly. The higher performing Court Presidents each seem to have cultivated in an ad hoc manner a small managerial team of skilled mid-level professionals who support him/her to run the court. This model seems to work well and could be replicated. Court Presidents also rarely meet with each other – they could benefit greatly from colloquia aimed at sharing information, generating ideas and replicating innovations.
7. **A core task for governance and management bodies is to ensure the appropriate mix of system resources to enable performance.** In Serbia, neither the MOJ nor the Councils have developed the capacity to consider and program resources jointly. This has led to a resource mix that is currently inadequate to bring the system in compliance with EU accession requirements. Continued fragmentation exacerbates this challenge resulting in suboptimal coordination and management of resources, as well as resource planning. When there is a common view, it reveals a strong bias toward adding judges and assistants, while the provision for much-needed provision for other resources is not sufficiently prioritized. To enable transformation, the resource mix must favor spending on ICT, infrastructure, training and innovation, while reducing spending on the large wage bill, particularly on judges and low-skilled ancillary staff. This will require a series of calibrated decisions by the governance and management bodies.
8. **The mechanisms to govern integrity and conflicts of interest are not fully able to address a perceived lack of integrity in the judicial system.** Serbia's random case assignment technology works well to reduce predictability in the assignment of individual cases to specific judges. However, not all courts use the functionality, and those Court Presidents who do use it overrule the system relatively frequently. There is no corresponding technology for allocating files randomly within PPOs. Integrity Plans have been prepared only for some parts of the judiciary. Formal rules on gift-giving to judges, prosecutors, and staff are clear. Yet gift-giving remains prevalent. Complaints are numerous, but grievance redress is scarce. Lessons learned from complaints do not systematically feed these into reform processes.

a. Governance and Management of Justice Institutions

9. **The judiciary is more than a collection of individual judges resolving cases in accordance with the law.** The judiciary is an organization and so requires a mechanism to oversee its performance, plan improvements, set guidelines, and ensure that financial and other resources are used most effectively and efficiently. In this Chapter, the terms ‘governance and management’ are used to emphasize two related but somewhat different functions:

- a. Governance: decision-making at the highest level to set policies, guidelines, rules, targets, and plans.
- b. Management: the implementation of decisions in an institution’s day-to-day operations, and the provision of information and analysis to support the governance body’s deliberations.

10. **Governance and management should enable judges to carry out their work effectively and efficiently.** Governance and management should not interfere with the judges’ decision-making ability or otherwise submit them to undue influence. However, governance and management are vital in ensuring that judges work in adequate conditions and remain motivated to perform impartially, fairly, and without unnecessary delay. The aim is to create an enabling environment that encourages performance. These same general principles apply to other sector institutions, particularly in prosecution, defense, police, and prisons.

11. **Over time, the institution responsible for justice sector governance and management has varied across countries.** Historically, the Executive performed these functions through the MOJ or similar departments. The apparent contradictions between this situation and the principle of judicial (and to some extent prosecutorial) independence have recently been recognized. This recognition produced a tendency to transfer both activities to a Judicial Council or to the SCC.⁵⁹⁶ It should be emphasized that the highest court retains its jurisdictional functions.⁵⁹⁷

12. **Wherever governance functions are located,⁵⁹⁸ they require a professional management unit to carry out day-to-day administrative work.** Governance increasingly involves tracking and analyzing system performance, identifying problems, proposing remedies and all that is needed to support the governance body’s deliberations. Council members or the SCC operate much like corporate boards of directors and oversee without directly engaging in managerial work. Without well-organized management units, the governance bodies (whose members are rarely managers) will be unable to operate effectively, will lack information on internal operations, and be uncertain as to whether their decisions are correctly implemented. Also, emerging problems may go undetected and proposed remedies will be insufficiently analyzed.

Governance and management are the two interrelated functions essential to organizational performance. Governance bodies set the policies and guidelines, and management organizations implement them, and in the modern era, do the monitoring and analysis needed to inform governance decisions.

⁵⁹⁶ The United States was first to change, transferring the Judicial Administrative Office from the Executive Branch (Department of Justice) to the federal courts in 1939. Other common law countries were slower to follow, but have been moving steadily in that direction. In most Latin America, supreme courts traditionally managed the judicial budget. Over the last two decades, about half the region’s countries have adopted judicial councils, but in only five countries do the councils handle judicial administration as well as judicial appointments. In Western and Eastern Europe and in Latin America, councils have received mixed reviews. Some judiciaries (e.g., in Germany) do well without one. Some councils work closely with the Ministries of Justice (e.g., in the Netherlands) and manage quite well. The situation of prosecutors is still more varied. See Seibert-Fohr (2012).

⁵⁹⁷ Whether or not the SCC takes on these additional tasks, it continues to review decisions by lower level courts to ensure their conformity with substantive and procedural law.

⁵⁹⁸ Governance will likely be located at both central and decentralized levels.

13. **A core task for governance and management bodies is to ensure the appropriate quality and quantity of system resources to optimize performance.** Once governance bodies set general rules and policies, the bodies' management staff carries out the day-to-day implementation. The management offices then prepare and execute budgets, and agree on the mix of human resources, ICT, and infrastructure resources. Management offices recruit, vet, and sometimes select personnel or handle other human resource matters; and they also procure materials and equipment, and, in some systems, oversee capital investment.

14. **Modern management includes additional dimensions, most significantly the optimization of the distribution and mix of all inputs.** In Serbia, the provision of resources depended on history and tradition as legislation drafted years or decades ago influenced the distribution of judges or the staff-to-judge ratio. In the face of reformed procedures, old formulas are decreasingly relevant with the prospect that new demands and technological advances bring. Nonetheless, innovation in the sector is often constrained by rigid rules, bifurcation of responsibilities between organizations, and an overall system that does not encourage new ways of improving old practices.

15. **Human resources often pose challenging issues for legal, technical, and political reasons.** The immovability of judges and prosecutors exists in most continental systems. As suggested by the CCJE, more flexibility in placements is desirable so long as it does not violate the independence of individual judges.⁵⁹⁹ In recent years, several systems found flexible ways of reassigning judges to where they are most needed, for instance by creating incentives for judges to consent to transfer, or to require experience in more than one court or on certain projects as a criterion for promotion. What once made sense when transportation and communication were difficult no longer holds, and transfer to a 'removed' location does not entail the hardships it once did. In modern judiciaries, mobility is often encouraged and incentivized as it builds experience, collegiality, and consistency of practice. For example, experience in more than one court could be considered desirable (or even a pre-requisite) in promotion applications. Judges may be asked to act as substitute judges in nearby courts within the same appellate jurisdiction, and will often agree. Financial incentives can further encourage judges to consent to transfer. For court staff, automation has altered the nature of their work and the skills needed to perform. To be in line with these changes, there is a need for adjustments to position descriptions and performance expectations.

16. **Modern governance and management also call for the modification of work processes and practices for greater efficiency.** The changes needed may be of an organizational nature, such as establishing specialized units to process certain types of cases and so improve the access and quality of service delivery for users. For example, streamlined small claims procedures can accelerate case processing while providing services that are more appropriate to users. Many countries with new criminal procedure codes adopt both specialized judicial and prosecutorial divisions for financial crimes and create units to process simpler cases. Some modifications may be technological,⁶⁰⁰ and simplification may consist in establishing means to join similar disputes involving the same defendant and plaintiff, or limiting the potential for party abuses.⁶⁰¹ These changes in procedures and practices have been among the most successful in enhancing efficiency, but only when they have been carefully analyzed and tested.

⁵⁹⁹ CCJE Opinion 6 (2004, paragraphs 56-60).

⁶⁰⁰ In some circumstances, technology can even replace hearings with internet proceedings, while still ensuring quality. In the UK, the online claim facility enables users to register and process monetary claims with ease. The system requires neither a hearing nor a lawyer, and claims are handled by a single specialized court.

⁶⁰¹ Such as setting firm hearing and trial dates, introducing stricter criteria for accepting appeals, and discouraging dilatory practices.

17. Finally, governance and management bodies are increasingly forward-looking, attempting to project new needs and define the resources required to meet them. Useful projections go beyond a simple extrapolation of past trends, requiring anticipation of how these trends will change. Rapid societal development may increase or decrease court use, but will inevitably alter the nature of demand. For example, Internet penetration could transform justice service delivery in the medium term if harnessed properly, and governance bodies may ask their management units to track these trends and anticipate how well current practices will deal them.⁶⁰²

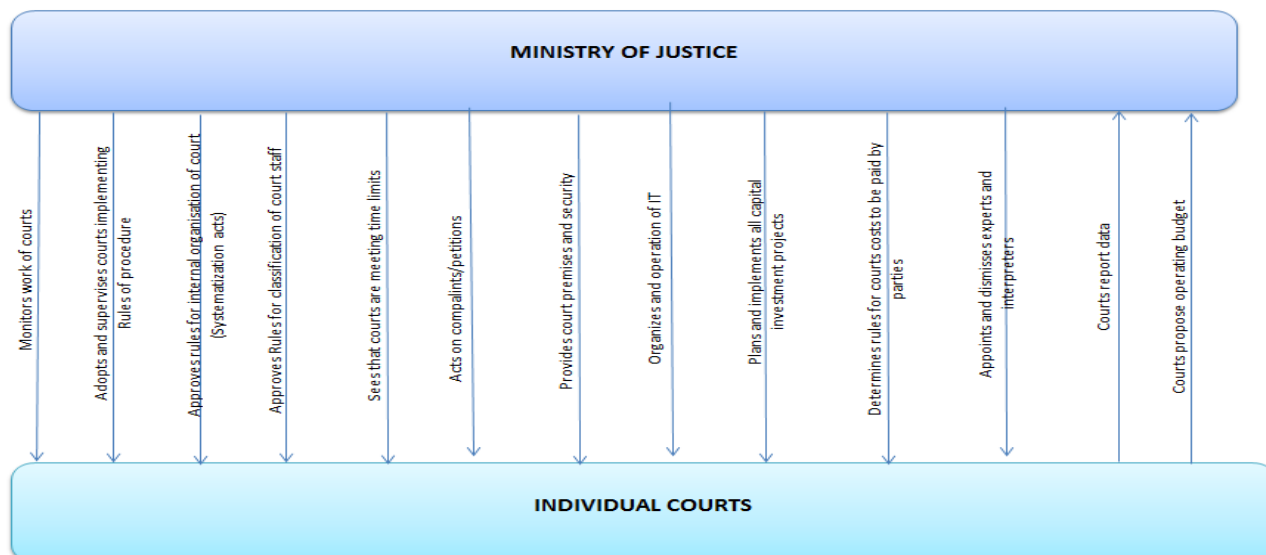
A traditional administration focuses on organizational housekeeping. Modern management adds a forward-looking approach emphasizing planning, evidence-based analysis, and alternative scenarios to help governance bodies adjust organizational performance to the changing conditions and needs.

b. Structures and Powers of Governance and Management Bodies

i. Distribution and Fragmentation of Functions

18. A range of governance and management functions are currently under transfer within Serbia's court system. Traditionally, both were almost entirely entrusted to the MOJ functions (see Figure 109). Out of a concern to enhance institutional independence, many responsibilities have been (or are being) transferred from the MOJ to the HJC and the SPC.⁶⁰³ The SCC also ceded some functions to the HJC, including the responsibility for the election and discipline of judges. The SCC maintains its key role as the highest court in Serbia through the management of courts and cases.

Figure 109: Roles and Responsibilities of MOJPA vis-à-vis Courts



19. The Councils have already assumed some key functions, and the NJRS anticipates more to come. Both Councils advanced their organization in the recruitment and selection of new judges and prosecutors. However, critical details related to the career management of judges, prosecutors and court staff remain undefined, such as their evaluation, promotion, handling of complaints, and their training.

⁶⁰² For a further discussion, see the Long Term Planning section of the Human Resources Chapter.

⁶⁰³ While many European countries operate under an MOJ-run system, EU thinking has changed especially where there are questions about the degree of judicial independence. The Serbian authorities can expect that the EC will continue to look for progress in this direction.

20. **Still today, stakeholders report that the MOJ is ‘in the driving seat’ of the reform agenda while other stakeholders behave more passively.** Yet the transition of functions has resulted in the MOJ being less involved in the implementation of reforms. Further, stakeholders report that the quality of interactions among stakeholders is oftentimes strained, and this undermines coordination and exacerbates existing fragmentation. There is thus a high risk that reforms will lack ownership among those responsible for their implementation, thus jeopardizing their success.

21. **Further, despite the re-shuffle, the current legal framework maintains several redundancies and inconsistencies, which inhibit system performance.** Some gaps are created by the law and others by how the Councils assumed their new responsibilities or their interpretation of them. This affects the relationship between the MOJ and the Councils, and between the SCC and HJC. The MOJ, the HJC and the SCC still share responsibilities for setting and implementing some policies on court resources and operations.

22. **For example, effective caseload management is hampered by the bifurcation of functions between bodies.** For several years, the SCC was in charge of the backlog reduction efforts, but the NJRS states that the HJC will be responsible for determining equitable caseload and the allocation of cases.⁶⁰⁴ The NJRS calls on the HJC to prepare Annual Reports on court performance and define the measures for its improvement, although the SCC Annual Reports are comprehensive in this regard. Both the HJC and the SCC still require that individual courts submit periodic reports on case movement, and that each court compiles its own databases on the results.

23. **There is also overlap regarding the promotion of judicial independence and integrity.** Stakeholders report that the SCC is more active than the HJC in promoting independence, and many suggest that the HJC should play a more prominent role. The NJRS Action Plan charges the SCC with overseeing the measures to improve integrity within the courts,⁶⁰⁵ but the HJC is responsible for selecting and evaluating judges, and overseeing Integrity Plans.

24. **The management of civil servants is another area where overlap hinders effectiveness.** All court staff are hired and managed by individual Court Presidents. The hiring of civil servants is made under the SCC's broad direction, but the SCC has not traditionally issued guidelines, and the number of civil servants continues to be set by the MOJ. The overlapping rule-making authority may explain the enormous court-to-court variations in staffing patterns as well as the use of temporary, contracted, and volunteer staff to fill what Court Presidents identify as gaps. Starting in 2016, the HJC will be responsible for providing adequate training, compensation, performance management, and discipline for court staff. The HJC has not yet focused on these issues, but they will be critical to driving performance improvements.

25. **Progress on capital projects is hampered due to the bifurcated management of capital and current expenditures.** Until recently, the HJC was responsible for the operation and maintenance costs for infrastructure, with the MOJ retaining authority for capital investments. As of 2014, the MOJ is responsible for both functions, thus facilitating a more coherent approach to infrastructure investment. From 2016, it is anticipated that the package of responsibility will move to the HJC. While the move may be appropriate, the to-and-fro of responsibilities discourages either institution from developing robust capacities. Oddly, for ICT resources, the same change may not occur. Rather, it is expected that the MOJ will remain responsible for capital ICT investments, while the HJC will handle operations and maintenance – therefore the bifurcation will persist. The judicial system should reconsider the placement of functions relating to capital and recurrent expenditures to ensure coherence in this important area.

⁶⁰⁴ Government of the Republic of Serbia, The Action Plan for the Implementation of the National Judicial Reform Strategy for the period 2013-2018, Strategic Guideline 1.3.2.

⁶⁰⁵ Government of the Republic of Serbia, The Action Plan for the Implementation of the National Judicial Reform Strategy for the period 2013-2018, Strategic Guideline 2.1.2.

26. **Looking forward, it will be important to plan for the legally mandated changes such that the Councils are prepared to assume their new functions at the end of 2015.** More regular meetings among these fragmented stakeholders may also help to prevent issues ‘falling between the cracks’ and promote a more cohesive and coordinated approach to management of the sector.

ii. Composition of the Councils

27. **The establishment of the Councils is consistent with European standards, however several details in their composition and organization deviate from the CCJE’s recommendations.**⁶⁰⁶ Reforms to strengthen the Councils are currently under discussion. Reforms are likely to require constitutional amendment and could be considered as part of a constitutional amendment package.

28. **The composition of the Councils and method of appointment of members is not consistent with the CCJE recommendations.** The National Assembly elects eight of the eleven members of the HJC, with the other three members being ex-officio. The current composition of the Councils includes the Minister of Justice and a President of the Judiciary Committee of the National Assembly. The CCJE Opinion 10 (2007) acknowledges that Councils may have a mixed composition of judges and non-judges, but emphasizes that it must reflect the guarantee of the independence of the judiciary, and that any perception of self-interest, self-protection, and cronyism must be avoided. The CCJE rejects the inclusion of representatives of the other branches of government in the Council, particularly the Executive branch. The CCJE also recommends against a selection process whereby representatives of the other branches of government nominate Council members. The composition of Serbia’s Councils should thus be amended.⁶⁰⁷

29. **Opinion 10 makes two further suggestions regarding the composition which are not yet present in the Councils in Serbia.** The first is the participation of technical specialists in the discussions on specific issues, although not as voting members. The second is the suggested selection of non-judge members to supply additional skills, knowledge, and viewpoints such as civil society or small business representatives. The Councils may find these additional voices valuable to their work.

30. **The en-masse replacement of Council members every five years is also problematic.**⁶⁰⁸ The simultaneous replacement of all members represents a loss of institutional memory for any organization. The effect is particularly unfortunate at this stage, when the Councils are still developing their internal structure, procedures, and institutional competencies. This situation should be resolved by the adoption of a staggered replacement program for the elected members, as recommended by Opinion 10 (2007).

31. **Further, very little information is furnished about candidates in the nomination process.** As a result, judges and prosecutors are unable to make informed voting decisions about those who should represent them. Public experts and professional associations are similarly unable to provide informed advice. Instead, stakeholders report that the process is dominated by political, personality and popularity factors, rather than the candidate’s track record of performance or their positions on Council policies. In future, nominations could be accompanied with some basic and objective statistics on the candidate’s track record and their plans for membership on the Council, which can be used to inform the process.

32. **Lastly, some managerial background would be valuable for the Council members.** The management experience of judges and prosecutors generally is acquired on-the-job. Court Presidents and

⁶⁰⁶ Consultative Council of European Judges (CCJE) Opinion No.10 (2007) recommends the creation of a Judicial Council to protect institutional and individual independence. The opinion suggests that the Council handle not only the appointment and evaluation process, but also general management and budgetary matters. Serbia’s new arrangements match this description legally if not yet fully in practice.

⁶⁰⁷ See also the *Report on Judicial Reform*, Anti-Corruption Council, Government of the Republic of Serbia, 2014, pp3-5.

⁶⁰⁸ In practice, the Minister of Justice and President of the Judicial Commission of the National Assembly are likely to sit on the Council for even shorter durations, as their appointments are ex-officio.

heads of PPOs receive most of this practical training; however the Law for the HJC precludes Court Presidents being candidates for Council membership. Familiarity with management principles and practices would be a considerable advantage in interacting with the Council's management office and interpreting the information and recommendations it provides. An increase in managerial experience could be achieved by including management experience as a criterion for election.

iii. Powers of the Councils

33. **The Councils' powers in relation to judicial appointments, promotions, and dismissals are more limited than what is called for in European and international standards.** Currently, the National Assembly approves the initial appointments of all judges and prosecutors, as well as the appointments of Court Presidents and Chiefs of PPOs, the promotions of Public Prosecutors and the dismissal of Court Presidents and Public Prosecutors.⁶⁰⁹ Appointments by the legislature are rare in Europe, and they raise concerns for the independence of the judiciary.⁶¹⁰ As stated by the Venice Commission:

*'the involvement of Parliament in judicial appointments risks leading to a politicization of the appointments and, especially for judges at the lower level courts, it is difficult to see the added value of a parliamentary procedure.'*⁶¹¹

Stakeholders are aware of this deficiency, and constitutional amendments are under consideration.



Title: *Keep Walking*, submitted by an entrant to the Justice Competition, World Bank 2014.

34. **As an elegant interim measure, the NJRS states that only one candidate should be proposed per position, depriving the National Assembly of its ability to select candidates among several.** Nonetheless, the amendments should proceed as a priority, and would be a significant positive step to enshrine judicial independence and the separation of powers in Serbia.

35. **The passage of amendment will not be a panacea for barring all political influence as more subtle forms of influence exist.** Perceptions among judges and prosecutors of the independence of their

own judicial system is low, and perceptions are equally poor among lawyers and the general public,⁶¹² and

these perceptions likely derive from something more than National Assembly approvals. Some stakeholders allege that judicial appointments become politicized at a very early stage, with political parties reviewing names well before National Assembly involvement, and that this practice has been embedded in the culture of the Serbian judiciary for decades.⁶¹³ If that is so, then improvements in judicial independence and public trust and confidence would require changes to behaviors throughout the process. The implementation of appropriate governance and management across the judiciary will be critical to ensuring that the spirit of the amendments is upheld in daily operations.

⁶⁰⁹ Meanwhile, the HJC approves the promotion and dismissal of judges, and the SPC approves the promotion and dismissal of Deputy Prosecutors.

⁶¹⁰ In Slovenia, the Parliament elects judges on the proposal of the Judicial Council, and in Estonia, judges are elected by the Parliament on the proposal of the Chief Justice. In Lithuania, Supreme Court judges are elected by the Parliament on the proposal of the President of the Republic. See *CEPEJ Evaluation Report, 2014* (based on 2012 data).

⁶¹¹ Venice Commission, Opinion on the Provisions on the Judiciary in the Draft Constitution of the Republic of Serbia, 2005; Venice Commission, Opinion on the Constitution of Serbia, 2007.

⁶¹² For perceptions of judicial independence, see the section on perceptions of judicial independence in the Quality Chapter.

⁶¹³ See also the section on Recruitment of Judges and Prosecutors in the Human Resources Chapter.

36. **On financial matters, the extent of independence of courts and councils from the Executive seems to be appropriate.** Some countries have established constitutional earmarks to protect their judiciary from encroachments on their financial independence. However, setting the right earmark is difficult. Further, judiciaries enjoying earmarks (predominately in Latin America) do not perform demonstrably better.⁶¹⁴ Serbia is already at the high end of the ratio of judiciary expenditure as a percentage of GDP. If Serbia adopted an earmark based on the percentage of GDP, it would have reached the European limit; if the earmark was based on the percentage of the public budget, it would have exceeded the European limit. Rather, resource allocation within the judiciary suffers from excessive rigidity that is neither due to the resource envelope nor imposed by the MOF.⁶¹⁵ Looking forward, better financial management, particularly within the Councils, will be critical to ensuring that the judiciary can exercise its financial independence more effectively.

37. **Beyond finances, the defined work and goals of the Councils remain unclear.** The Strategic Guideline 1.1.2 of the NJRS Action Plan calls for the clarification of 'specific competencies' of the Councils through changes to the relevant rules of procedure. However, it does not specify which competencies are to be clarified and only offers examples instead.⁶¹⁶ Both Councils should move rapidly to set these definitions lest another law sets the definitions for them.

38. **The organization of the Council members' work is another source of concern.** The details of internal organization were left to the Councils, but little progress has been made to date. The USAID SPP recommended the formation of internal committees, in particular a committee for budgetary matters. However, the Councils, the SCC, and the RPPO believe they may only adopt the structures and processes specified in the statutes and rules regulating their work. For this reason, the HJC indicated that it could not create internal subcommittees. This impasse will need to be resolved for the Councils to implement their mandate effectively or else the work will soon be overwhelming.⁶¹⁷

iv. Managerial Capacities in the Councils

39. **The Councils will not be able to function effectively without managerial support.** Council members constitute the governance body; they oversee management without engaging in it directly. This division of labor raises the question of whether the Councils' managerial support is adequate. The CCJE and other EU and CoE bodies have not set specific standards, only emphasizing the need for an administrative or managerial office. In this light, the following analysis uses several criteria: the existence and implementation of an organizational plan; conformity of the plan with general management principles and its apparent adequacy in light of the tasks required.

40. **Each Council established an organizational plan and has taken steps to implement it.** The organizational chart of the Administrative Offices of the HJC and SPC can be found in Figure 110 and Figure

⁶¹⁴ Of the six Latin American countries enjoying an earmark ranging from 2 percent to 6 percent of the national budget, only one (Costa Rica) is considered a successful judicial performer. The others, typically with a higher earmark for the courts, remain at the bottom of the performance scale for the region.

⁶¹⁵ Rigidity in resource allocation is largely due to immovability of judges and lack of automation in resource allocation within the Councils. For further discussion, see the Financial Management Chapter.

⁶¹⁶ See The Action Plan for the Implementation of the National Judicial Reform Strategy for the period 2013-2018, Strategic Guideline 1.1.2. 'Clarify specific competences of the High Judicial Council and State Prosecutors' Council ('e.g., human resource management, statistical analysis), organizational structure and working procedures for fulfillment of obligations of the High Judicial Council and State Prosecutors' Council.'

⁶¹⁷ Although the Council members' oversight of budgetary and other matters would be informed by their management units, it would be useful to have a smaller group of Council members focus on the details for each area. This effort would relieve members of having to inform themselves thoroughly on every topic. The use of committees would not preclude en banc decisions on policy, but would allow more effective internal organization of the Council work. Some judicial councils abroad have opted to have a single member oversee each area, but this is not advisable. Reliance on a single member tends to fractionalize decision-making, undermine coordination, and create a vulnerability to malfeasance.

111. The Councils do not have a General Manager or an Administrative Director, as is normal for this type of institution. Instead, each Council has a Secretary of the Administrative Office with a more limited level of competence and less senior job description. This role should be expanded to better enable the organization's leader to advise the Councils on organizational and managerial matters. A structure analogous to the Anti-Corruption Agency may be more effective, where a Director leads the organization while reporting to a Board.

Figure 110: Administrative Office of HJC Organizational chart

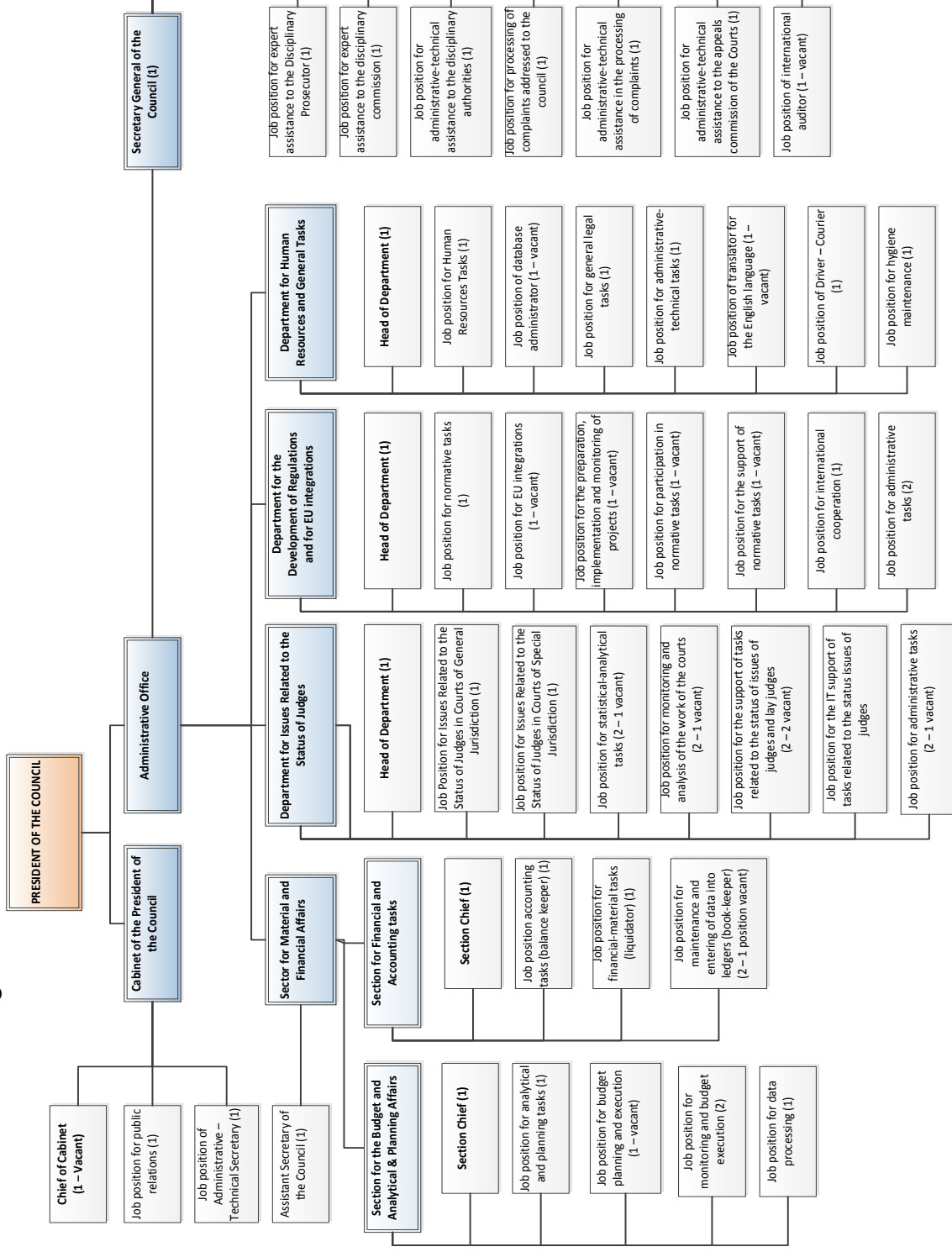
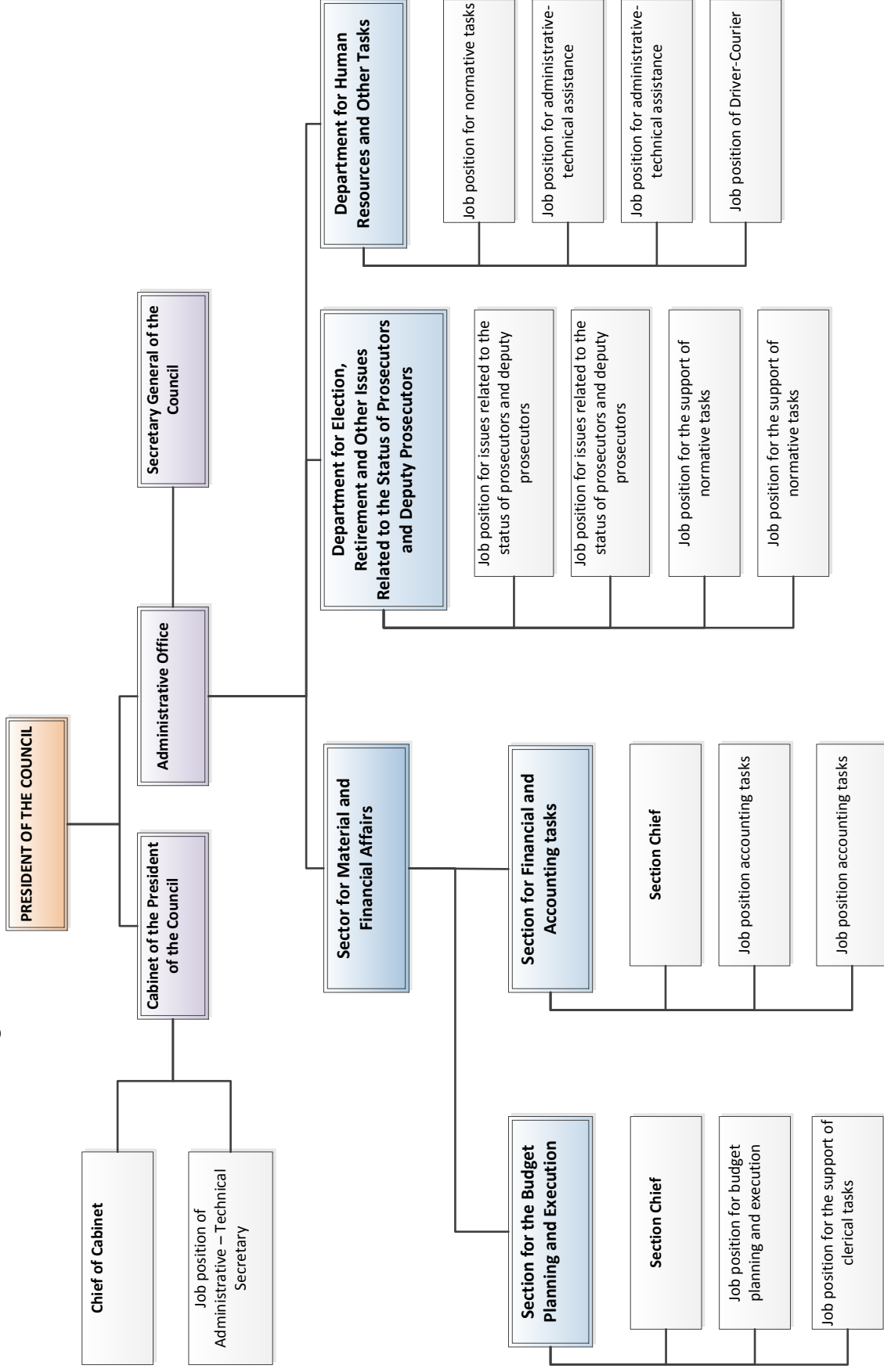


Figure 111: Administrative Office of SPC Organizational Chart



41. **The Administrative Office of the HJC is already sizeable.** The structure suggests 45 positions, one 'sector', and three departments. One year following the approval of the rules,⁶¹⁸ the Administrative Office of the HJC has filled 34 of the 45 positions. Personnel transferred from the MOJ staffed the sector for Financial and Material Affairs, and civil service personnel already working in the courts filled other positions. The Secretary of the Cabinet, a lawyer by training and experience, oversees the three departments while the Assistant Secretary of Cabinet, an economist, oversees the sector for Material and Financial Affairs. For these positions, prior management experience was not an official selection criterion. Also, the HJC counts only one ICT staff (currently on leave), and only one HR staff working only on internal functions such as payroll processing.

42. **The Administrative Office of SPC is smaller and less developed, but its role is narrower, focusing on the prosecution service.** Overall, there are 16 employees in the Administration Office of which 12 are staff seconded from PPOs and four are temporary staff. The SPC counts two departments and one sector. With no heads of departments, all work funnels to the Secretary of the Administrative Office. There is no dedicated staff for specialist roles such as ICT, but plans are underway to recruit for those positions.

43. **If the Councils' mandates were purely routine administration, the structure would be sufficient, but their role is far more complex and requires a broader range of skills.** Both Councils fulfill basic administrative tasks. However, staff is unprepared to design, supervise, and implement more proactive approaches to management and planning since they lack managerial skills and backgrounds. For example, the HJC's human resources capacity relates primarily to internal and routine HJC personnel needs. However, proactive HR management includes the assessment of personnel needs for the courts as a whole based on the changing nature of judicial work (new demands, new technologies, and new procedures). The structural change may require altering job descriptions and qualifications correspondingly, assessing and redefining judge-to-staff ratios, and identifying new types of expertise needed in the central and decentralized management units. Given the skill levels of its staff, it is not clear how the HJC would accomplish this change. More advanced tasks include assessing how additions of one type of resources can influence the needed expenditures in other areas, especially for budgetary planning. Budgetary analysts must consider both immediate costs (salaries and benefits, or the price of software design and installation) and the related costs of equipment, space, training, and maintenance requirements. Financial managers, in cooperation with other management units, should also identify alternative mixes of different inputs, their cost-benefit ratios, and allow for greater flexibility in resourcing.

44. **Furthermore, the HJC and the SPC organization charts do not include a function for overall planning based on statistical analysis and other hard data.** The Strategic Action Plan (1.3.1) foresees the establishment of 'working bodies' to analyze the organizational performance in the Councils, although no action has been taken yet. The brief description in the Plan does not indicate whether these bodies would do any planning beyond producing reports and suggesting measures for improvement.

45. **Currently, the HJC's planning and analytic capability is minimal.** The HJC counts one position for 'analytical-planning affairs' in the department of Budget and Analytic Planning, although the job description only focuses on budgeting for salaries and current expenditures. In the same department, there is only one staff member in charge of processing data and the job description requires only a secondary education degree and two years of experience. In reality, the staff members see their daily job as clerical. The two statistical positions in the Department for Status Issues of Judges are largely devoted to processing data that are already collected automatically. Also, there is one database administrator in the HR department, but this person will only be working on the Council's internal systems.

⁶¹⁸ Set of Rules on the Internal Regulation and Systematization of Job Positions at the Administrative Office, High Council of the Judiciary, April 2013.

The HJC's design of its management unit corresponds to the traditional housekeeping approach to organizational administration and management. Once current positions are filled, the Council will need to consider the addition of units capable of analyzing performance, identifying areas for improvement, and developing suggested remedies.

46. **Despite the many positions held by lawyers, there is neither an office nor a person to review the potential for procedural simplification or ways to remove the procedural bottlenecks in case processing.** The position(s) focused on this topic might well fit in a planning and analytic office, assuming one is created. This office could also analyze proposals for procedural changes forthcoming from other agencies or branches of the government. Also, this office's staff could lead

the much-needed analysis of the financial implications of future reforms to ensure effective rollout in cooperation with the 'sector.'

47. **Once the initial organizational structure is fully implemented, the HJC should review additional needs for more proactive management.** This will mean first reviewing the qualifications for department and section heads to ensure that they (or their immediate advisors) can perform scenario-based and evidence-based planning using available data and comparative experience. It will be essential that the experience gained from other European countries is not isolated in the Department for European Integration, but is rather shared and implemented.

v. Structure and Capacities of the MOJ

48. **The MOJ comprises eight major thematic units each headed by an Assistant Minister.**⁶¹⁹ It also includes the Cabinet of the Minister and the Secretariat of the Secretary General of the Ministry. In 2013, the number of full time employees was 174, as well as 13 part-time staff and consultants. However, the HR plan envisages 228 employees. Comprehensive data on the number of permanent staff and temporary consultants in the Ministry were not available, but there is a wide range of donor projects supporting the MOJ and justice sector reform more broadly.

49. **The MOJ workforce is relatively well qualified for legal duties, with most staff having tertiary education.**⁶²⁰ However, they are less prepared for policy and planning work or other analytical tasks.

50. **The MOJ's main responsibility is for policy and legislative issues and as the interlocutor and chief negotiator in Accession Negotiations under Chapter 23.** Performing these functions requires strong legal, analytical, planning and project management skills. Capacity development and training are therefore needed, particularly in policy development and project management. This would include basic capacities to analyze statistics, extract and present policy/relevant information in support of decision-making (through policy briefs, memos, reports, etc.). This will be of utmost importance for the accession negotiations for Chapter 23. The resource constraints of Serbia's public sector are likely to remain, and clear prioritization is therefore needed. While the MOJ management is anticipating future business needs in a number of areas, there is no formalized human resource strategy.

51. **The Sector for EU integration and International Projects has limited resources to perform critical coordination and resource mobilization functions.** Significant pre-accession funding is available to support reforms in the judiciary. At the same time, reporting and coordination requirements with EU authorities will further intensify as Serbia obtains official candidate status. The Sector currently employs 11 staff, including

⁶¹⁹ For further information, including an organizational structure of the MOJ, see the Background Information on the Serbian Judiciary, available at <http://www.mdtfjs.org.rs/en/serbia-judicial-functional-review>.

⁶²⁰ As far as legal skills are concerned, most officers working in the field of the judiciary and legislative drafting appear to be appropriately qualified, many having passed the bar examination and with several years of experience in government and/or in the judiciary.

an Assistant Minister. The Sector also hosts the Reform and Accession Facilitation Unit (RAFU), which is funded by the MDTF-JSS and consists of 12 advisors. The RAFU provides analytical, advisory and reporting services in a number of key areas such as reform of the prosecutors' services, reform of the judicial network, outreach and communication, resource analysis, legal aid, reform of legal professions, anticorruption, etc. To absorb the increasing workload during the pre-accession process, and to ensure sustainability, increases in permanent staffing in this business area should be prioritized. Most candidate countries increased staffing in accession-related functions across the public administration, including in MOJs during the EU accession process, often on secondment from other areas. After accession, such capacity will need to be sustained and mainstreamed throughout the MOJ.

52. To ensure coordination of recurrent and capital budgeting, strong communications need to be established between the Sector for Material and Financial Planning, the HJC, and the SPC. While the Councils could assume responsibility for capital budgets in the long run, stronger mechanisms for cooperation need to exist in the meantime between the Councils and the MOJ. Current financial management is primarily concerned with transaction processing and compliance control, rather than resource planning (see Resource Management section). The Sector employs 23 staff, including the Assistant Minister. After the transfer to the Councils, a reorientation of the financial management function in the MOJ could be undertaken to provide wider policy analysis, monitor cost effectiveness, and improve performance and efficiency in the judiciary. This would require improved information and data management, including the development of a database on caseloads, staffing, and costs across the court network together with resource planning tools that link budget allocations to service demand and results.

vi. Managerial Capacities in the Courts

53. Effective governance and management are particularly important at the court level. Court Presidents have traditionally managed and overseen their own courts and the courts below them in the hierarchy, at least in theory. In this sense, Court Presidents serve as mid-level governance and management bodies.

54. It was thus concerning that Court Presidents had not been appointed since 2010 and many remained 'acting' for prolonged periods, and occasionally were replaced without justification. Stakeholders report that the prolonged 'acting' status of Court Presidents created various problems for these key players, including timidity in tackling management issues, self-censorship in sensitive matters, and a general feeling of uncertainty and dependence that negatively impacted performance in recent years. Fortunately, this issue has been addressed with the appointment of 141 Court Presidents in May 2014. This represents an opportunity to invest in these Presidents and build their managerial capacities.

55. There are significant variations in court management among individual courts. The authorized functions of Court Presidents are quite extensive (see Box 17) and the structures of the courts and PPOs are set by detailed rules. However, there is no uniform approach to implementing these functions, and very limited guidance and accountability. On several field visits, stakeholders commented that it is not possible to comply with all rules, so they are forced to exercise discretion and make trade-offs as to which rules to break – an ironic sense that with too much rigidity comes disorder. The resulting variation is visible in staffing patterns, budget execution, arrears, judicial productivity and backlog reduction efforts, and in the use of automated systems and the submission of reports. Greater consistency is probably desirable although not at the cost of stifling productive innovation.

56. The managerial abilities of Court Presidents are pivotal to success. Stakeholders report that the main determinant of a court's performance is not its location, the number of incoming cases or its infrastructure but rather the quality of the individual Court Presidents and their willingness to address issues in their court.

57. **The performance of Court Presidents has been variable – those who have been strong base their success on individual enthusiasm and largely unrecognized effort.** Very little training has been provided, and opportunities for Basic Court Presidents to meet and exchange experiences are rare. Some Court Presidents, even when they were ‘acting’, have been proactive in their management, setting clear expectations for performance among their judges and staff. Others simply fight fires in disarray. In between, there are examples highlighted throughout this Report of improvisations to solve ad-hoc problems that have led to innovations, and lessons could be learned from these and replicated around the country. Court Presidents report their courts court perform better – and their roles are made easier – in a governance and management environment where there are enough general rules to set parameters, but enough flexibility to adapt and innovate, reinforced by guidance and peer learning.

Box 17: From the Law on the Organization of Courts

The duties of Court Presidents include: representing the court, managing court administration, responsibility for proper and timely court operations by ensuring legality, order, and accuracy in the court; ordering the removal of irregularities, preventing procrastination in the court’s work, designating the panel of attorneys to provide free legal assistance, safeguarding the independence of judges and the credibility of the court, and other tasks set forth by law and the Court Rules of Procedure.

In Serbia, the court administration for which Court Presidents are responsible consists of tasks that support the exercising of judicial power, in particular: the organizing of internal operations, summoning and assignment of lay judges, activities related to standing expert witnesses and court interpreters, review of complaints and petitions, keeping statistics and drafting reports, enforcement of penal and minor offences sanctions, financial and material business of the court, and certification of documents for use abroad. The court administration is also regulated in more detail by the Court Rules of Procedure.

58. **Most Court Presidents lack specialized staff to assist them, and court rules are relatively silent or considerably outdated on the need for support staffing.** Some Presidents have developed ad-hoc support teams. In Vrsac for example, an active and skilled team of middle managers assists the Court President to take decisions, implement, and monitor results. This approach should be systematized and the practice of using clerks for these tasks, or the hiring of contracted experts, should not be continued. Thus, in addition to developing staffing patterns for the Councils, a performance improvement program will require developing staffing profile to support Court Presidents. Some functions may be appropriate for a Court Manager, some for managerial advisors, and others for a combined IT/statistical specialist profile. Existing staff – especially judicial assistants and Court Secretaries – could rise to these roles. The key will be to create an attractive career path where positions have official recognition, detailed descriptions of responsibilities, selection criteria, and salaries commensurate with their market value.

59. **Under new governance arrangements, Court Presidents’ roles will be even more important.** The Councils and their management offices will be responsible for setting and tracking the overall standards for their respective institution’s operations, monitoring their performance, and executing some centralized projects. However, the Councils require input ‘from below’ and a replication of some functions downwards through their organizational hierarchies. Further clarity on responsibilities and decision-making in higher-level courts is required. In addition, individual courts need to be adequately resourced to perform more modern tasks.

60. **Management by groups of judges would further enhance court performance and assist Court Presidents in carrying out their tasks.** In the Netherlands for instance, the work is undertaken by Court Management Boards. These Boards function like a mini Council. If created at the Appeals Court level, the Boards might incorporate judges from lower courts. Service on the Boards need not be full-time, although Serbia has enough judges to make permanent Boards feasible. Much also depends on how much decision-making power the HJC delegates to the lower reaches of the judicial hierarchy. Similar considerations apply

to the SPC and the prosecutors.

61. **While the HJC and the SPC should first focus on their own organization and management units, they will need to proceed quickly in defining the governance and managerial responsibilities of individual courts. This is where practical innovation to improve service delivery is likely to occur.** Therefore, the goals for the HJC and the SPC should be to enforce uniform standards that still leave room for useful innovation.

c. Effectiveness in Operational Management

62. **Due to the ongoing organizational changes, the evaluation of internal management is complicated.** Both Councils are still implementing their management offices and internal work processes, and it is premature to assess their ability to perform the key functions. This section thus focuses on what the structures still under construction will be able to do, and how they might be expanded for better performance.

i. Internal Organization in Courts

63. **The organization of courts has been unstable for some time** (see Background Annex). A series of reforms adopted over the last decade reflect different views of how the judicial system, and particularly the courts, should be managed. Some were successful, but many returned to the drawing board. Most recently, the court network was again reorganized in 2014, but this should now stabilize. Although the impetus and methodology were not clear, it was observed that no fiscal impact analysis was conducted. However, any concerns regarding geographic access to justice under the old network should now be fully allayed. As previous court units became Basic Courts, they can now operate at expanded hours and judges need not travel so far.

64. **The 2014 change to the court network did not fundamentally change the organization of the system.** The same building blocks remain (e.g., the budget, number of buildings, judges, prosecutors, staff, caseloads, and users), but people are now dispersed across a larger number of locations. It is hoped that the network is now settled and will remain so for at least the medium term. Stakeholders report a craving for stability within the organization of courts to allow various reforms to be implemented.

65. **However, within-court changes have been fewer and internal re-organization will be inevitable in the transformation.** When procedures change, the judicial work, judge-to-staff ratio, and the types of staff will need to change as well. The nature of demand may also change, for example through the use of plea-bargaining or when new departments may be needed to support mediation. The reduction of backlog may also require the temporary creation of enforcement departments to speed up the process.

66. **The Councils or the SCC/RPPO should review internal organization and modernize to meet current needs.** The need is recognized in the Action Plans which assign the task to ‘working groups.’ These groups may not be well equipped for this type of analysis. To date, little has been done to assess the internal organization of each court or PPO or to determine how productivity or other aspects of performance are affected by the significant organizational variations. The Councils or the SCC/RPPO should consider creating an office or positions within an existing unit to identify optimal internal organization, and support wider adoption. The staff charged with this task could be lawyers, but they will need additional qualifications and skills. A degree or experience in organizational development, industrial engineering, or business administration might be useful. In the meantime, both Councils might recruit external experts to lead the initial analysis.

67. **Guidelines should be developed to ensure that resource use is linked to productivity and results, allowing variations from strict finance and staffing models when it can be shown that they are more**

efficient or effective. The HJC in particular, as the judiciary encompasses more variations, will need to collect and analyze information on the real situation of courts' organization, staffing patterns, and staff use. It should identify productive experiments such as courts that have formed management teams, preparatory departments and backlog reduction taskforces. Past and current Court Presidents are a resource the HJC should tap for innovative ideas to improve the delivery of court services. Colloquia among Court Presidents would be valuable to further explore what does or does not work, and what is needed at the court level to enable performance improvements.

68. **For example, one organizational innovation with reportedly positive results is the introduction of preparatory departments to smooth case processing in civil cases.** In the Basic Courts in Uzice and Subotica, preparatory departments have been an efficient way to ensure that cases are ready for hearing, while also reducing the administrative burden on judges. Such departments are composed entirely of judicial assistants devoted to verifying that procedural requirements have been met, researching cases and finding examples of court practice for judges, drafting court decisions, and calculating court fees. Similar arrangements have been used successfully in other countries. France created a special judge (*juge de mise en état*) to prepare civil cases for adjudication, and common law countries often assign preparatory work to qualified court staff.

69. **Lessons learned from these nascent Preparatory Departments should be shared across the system.** Results can then be monitored and innovators rewarded. Courts which have been slower to introduce Preparatory Departments could be encouraged to prioritize their establishment. Logistical concerns and judges' reluctance to 'share their assistants' may be overcome once the efficiency gains are highlighted.⁶²¹ There may be different models of departments that work better than others. Elucidating and sharing these lessons could thus spur further innovations.

Serbia's judicial sector still lacks a good mechanism for evaluating internal organization as a whole – and especially variations in structure and staff numbers. There are significant differences in unit productivity that deserve further study since they could provide solutions to improving the overall system performance.

70. **Further consideration could also be given to specialization of work.** In Basic Courts in particular, specialized departments and streamlined processes could be established to deal with certain types of cases such as small claims, labor disputes, and family issues. In Misdemeanor Courts, greater specialization on customs and tax cases may be warranted. Similarly, PPOs could consider the establishment of departments and processes for the investigation and prosecution of types of cases that require specialized skills,

such as fraud and sexual violence.

ii. Managing Caseloads and Workloads

71. **As discussed in the Efficiency Chapter, judicial caseloads are distributed very unevenly in the Serbian judiciary, because the number of judges in the same types of courts does not correlate with the number of incoming cases, pending caseloads, or dispositions.** This directly impacts court efficiency and access to justice.

72. **A case weighting methodology would improve the system's ability to allocate workloads among judges and staff.** Weighted caseload standards define case complexity and the amount of judicial time that should be allocated to each case event, and develop case weights that can be used to effectively allocate human and material resources within the judiciary. Case weighting is useful to balance workloads in courts that handle different case types that require different levels of effort to resolve. By contrast, courts that

⁶²¹ The Basic Court in Novi Sad intended to establish Preparatory Departments for civil matters in 2014, according to its Annual Work Schedule. However, this has yet to occur, reportedly because the three assistants proposed to work on the project cannot sit together, and because judges are reluctant to forego their assistants.

handle different case types of broadly similar effort may not need such a tool and random case assignment combined with managerial oversight is sufficient. While case weighting helps, there remains some debate about the extent to which a case weighting tool would solve Serbia's problems. See Box 18.

Box 18: The Debate on Case Weighting in Serbia

There remains some debate regarding the extent to which a case weighting tool would solve Serbia's efficiency challenges. While there appears to be consensus in favor of developing a tool, there are divergent views on the level of investment and priority it warrants.

At its heart, the issue lies in whether the problem of uneven workloads in Serbian courts lies in difference in case types or something else.

Proponents of a case weighting argue:

- Case weighting would assist Court Presidents to compare true workloads between judges in the same court. When an individual court handles a range of case types that require very different amounts of effort, the Court President can apply the weights, compare workloads, and assign and re-allocate cases accordingly.
- Case weighting would assist the SCC and HJC to compare workloads between courts of the same type (i.e. between all Basic Courts). When the same type of courts handles a range of case types that require very different amounts of effort, the system can compare workloads between different courts of the same type. Measures would still be required to either re-allocate cases or transfer judges.
- The tool could enable the system to highlight high-performers, whose true workloads are worthy of recognition, and could feed into evaluation and promotion systems.

Arguments against case weighting include:

- Uneven caseloads in Serbia relate to differences in judges (their productivity, work pace, skill etc.) more so than differences in case types. Case weighting will become a diversion from the real challenge of ensuring that judges are sufficiently trained and share a common commitment to work.
- Some cases take longer than others, not because of their case type but because of inconsistent practices. The system should target inconsistent practices, and workloads will improve for all judges.
- The random case assignment system already enables Court Presidents to equalize caseloads (and when some cases require different levels of work, deviations in assignment can resolve them). AVP reports can show caseloads per judge by case type in each Court, but should be integrated to show the same across courts. Effort should focus on improving statistical reporting and ensuring that leaders analyze their reports and take action on them.

73. **An HJC working group prepared a pilot case weighting methodology, but its work has not been endorsed.** With support from USAID SPP, the working group developed case time estimates through expert opinions and collected actual case time data, then tested and adjusted both to develop a caseload analysis.⁶²² Cases were categorized into three groups (simple, complex and very complex).

⁶²² The working group adopted the Delphi method to estimate time needed to review each event in the case processing chain. Time-keeping was conducted of among 386 judges from 37 pilot courts of varying court types.

Box 19: Pitfalls and Lessons in Developing Case Weights

Court systems commonly get mired in the design of weighting methodologies. Some countries have taken many years to roll out sophisticated systems, only to have to re-work them to account for reforms that have occurred in the interim. Lessons from other jurisdictions highlight many pitfalls. Often, the hardest part of developing a case weighting methodology is identifying how much effort is spent by different actors to resolve cases. Estimates by judges are often not accurate, and testing is often contaminated by bias and gaming behavior. Experts agree that the development of such a tool can be a challenging and often long-term endeavor. Long-term time testing with time sheets and stop-watches, preferably by a professional firm specializing in this kind of research, is often required. The process has also produced conflict. For example in Spain, judges rebelled against both the weighting system and the decision to use it to give merit bonuses to judges producing over the average. Above all, case weighting needs to be simple in order to be effective.

Best practice suggests that a judiciary in transition should 'start somewhere' and develop a simple estimation, and then enrich it over time. A brief pilot program can be valuable, and once rolled out, annual updates to the methodology can incorporate legal and procedural reforms, and apply lessons based on experience. The process of refinement should rely heavily on objective data from expert firms, as well as on input from stakeholders within the judiciary.

74. **In Serbia, while a more sophisticated analysis is underway, an initial basic weighting by major case-type could be implemented.** Lessons from the pilot could be applied, particularly its first stage of grouping cases into three categories, which was not contentious. Weights could be applied to the numbers of cases of each judge (without allocating time), to arrive at a roughly weighted number for each judge that can be compared. Over time, the system could become more sophisticated by estimating the amount of effort generated by each case type. Such an option could be considered by the HJC and SCC as an interim methodology in the short to medium term.

75. **In the meantime, much progress can be made to address the unequal distribution of cases between courts without the tool.** For example, it is doubtful that the enormous variation in the average caseloads of Basic Courts is based solely on the relative complexity of cases received. Under-performing courts could also be supported to improve performance to meet the system's averages through targeted interventions. Court Presidents should also use existing systems (predominantly AVP) to analyze existing caseloads for each judge by case type. The HJC should also require AVP reports from courts on the allocation of judges to cases by case type. Where imbalances are real, files can be transferred between neighboring courts. Incentives can be offered to encourage judges to transfer (permanently or temporarily) between neighboring courts, including recognition awards, consideration for promotion and financial incentives. The current system of random case assignment could be monitored, and Court Presidents could be required to report on each occasion when they overrule the system, and the reasons for their decision. Together, such a suite of measures would improve the distribution of caseloads to a point where the variation may be due to case complexity, at which time case weighting will be ready to be applied.

iii. Work Processes and Process Re-Engineering

76. **Closely related to internal organization, process re-engineering is the re-design of work patterns to produce high quality outputs more rapidly, with less effort, and at lower costs.** If done successfully, process re-engineering contributes to quicker and more effective remedies for users, and reduces the burden on judges and their staff without sacrificing on quality. Process re-engineering seeks to identify and remove steps that contribute little value. At times, all that is required is a better method for organizing workloads and distributing work between judges and their staff. All these efforts can improve the work environment, and make life for courts and parties easier, reduce delays, and costs, and improve satisfaction with justice services.

77. **Neither the Councils nor the SCC has a system to evaluate work processes or to re-engineer them.** Individual Court Presidents use their own systems based on personal initiative or with the support of donors (see boxes in the Efficiency Chapter). Neither the SCC nor the Councils have created a unit or position to contribute to this work, nor did one exist prior in the MOJ.

78. **Process re-engineering requires familiarity with current practices, knowledge of alternatives pursued in other countries, and some ingenuity or imagination to see how imported or local innovations might be adopted more widely.** See Box 20 below for an example of business process re-engineering that has been highly successful in the Subotica Basic Court. Western European judiciaries, as well as the more developed common law systems elsewhere, constantly make refinements to their system. Some reforms are more successful than others. However, no process is impervious to change.

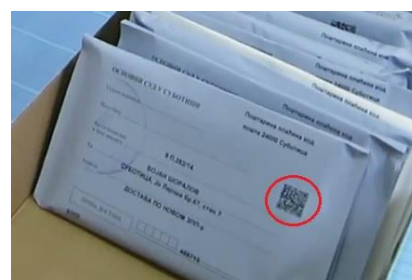


Image of a service of process envelope in Subotica Basic Court, 2013.

Box 20: Easing the Bottleneck of Service of Process: An Example from the Subotica Basic Court

Each day, the Subotica Basic Court processes hundreds of requests for service of process (for orders, summons, decisions etc.) in famous blue envelopes. With the assistance of their in-house IT Administrators, the Court streamlined the process and achieved remarkable results.

BEFORE: Judicial assistants would write on each envelope the name and address of the sender and recipient and pass them to the Expedition Office within the Court. The Expedition Office would then pre-process all of the envelopes and place them in a box for delivery to the Post Office. The Office would transcribe the details on each envelope into a form that is required by the Post Office, and the names on the form must be in the same order in which the envelopes are boxed. The process would take approximately five minutes per envelope, and human error was common. With hundreds of envelopes each day, the task of preparing service of process would take clerical staff several hours each day.

AFTER: Now, judicial assistants enter the names and addresses of each recipient in an Excel spreadsheet. The spreadsheet generates a QR code with the embedded data, and the assistant prints the QR code on the envelope. The Expedition Office then scans each envelope using an inexpensive webcam as they place the envelope in the box. The scanned data relays to a computer that automatically populates the required form. Staff now process 6 envelopes per minute, and the process is complete in about an hour. (See image above. Also, a video of the process is available here - <https://www.youtube.com/watch?v=7ka9ncdNa-0>)

THE LESSON: Streamlining processes does not always require expensive investments in ICT (in this case, the only cost was an inexpensive web camera). It requires staff to understand the workflow, identify the bottlenecks and work together to solve problems. The result in the Subotica Basic Court is speedier and more accurate delivery of service of process, along with higher morale and more effective use of staff time. Given that service of process is a severe bottleneck, many Basic Courts could consider replicating this innovation.

79. **The adoption of new procedural codes is a form of business re-engineering, but rarely have their intended aims been effective due to lack of analysis.** Frequently, reforms have become a source of new problems or simply have not eliminated past ones. It is particularly critical that reformers specify the changes and benefits they propose to introduce, and that these be tracked once the code is enacted, and if legally possible, via a pilot.⁶²³

⁶²³ For example, Romania's Small Reform Law was intended to introduce changes as a prelude to the adoption of the new criminal and civil procedures codes. However, the presumed improvements like a reduction in the average number of hearings per case were never actually monitored. As of late 2012, decision-makers did not know whether the changes had occurred, and if they had happened, whether there were decreased delays. Nonetheless, new codes were enacted on the assumption that both the changes and the benefits came about.

80. **The new CPC – a radical exercise in process re-engineering – provides a recent example.** In this case, reforms were based on legal principles regarding the proper role of the courts, prosecutors, and law enforcement with some influence from foreign donors, more so than on the detailed process analysis or data from within the Serbian system.⁶²⁴ In a positive effort, the SPC attempted to analyze the cost implications for PPOs based on grafting the budget and staffing needs of criminal investigation functions onto PPOs. However, this analysis did not account for the expanded scope of work entrusted to prosecutors, nor did it assess whether existing court allocations (or prior PPO allocations) were appropriate in the first place. Furthermore, the HJC and SPC estimates regarding personnel needs under the new CPC did not suggest a detailed exploration of organizational alternatives or available data. The implementation plans did not include a rigorous, comparative analysis of the old and proposed case trajectories, or the effects on staffing needs and task assignments, or of the impact on the timing, quantity, and quality of service delivery.

Process re-engineering, or the development of ways to simplify the means for carrying out basic tasks, is underdeveloped in Serbia's justice system. Were it to be adopted, judges and staff could produce more with less effort, and satisfy user demands for quicker and more effective remedies.

81. **It is not too late for Serbia to test the effects of this reform, if it immediately and precisely defines the intended benefits and the data through which it can measure the impacts.** Such testing would also permit refinements in the future, should the benefits not emerge as anticipated. Lessons from Croatia's experience with its CPC may be instructive. The Croatian CPC introduced significant amendments, only to be partially abolished by their Constitutional Court, resulting in a partial reversion to the previous system.

82. **Much re-engineering can be done less radically. An administrative change can be quite small yet can have a discernable impact in service delivery.** While physical case files are still used, barcodes can facilitate their location, which may prevent files from being lost or misplaced for long periods of time. If files are scanned, copies requested by attorneys or parties can be produced more rapidly and, if permitted, delivered electronically. Similarly, statistical reports can be generated electronically and transmitted by flash drives to a central database, as is already practiced in the Misdemeanor Courts. On the administrative side, the goal is to avoid entering the same data more than once, thereby reducing workload and potential errors. The online filings and notifications (e-filing) currently under development in Serbia is a natural progression.

83. **On the judicial side, redundant processes can be eliminated. Giving judges more authority to decide on what is essential and what is not can curb potential dilatory practices.** Court Presidents can encourage their judges to be more assertive and proactive in their case management, and should support them to enforce the new approach. Sanctions for frivolous claims and abuse of process can be imposed and enforced. Appellate Courts can support lower courts by endorsing a more assertive stance during trials; meanwhile, they could be encouraged to amend decisions wherever possible instead of simply sending them back for retrial.

⁶²⁴ The transfer of the investigation from a judge to the prosecution draws on a widely held assumption that prosecutorial investigation eliminates conflicts of interest and reduces overall costs and delays. So far, none of these beliefs has been subjected to rigorous testing. The investigative judge continues to function well in many countries, including France, the Netherlands, and Spain.

Box 21: Process Re-Engineering in Modern Judiciaries

Whether a change in practice and procedure is small or large, success is more likely if four conditions are met:

- i. **precisely define the targeted problem** (identify whether and why it really exists, and assess whether its proportions merit the change);
- ii. **define the proposed improvement** (identify not just a change in practices, but a change in service quality);
- iii. **adopt a credible remedy** (ensure it has not already been tried and failed, and look for evidence success elsewhere); and
- iv. **make a plan to test results** (know what success will look like, make mid-course adjustments, and reward innovators).

Reforms undertaken in many judiciaries do not meet these conditions. Reforms often start without good evidence of the existence of a problem or of its purported causes. These errors can be avoided through a review of performance statistics and case file data, surveys with court users, and other types of empirical evidence. Planning and analytic units can be tasked with reviewing all these sources of data to identify problems, investigate those suggested by Council members or external observers, and thus put the Councils on firmer ground in making their decisions. The benefits of improvements can then be quantified, and innovators rewarded.

See World Bank (2002) for a critique of ineffectual reforms to enforcement proceedings in Mexico. See Genn (2005) for a critique civil justice reforms in England and its lack of an evidence base. See Kritzer (2000) on the US' experience in reducing delays by limiting adjournments, only to find that adjournments were not the cause.

84. **The judiciary should consider establishing such a process re-engineering team.** The team could identify opportunities, and analyze existing processes and decision-making while learning lessons from other judiciaries. Some judiciaries, such as in the Netherlands, have introduced roving evaluation teams that periodically evaluate the effect of processes on a given number of courts, and assess how improvements in processes might be made.

d. Effectiveness in Resource Management

i. Resource Management and Coordination

85. **Continued fragmentation results in suboptimal coordination and management of resources and resource planning.** This is in part due to the division of responsibilities among Councils, the SCC, RPPO, and the MOJ which results in a lack of coordination in the planning for resources, such as judges, court staff, ICT, and infrastructure. This fragmentation is then deepened because departments within each organization work in silos and are isolated from each other. Within the Councils for example, the financial and material resources sections do not generally liaise with the human resource departments to identify ways to coordinate resource demands and calibrate them against needs. As a result, individual resources, if planned at all, are not coordinated within a resource envelope.

86. **To the extent that there is a common view, there is an inherent bias toward adding judges and assistants.** This is evident in the high and growing wage bill, the incremental increases of personnel, and the common refrain that more staff is still needed. The distribution of judges and support staff tends to follow tradition more than logic – if Basic Court X had 10 judges, 10 positions will be maintained or the number might be increased. Yet, as highlighted in the Efficiency Chapter, there is no correlation between the number of judges and their caseload, nor the productivity of courts, nor is there a relationship between court size and the judge-to-staff ratio (see the Human Resources Chapter). Staffing patterns vary widely, and the use of contracted and voluntary employees contributes further to the variation. Other judiciaries across Europe and in the region operate at similar levels of effectiveness (clearance rates, times to resolution, pending backlog) with substantially less professional and support staff. Thus, Serbia's preference for adding judges and assistants might merit reconsideration alongside more pressing needs, given that the resource envelope is fixed.

87. **The provision for other resources is less generous, and more of an afterthought.** IT specialists, Court Managers, and experts in other disciplines are in short supply. Meanwhile, there are constant complaints that staff of all types are underequipped and poorly housed.⁶²⁵ Planning for these positions is not done, suggesting that budgeting for anything but the basic human resources – judges, prosecutors and possibly their immediate assistants – is done with what remains left over, or if managed by the MOJ, through donor funding.

88. **There is no systematic planning or programming for ICT and infrastructure – decisions are ad-hoc and based largely on what donors are willing to supply.** Often overlooked are the longer-term costs of operations and maintenance. In the case of ICT, little analysis has been done as to what best fits within existing systems, which has led to a proliferation of donor-funded fragmented systems. Not enough training has been programmed to enable users to maximize the benefits of new investments. Yet these other resources will be critical to driving the kinds of performance enhancements that are required for EU integration.

89. **Further, the impact of one resource upon another is not estimated.** For example, there is no sign that increases in IT equipment have sufficiently augmented budgets for IT specialists or IT training, or that the addition of court staff is translated into increased costs for equipment, space, and materials. The results in judges without offices, staff without computers, and a case management system with no training. Or in an extreme case with the court re-networking, some PPOs opened without desks and chairs for staff. Formulas need to be developed for making cost projections; otherwise, the investment in the original resource is not productive.

90. **Fragmentation also hides arrears. As discussed in the Financial Management Chapter, the accumulation of arrears is a significant problem for the judiciary and needs to be more proactively managed.**

Justice sector planning in Serbia could benefit from two additions: greater attention to the need for non-judicial mid-level staff (e.g., IT and management experts) and an automatic recognition that the addition of one type of resources has implications for expenditures on other resource types.

ii. Resource Mix and Ability to Program Resources Jointly

Box 22: How Much Should I Spend on What?

There is no European standard for the required mix of resources in the judicial system. Data on financial, HR, and ICT resources available to the judicial system can be compared at European level and beyond by utilizing internationally available budget data or the CEPEJ data. Always the biggest share of the budget of justice sector institutions is dedicated to human resources, but different systems dedicate greater or lesser shares to other resources. With no magic formula, much depends on the specific characteristics of the local context and the baseline from which a judiciary embarks. For example, a judiciary with an old or poor stock of existing infrastructure and ICT will need to spend a higher share of its resources on upfront capital investment than a judiciary that already has a decent stock.

91. **Neither the MOJ nor the Councils have developed the capacity to consider and program all resources jointly.** Some aspects of joint programming were addressed above, but only regarding implied costs of additions of each type. This report examines the global programming in which strategic results are identified and resources are mobilized collectively to achieve them. Currently, there is no process to prioritize results, analyze data to identify alternative resource mixes that could be mobilized to achieve them, decide upon a resource mix, and later deploy plan resources accordingly. Instead, decision-making

⁶²⁵ If performance shortcomings could be explained by poor working conditions and insufficient equipment for the judges already in place (as many interviewees report), then the situation will not be resolved by adding more people to the system. If additional funding is applied only to salaries, then funds needed to support those people through infrastructure, equipment and ICT will be even scarcer.

focuses on a desire for inputs and the preferences of individual decision-makers.

92. **With ambitious goals and a fixed resource envelope, trade-offs and linkages must be considered.**⁶²⁶ Resources will need to be programmed in different combinations to generate more output of higher quality. The aim should be to make these choices by considering the goals to be pursued, examining available evidence on current system performance, and exploring alternative uses of funds based on local suggestions and the experience of other countries.

93. **Clearly, more needs to be invested in ICT, infrastructure, and training, and less devoted to salaries; this recalibration will require a series of decisions through the short and medium term.** For example, IT investments (such as better scanning, improved access to legal research, the use of templates, and the automation of analytical reports) will reduce the need for large numbers of unskilled ancillary staff, but may require the addition of mid-level IT specialists and further training for all staff. While costs for HR, IT, and infrastructure tend to rise together, investments in one of them might reduce the immediate need for investments in others. For example, improving the workspaces for judges, prosecutors, and staff might raise their productivity without adding personnel. Attrition, through the non-replacement of departing judges and other personnel, could free up funds to invest on much-needed infrastructure.

94. **Further consideration could also be given to the mix of personnel.** It may be necessary to hold the number of judges fixed over the medium term and increase their training, while prioritizing investments in skilled staff (IT specialists, managers, advisors) and reducing unskilled staff.

95. **These are the tasks of management units, with the preferable addition of an office dedicated to planning and analysis.** This prior analysis should greatly enhance the confidence of leaders in making the correct choices about the mix of resources needed to mobilize the system to meet transformation goals. Combined with process re-engineering, alternative input mixes should allow the institutions to do much more with their existing resources, and make better arguments for targeted investments in certain areas such as ICT and infrastructure.

Serbia's disjointed approach to resource programming, both within management structures and across institutions makes global planning difficult. If programming was more coordinated and linked to performance improvements, planners would have a wider range of alternatives for reaching desired output goals.

e. Effectiveness in Strategic Management

i. Development of Strategies

96. **The adoption in Parliament of the NJRS 2013-2018 and its Action Plan represents a significant milestone for the Serbian judiciary.** This second Strategy was built on the first Strategy that covered the 2006-2011 period. Each was designed with the objective of EU accession, and therefore both strive to align the Serbian judiciary with EU benchmarks. The specific aim of each Strategy was slightly different. While the 2006-2011 Strategy focused on the legal and structural change, the 2013-2018 Strategy focuses on the 'fine tuning' the new Framework.

97. **The NJRS and Action Plan are comprehensive but overly ambitious.** The NJRS provides a solid evaluation of the previous strategy, including a thorough and honest review of the limited progress made to date and the significant tasks that lie ahead. The document provides a lengthy list of goals without listing their prioritization. It will be difficult to implement the 237-page Action Plan within the five-year timeframe. Despite the significant efforts made within its first year, implementation is already experiencing delays (see

⁶²⁶ Even if the Serbian judiciary could raise the sector budget by 20 percent, which is highly unlikely, it would still have tough choices to make.

further below).

98. **Despite its purported emphasis on fine-tuning, the second NJRS focuses more on developing the law than ensuring the effective implementation of existing and new legislation and processes.** To meet the Acquis requirements, the passage of new legislation will be inevitable (for a further discussion around the quality of laws and law-making in Serbia, see the Quality Chapter). However, the system should resist the natural bias of legal professionals to add legislation, which has been shown to be a suboptimal approach to improving justice services. Over the last two decades, the experience of judiciaries seeking transformation, including those in Eastern Europe, highlights the need to balance legal reform with pragmatic changes in practice and process. One pitfall is the passage of ‘stillborn’ law – legislation that exist ‘on the books’ but are incapable of effective implementation due to the absence of appropriate funding, planning, administrative, or practical elements that enable them.⁶²⁷

99. **To avoid these pitfalls, the implementation of the Action Plan requires an organizational and managerial approach more than a legal one.** Planning for effective implementation is imperative, as is recognizing that the passage of legislation is perhaps the beginning of a process and not an end. Budgets must be modified based on realistic estimates of new requirements. Reforms may also require changes to existing institutions, business processes, and workflows. Training is an important element in this change process, and it is of concern that the Judicial Academy’s focus to date has been on new recruits rather than the necessary in-service training that can equip the system to deal with reforms. Outreach is essential to raise awareness and to gain the buy-in needed by actors in the system to ensure their cooperation. Also, judiciary leaders should identify the behavioral changes they wish to see, and the system performance results they seek to achieve beyond the passage of a particular law. In a positive step, the Principle 5 ‘Efficiency’ lists some measurable indicators, such as the number of old cases, the number of courts and prosecutors per 100,000 inhabitants, and the scope and structure of the costs of the judicial network. With these indicators, specific targets could be identified and monitored, and the impacts of reforms could be measured.

100. **The NJRS and Action Plan also lack a clear focus on how these reforms will affect the users.** If there still is room for re-setting objectives (rather than eliminating them), stakeholders may consider these modifications before implementation is further waylaid. Prioritization could be given to reforms that provide the greatest impact in enhancing the court user’s experience of the court system, and improving the users’ satisfaction with justice services. According to the latest Multi-Stakeholder Justice Survey, stakeholders aware of the reforms show high expectations. These expectations could therefore serve as a selection criterion for any effort to prioritize activities.

101. **By 2018, Serbia may have enacted the new laws and regulations listed in the Strategic Plan so that it may ‘check the boxes’ as requested by the EC.** Whether behaviors and performance within the Serbian judiciary will have changed in accordance with the intended effects of the NJRS is not obvious. It may be that the NJRS requires a second stage of fine-tuning focused exclusively on the on-the-ground implementation.

The NJRS’s analysis of system needs appears complete, but the Action Plan may be overly ambitious and lacks a statement of how results will affect court users. If there is room for adjustment, the emphasis on new laws might be reoriented to prioritize those with most impact and fine-tuning might be directed to benefits that will be felt by users.

102. **The HJC developed its own implementation plan for 2011-2013, but the Plan remains largely unimplemented.** The plan for the most part incorporates goals and expands on those from the NJRS and Action Plan. For example, the plan stressed the HJC’s interest in participating in the drafting of the legal

⁶²⁷ Gupta, Poonam, Rachel Kleinfeld, and Gonzalo Salinas (2002), Legal and Judicial Reform in Europe and Central Asia, The World Bank Operations Evaluation Department, Working Paper Series.

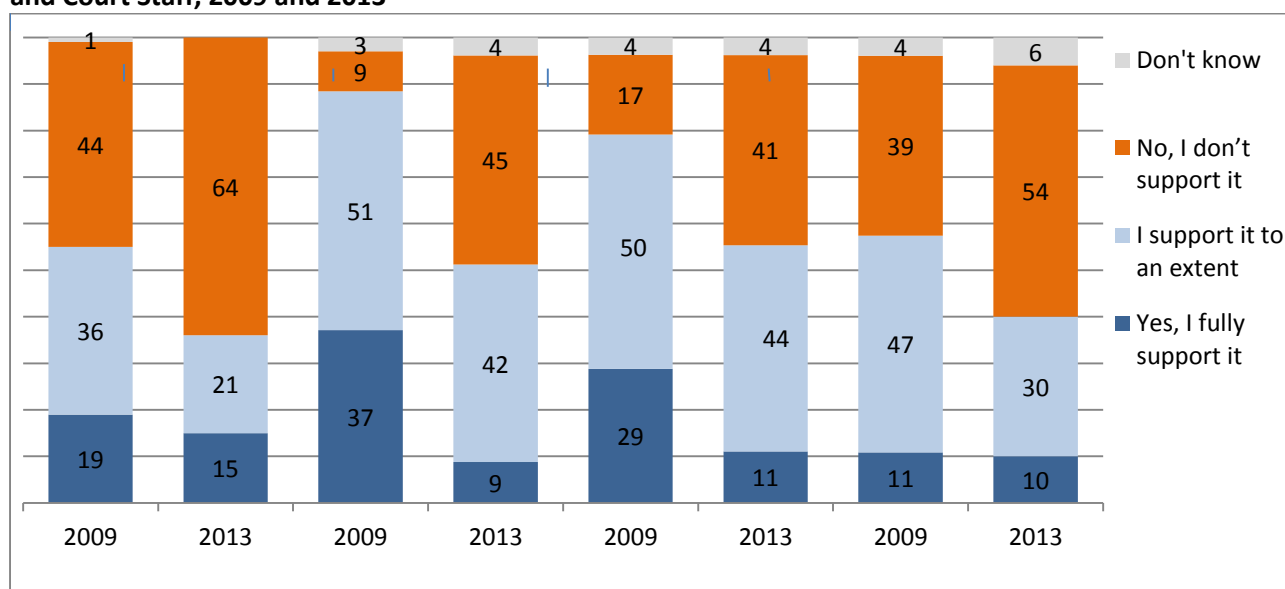
reforms affecting its operations. The HJC plan also identified mechanisms not mentioned in the NJRS and Action Plan, such as the use of consultations with judges and other stakeholders, a comparative analysis of solutions from other countries, and media promotion. The HJC plan was more specific on the delay and backlog reduction targets. Given the delays in the HJC's implementation of its own structure, many of the goals are still pending realization but would make good targets for the next period. The plan's short length and limited number of targets may be more practical than the longer NJRS Action Plan.

ii. Dissemination of Strategies

103. **The NJRS documents do not appear to be widely known.** In fact, the Multi-Stakeholder Justice Surveys showed that over time, the public awareness of the first reform process has dissipated. Correspondingly, all the existing buy-in was lost as a consequence.⁶²⁸

104. **More critically, support for the older reforms decreased significantly among system professionals and staff between 2009 and 2013 (see Figure 112).** While the question referred to the 2010 reform – and not the two strategic plans – the declines suggest a decreasing faith in the leadership's ability to program positive changes.

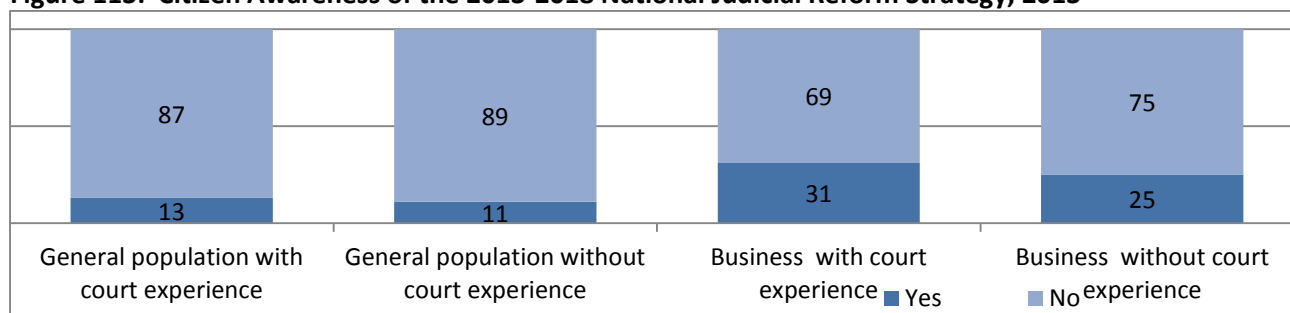
Figure 112: Degree of Support for the 2010 Judicial Reform Strategy among Judges, Prosecutors, Lawyers and Court Staff, 2009 and 2013⁶²⁹



105. **Public awareness of the new strategy is even more limited (see Figure 113).** Those aware of the new strategy have relatively high but unknown expectations for its progress. More dialogue with the public, particularly with court users, might better define what the Serbian population expects from their courts. Such dialogue may prevent disappointment and disillusionment later on.

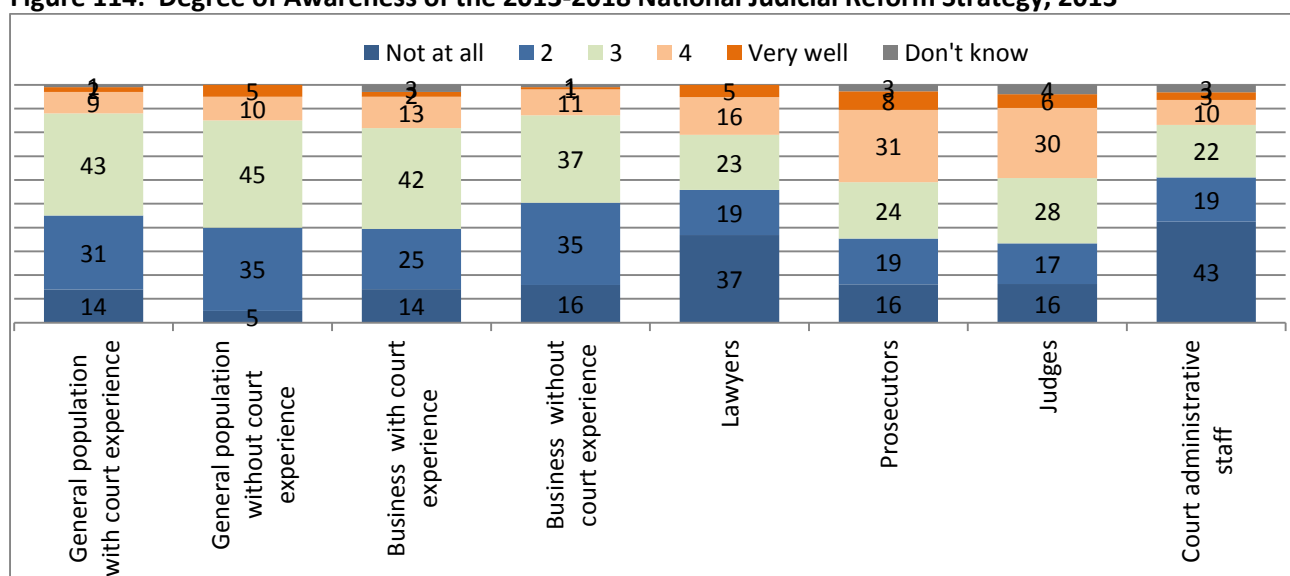
⁶²⁸ While the decline was more pronounced among those without court experience, it was evident even among those who had used the courts.

⁶²⁹ Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

Figure 113: Citizen Awareness of the 2013-2018 National Judicial Reform Strategy, 2013⁶³⁰

106. **If governance and management bodies want broader stakeholder ‘buy in’ to the reform agenda, further dissemination is required.** Leaders may need to find ways to explain the reform more simply, with an emphasis on results and the likely impacts for court users. Without a proactive outreach signaling a shift in performance and culture, improvements in the perception of the judiciary are unlikely to occur even in the medium and longer term.

107. **By contrast, more professional staff became aware of the new 2013-2018 Strategy than the former strategy, but its content remains not well understood (see Figure 114).** The media are the staff’s primary source of information, in addition to informal discussions and their own reading of the legislation instead of a concerted effort by the judiciary to inform its staff.

Figure 114: Degree of Awareness of the 2013-2018 National Judicial Reform Strategy, 2013⁶³¹

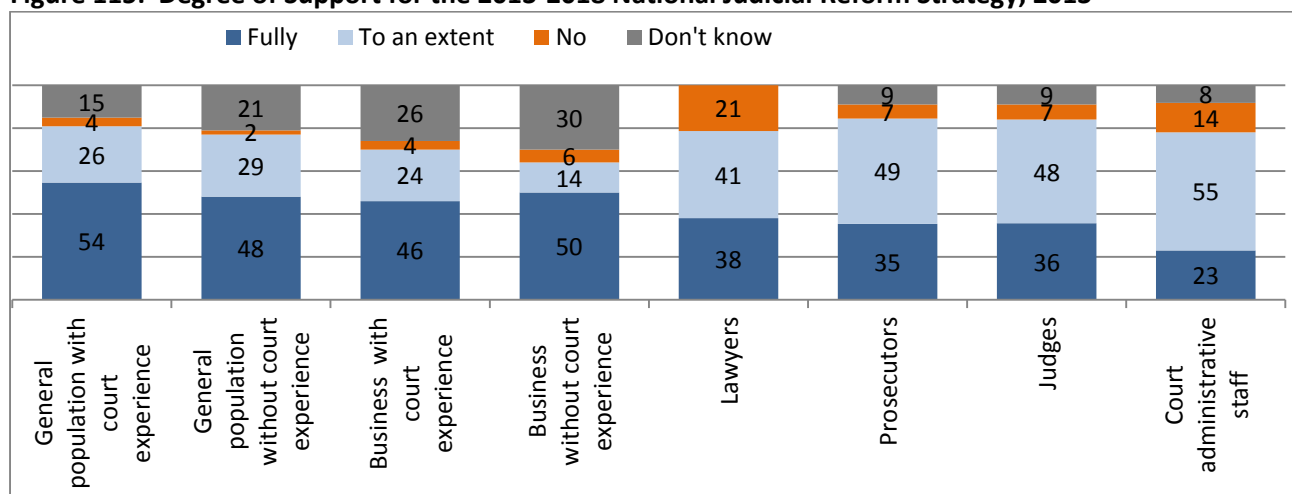
108. **Professional staff was generally less supportive of the new reform strategy, but more so than the general population and businesses (see Figure 115).** This sentiment suggests the sector authorities could face resistance from within. Some resistance may already exist in pockets of a ‘counter-bureaucracy’ – a segment of permanent judges, prosecutors, and staff who acknowledge the existence of new rules but do their best to thwart their implementation. The reasons for such lukewarm support require further analysis. If the reason for lackluster support is purely due to a lack of information, then outreach of the NJRS – explanation of its goals, actions, targets, and intended benefits – would be timely to build awareness and harness the staff’s input in the system to meet the new goals. If the issue relates to specific concerns,

⁶³⁰ Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

⁶³¹ Population Base: respondents who heard about the new NJRS which was adopted in Parliament in July 2013. Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

perhaps some accommodations could be made to obtain the necessary buy-in.

Figure 115: Degree of Support for the 2013-2018 National Judicial Reform Strategy, 2013⁶³²



Serbia's public and its judicial sector staff are relatively uninformed about the NJRS. Judicial authorities might want to consider a multi-dimensional dissemination approach, one part aimed at the public, another at businesses, and a third at sector employees, whose attitude toward the strategy is somewhat mixed.

iii. Implementation of Plans and Measurement of Progress

109. **The monitoring and coordination of the 2013-2018 Strategy rests with the Strategy Implementation Commission.**⁶³³

110. **The Commission leadership described its role to the Functional Review team as only reviewing the reports it receives about the NJRS implementation.** The leadership also did not see itself as authorized to recommend changes to the content, order, or timing of activities called for in the Action Plan. This is arguably an appropriate role, and it would be well to leave the actual implementation to the HJC and SPC with the Commission overseeing and reporting on the results.⁶³⁴

111. **The Commission Secretariat called for in the Action Plan intended to provide the Commission with expert, technical, and administrative support has not been established, apparently due to lack of funding.** Instead, the MOJ has been providing support to the Commission under the interim language of the NJRS via its RAFU.⁶³⁵ The Secretariat's functions imply an ambitious role for the Commission.

⁶³² Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

⁶³³ Membership includes representatives of the MOJ, the SCC, the National Assembly Judicial Committee, the HJC, the SPC, the Public Prosecutors' Office, the Judges' Association, the Prosecutors' Association, the Bar, the Judicial Academy, the Belgrade University Law Faculty, and the MOF. NJRS, pages 2, 3 and 6.

⁶³⁴ The same recommendation was made in the *Judicial Public Expenditure and Institutional Review*, World Bank MDTF-JSS, 2011 (the JPEIR).

⁶³⁵ National Assembly of the Republic of Serbia (2013), National Judicial Reform Strategy 2013-2018, page 9, Section V, Reform Implementation, subpart 3.

Box 23: Duties of the Commission Secretariat:

- *Drafting updated versions of Action Plan for Strategy implementation;*
- *Drafting proposals of recommendations and decisions based on the report of special working groups;*
- *Setting up working groups for implementation of the main Strategy goals by coordinating their work, ensuring the continuity of cooperation with working groups which participated in the drafting of the Strategy and Action Plan;*
- *Establishing coordination with representatives of other bodies envisaged for implementation of relevant strategies and action plans;*
- *Considering projects financed from the international resources;*
- *Assessing the cost of activities envisaged by Action Plan;*
- *Collecting and compiling statistical data relevant to strategic decision-making, as well as other data serving as indicators for implementation of activities set out by the Strategy;*
- *Collecting, compiling, processing, and analyzing data received from all the relevant stakeholders envisaged as institutions competent for the implementation of the Strategy under the Action Plan;*
- *Drafting decisions and documents of the Commission, based on the collected and analyzed data;*
- *Analyzing comparative reviews and international recommendations which are to be incorporated into the legal system of the Republic of Serbia, in order to align domestic legislation in the EU integration process; and*
- *Performing other duties, as ordered by the Commission or on the basis of the Rules of Procedure, which are necessary for the implementation of the Strategy.*

Responsible entities are obliged to provide data and information to the Secretariat regarding the Strategy implementation activities.

112. **One potential disadvantage of the Commission's chosen lesser role is that it leaves the MOJ as the sole interlocutor with the EU for reporting on progress meeting Chapter 23 criteria.** This issue could be resolved through the formation of a Commission Secretariat organized to support the reporting process, and working in close coordination with the HJC and SPC to deal with the questions, data requests, clarifications, and criticisms forwarded by the EU experts. Alternatively, the two Councils could continue to work through the MOJ, decreasing their dependence by developing their own implementation and reporting capabilities. Neither arrangement satisfies the longer-term need to facilitate inter-institutional collaboration and exchange of information beyond the accession process. Other countries have enhanced coordination without creating another legally constituted bureaucracy. Serbia might try the same, via the formation of ad-hoc task forces to focus on specific problems as they arise. Before that happens, the two Councils should put their own houses in order.

113. **However, as the Commission further defines its role, like the Councils, it will have to design and put in place a technical body to support it.** So long as the MOJ continues as the interlocutor with the EU, this may be less urgent than staffing the Councils. Nonetheless, the implications for the adequate coordination of the reform plans also need to be considered. If the Commission lacks at least some staff, its ability to perform this function or serve as a forum for discussions will be limited.

114. **With four years remaining, it is still possible to prioritize the Action Plan and achieve significant progress.** It will be a challenge to effectively plan, draft, operationalize, and implement several dozen new laws in the remaining four years. At this juncture, further prioritization and sequencing would be useful. To meet targets, tracking of advances should be done more frequently. For the public's benefit, as well as for the EU, each lead institution in the Action Plan might develop a means of reporting on progress at least twice per year.

iv. Capacity to Obtain and Analyze Stakeholder Feedback

115. **In the Serbian justice system, there are very few feedback loops to enable stakeholders to provide input to the performance management process or to the reform process.** Evaluations of judges works from the top down and focuses on discipline and compliance, and there are no corresponding processes to allow lower Court Presidents to provide input to the work of those above them in the hierarchy (superior Court

Presidents, the SCC, the HJC, or the MOJ), or to provide feedback to improve or innovate system performance. There are few colloquia that bring together Court Presidents or judges of different court levels to discuss common challenges. Consultation processes for draft legislation are perfunctory for the reasons outlined in the Quality Chapter. As a result, leaders at the top of the system receive little feedback and lack information critical to evaluating the effectiveness of the system.

116. **The Serbian judiciary does not conduct its own user feedback surveys.** The World Bank MDTF-JSS has funded and implemented two large user surveys, and the judiciary has provided input and approval to both surveys.⁶³⁶

117. **Whilst not a standard per se, advanced judiciaries in Europe and around the world, are increasingly using surveys as a routine data collection method to supplement statistical data.** Surveys can be particularly useful in areas such as user satisfaction in terms of timeliness, costs, access to justice and integrity. Table 20 below shows that the majority of EU Member States monitored to the CEPEJ implement a range of surveys to seek the views of key stakeholders.

Table 20: EU Member States which Implement Surveys to Key Stakeholders, 2014⁶³⁷

Types of Surveys	Number of EU Member States that Implement Surveys
Surveys of judges	11
Surveys of court staff	10
Surveys of prosecutors	10
Surveys of lawyers	12
Surveys of parties	17
Surveys of other court users	11
Surveys of victims	10

118. **In Serbia, user feedback will be necessary to inform future performance improvements in courts.** Looking forward, the judiciary should allocate budget and assume responsibility for implementing a survey to obtain stakeholder feedback. One option would be to fund further rounds of the existing Multi-Stakeholder Survey, which has already been designed and allows comparison back to 2009. Alternatively, the judiciary could develop a more modest survey targeting a smaller number of topics. Although the work involved in administering surveys can be outsourced, effective implementation will require an ongoing leadership commitment among the HJC, MOJ and SCC to generate and use feedback to drive performance improvements.

119. **The Councils and SCC might also consider incorporating a feedback loop as they progress with their work, by creating focus groups of Court Presidents to obtain input and road-test proposals.** Provisions for feedback from judges (and prosecutors) as well as court users and the general public would also be useful.

v. Communicating System Performance

120. **The SCC currently compiles and publishes annual information on caseloads. Preparing these reports requires significant effort and many man-hours given the fragmentation of systems (see the ICT Chapter).** The quality of data has improved over the last few years, and it is commendable that the SCC produces what it does in such a challenging system. Although it provides a large amount of information, it offers very limited analysis or synthesis; therefore its audience and consumption are limited. In the future, reports could include data on managing resources for performance including average workloads and

⁶³⁶ See *Multi-Stakeholder Justice Survey*, World Bank MDTF-JSS, 2014. The results from the 2009/2010 and 2013 surveys are highlighted in this Report.

⁶³⁷ The EU Justice Scoreboard 2014, based on 2012 data. 27 Member States submitted reports on these questions.

productivity, ageing lists, numbers of personnel, investments in ICT, and infrastructure resources. Annual Reports could report on the results of the SCC and the court system in relation to the NJRS Action Plan and the Action Plan for Chapter 23. Annual Reports could include information about new initiatives to strengthen efficiency, quality and access, as well as analysis of performance challenges and updates on how they are addressing these.

121. The SPC produces an Annual Report, but its data are much more limited. The problem originates in the underdevelopment of automated data collection, which prevents much disaggregation or analysis of data. The current organization of data makes it difficult for the organization and outsiders to analyze the performance of the prosecution system, and there is little practical information. Once new data systems roll out in the medium-term, reports should improve and more detail and analysis could be provided.

122. Academics and larger CSOs could use the data available to conduct further analysis if it was presented in an amenable format, such as Microsoft Excel. To date, there has been no analysis of who uses annual report information or to what ends. In other judiciaries, analysis by academics and leading CSOs has been important in identifying the developments that may have slipped to the judiciary.⁶³⁸

123. Providing reports on performance (and on strategic progress) in a user-friendly format for lay readers would be useful for public access and general information. In any judiciary, detailed performance data are unlikely to be used by ordinary citizens, the business sector, the media, or small CSOs. International experience demonstrates that a report containing analysis accompanied by a few charts and statistics could raise awareness on the efforts made by the judiciary. For example, the Brazilian judiciary compiles statistics on the performance of the over 17,000 judges in its federal and state systems. The report is consolidated into a short (20-page) pamphlet featuring the most important graphs and an explanation of their significance to raise awareness of pertinent issues.⁶³⁹ Targeted lay communication could more quickly improve the public perception of the judiciary among professional groups and CSOs, and build buy-in for future reforms. For example, the HJC's new website is user-friendly and could be built over time to become a hub for useful public information.⁶⁴⁰

124. By communicating official data in easy-to-read formats, the judiciary would also be better placed to counter misrepresentations. Currently, there are many discrepancies in the data portrayed in the public domain. The judiciary frequently falls victim to misrepresentations (intentional or otherwise) by the media and interest groups. Such 'spinning of statistics' by interested groups will occur in any system. However, the judiciary could mitigate the risk. If it routinely communicated reliable data in a legible format, it could more easily counter misrepresentations or misconceptions and raise awareness in the public domain.

125. There are several narratives on the Serbian judiciary experience to share, and more could be told had the system developed the analytical skills it greatly needs to further research these points and report on them. On the issues of delay and backlog for example, the SCC could more convincingly present the problems encountered and the progress made in reducing the number of pending cases. Using CEPEJ's method for calculating the time to disposition, Serbia's judiciary does relatively well in all first instance cases with the exception of the enforcement stage.⁶⁴¹ This example should be highlighted along with the results of the backlog reduction program, and a more detailed analysis of backlog content would help advance the presentation.

⁶³⁸ In the United States and United Kingdom for instance, concerns about the 'disappearance of the civil trial' first emerged from academic studies.

⁶³⁹ In another example, the Singapore Courts share their annual reports by email to a large distribution list of stakeholders, and the email contains a brief summary of the content, analysis and updates contained in the larger report.

⁶⁴⁰ See <http://vss.sud.rs/>.

⁶⁴¹ Since most of the backlog consists of utility bill enforcement cases, delays affecting ordinary court users represent a smaller proportion. For further discussion on utility bill enforcement and other efficiency issues, see the Efficiency Chapter.

f. Effectiveness of Mechanisms to Govern Integrity and Conflicts of Interest

i. Random Case Assignment

126. **Serbia's random case assignment technology works well to reduce predictability in the assignment of individual cases to specific judges within a court and thus prevent 'judge shopping.'** The system ensures that new cases are distributed equally over the course of the year, and randomly based on an algorithm.⁶⁴² The distribution of cases is done by the court registry and supervised by the Court President, Court Secretary, or Court Registry Manager.

127. **However, the software is not available in all courts.** It is available through the case management systems of Basic, Higher, Appellate, Commercial, Administrative Courts and the SCC.⁶⁴³ Random case assignment software is not yet available through all Misdemeanor Courts. The Misdemeanor Court in Kikinda developed an IT solution to provide the same functionality, and many Misdemeanor Courts in Vojvodina use this solution. In other Misdemeanor Courts, allocations are still done manually through the registry office, and given the caseloads in these courts the task would be a burdensome and time-consuming. New case management software (SIPRES) will shortly be rolled out to all Misdemeanor Courts which include this functionality.

128. **Further, not all courts that do have the software use it.** One stakeholder estimated that in 2013 only around 60 courts were using the functionality; however this figure could not be verified. So it is unclear why it would not be used in those courts. Reasons may include lack of understanding, lack of training or individualized case management practices.⁶⁴⁴ Whilst ever the random case allocation is voluntary, such outliers will persist. Court Presidents across all courts should be required to use the software when allocating cases. This would increase consistency in the randomness of allocations, while also enabling the monitoring of data and trends.

129. **In places where random case assignment software is used, the algorithm is overruled by Court Presidents relatively frequently.** This is not necessarily done for collusive purposes but to re-allocate cases to more equitably distribute the workloads, if for example one judge receives many complex cases while another receives many simple ones. Further, the algorithm does not allow for the specialization of case processing, so a Court President wishing to see a particular judge (or small team of judges) specialize in certain case types would need to re-allocate those cases manually.⁶⁴⁵ Unfortunately, data relating to these overrides are not collected, so further analysis is not possible.

130. **The random case assignment algorithm could be enhanced once a case weighting methodology is developed.** A simple case-weighting methodology and some specialization in case processing, could be incorporated into the algorithm and refine the case allocation process. At that stage, the need to override the random case assignments would be significantly reduced. Overrides could then be monitored closely, and Court Presidents could be fully accountable for their decisions to circumvent the random allocation.

131. **There is no corresponding technology for allocating files randomly within PPOs.** Cases are not assigned electronically; instead, a case assignment logbook is kept. The Prosecutor assigns incoming cases to

⁶⁴² Some judges reported to the Functional Review team that the algorithm in AVP must not be working correctly because they receive two (or even three or five) consecutive new cases in a row. However, the AVP is specifically designed that way – consecutive assignments within the year reduce predictability and prospects for collusion, making the system work as it is intended. It may be that judges are not aware of this aspect of the system's design.

⁶⁴³ In Basic, Higher and Commercial Courts, random case assignment is integrated into AVP. In the SCC, Administrative, Appellate Courts, random case assignment is integrated into SAPS.

⁶⁴⁴ For example, some individual courts may prefer to allocate cases to specialized judges or may have their own manual and ad-hoc form of case weighting. Others may prefer to equalize caseloads monthly, whereas the software distributes on an annual basis.

⁶⁴⁵ As discussed in the Quality Chapter, little specialization in case processing occurs.

the first available Deputy Prosecutor based on an alphabetical list, and can re-allocate based on broad discretions.⁶⁴⁶ This system has advantages in that it caters to case complexity and specialization. However, stakeholders note that there remains a perception that within some offices, cases are assigned based on extrinsic factors. In the medium to longer term, and once related functions are automated in PPOs, a random assignment technology could be considered. This would also improve transparency and accountability in case allocation.

ii. Development and Monitoring of Integrity Plans

132. **All state institutions, including in the judiciary, are required to develop Integrity Plans by March-April 2013 under the ACA Law.** Integrity Plans require each institution to identify its potentially vulnerable points of corruption, assess risks, and apply self-control in the implementation of their competences. Creating an integrity plan is to be done in phases: the institution first conducts an evaluation and risk assessment, then prepares measures to prevent corruption, and implements the plan under the guidance of the ACA.

133. **To date, most of the courts have not submitted Integrity Plans.**⁶⁴⁷ The HJC planned to develop specific forms for courts to complete and training, but this has not yet been executed. Once shared, an Integrity Plan will need to be developed for each court and approved by the Court President.

134. **By contrast, the Misdemeanor Courts have been active in developing their Integrity Plans.** With the JRGA support, all Misdemeanor Courts and Appellate Misdemeanor Courts met the deadline.⁶⁴⁸

135. **Prosecutors have also been forthcoming.** The SPC and RPPO have each prepared their Integrity Plans and submitted them to the ACA, as have most PPOs. As of January 2014, only 11 PPOs had not yet submitted a plan. Those PPOs which have yet to submit plans should do so as a priority.

136. **Once submitted, implementation and monitoring should be prioritized. Since the ACA is not leading this process, the Councils or the SCC/RPPO would need to demonstrate leadership to promote a change of culture of vigilance.** The ethics committees of the HJC and the RPPO should start to issue opinions and standards with practical examples of conduct of what is and is not permitted. Further training could be provided to judges, prosecutors, and court staff focusing on the areas of vulnerability and the changes, processes, and behaviors that will be required to maintain vigilance in those areas, as well as training sessions for Court Presidents to share experiences in implementation. If, as the 2013 ACA Court User Survey suggests, petty corruption among court staff is more prevalent in courts than high-end corruption among judges, then public education campaigns could also be implemented across courts and PPOs, with posters and pamphlets to accompany complaint awareness to signal a change in culture.

⁶⁴⁶ Article 42, Rulebook of Procedures in PPOs.

⁶⁴⁷ The ACA estimated that around 40-50 percent of institutions would file their plans by the deadline.

⁶⁴⁸ The ACA and JRGA provided training to the Misdemeanor Courts outlining the content and the preparation of the integrity plans. They also worked with a group of Misdemeanor Judges to develop a template integrity plan designed to assist each Misdemeanor Court to develop their own integrity plans, to avoid duplication of effort, and to promote standardization of measures where appropriate. The JRGA further provided technical assistance to Misdemeanor Courts as they developed their integrity plans.

iii. Rules on Gift-giving

137. **The formal rules regarding giving gifts to judges and prosecutors are clear.** According to the Law on Judges and Law on Prosecutors, acceptance of gifts is contrary to the provisions regulating conflict of interests and can amount to a disciplinary offence. Further, the Law on the ACA also prohibits gifts in connection with discharge of a public office. No official, including judges and prosecutors, may accept a gift whose value exceeds 20 EUR.⁶⁴⁹ The Law also regulates the procedure for judges, prosecutors, and civil servants⁶⁵⁰ to reject gifts, the duty to report and maintain records of gifts, and the prohibition against receiving gifts from certain individuals. Yet stakeholders working in the courts reported to the Functional Review team that they are not aware of records being kept on gifts.

138. **Similarly, the rules ‘on the books’ are quite clear for civil servants.** The Law on Civil Servants also prohibits civil servants, which includes staff and temporaries but not volunteers or interns, from accepting a gift or any other services or benefits in connection to the performance of their tasks, except for occasional presents of smaller value. There is some ambiguity about what ‘occasional presents of smaller value’ means. However, if a similar 5 percent standard is applied, and assuming that civil servant salaries average 400 EUR per month, gifts should not exceed 20 EUR. Similarly, a civil servant may not use his or her status as a state authority in order to influence the exercise of his or her rights or rights of people related to them.

139. **However, gift-giving does occur and stakeholders report it is relatively frequent.** In the 2013 ACA Survey of Court Users, 22 percent of court users said they gave ‘small gifts’ at least once, mainly after ‘the job had been done’ as a token of appreciation for the respective ‘service.’ As is common in surveys of this type, this figure is likely to be under-reported due to reluctance among respondents to speak freely of their experience in gift-giving. Further, the value of the term ‘small gifts’ was not defined. The ACA survey results also suggested that gift-giving was more a problem among court staff than among judges and prosecutors, who are likely to use more subtle means of influence.⁶⁵¹

140. **Related to this, asset disclosures are not monitored.** Conflict of interest rules require that judges and prosecutors provide asset declarations. However, there is no mechanism in place to check these. This significantly undermines the potential impact of the rules, and also undermines public trust and confidence.

141. **The HJC and the SPC could do more to foster a culture that rejects gift-giving.** More detailed protocols on gift giving are not elaborated into the Council’s internal rules, orders, and procedures of the courts or PPOs. Doing so would raise awareness of the rules and the specific procedures to be followed. This is an area where the HJC in particular could take a more proactive role in the future in supervising court staff’s work. More could also be done by the HJC and the SPC to raise awareness of the rules among the staff and citizens. Judiciaries across Europe and elsewhere use promotional campaigns to raise awareness among court users that it is not acceptable to offer gifts. Specific trainings are also useful to assist court staff to understand the parameters of ethical behavior and the consequences of non-compliance, as well as to coach them on responding to offers of gifts.

iv. Recusals (Exemptions and Exclusions)

142. **To manage conflicts of interest, the Serbian judiciary has two mechanisms for recusals of judges: exclusions and exemptions.** Exclusions require that a judge be disqualified from hearing a case if one of several grounds exists, such as if the judge is a party to the proceeding, a shareholder to a company that is a

⁶⁴⁹ The maximum value of a gift is set at 5 percent of the official average net salary which, at 400 EUR, sets a maximum value of 20 EUR.

⁶⁵⁰ Including staff and temporary employees, but not volunteers and interns.

⁶⁵¹ See the reported levels of corruption section of the Quality Chapter.

party, a family member of a party, if the judge had previously participated in the case, and so on.⁶⁵² Exemptions are more general and apply where circumstances would give rise to doubt the impartiality of the proceeding judge, and the judge may be disqualified where such doubt can be shown. When a party submits a written motion to exclude or exempt a judge, the proceeding judge is required to suspend proceedings, make a statement about the motion, and notify the Court President who has the authority to decide on the merits of the motion based on the information contained in it. Motions are to be decided within three days, sometimes they can be issued immediately and other times rescheduling of hearings is required.

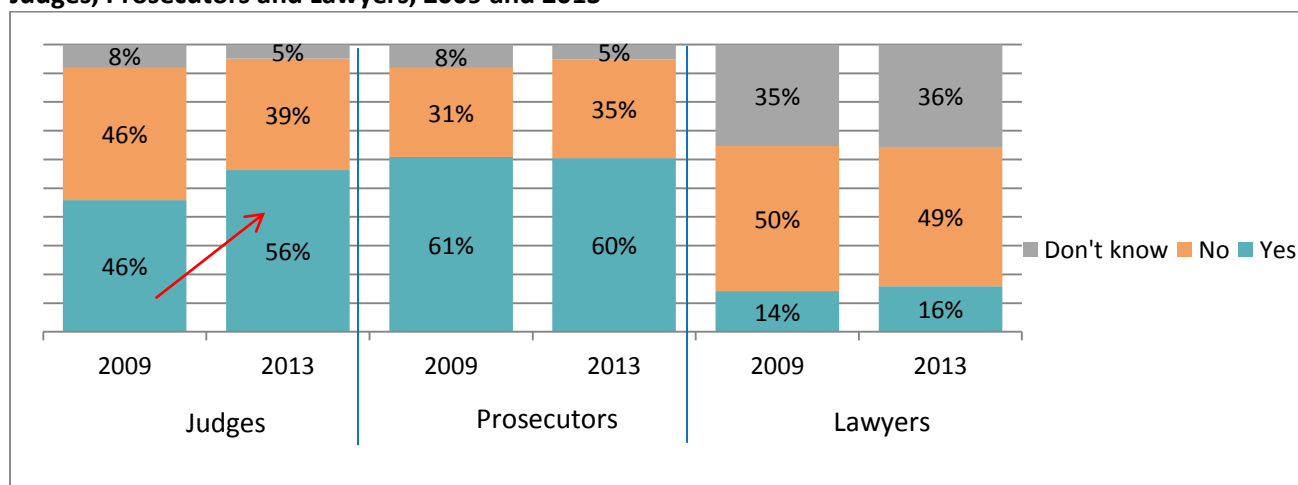
143. **There is little monitoring or tracking of recusals within the court system.** Details are maintained manually by most courts,⁶⁵³ but recorded in AVP by some. They are usually reported to the Higher Court but not to the HJC, the SCC, or in any one system that would enable monitoring or tracking. As a result, it is not possible to measure the extent of the use of recusals, or the circumstances by which they come about.

144. **Stakeholders report a range of views on the use of exemptions. Some argue that the process of decision-making is not transparent, raising concerns that Court Presidents consider issues beyond what is contained in the exemption motion.** Some report that lawyers abuse the applications for exemption as a delaying tactic requiring judges to make statements in frivolous motions, thus prolonging the duration of the case. Other stakeholders report that judges are routinely partial in their dealings with parties, but that parties are reluctant to seek exemptions for fear of retribution. Without better data, the Functional Review team cannot substantiate these claims.

v. Use of Internal Controls

145. **There are otherwise few internal controls to manage integrity across the judiciary.** In the 2014 Multi-Stakeholder Justice Survey, the majority of judges and prosecutors say that some form of internal control exists in judicial system, but a substantial proportion report that it was not present at all. Out of those who reported that internal control existed, only slightly more than half reported that it contributed to integrity of judiciary (see Figure 116).

Figure 116: Awareness of the Existence of Internal Control Mechanisms within the Judiciary among Judges, Prosecutors and Lawyers, 2009 and 2013⁶⁵⁴

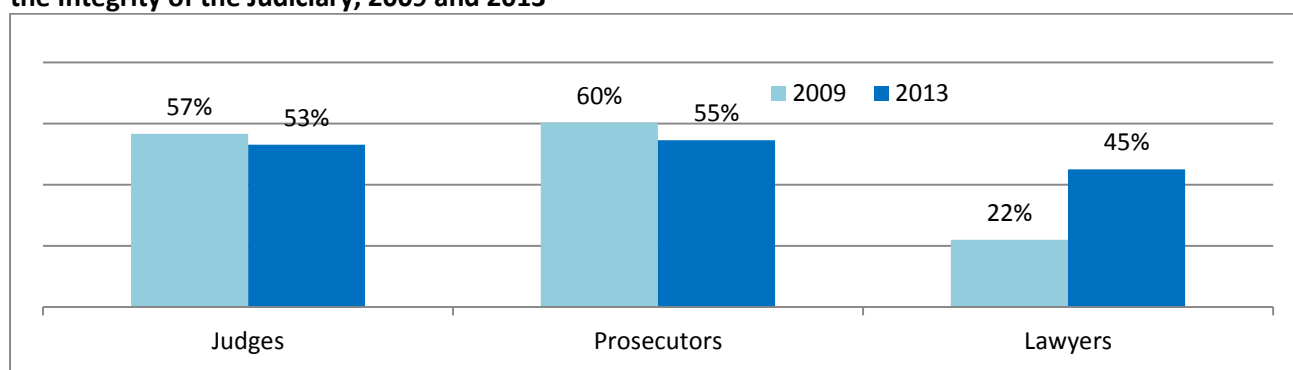


⁶⁵² Article 67, Civil Procedure Code ('Official Gazette of the Republic of Serbia' No. 72/2011, 49/2013 – CC Decision, CC – Decision 55/2014).

⁶⁵³ Article 261 of Court Regulation of Conduct (Sudski poslovnik), Official Gazette of the the Republic of Serbia No. 110/2009, 70/2011, 19/2012 i 89/2013.

⁶⁵⁴ Survey Question: *Was there any form of internal control within the judicial system in the last 12 months?* Total target population base: judges, prosecutors, and lawyers. *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.*

Figure 117: Share of Judges, Prosecutors and Lawyers who Reported that Internal Controls Contributed to the Integrity of the Judiciary, 2009 and 2013⁶⁵⁵



146. **However, there appears to be a consensus that further internal control is necessary.** In the 2014 Multi-Stakeholder Justice Survey, 86 percent of judges, 89 percent of prosecutors, and 95 percent lawyers agreed that internal control is important for the future strengthening of the integrity of the judicial system. The majority of judges, prosecutors, lawyers, and court users also indicate that governance within the courts should be changed to improve judicial operations.

g. Effectiveness of Complaints and Discipline Processes

i. Complaints Mechanisms

147. **Public awareness of complaint mechanisms and disciplinary rules is low.** Public education has not been provided regarding what constitutes a disciplinary breach, where to go, and what information to include in a complaint.

148. **This is borne out by the fact that few court users raise complaints, even if they feel they have grounds to do so.** According to the 2013 ACA Survey of Court Users, 46 percent of respondents reported that they had grounds to file a complaint about the work of the judge in their case, however only 6 percent had done so. Of the 40 percent of respondents who did not complain when they felt they had grounds, 26 percent reported they did not believe that the court system would act on their complaint. A further 14 percent of the respondents reported they lacked the knowledge, information, or time to lodge a complaint. In the case of administrative tasks, the responses were similar where 35 percent of respondents reported that they had grounds to file a complaint about court administration, while only 2 percent had done so. Similarly, the most common reasons for not complaining included a lack of trust that the system is capable of correcting itself, and a lack of information about procedures for complaint.

149. **The complaints focus mainly on judges and relate to the timeliness of proceedings.** The common causes for complaints relate to a judge repeatedly cancelling or rescheduling hearings. That does not mean that judges are the basis of complaints, but rather, there is no mechanism to complain about system-wide problems.⁶⁵⁶ As the most visible embodiment of the court, judges are the targets for court users' disgruntlement. Some court types and locations are the subject of more complaints than others.

⁶⁵⁵ Survey Question: *To what degree did the internal control that existed contribute to the integrity of the judiciary?* Population Base: judges, prosecutors and lawyers who believe that an internal control existed. See *Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014*.

⁶⁵⁶ There may be many different reasons for complaints that are not traceable to the judge in the case, and some that do not relate to any judge at all. For example, a disabled court user may wish to complain that the registry office is located in a place that is inaccessible to a wheelchair. Court staff may indirectly solicit a bribe. At present, such complaints often go unheard because there is no clear mechanism for their consideration.

150. **There are multiple channels by which an individual can complain about justice service delivery, including via the HJC, the SPC, the Court President of the specific court (or its higher or Appellate Court), the SCC, the Ombudsman's Office, and the ACA.** Information about each complaint channel is available in Annex 5, including information about their powers, whether templates exist, the number of complaints they receive, the most common complaints, and any action taken.

151. **The HJC estimates that around 12,000 complaints are received each year, but precise data are unavailable.** Each complaint mechanism may collect some data on their work, but data are not electronic, not linked in any system, and not aggregated. Complaints against individuals do not inform evaluation or promotion processes. Most important, data are not analyzed to identify lessons or patterns of behavior that can enable future systemic improvements.

152. **The various complaints-handling bodies face significant capacity constraints.** Most agencies are understaffed to cover the inflow of complaints received. The MOJ for example three staff to manage thousands of complaints per year. The HJC lacks staff to perform the function and, like the SCC and individual courts, absorbs this function into existing clerical roles.

153. **The fragmented system causes duplication and prevents action that could improve performance.** Complainants routinely lodge their complaints through several avenues, in the hopes that one may be responsive. This practice inflates the figures on the number of complaints and can produce the inverse effect, where each body may be less likely to respond or may pass complainants from one mechanism to the other.

154. **There is little to no coordination between the various complaint bodies.** The Ombudsman's Office has developed a standard template letter in response to citizens who complain about courts, attorneys, bailiffs, or prosecutors. While it is a positive and good faith attempt to inform citizens, the letters describe how the Ombudsman's Office is not competent to control the work of the judiciary, and provides legalistic information about the functioning of the various supervisory bodies and procedures. Such information offers little practical guidance to an average citizen on avenues for grievance redress. Beyond the Ombudsman's effort, the officers in each body state they do not talk to one another or coordinate their work. A better coordination could improve the quality of the process and strengthen the ability of citizens to engage constructively within it.

155. **Multiple processing also encourages inconsistent practices.** Staff working in the complaint bodies acknowledge that they are most likely to respond to the most pressing complainants (i.e. those who are most vocal or influential) among the many complainants in the 'pile' of overwhelming requests. Stakeholders report that procedures are not transparent and some complaints 'are more equal than others.'

156. **Follow-up on complaints is weak due to an imprecise and ineffective legal framework.** Under the existing legal framework, the Court President is not obliged to provide a written response to the complainant or to the complaint-handling body. Complaint-handling bodies are not permitted to make a decision on the complaint that contradicts the stated opinion of the Court President's, and where the Court President avoids to explicitly engage with the complaint, there is no legally prescribed mechanism to independently and objectively to determine the merits of the complaint, such as by reviewing the actual case files. Further, there is no obligation on courts to comply with measures ordered by complaint-handling bodies to address the principal reasons for the complaints, nor sanctions or deadline for implementing the recommendations. As a result, courts can largely ignore the measures recommended or ordered by a complaint-handling body, or postpone them indefinitely.

157. **The HJC proposes to streamline the complaint mechanism.** The HJC, with support from International Management Group (IMG), led a working group on the Complaints Improvement Process which

identified improvements to the complaints handling framework, drafted legal amendments, and proposed new business processes. Complainants could continue to lodge complaints with multiple mechanisms, but those complaints would be registered in a central database at the HJC. Complainants will be able to submit their complaint online on the HJC website using a standard form that gathers the data necessary to make a complaint. The database will also record a series of attributes and classifications so that complaints data can be analyzed. The complaint would then be decided as one case by a complaints judge appointed by the HJC. Courts would be required to comply with measures ordered by the HJC, and within certain timeframes. Failure to follow-up would itself be a disciplinary breach which could trigger ex-officio disciplinary proceeding against the judge or the Court President.

158. **It will be important to ensure that the proposed reform to the complaint procedure is easily understood and well publicized to its intended audience of court users.** To date, the proposed reforms are technically very sound, but no recommendations were offered regarding public awareness campaigns. Information about how to make a complaint should be highly visible in public areas in all courts, as well as on websites of courts and the HJC. Information should use lay language and be highly visual, and translations into minority languages should also be available. In a positive move, the OSCE and the HJC have recently published a series of posters and leaflets to educate the public about the complaint process, are due to be rolled out to each court. These are highly visible in courts. The HJC could also partner with the ACA and the Ombudsman's Office, the CSOs, and others to ensure that complaints received by other bodies are channeled to the HJC and that awareness is raised among citizens. Transparency and public awareness campaigns can also minimize the risk of capture in the central body. Standardized complaint forms should be in lay formats to ensure that average citizens can complete them easily, and that complaints processing is as simple as possible from the user perspective.

159. **Though precise data are not available, the number of complaints appears to be rising.** However, this should not be judged negatively as there may be a range of positive or natural reasons for the trend. For example, the ACA and the Ombudsman's Office reported that the number of complaints they received regarding the judiciary may be rising because individuals are increasingly aware of these bodies and their functions. Both agencies also report that citizens are increasingly willing to speak out against malfeasance and poor service delivery, particularly the younger and urban populations.

ii. Disciplinary Measures and Sanctions

160. **Disciplinary sanctions for judges and prosecutors include reprimand, fines, suspension, and termination.** The rules and procedures for discipline are clearly listed.⁶⁵⁷ Stakeholders frequently report, however that the sanctions are too mild to produce a deterrent effect. Sanctions are also reported to be inconsistent. An assessment of the types of complaints selected for further investigation by the Disciplinary Prosecutor, and the consistency of sanctions for similar disciplinary breaches are needed.

Effective and open mechanisms for judicial discipline and an appropriate gradation of sanctions including reprimand, fines, suspension and termination have been developed with likely benefits for quality of justice, effective access, and transparency.

161. **The Disciplinary Commission reports that Court Presidents and judges lack education on what constitutes a disciplinary breach.** Some ethics training has been provided to judges, but judges report that this training has been limited in value.⁶⁵⁸

⁶⁵⁷ Judges are criminally liable for offences they commit outside their judicial office. Criminal liability is not imposed on judges for unintentional failings in the exercise of their judicial functions.

⁶⁵⁸ The Judicial Academy states that it has conducted ethics training for 340 training days in 2012, 240 of which were provided to misdemeanor judges, and 178 training days in 2013.

162. **Despite the underreporting and duplication of the current complaints-handling process described above, a number of judges have been disciplined under the system.** 13 sanctions were imposed in 2012 and 2013, a notably very small number in comparison to the complaints received. Of these 13 sanctions, four of these cases resulted in termination of office or resignation. The Commission in 2013 upheld all but one of the cases brought by the Disciplinary Prosecutor.⁶⁵⁹

163. **The Disciplinary Commission cannot proceed with the large portion of complaints received.**⁶⁶⁰ Many complaints deal with matters outside of the Commission's purview or do not contain sufficient information to proceed. Without a streamlined process for rejecting non-substantiated complaints, these submissions require significant staff time to process nonetheless.

164. **Disciplinary processes are alleged to be slow.** Several Court Presidents complained to the Functional Review team that disciplinary processes for judges under their command took too long and were too opaque, creating loopholes for judges to remain who should have been dismissed.

165. **Court Presidents should be involved in assessing potential disciplinary breaches whenever possible to reinforce their role as the managers of their court.** Suggested amendments to the rules of discipline include a strict obligation for the Court President to implement corrective measures imposed by the HJC in a given timeframe (e.g., 'the hearing has to be scheduled within next 30 days'). Violation of the corrective measure may lead to disciplinary proceedings against the judge and/or Court President.

166. **The disciplinary system is not adequately linked to performance management of judges, impeding the use of complaints to improve the quality of justice when the complaint does not rise to a level requiring discipline.** The automated human resource system under development will include indications of complaints and disciplinary proceedings against judges and non-judge employees. While the HJC can require judges with performance issues to pursue continuous training for judges when their performance issues are not disciplinary, this has not occurred.

167. **Disciplinary processes for court and prosecution staff exist but are unclear and applied very rarely.** The Law on Civil Servants directs that the SCC be responsible, but in fact, Court Presidents manage and terminate civil servants and public employees without guidance from the SCC, the MOJ, or the HJC. In the prosecution service, the RPPO and the SPC are responsible and examples of discipline and termination across the court system are extremely rare. As for the 'shadow workforce' of contractors, interns, volunteers, and lay judges, there is no easily discernable process for discipline or termination. Similarly, decisions would be at the discretion of the Court President. As is common in all systems, relationships play a key role, and stakeholders report that civil servants and 'shadow staff' are likely to remain in place despite under-performance or disciplinary concerns.

⁶⁵⁹ The source and reasons of the complaint were not made available to the Functional Review team.

⁶⁶⁰ Totalling 540 cases received in 2013, of which 226 were not accompanied by sufficient documentation.

2. Financial Management

Chapter Summary

1. **The judicial system in Serbia is not under-resourced, measured on either a per capita basis or as a share of GDP.** In 2012, court expenditure was 0.66 percent of GDP, which is higher than any EU Member State monitored by the CEPEJ. Prosecution expenditure was 0.11 percent, which is within the range of other EU Member States monitored by the CEPEJ but is slightly lower than the average.
2. **Any increase in the judicial budget is highly unlikely in the medium to long term.** Serbia faces a tight fiscal environment, characterized by a double-dip recession, high and growing public debt. The Serbian Government recognizes the need to find savings, including by reducing the wage bill and rightsizing the public sector. It would be difficult for the sector to argue for more resources, particularly given the low levels of efficiency and effectiveness in the use of existing resources. Budget cuts may be expected, and the sector may need to 'do more with less', including by funding innovations via savings identified within the resource envelope.
3. **The courts are partly funded by court fees, and this poses some opportunities and some significant risks.**⁶⁶¹ In 2013, the courts collected 10.22 billion RSD in fees.⁶⁶² However, collection rates are low, and courts manage to collection only around one-third of the fees due. The courts are not well equipped to play the role of a collection agency, as they lack the legal tools to pursue delinquent debtors⁶⁶³ and lack the technical capacity to dedicate to fee collection. More concerning, court fee revenue is declining, and will soon decline rapidly.⁶⁶⁴ With the imminent transfer of verification services from courts to private notaries, court fees can be expected to decline by as much as 30 percent by next year.⁶⁶⁵
4. **Budget planning and resource allocation are not linked to service delivery needs.** Rather, it is based on historical allocations of inputs, which are adjusted rarely in reaction to extraordinary events, such as the reorganization of the court network or emergencies that may disrupt judicial work. Resource allocation is not based on any caseload forecast, performance targets, or objective norms, and the resource allocation mechanism does not provide the courts and the prosecution service with the incentives or opportunities to improve cost-effectiveness.
5. **The resource mix favors personnel over all else.** The large wage bill crowds out other expenditures, including in much-needed areas such as training, ICT and infrastructure. From 2010 to 2013, less than 2.5 percent of the court system's budget was spent on capital investments, which is about half the EU average. Given the pressing need for widespread ICT and infrastructure upgrades, a more significant investment is warranted. However, disbursements on capital projects are slow due to limited procurement capacity, and funds earmarked for capital projects are routinely reallocated in supplementary budget processes.
6. **The courts are generating massive and growing arrears.**⁶⁶⁶ The main reason for accumulating arrears is poor planning in the budget preparation process and the legislative reform process. Frequently, new legislation imposes increased requirements on courts and other agencies to deliver services or fund

⁶⁶¹ It is estimated that nearly 43 percent of the total budget of the courts came from court fees. *Draft Comparative Court Budgeting Analysis*, June, 2013, 'Case Study – Court Budgeting Practices in Serbia', World Bank, page 12.

⁶⁶² The Treasury allocates 40 percent of all collected court fees to the HJC and 20 percent to the MOJ. The rest is deposited into general consolidated revenue and used for unrelated purposes.

⁶⁶³ Due to legal requirements, the courts are not able to refuse hearing a case even if the court fees are not paid, and they cannot charge late fees or interest payments. Therefore, it is common for court users not to delay or evade payment.

⁶⁶⁴ Court fees fell by 12 percent from 2010 to 2013.

⁶⁶⁵ Based on unofficial estimates shared by court financial officers.

⁶⁶⁶ By the end of 2013, the cumulative arrears reached 3.8 billion RSD exceeding the public prosecution's total budget.

costs of legal procedures. However, financial and regulatory impact assessments are not conducted and budgets are not adjusted. Arrears are increasingly impacting service delivery by courts, including by causing delays in hearings. Arrears also generate a significant amount of work, as court presidents and financial departments operate in a continuous crisis management mode, including the management of litigation against service providers.

7. **The lack of automation in the processing of requests for funding reallocation results in excessive budget rigidity, preventing courts and PPOs from adjust funding to business needs.** This rigidity is not a requirement from the Ministry of Finance (MOF) but of the HJC, SPC and MOJ respectively, which lack both human and technical capacity to process reallocation requests and so refuse them. The problem could be eased with more modern systems and better coordination between stakeholders, consistently with the Budget Law. Without addressing this problem, it is difficult to see how the sector could unlock the funds necessary to achieve the transformation required to align with EU benchmarks.

8. **The divided management authority and lack of clear division of responsibility and accountability over judicial budget poses coordination challenges for financial management.** The budget authority is split between the Councils (the HJC and the SPC) and the MOJ. While the Councils are responsible for the wage bill for judges and prosecutors the MOJ is responsible for wages for all other staff in courts and PPOs. The division of budget responsibility and accountability in other areas, such as funding for maintenance and capital investments, is not clearly defined which slows progress and disbursements on much-needed capital projects. The authority over other non-financial matters, which may have a major financial impact, is also separated from the budget authority, including decisions that affect the large wage bill.

9. **Financial systems are fragmented and outdated.** Multiple financial management systems operate simultaneously, and staff are required to enter and transfer data between systems manually. The judicial system lacks a clear cost structure, and there is very little information on unit costs or data that would relate costs to outputs, making analysis of costs per case challenging. There is no alignment between case management and accounting systems, so financial management is unable to inform decision-making or support performance improvements.

Overview of Expenditure Management in the Judiciary

10. **The Chapter reviews the effectiveness of financial management in the Serbian judicial system in the context of the performance challenges highlighted elsewhere in the Functional Review Report.** The Chapter focuses, in particular, on those systemic aspects of financial management that can be strengthened within the existing budget framework. The analysis relies on information provided by the Serbian judicial and executive authorities and builds on the previous *Judicial Public Expenditure and Institutional Review* (JPEIR).⁶⁶⁷

11. **The judicial system is subject to the general budget framework for the public sector, which is based on the *Budget System Law*.⁶⁶⁸ The *Budget System Law* distinguishes between direct and the indirect budget recipients, referred to as budget beneficiaries.** As Figure 118 shows, there are 11 direct budget beneficiaries across the judicial system, which include the MOJ, the HJC, the SPC, RPPO, the Judicial Academy, four republic-level court types⁶⁶⁹ and two republic-level types of PPOs.⁶⁷⁰ There are also 155 courts and 87 PPOs which are indirect budget beneficiaries whose budgets are administered by the Councils and

⁶⁶⁷ *Serbia Judicial Public Expenditure and Institutional Review*, World Bank MDTF-JSS, 2011.

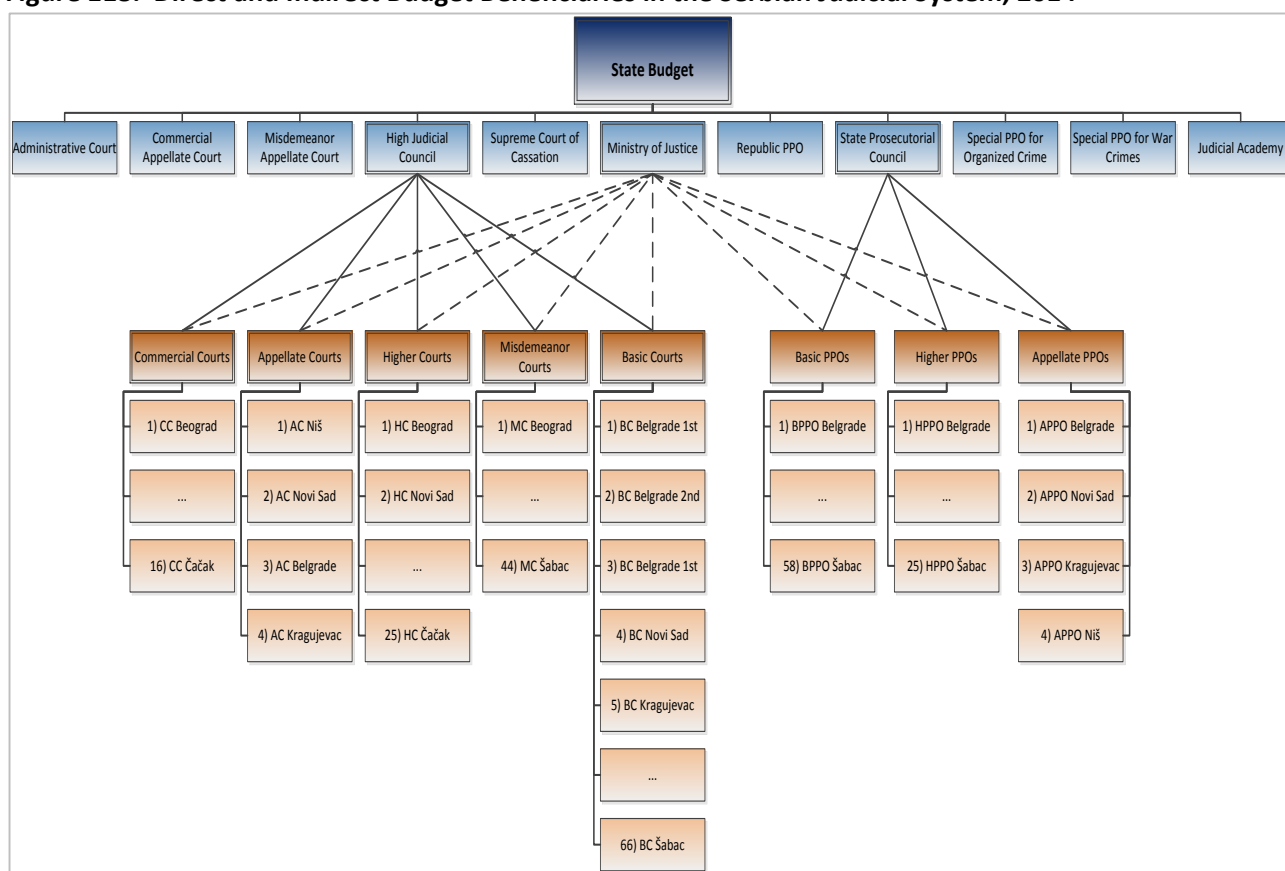
⁶⁶⁸ *The Official Gazette of the Republic of Serbia* No. 54/2009 as subsequently amended. Additionally, the judicial system is subject to the *Law on Organization of the Courts*, which divides the authority over the judicial system's budget between the Councils (the HJC and the SPC) and the MOJ, as well as the *Law on Court Fees*.

⁶⁶⁹ The Supreme Court of Cassation, the Administrative Court, the Commercial Appellate Court and the Higher Misdemeanor Court.

⁶⁷⁰ The Prosecutors' Office for War Crimes and the Prosecutors' Office for Organized Crime.

the MOJ.⁶⁷¹ These indirect budget beneficiaries consume the overwhelming majority of the resources within the system, including all Misdemeanor Courts, Basic Courts, Higher Courts, Basic Prosecutors' Offices and Higher Prosecutors' Offices.⁶⁷²

Figure 118: Direct and Indirect Budget Beneficiaries in the Serbian Judicial System, 2014



12. **Only direct budget beneficiaries execute their budgets through the Treasury Single Account (TSA).** The Treasury ensures that transfers to the direct budget beneficiaries are within authorized appropriations and the limits set by the disbursement schedule. However, the Treasury is not involved in the substantive verification of any payments. For some time, the Treasury has been planning to incorporate indirect budget beneficiaries into the TSA,⁶⁷³ however this is yet to occur due to technical difficulties. Once the Treasury transfers funds, courts and PPOs manage their accounts independently

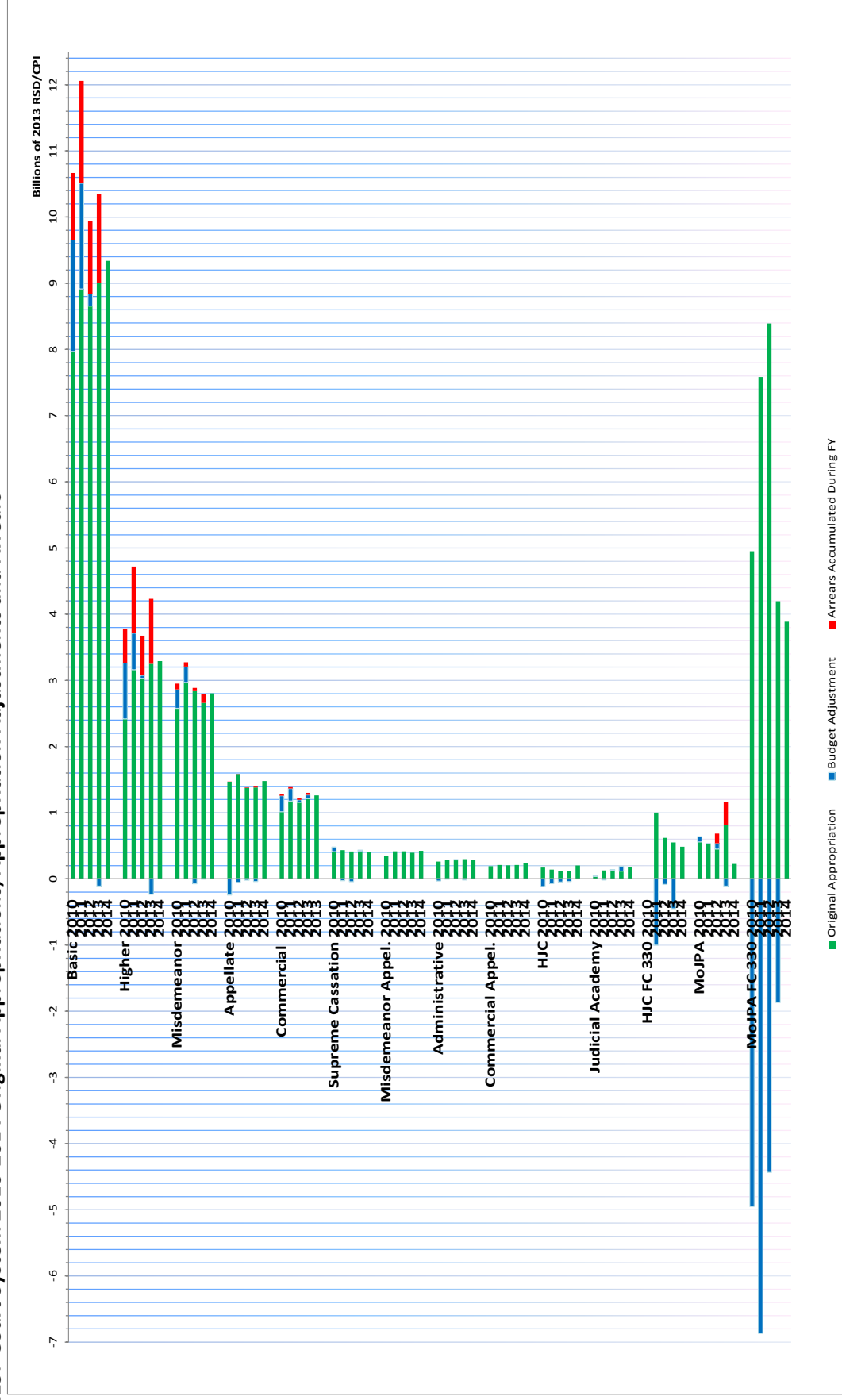
13. **Judicial expenditure during 2010-2013 can be characterized by complexity, volatility and arrears.** Figure 119 and Figure 120 present a visual overview of the court system's and public prosecution's expenditure from 2010 to 2013. This sets a context for describing the expenditure management framework and the budget process. The figures show original appropriations (in green), budget adjustments (in blue) and arrears (in red), measured in constant 2013 RSD, by the type of budget beneficiary within the court system and the public prosecution respectively. The following characteristics of the system's expenditures can be noted:

⁶⁷¹ The number refers to the judicial network prior to the 2014 network reorganization.

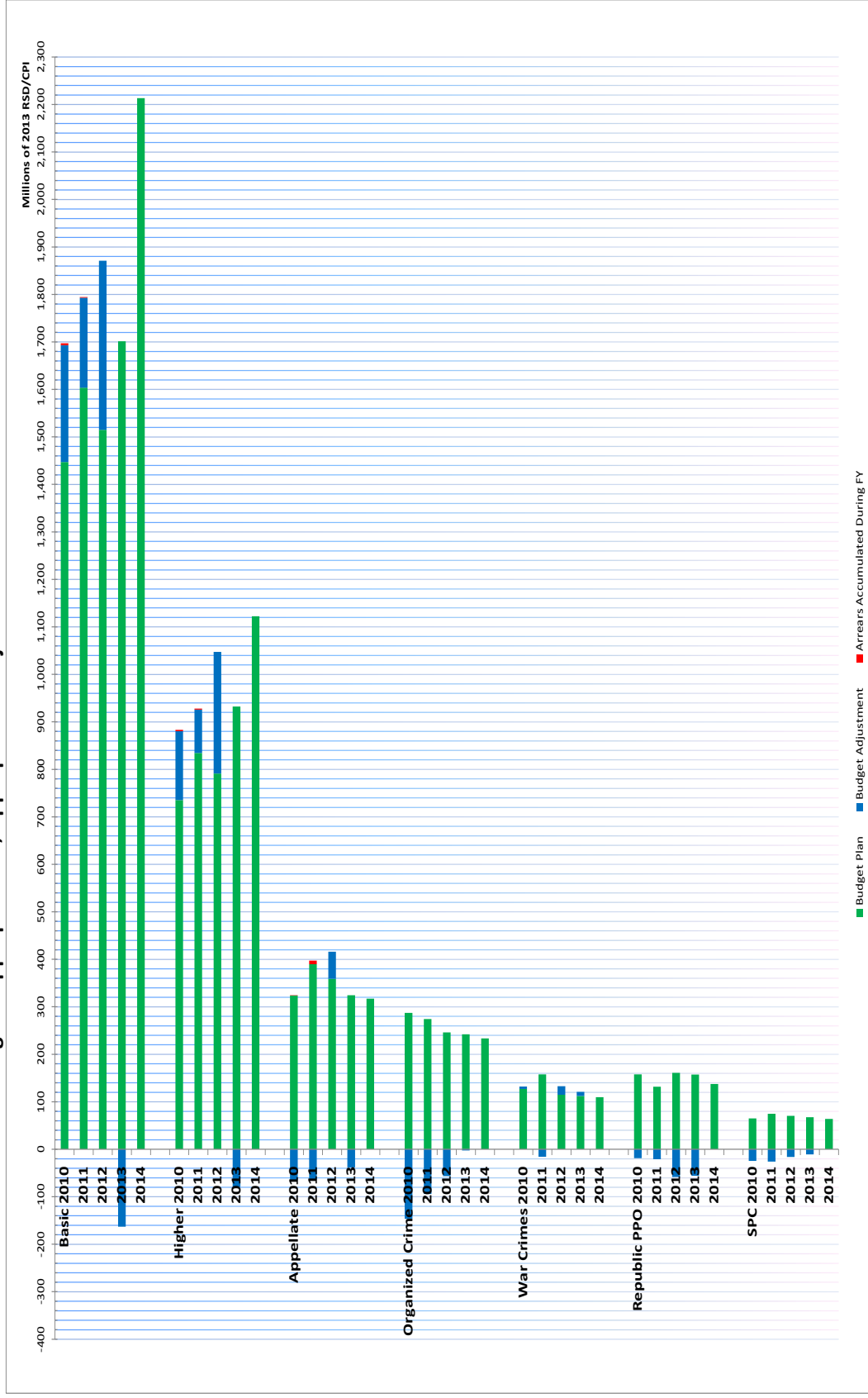
⁶⁷² For these indirect budget beneficiaries, the Councils and the MOJ are permitted to move funds flexibly between the types of indirect budget beneficiaries. So for example, the HJC could move funds between individual courts of the same type (i.e. from one Basic Court to another Basic Court) but it could not move funds from Higher Courts to Basic Courts, regardless of business needs.

⁶⁷³ Referring to the situation as of 2011, the JPEIR states: '[t]he Treasury Department currently plans to incorporate indirect budget beneficiaries into the single treasury account' adding in a footnote: '[h]owever, computing capacity and required equipment present an unresolved obstacle.'

- Complexity: there is a large number of institutions involved in financial management. The courts alone show 12 discrete organizations and organizational groupings including the HJC, the MOJ, the Judicial Academy, the SCC and various courts types. There is a range of execution mechanisms: some parts of the court system budget are executed by the courts but others directly by the Councils (the HJC or the SPC) or by the MOJ;
- Volatility: the fluctuations in the year-to-year original appropriations are shown in green; and budget adjustments augmenting or, more often, reducing original appropriations are shown in blue;
- Arrears: there are chronic, massive and growing arrears incurred by the courts, predominantly the Basic Courts, Higher Courts and the MOJ.

Figure 119: Court System 2010-2014 Original Appropriations, Appropriation Adjustments and Arrears⁶⁷⁴

⁶⁷⁴ Megadata Table, World Bank. (Available at: <http://www.mdtfiss.org.rs/en/serbia-judicial-functional-review>).

Figure 120: Public Prosecution 2010-2014 Original Appropriations, Appropriation Adjustments and Arrears⁶⁷⁵

⁶⁷⁵ See Megadata Table, World Bank. (Available at: <http://www.mdtfss.org.rs/en/serbia-judicial-functional-review>).

a. Effectiveness in Budget Formulation

14. **Budget formulation is a top-down process.** When the Government adopts the Fiscal Strategy, the MOJ provides direct budget beneficiaries with instructions for the preparation of the upcoming years' financial plans by July 5th. In addition to economic assumptions and submission guidelines, the plans include hard budget ceilings for each direct budget beneficiary. These ceilings are usually based on previous year's allocation adjusted only for macroeconomic expectations. Based on the financial plans prepared by the direct budget beneficiaries,⁶⁷⁶ the Government revises its Fiscal Strategy and submits a Draft Law on the Budget to the National Assembly. The Parliament is obliged to adopt the Law on the Budget of the Republic of Serbia by December 15th.⁶⁷⁷ Budget negotiations between the direct budget beneficiaries and the MOF are not precluded, but they are not encouraged. As a matter of practice, institutional budget negotiations do not take place.

15. **In the Serbian judicial system, budget planning is driven by the inputs-based budgets of previous years rather than any assessment of what needs to be accomplished in the future.** The overall budget framework is focused on allocating funds to historically defined inputs, and on holding the direct budget beneficiaries accountable for not exceeding those allocations. Within this input-oriented budget framework, the court system's direct budget beneficiaries, mainly the MOJ, the HJC and the SPC, could in theory focus the allocation of financial resources based on demand for services and outputs (i.e. the anticipated caseloads). However, decision-makers do not use data to inform these kinds of decisions, and there is no analysis of cost-effectiveness or objectively defined standards for technical and financial performance. In addition, authority for managing judicial resources is fragmented and not aligned with the budget authority. Hence, the court system reverts to the traditional input-oriented methods.

16. **Regardless of business needs, the judicial budget prioritizes salary expenditures, which are determined by a Human Resources Plan that is set outside of the budget process.**⁶⁷⁸ From 2010 to 2013, current expenditures averaged 97.67 percent of the executed budget. Of that, salaries averaged 76.46 percent of the total executed budget, and current non-salary expenditures averaged 21.20 percent. Notwithstanding its title, non-salary expenditures also include compensation for people working in the system, including lay judges and remuneration for individuals employed on service contracts. The capital investment averaged only 2.33 percent of the total executed budget for the reporting period.

17. **Although on paper the judiciary budget has a three-year horizon, in reality budget planning is conducted on a year-by-year basis.** Agencies are unable to engage in a contract for longer than a year, making multi-year investments challenging to execute. Meanwhile, the court system is preoccupied with day-to-day problems related to arrears, inadequate infrastructure and inefficient operating systems, and has little capacity to focus on future needs and how to resource those. As discussed below, the court system has been investing very little in modernization initiatives and its capacity for any large-scale multi-year modernization initiatives has been severely constrained.

18. **The authority over matters that define or strongly influence financial management is scattered across the Councils, the MOJ, the SCC and the courts.** First, authority over the judicial budget is divided between the Councils (the HJC and the SPC), which is responsible for the current expenditures net of maintenance, while the MOJ⁶⁷⁹ is responsible for capital investments and maintenance.⁶⁸⁰ Second, the

⁶⁷⁶ Direct budget beneficiaries are required to submit their financial plans to the MOF by September 1st, 2014.

⁶⁷⁷ For more information on the Budget Calendar, see <http://www.parlament.gov.rs/national-assembly/role-and-mode-of-operation/national-assembly-financing/budget-cycle.504.html>.

⁶⁷⁸ For further discussion of the Human Resources Plan, see the Human Resources Chapter.

⁶⁷⁹ The MOJ, until recently, was also responsible for the civil servants working in the judicial bodies but is in the process of transferring this responsibility to the Councils. However, it is planning to retain control over capital investment and maintenance on the grounds that courts and PPOs are often housed in the same buildings. For further discussion, see the Governance and Management Chapter.

authority over non-financial matters, which have a significant financial impact, is separated from the budget authority. For example, the SCC is responsible for several human resource matters concerning judges and in matters of internal court organization. Individual courts are managed by their Court Presidents under a general oversight of the presidents of the next-most superior court.

19. **Effective budget planning is also undermined by a lack of clarity regarding the division of financial responsibilities between the courts and PPOs for a range of mandatory expenses in criminal cases.**⁶⁸¹ Such services are required to be provided under the CPC and include mandatory legal defense, expert witnesses, interpretation, prisoner transportation and detention. Due to the lack of clarity regarding who pays for what, neither organization plans for such expenditure. Although the data on PPO's expenditures on these services is not yet available, the amounts are significant in comparison with their budget. Many courts attribute their inability to operate within their existing operating budget to this type of expenditure.

b. Budget Levels and Sources

i. Budget Levels

20. **The judicial system in Serbia is not under-resourced, measured on either a per capita basis or as a share of GDP.** In 2012, court expenditure was 0.66 percent of GDP, which is higher than any EU Member State monitored by the CEPEJ.⁶⁸² Prosecution expenditure was 0.11 percent, which is within the range of other EU Member States monitored by the CEPEJ but is slightly lower than the average.⁶⁸³ Combined, the total judicial expenditure was approximately 0.77 percent of GDP in 2012.⁶⁸⁴

Serbia spends around 27 EUR per capita on its courts, which is consistent with EU averages, adjusted for GDP.

21. **Serbia spends around 27 EUR per capita on courts, which is more than EU comparator states.** As Figure 121 shows, Serbia's court budget sits above the trend line but is within an acceptable range, based on the definitions used by the CEPEJ.

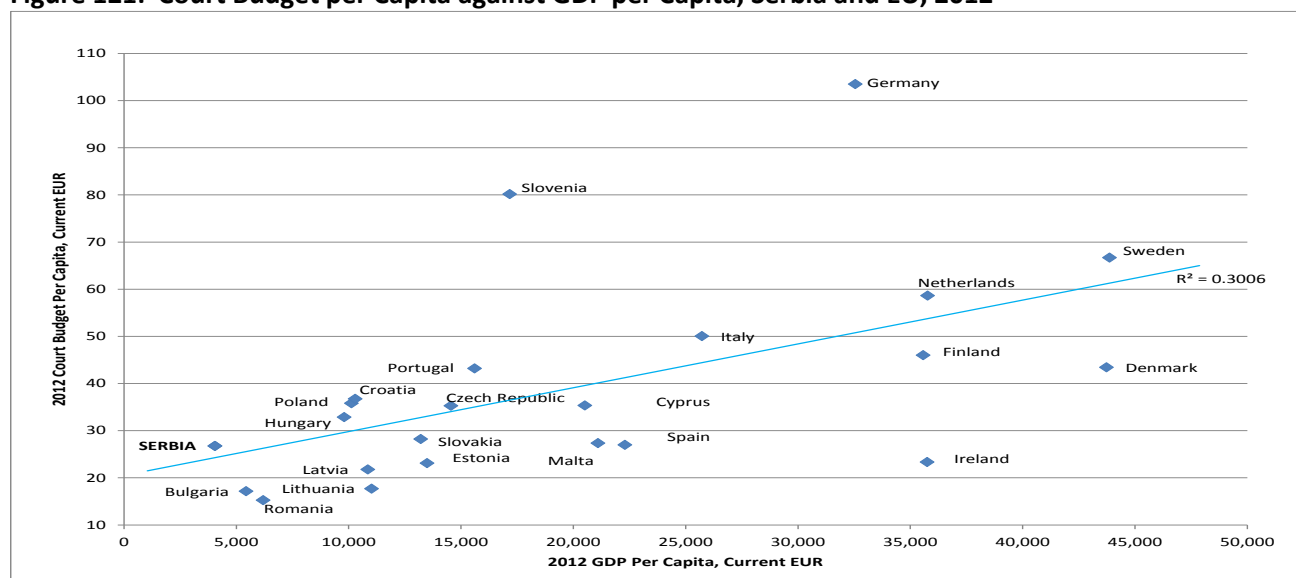
⁶⁸⁰ Some stakeholders express concern that the divided arrangement infringes the financial independence of the courts: Refer to the *Anti-Corruption Council Report on Judicial Reform, Government of Serbia, 2014, page 7*. However, in several EU Member States Ministries of Justice have judicial administration responsibilities and exercise them without exerting undue influence on the judicial bodies.

⁶⁸¹ Stakeholders reported that the PPOs are obliged to pay for such services out of their budget despite a potential for conflict of interest. However, in the absence of binding instructions, some PPOs state that they are not authorized to pay the lawyers' fees. Some of them argue this on the grounds that the CPC specifies their responsibility for the costs but not the fees. They say that in the Serbian language these two terms have substantially different meanings. Some PPOs believe that the lawyers should be paid only once the case is decided, because they are unable to attribute a particular portion of their fees either to the PPO or to the court. Finally, PPOs argue that if the defendant is acquitted, responsibility for compensatory payments clearly lies entirely on the court. With respect to expert witnesses, some of the PPOs informed the Functional Review team that they decided not to pay for their services until the expert witness fees are set at a predictable and 'reasonable' level.

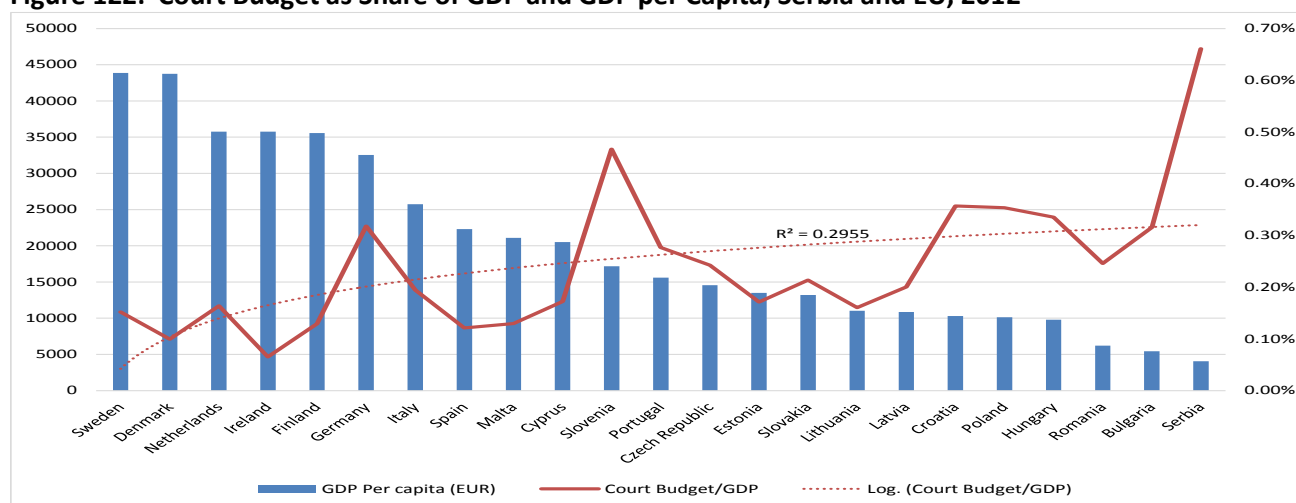
⁶⁸² For EU data, see *CEPEJ EU Justice Scoreboard 2014* (based on 2012 data). For Serbian data, see *Megadata Table, World Bank*. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁶⁸³ To ensure comparability with the available EU data, the public prosecution's expenditures are defined as the total annual approved public budget allocated to the public prosecution system. The data sources are: *Megadata Table, World Bank*. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>) for Serbia and *CEPEJ EU Justice Scoreboard 2014* (based on 2012 data) for the EU Member States. In 2012 the public prosecution did not accumulate any arrears.

⁶⁸⁴ The Functional Review team estimates that Serbia's judicial budget as a share of the total budget is also consistent with EU averages. However, precise numbers are not available because Serbian authorities do not publish the total executed budget.

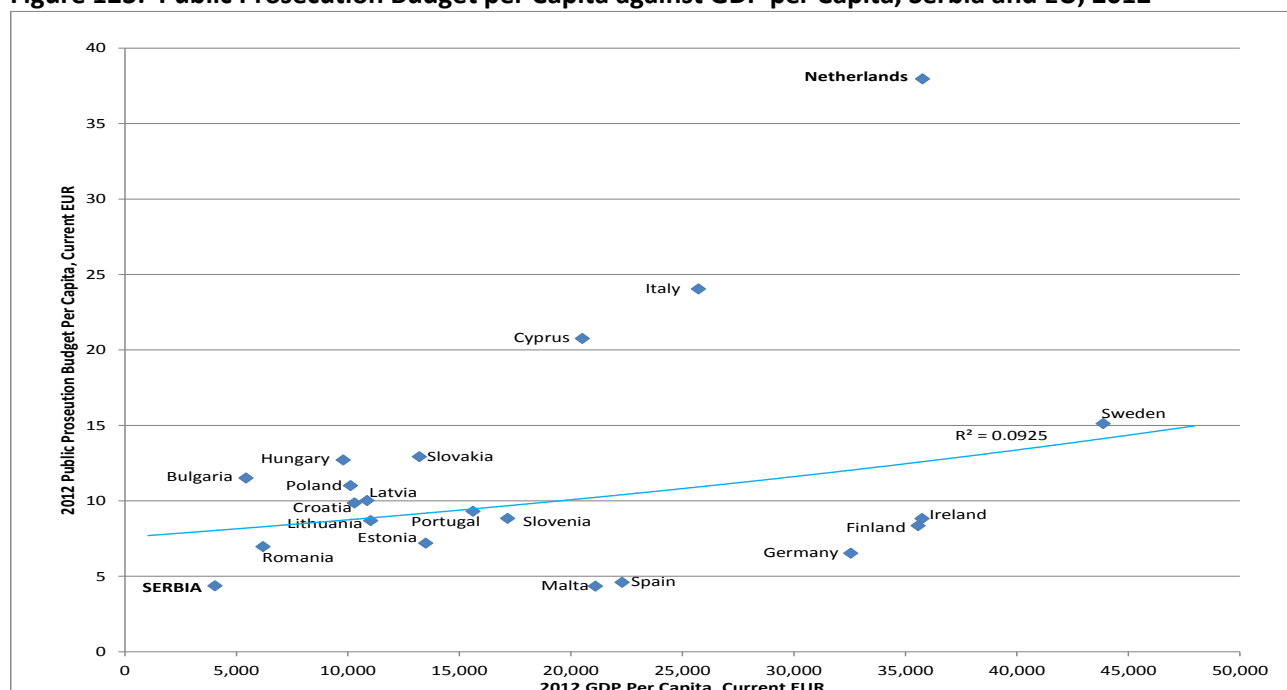
Figure 121: Court Budget per Capita against GDP per Capita, Serbia and EU, 2012⁶⁸⁵

22. Measured as a share of GDP, court expenditures were 0.66 percent, exceeding the EU range. As the red trend curve in Figure 122 shows, EU Member States with a lower GDP per capita tend to allocate a higher share of GDP to their judicial bodies, however Serbia still spends more than comparator states.

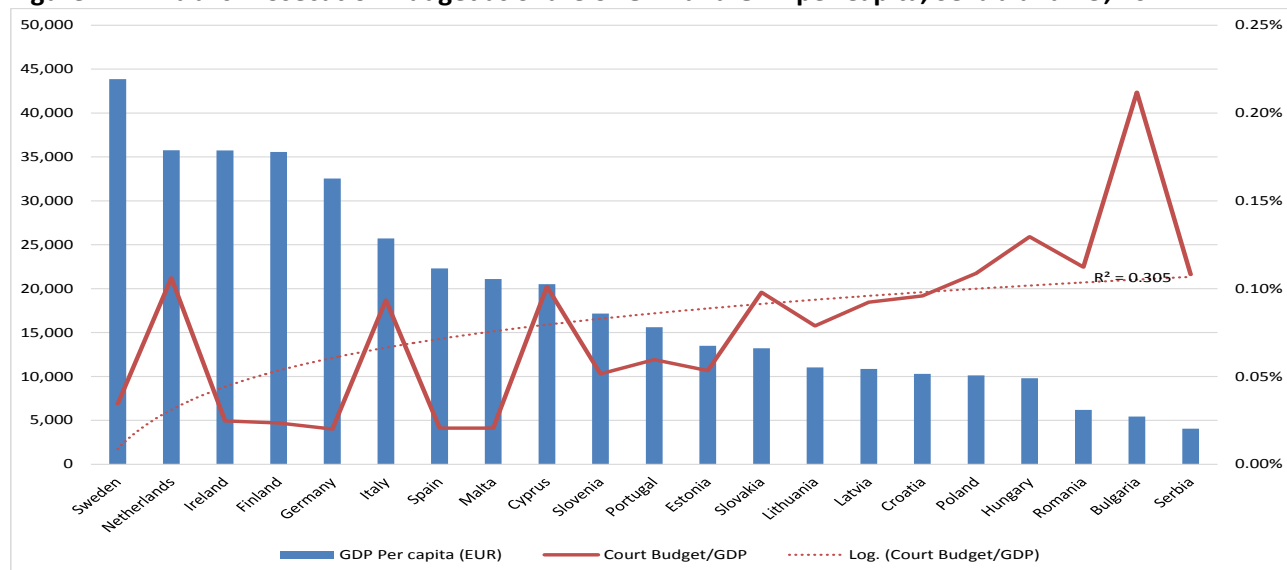
Figure 122: Court Budget as Share of GDP and GDP per Capita, Serbia and EU, 2012

23. Expenditure on public prosecution services is around 4 EUR per capita, which is within but at the very bottom of the EU range. As Figure 123 shows, Serbia sits below the trend line but is within an acceptable range, based on the definitions used by the CEPEJ.

⁶⁸⁵ To ensure comparability of data, in calculating this ratio the Chapter defines court expenditures as a sum of total annual approved public budget allocated to all courts with neither prosecution nor legal aid, plus the courts' arrears. For Serbia data, see *Megadata Table, World Bank*. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>). For EU data, see *CEPEJ EU Justice Scoreboard 2014* (based on 2012 data).

Figure 123: Public Prosecution Budget per Capita against GDP per Capita, Serbia and EU, 2012

24. Measured as a share of GDP, the 2012 prosecution expenditures were 0.11 percent, within the EU range. As Figure 124 shows, unlike the court budget's share of GDP that is above the EU range, the public prosecution's share of GDP is at its middle.

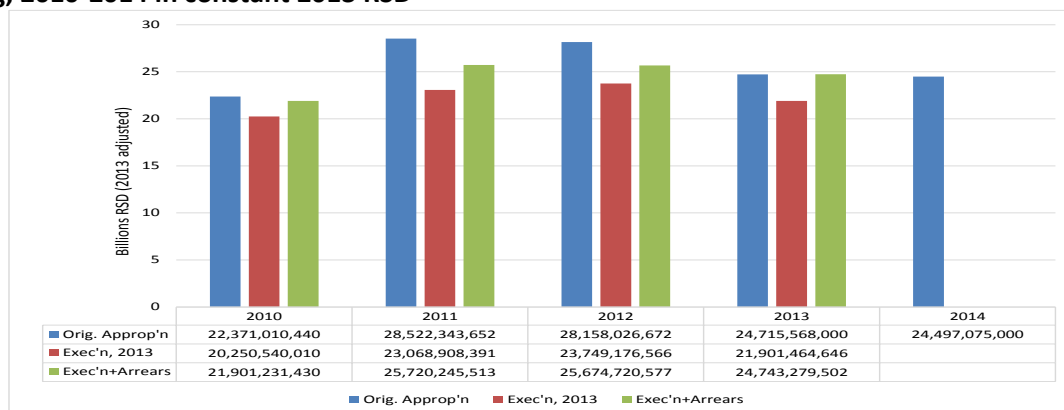
Figure 124: Public Prosecution Budget as Share of GDP and GDP per Capita, Serbia and EU, 2012

25. Court system expenditure is characterized by year-to-year variability, mid-year budget adjustments which result in the reduction of the original appropriations combined with overspending. As Figure 125 shows, the original budget appropriation, represented by the blue bars and measured in constant 2013 RSD, has grown since 2010. It peaked in 2011 at 28.5 billion RSD before declining again in 2012 and 2013, but even in 2013 the original appropriation still exceeded the 2010 level by over 10 percent. Each year, the original appropriation was adjusted⁶⁸⁶ and reduced to the levels represented by the red bars.

⁶⁸⁶ In response to lower-than-expected state revenues and increases in state spending in other sectors, the MOF proposes budget adjustments which lead to Parliament's adoption of the Supplementary Budget. See Article 42, *Budget System Law*.

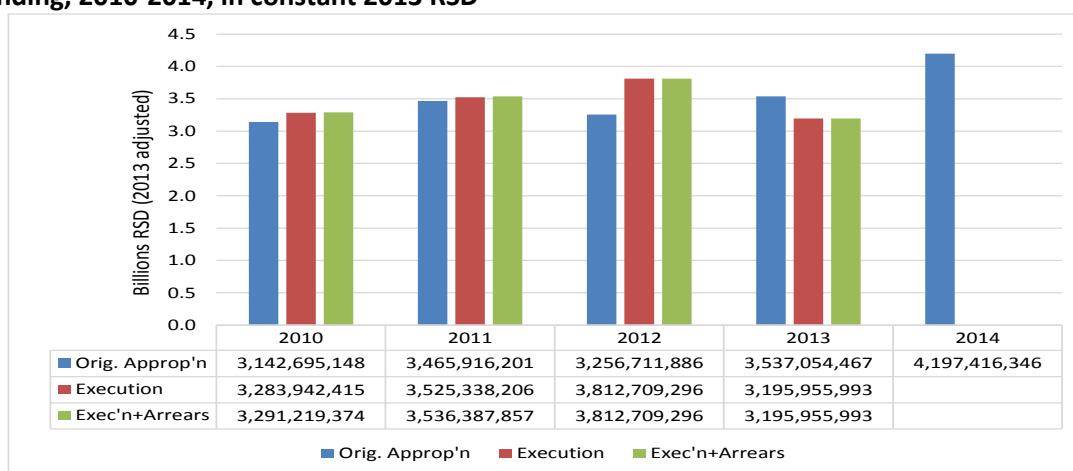
Meanwhile, the court system expenditure, represented by the green bars, regularly exceeded its adjusted budget appropriation due to arrears. Only in 2013 did the court system's expenditures reach the level of the original appropriation, and this was achieved by accumulating large arrears.

Figure 125: Court System Original Appropriations, Adjusted Appropriations and Budget Execution and Spending, 2010-2014 in constant 2013 RSD⁶⁸⁷



26. The public prosecution's expenditures are also characterized by year-to-year variability, mid-year budget adjustments and only a limited overspending. As Figure 126 shows, measured in constant 2013 RSD, the original budget appropriation, represented by the blue bars, have fluctuated significantly, peaking in 2014. Given the significant reforms of the prosecution service underway in the lead-up to the implementation of the CPC in 2013,⁶⁸⁸ one would expect that the prosecution budget would have increased that year. Instead, its budget was cut in the supplementary budget process, and the delay in resourcing the PPOs likely impacted service delivery at a critical time. Fortunately, the 2014 appropriated budget is higher. Unlike the court system, the public prosecution has tended to stay within its adjusted budget appropriations, with the exception of 2010 when it incurred some arrears.

Figure 126: Public Prosecution Original Appropriations, Adjusted Appropriations and Budget Execution and Spending, 2010-2014, in constant 2013 RSD⁶⁸⁹



27. Any increase in the judicial budget is highly unlikely over the medium to longer term. The Serbian economy had stalled during the crisis and, after a very slow recovery in the period 2010-2013, Serbia is back in recession in 2014.⁶⁹⁰ In addition, Serbia faces a very difficult fiscal situation characterized by very high

⁶⁸⁷ See Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁶⁸⁸ See the section on Prosecution Workloads in the Demand Chapter.

⁶⁸⁹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁶⁹⁰ According to the official MOF estimates the Serbian economy in 2014 will contract for 1 percent.

fiscal deficits (around 7 percent of GDP) that have rolled over for several years and led to a significant increase of the public debt. The Government has acknowledged the need to find budgetary savings, including those related to the wage bill and rightsizing of the public sector. In this environment, it would be very difficult for the justice sector to argue for more resources, particularly given its current levels of performance, high wage bill and the low levels of efficiency and effectiveness in the use of existing resources.⁶⁹¹

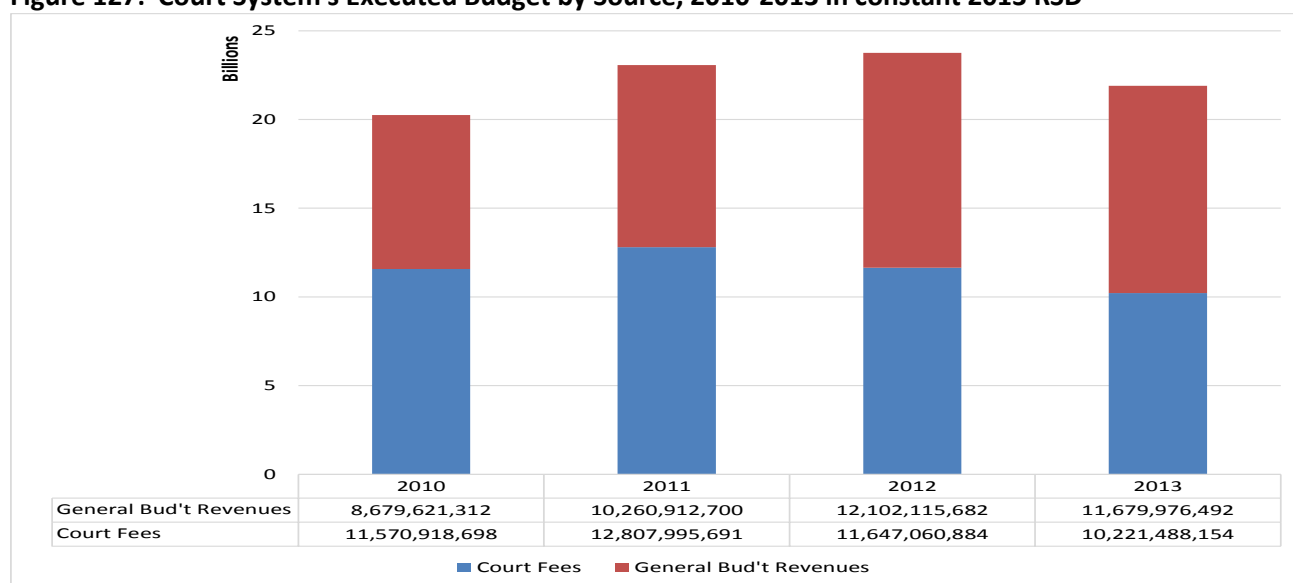
28. **Instead, the judicial system will likely be called upon to ‘do more with less.’** Budget cuts could well be expected. The judiciary will have to adjust to this situation and operate more effectively within a stricter budget environment. To fund innovations to drive performance improvements, it is likely that savings will need to be identified within the sector’s existing budget envelope.

ii. Court Fees

29. **The judicial system is partly funded by court fees and partly funded by general revenue.** Court fees do not provide the judicial system with any funding additional to its appropriation.⁶⁹² However, court fees are a source of the state budget revenue, a portion of which is earmarked for the judicial system.

30. **In 2013 the courts collected 10.22 billion RSD in fees, which is a reduction compared to the 11.57 billion collected in 2010.** As shown in Figure 127, collection grew by 11 percent from 2010 to 2011 but has fallen since.

Figure 127: Court System's Executed Budget by Source, 2010-2013 in constant 2013 RSD⁶⁹³



31. **Although court fee revenues do not provide the courts with additional resources, they nonetheless represent an attractive and more flexible funding source.** The part of the court budget funded out of court fees is not subject to the economic classification of the state budget. The portion of the budget that is funded by court fees can therefore be reallocated during budget execution across line items to meet emerging needs, at the discretion of the HJC and MOJ. This provides courts and the judiciary with a

⁶⁹¹ See sections of the Financial Management Chapter below. See also the Governance and Management Chapter and the Human Resources Chapter.

⁶⁹² Theoretically, if the courts exceed the fee collection target, they are entitled to retain their portion of the surplus. However, this has never happened.

⁶⁹³ Figures in constant 2013 RSD. *Megadata Table, World Bank.* (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

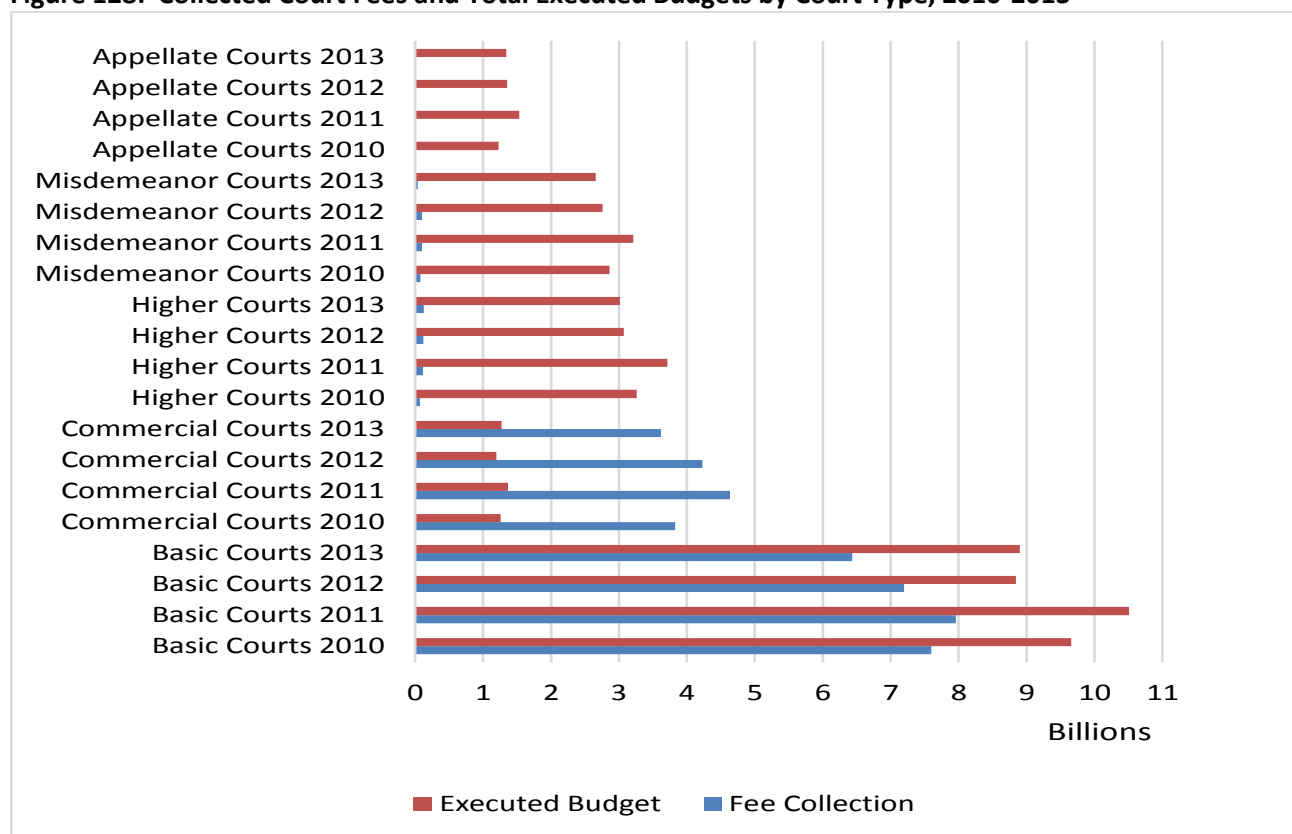
discretionary pool of resources in an otherwise very rigid system.⁶⁹⁴

32. **The Basic Courts and the Commercial courts collectively generated 98.36 percent of all court fees in 2013.** As Figure 128 shows, the Basic Courts collect the highest amount of court fees in absolute terms. However, the Commercial Courts collect the highest amount of fees that amounted to 285 percent of their executed budget in 2013. Although the fees collected by the Misdemeanor Courts for their services are smaller, they collect large amounts of fines—monetary penalties for traffic violations and other minor breaches of the law—which all go to the state budget. See also Box 24 for a recent innovation which seeks to boost the collection of fines in Misdemeanor Courts further.

Box 24: Registry of Uncollected Fines

The Misdemeanor Courts are establishing a national registry for uncollected misdemeanor fines. Individuals with their names in the registry for non-payment of fines will be unable to receive certain common government services, such as renewing a vehicle registration. With the support of a USAID-funded Judicial Reform and Government Accountability Project, the final phase of the project will create a network through which each judge will be able to connect to the database. This modern registry could significantly improve fine collection rates in the Misdemeanor Courts.

Figure 128: Collected Court Fees and Total Executed Budgets by Court Type, 2010-2013⁶⁹⁵



33. **According to unofficial estimates, the courts manage to collect in court fees only 30 percent of what is due.⁶⁹⁶** Based on these estimates, the full collection of court fees would theoretically generate revenues as large as the entire court system's budget.

⁶⁹⁴ Further, the disbursement of court fee revenues from the Treasury to the judicial system does not depend on the general revenue performance, which is subject to fluctuations.

⁶⁹⁵ Figures in constant 2013 RSD. Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁶⁹⁶ Some Courts do better than others. For example, the Kragujevac Basic and Higher Courts report that they collect around 40 to 50 percent of all court fees.

34. **However, with an imminent transfer of the verification services from the courts to private notaries, courts fees can be expected to decline by as much as 30 percent.**⁶⁹⁷ As at 30 June 2014, the HJC had not yet commenced planning for the reduction in court fees and had not addressed the likely impacts with the MOF. Verification services are scheduled to be transferred by early 2015.

35. **The courts are not well equipped to play the role of a collection agency.** Placing the responsibility for the court fee collection on the courts themselves is not conducive to maximizing the collection rate. Due to legal requirements, the courts are not able to refuse hearing a case even if the court fees are not paid.⁶⁹⁸ Many court users continue to proceed with litigation without paying fees. The courts are ill-equipped to pursue non-payers, as they lack the legal tools and resources comparable with those of a tax administration. Further, courts do not charge users late fees or interest rates on court fees. The absence of late fees and interests charges amounts to a subsidy to late debtors who take advantage of the time value of money to pay less than they owed when the fees were due.⁶⁹⁹ The courts receives less than what it is owed due to inflation and must also incur the administrative costs of collecting the outstanding fees. Meanwhile, the courts' various creditors charge the courts such penalties for their services, causing a net loss of funds for the courts.

36. **Reliance on court fees in court financing has downsides.** First, court fee revenues fluctuate in response to factors outside of the courts' control, such as the recent decrease in incoming cases, and the imminent transfer of verification services to private notaries. Courts also report that fee collection is seasonal, being lower in summer months and higher in winter months. Second, dependence on the court fees for their financial wellbeing creates an inherent conflict of interest, since the courts themselves decide on granting fee waivers or joining cases.⁷⁰⁰ Third, the courts are required to report on their expenditures financed out of the court fees separately from those financed by the general budget, and this imposes on them a heavy administrative burden.

37. **There are opportunities to increase the rate of court fee collection, but they are not actively considered.** It would be possible to assign the task of court fee collection to a single agency, which could operate a single dedicated account, assess interest and late fee charges and dedicate itself to pursuing fee collection. The *Law on Court Fees* could also be amended to empower the courts to deny provision of services in certain non-criminal cases unless the court fees are paid, subject to extenuating circumstances, such as the need for a fee waiver. Late fees and interest charges could also be added to incentivize early payment of fees and recoup the costs of pursuing delinquent debtors. Fee 'discounts' could also be considered for early payment. Lessons may be learned from the Misdemeanor Courts, which offer reduced fines to defendants in traffic cases in exchange for prompt payment.

c. Budget Structure

38. **The wage bill is the most significant budget item and judicial system has a strong preference for funding salaries rather than investing into system modernization (see Figure 129).** Currently, Serbia spends less than 2.5 percent of the total budget on capital investments. This budget breakdown into capital investment and current expenditures is within range of EU member states. However, Serbia has much greater capital investment needs than most EU Member States. As part of the EU accession process, the Serbian judiciary will be expected to undertake significant investments in infrastructure and ICT to align its performance with European practice. As a result, the funds dedicated to capital investments should rise far

⁶⁹⁷ Based on estimates of the court financial officers more than 50 percent of revenues from court fees in Basic Courts is generated by the verification services.

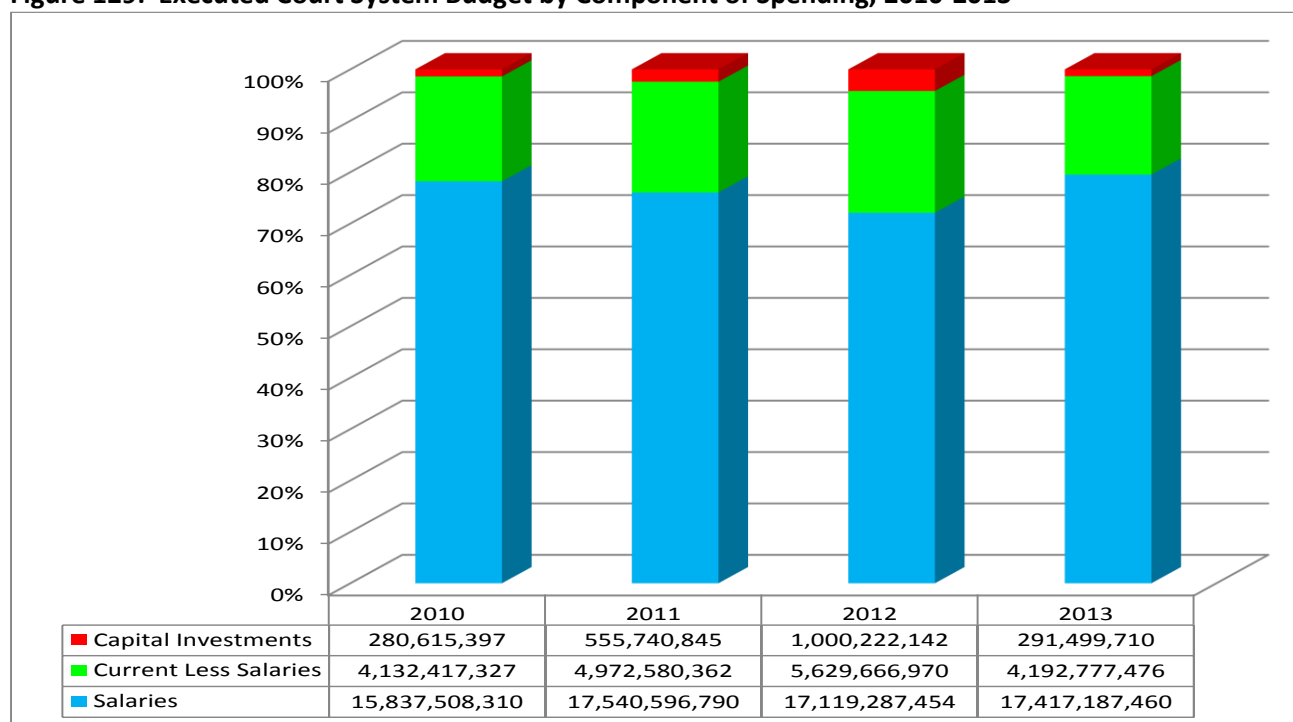
⁶⁹⁸ Article 7 of the *Law on Court Taxes* currently states that failure to pay court taxes does not result in suspension of a case proceeding.

⁶⁹⁹ The inflation rate in Serbia has fluctuated from 3 to 15 percent in Serbia during the 2010-2013 period.

⁷⁰⁰ For discussion of court fee waivers, see the Access to Justice Chapter. For discussion of joining cases, see the Efficiency Chapter.

above the current 2.5 percent. Given the current budgetary constraints, that investment will need to be sourced through savings from current expenditures, preferably salaries.

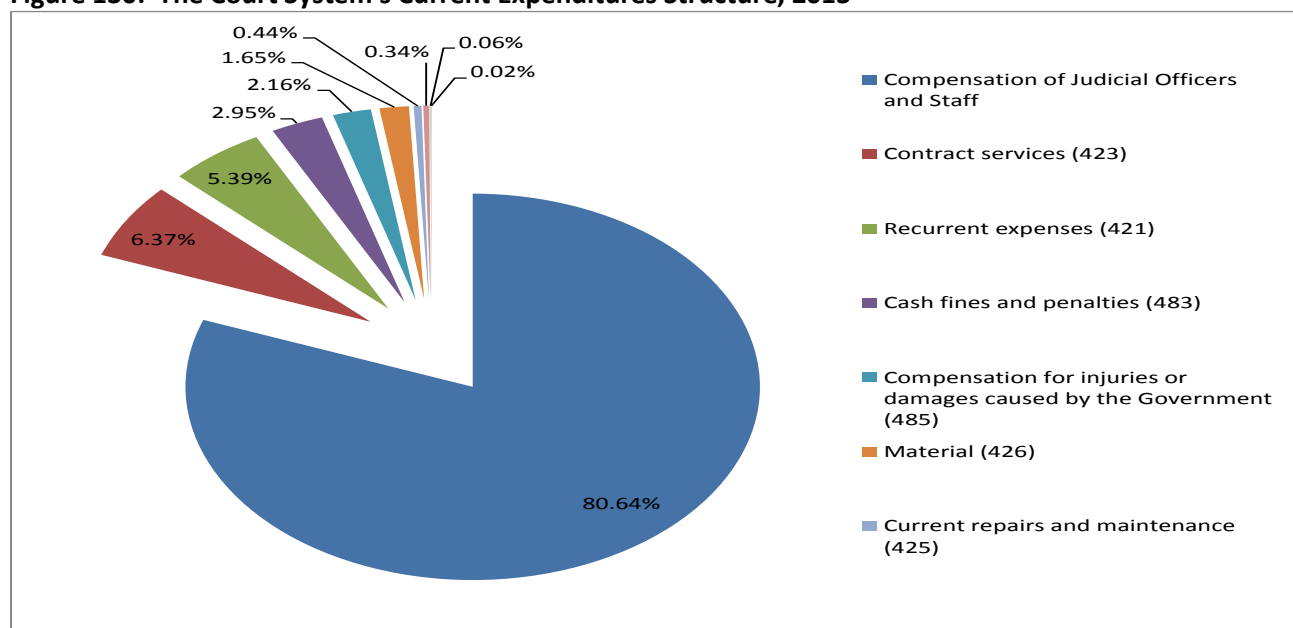
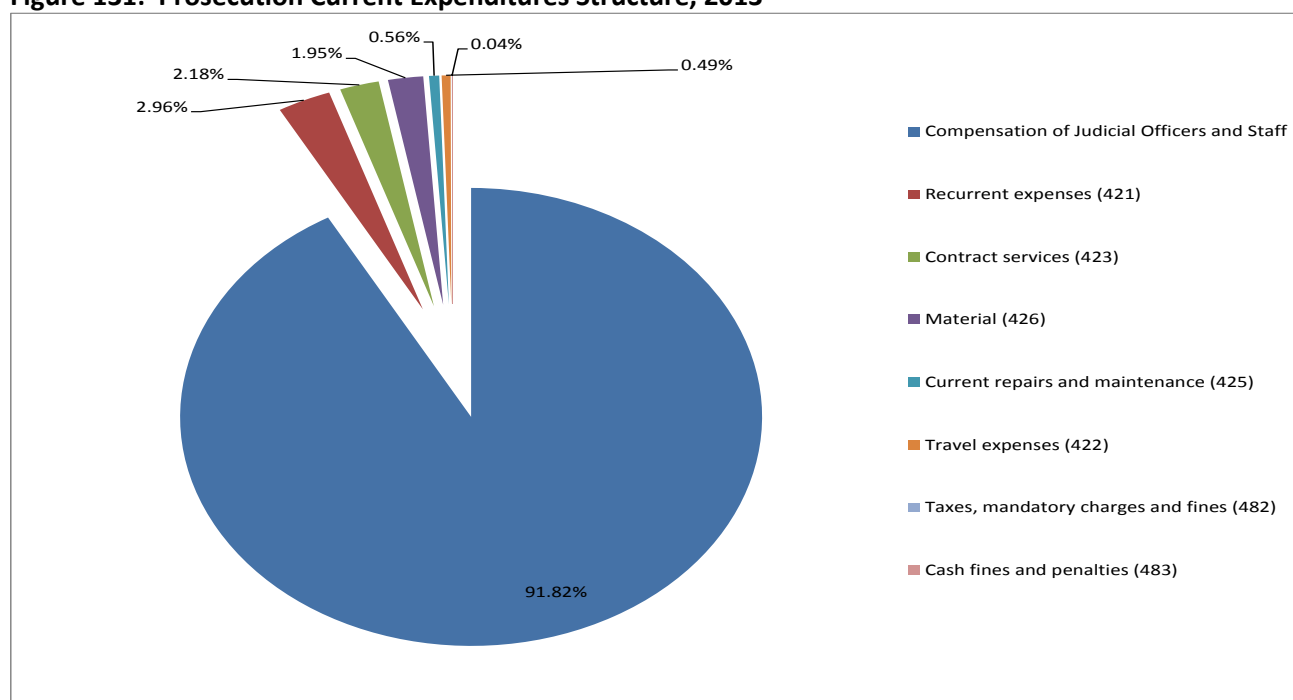
Figure 129: Executed Court System Budget by Component of Spending, 2010-2013⁷⁰¹



i. Current Expenditures

39. **Salaries dominate the court system's current expenditures.** The budget for salaries follows a Human Resources Plan which is set outside of the budget process. Salaries represent 81 percent of current expenditures of the courts and 92 percent of the current expenditures of the PPOs (see Figure 130 and Figure 131)

⁷⁰¹ Figures are in constant 2013 RSD. *Megadata Table, World Bank.* (Available at: <http://www.mdtfjs.org.rs/en/serbia-judicial-functional-review>).

Figure 130: The Court System's Current Expenditures Structure, 2013⁷⁰²**Figure 131: Prosecution Current Expenditures Structure, 2013**⁷⁰³

40. Often, the budget lines do not transparently convey the purpose of expenditures that they fund. For instance, budget line 4235 'Other Contractual Services' under line 423 'Contract Services' is used to pay not only such expenses as expert witness fees, lay judges, security staff but also compensation to acquitted defendants and postage.⁷⁰⁴

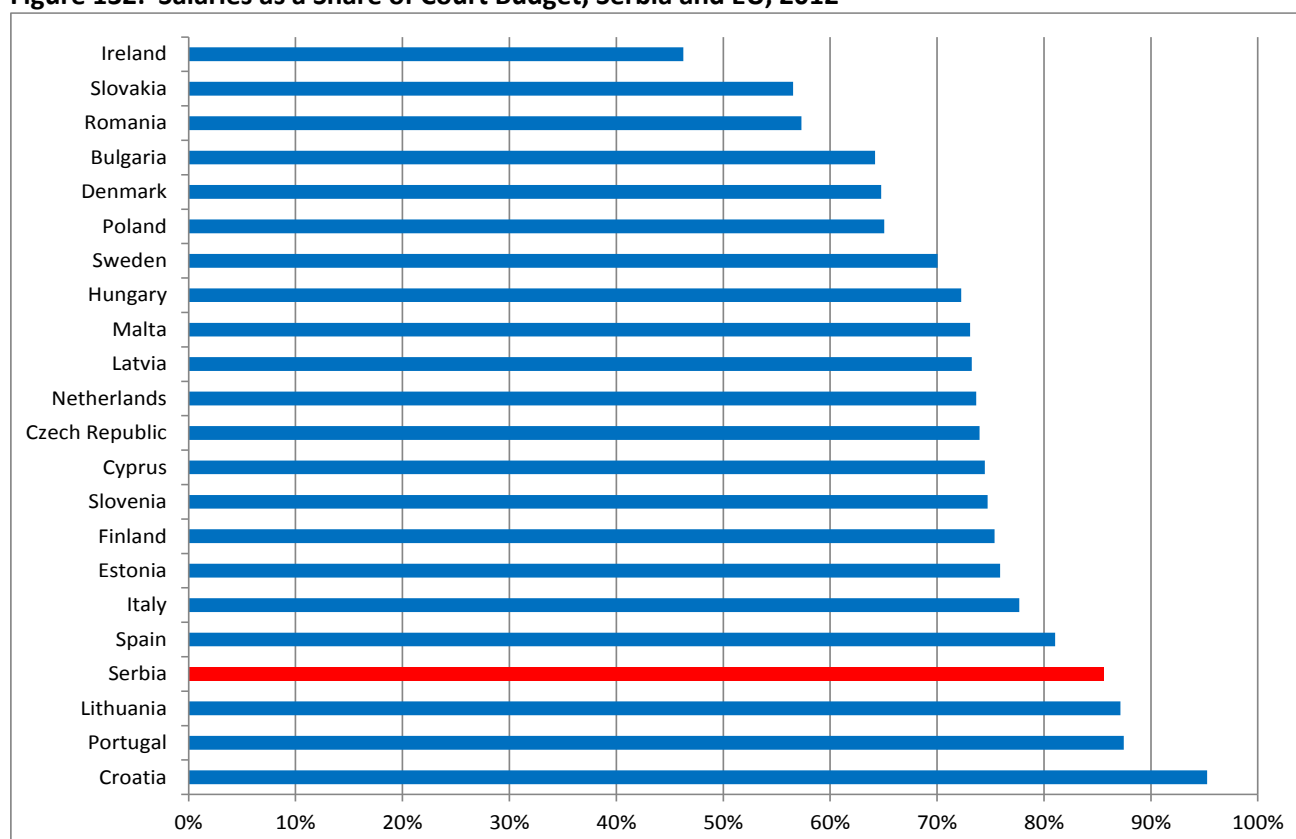
⁷⁰² Megadata Table, World Bank. (Available at: <http://www.mdtfss.org.rs/en/serbia-judicial-functional-review>).

⁷⁰³ Megadata Table, World Bank. (Available at: <http://www.mdtfss.org.rs/en/serbia-judicial-functional-review>).

⁷⁰⁴ Other budget line titles are more transparent: 'Cash fines and penalties' cover such items as court vehicles' parking tickets; 'Grants to International Organizations' appears only in the Judicial Academy's budget, which is likely to represent Judicial Academy's contribution to a donor-funded project; and the line 'Taxes, mandatory charges and fines' covers real estate taxes owed on premises.

41. **The Serbian court system spends a larger share of its budget on salaries compared with EU Member States (See Figure 132).** Serbia's salaries-to-budget ratio was 86 percent. Only three EU Member States out of the 21 shown below have a higher share of salaries in their budgets. The EU Member State with the highest salaries-to-budget ratio of 95 percent is Croatia. As discussed in the Human Resources Chapter, Serbia's complement of both judges and court staff is higher than in most EU Member States. Judges' compensation represents the largest component of the court's salary expenditures. A gradual reduction in the share of the budget spent on judicial salaries would free up resources for items that are critical to improving productivity such as automation, infrastructure and mid-level specialist staff.

Figure 132: Salaries as a Share of Court Budget, Serbia and EU, 2012⁷⁰⁵

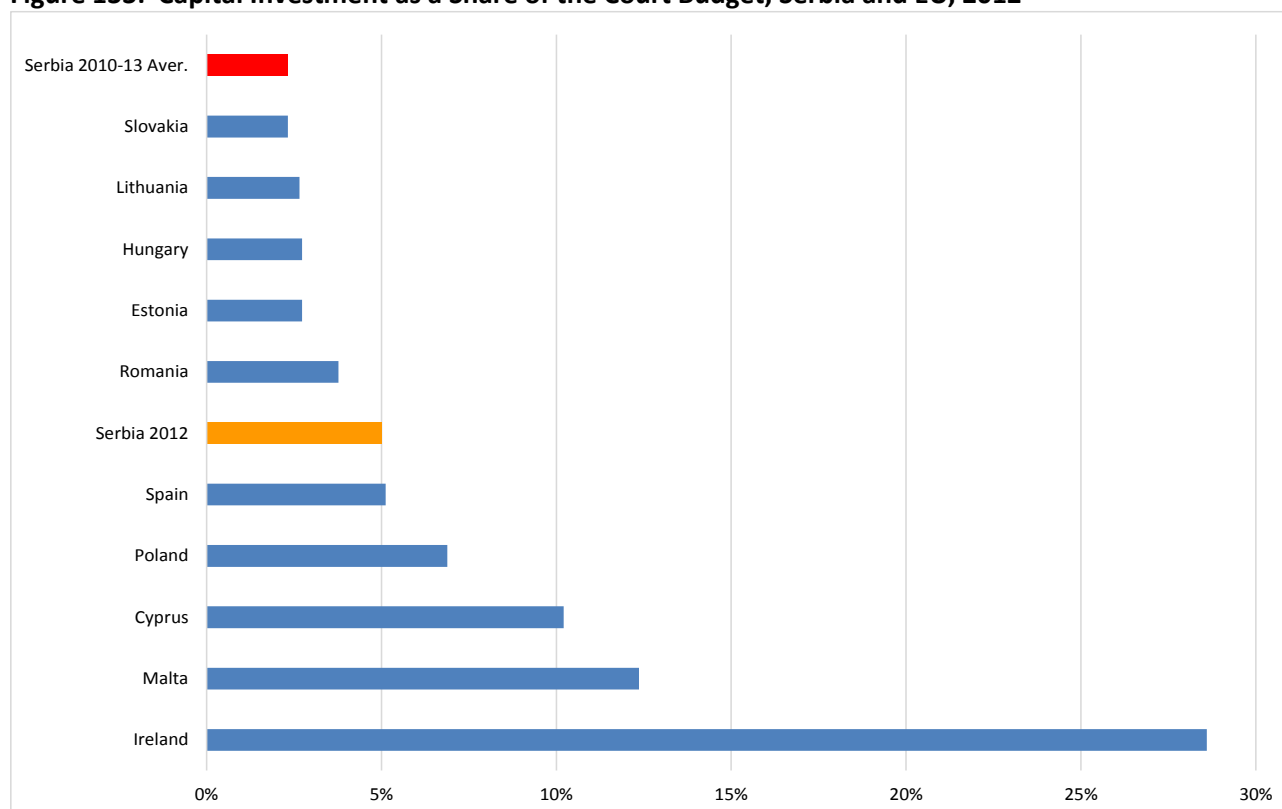


ii. Capital Investment

42. **Serbia's 2012 level of capital investment in relation to the court system's budget is consistent with the EU range (see Figure 133).** This, however, may draw a misleadingly optimistic picture because Serbia's 2012 level of capital investment of 5 percent of the executed budget was unusually high for the reporting period of 2010-2013. The average for the period 2010-2013 was only 2.33 percent. In 2012, only Slovakia had a similarly low capital investment budget; however Slovakia's existing stock of capital assets is likely of a higher quality than in Serbia, so its lower capital investment may be justified.⁷⁰⁶

⁷⁰⁵ Data from EU Member States is from the CEPEJ EU Justice Scoreboard 2014 based on 2012 data. For Serbian data, Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

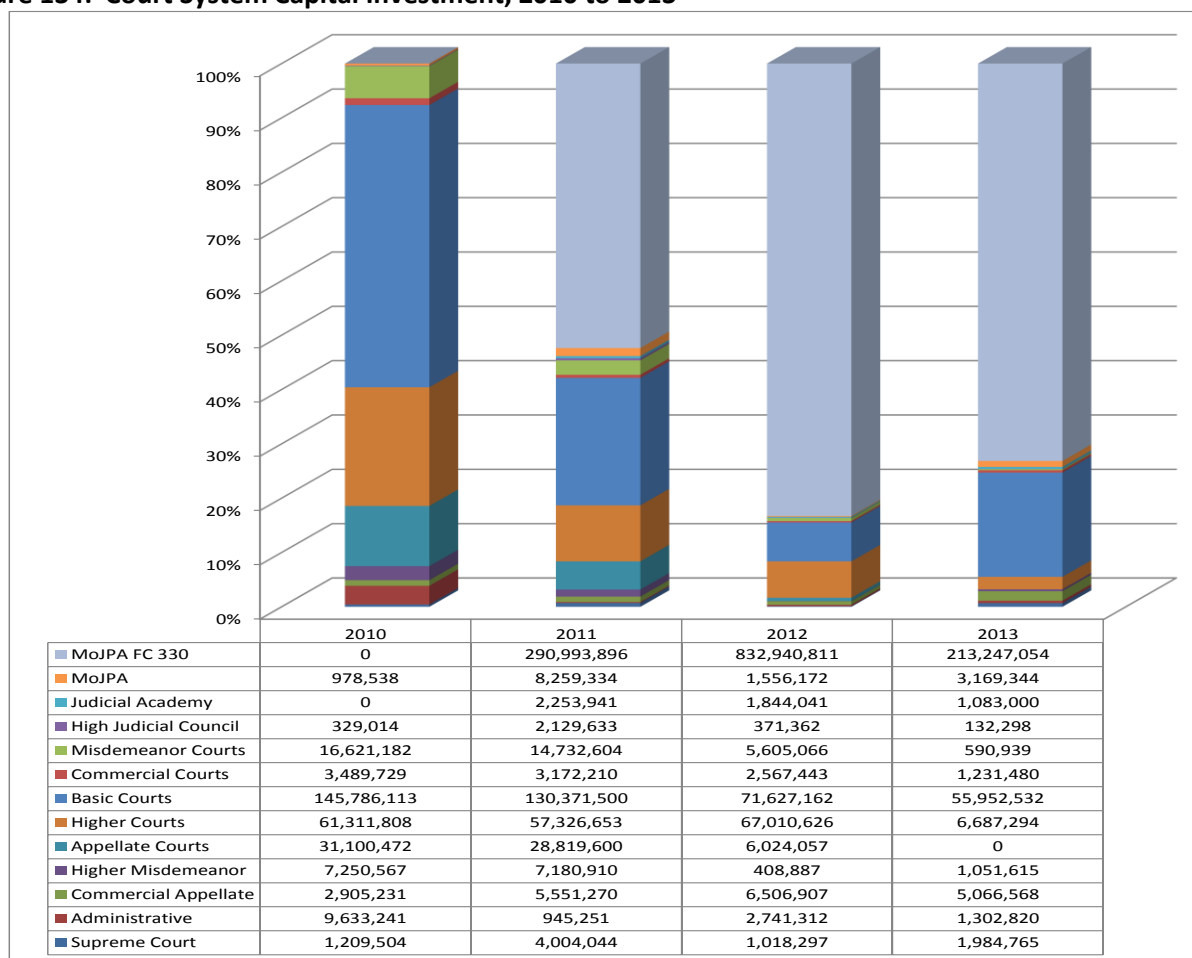
⁷⁰⁶ For discussion of the age and condition of infrastructure stock in the Serbian judiciary, see the Infrastructure Chapter.

Figure 133: Capital Investment as a Share of the Court Budget, Serbia and EU, 2012⁷⁰⁷

43. **With the exception of a few externally co-financed projects, capital investment projects have been insignificant in comparison with the real needs.** The Infrastructure Chapter documents the lack of courtrooms and office space, as well as the poor state of the buildings in which the courts and PPOs are located. The ICT Chapter provides insight into the ineffectiveness and insufficiency of the ICT infrastructure. Despite that, the capital investment budget was at times drastically reduced in budget rebalancing and reprogrammed for other purposes, such as paying court arrears. At other times, capital investment budget failed to fully disburse due to capacity constraints (discussed below).

44. **The court system's capital investments are predominantly executed by the MOJ.** These expenditures, which in Figure 134 are labeled as FC-330, also include some other expenditure which cannot be disaggregated. Capital expenditure executed under the budgets of individual Basic Courts followed in scale but their amount varied significantly from year to year.

⁷⁰⁷ Data from EU Member States is from the CEPEJ 2014 based on 2012 data. For Serbian data, Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

Figure 134: Court System Capital Investment, 2010 to 2013⁷⁰⁸

45. **From 2010 to 2013, the capital investment budget focused on infrastructure emergencies, as well as some relocation of courts and PPOs, as necessitated by two re-organizations of the court network.** Very little has been devoted to system modernization and upgrades.

46. **Apart from financial constraints, capital investment was impeded by the lack of technical capacity and an inflexible and opaque regulatory framework.** There is a lack of technical capacity among MOJ staff in areas such as engineering, procurement and contract management. In addition, neither HJC nor SPC have a dedicated person who will deal with these issues. There is currently no mechanism in place to objectively appraise and prioritize investment projects within the sector. Restrictive budget rules require that capital investment projects must be funded from a single year appropriation. A lack of a clearly defined distinction between capital and current expenditures, which affects the entire public sector, further complicates both formulation and execution of capital investment budget.

47. **There are a few capital investment projects, all of which have been funded under a single fiscal year appropriation.** The MOJ had a three-year capital investment plan that included a prioritized list of projects with a total value of 1.97 billion RSD for 2013, 1.31 billion RSD for 2014, and 2.00 billion RSD for 2015. However, the MOJ is unable to engage in a contract for longer than a year, making multi-year investments challenging to execute.

⁷⁰⁸ Figures in constant 2013 RSD. See *Megadata Table, World Bank*. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

48. **The MOJ is responsible for the court system's capital investments, while the HJC is responsible for current maintenance.** Within the MOJ, the Section for Investments is responsible for the central government-owned facilities used by both the courts and public prosecution.⁷⁰⁹ The Section manages all capital investment projects funded directly by the MOJ, and advises courts on the design and implementation of technical investments funded under their own budgets. According to the MOJ, the Section for Investments will take over the HJC responsibility for current maintenance of capital investments in order to ensure coherence in facility management. The MOJ believes it should retain the responsibility for capital investment beyond 2016 as it is cost-effective to share the same building by courts and PPOS, and it is more effective to manage a building by one institution. Some stakeholders express concern with this option on the basis of financial independence, however, several European justice systems allocate these functions

Box 25: Can the cost of inadequate office space be quantified?

The Pancevo Misdemeanor Court has been occupying an apartment in a residential building on a temporary basis since 1988. Because of the shortage of office space, the court's 10 judges have to work in two shifts, with working hours set in compliance with the curfew provided by the municipal regulations. The second shift, which starts at 14:00, overlaps with the first shift, which ends at 15:30. During the 1.5 hours the court has no physical space for the visitors. A 1.5 hour downtime for 10 judges per day translates into the salary and benefits cost of 45 judge's work days per month not counting overhead expenses.

to their respective MOJ for similar reasons.

49. **The MOJ and HJC rely on different definitions of capital investment and current expenditures, and this causes confusion and delays across the sector.**⁷¹⁰ Both definitions list activities that can be deemed as current/capital maintenance, but do not specify limits in terms of financial resources that will represent the boundary between these two types of the expenditures. A single official distinction between capital investment and current expenditures does not exist. Further, there are two kinds of maintenance projects in Serbia: ongoing maintenance and capital maintenance of fixed assets. For the courts, the determination of the type of a maintenance project for which they were seeking funds determined to whom they should submit the request: the MOJ or the HJC. The courts complain that this lack of clarity prevents the efficient running of courts. Courts are required to submit duplicate requests to the MOJ and HJC in the hope that one of the two organizations will fund their maintenance. Yet, requests for funding maintenance projects are repeatedly rejected because both the MOJ and the HJC each report that the other should pay. While the argument continues, the facilities remained in disrepair. The consolidation of responsibility for both capital investment and all maintenance in the hands of the MOJ should prevent such disruptions in the future.

50. **Making binding financial commitments for a multi-year capital investment project is still not possible under the Budget System Law.** The Law does not allow beneficiaries of public funds to enter into contracts that impose on them financial obligations beyond the amount that has been already appropriated in the state budget of that year. As a result, those capital investment projects taking more than a year to implement may be funded during the second year with the balance carried over from the previous year. The MOJ has no experience of implementing capital investment projects that would go beyond the following the year. This makes any long-term investments in physical or information infrastructure almost impossible. Fixing this problem will be essential for the court system to achieve the kind of capital upgrades that will be required to align the judiciary with EU practice.

⁷⁰⁹ For further discussion of infrastructure management arrangements, see the Infrastructure Chapter.

⁷¹⁰ The MOJ uses the instructions provided by the Association of Accountants and Auditors of Serbia in the 2007 Guidebook titled 'Application of Budgetary Accounting Figure', while the HJC uses the interpretation provided in Article 2 Paragraphs 36 and 36a of the Law on Planning and Construction ('The Official Gazette of RS' No. 24/ 2011).

d. Effectiveness in Budget Execution

i. Barriers to Efficient Utilization of Resources

51. **The budget execution framework is very rigid.** Once a budget is approved, it is very difficult to adjust it, even if not doing so undermines technical and financial performance. At the level of the entire budget system, direct budget beneficiaries are required to comply with the breakdown by economic classification.

52. **The HJC passes the rigidity of the state budget's economic classification on to the courts, even though it is not required to do so.** The courts commonly complain that the funds they receive are broken down by economic classification that is inconsistent with their needs. There is often too much money in some classification categories and not enough in others, but no ability to move funds between them. The HJC could permit individual courts, which are not direct budget beneficiaries, to use their non-salary current budgets more flexibly as long as the aggregate results of each court type are consistent with the budget ceilings. However, the HJC is unable to do this on a systematic basis because it lacks both trained staff and software for reconciling multiple court requests for budget adjustment with the state budget's economic classification.

53. **Budget execution is characterized by fluctuations in the disbursement of budget funds from the Treasury to budget beneficiaries.** In the beginning of a fiscal year, the HJC notifies the courts of their approved annual operating budget. Although the courts should expect to receive one-twelfth of that amount each month, the actual disbursed amounts vary. The MOF is unable to even out fluctuations in revenue collection and passes on the fluctuations to the budget beneficiaries.⁷¹¹ The HJC distributes funds to the courts when it receives them and is not allowed to maintain a reserve fund to even out fluctuation in the disbursement of its appropriation.

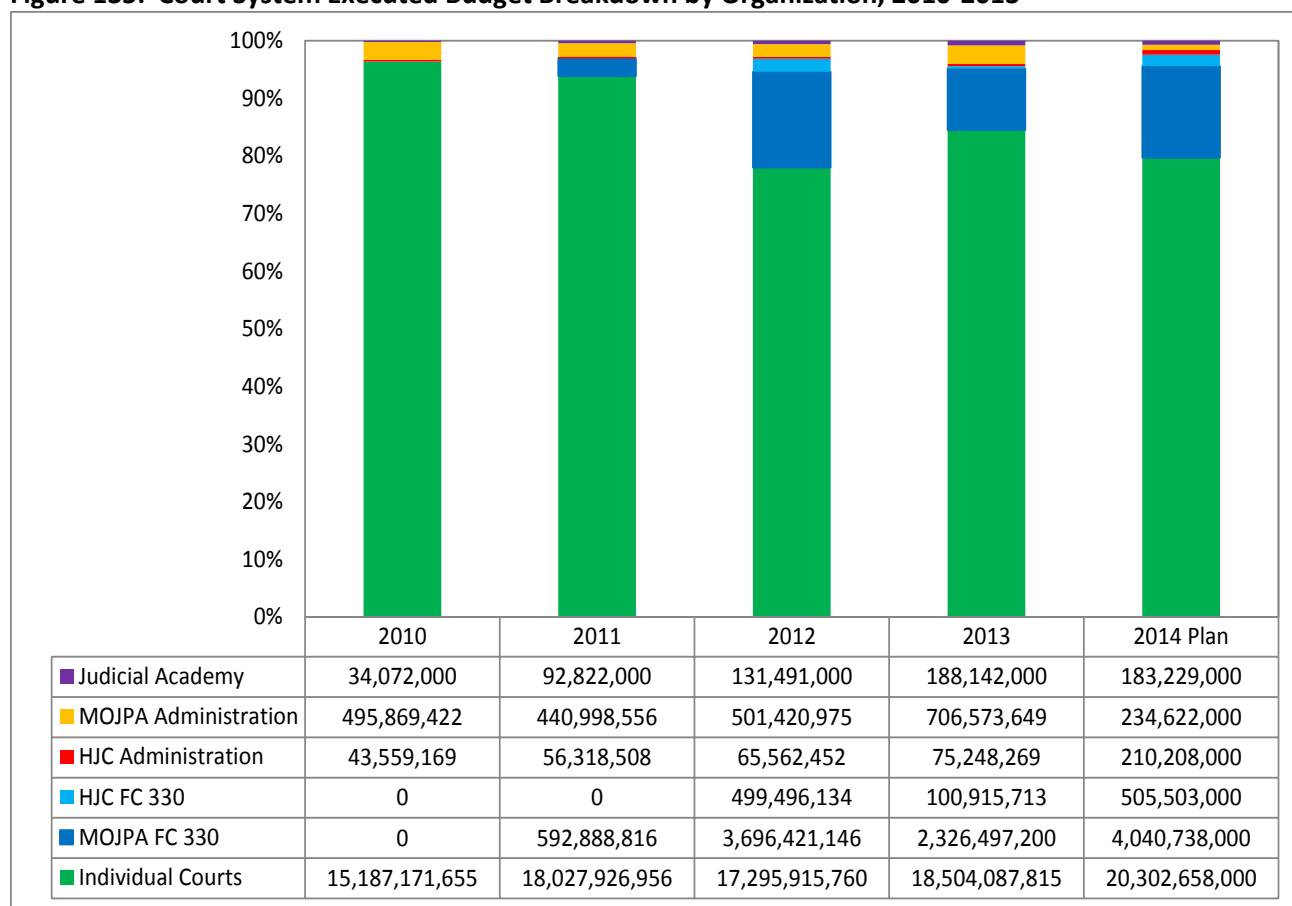
54. **The courts are driven by incentives to spend as much money as possible and then ask for more.** First, by saving resources, courts risk a reduction in their allocation for the following year. Second, as mentioned above, the financial management system does not provide any personal or institutional rewards for improving productivity or flexibility to move between categories. This 'use it or lose it' choice imposed on the courts in combination with an inflexible HR plans⁷¹² acts as a disincentive for any financial management initiatives aimed at improving efficiency in resource utilization, such as the automation of manual clerical functions.

ii. Allocation of Responsibilities for Budget Execution

55. **The breakdown of court expenditures by organization varies significantly from year to year (see Figure 18).** This is indicative of a system in transition that has not settled on any particular budget implementation model. However, from 2010-2013 individual courts have been consistently executing the greatest share, at around 80 percent of the court system's budget. The combined expenditures executed directly by the HJC and the MOJ for the benefit of the courts under FC-330 ranged from 3 percent in 2011 to 19 percent in 2012. The combined administrative expenditures of the MOJ and the HJC ranged from 2.6 percent of the total executed budget in 2012 to 3.57 percent in 2013, when the MOJ's administrative expenditures ranged from 2.26 percent of executed total budget in 2012 and 3.23 percent in 2013. The HJC's administrative expenditures increased from 0.28 percent in 2010 to 0.34 percent in 2013, which is to be expected given its expanding responsibilities.

⁷¹¹ The JPEIR highlighted this issue as a major external problems facing financial management in the judicial system, as well as in other sectors.

⁷¹² HR plan refers to the court employees and excludes contractors, including those whose services the courts are obligated to procure in compliance with procedural legislation (e.g. court-appointed defense attorneys and expert witnesses).

Figure 135: Court System Executed Budget Breakdown by Organization, 2010-2013⁷¹³

iii. Procurement

56. **The MOJ has established a unit of well-qualified procurement specialists, but the unit requires more staff to effectively oversee the procurement actions for which the MOJ is responsible.** With limited capacity, the MOJ tends to aggregate all components of civil works in one tender. Although it is cost-effective to allocate different types of tasks to specialized contractors, the MOJ does not have the capacity to manage multiple contracts and therefore, as a matter of practice, relies on a general contractor to manage the entire project. This frequently results in failed or stalled procurement processes, which reduces spending and makes the court system vulnerable to losses in supplementary budget processes. It is also highly risky to have so few procurement specialists in any system, as this creates an inherent vulnerability towards malfeasance such as collusion, corruption, or favoritism towards certain providers.

57. **The courts lack staff qualified in procurement and rely heavily on the limited capacity of the MOJ procurement team.** Courts report that they seek advice from the procurement specialists at the MOJ and that the quality of advice they receive is high, although the helpline is constantly busy. Courts complain that they lack understanding of the rules and how to follow them. In one court, staff commented to the Functional Review team that compliance with the procurement rules requires courts to buy the cheapest things of inadequate quality that do not fully respond to their needs. This clearly shows a lack of understanding of basic procurement rules. This lack of awareness could be resolved through training on public procurement, however it has been reported to the Functional Review Team that funds for such training are not available.

⁷¹³ See Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

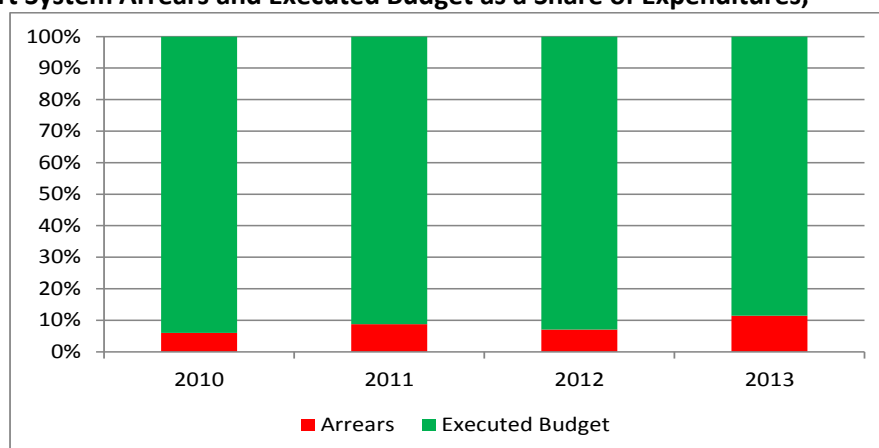
58. **Limited capacity in procurement has a range of impacts on service delivery.** Externally procured inputs such as legal services, communication, security, utilities, and building maintenance have a significant impact on court productivity. For instance, reliability of the Internet connection makes a great difference in productivity of staff responsible for electronic submission of reports.

e. Arrears

i. Scale of Arrears in the Judicial Sector

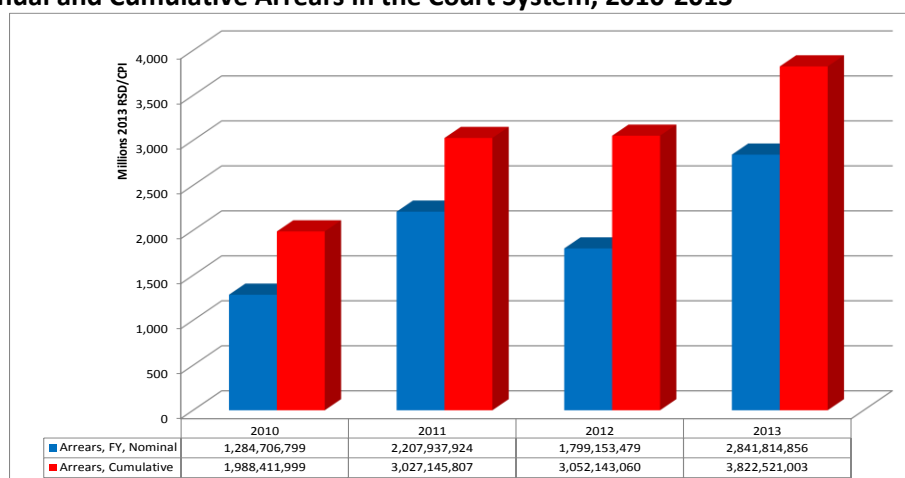
59. **The court system is generating massive annual arrears, which, in 2013 amounted to 11.49 percent of expenditures (see Figure 136).** Although the Budget System Law prohibits officials from incurring commitments in excess of available budget, arrears are present throughout the public sector. In the judicial sector, arrears render the courts impede service delivery and render them vulnerable to undue influence and a ‘crisis mode’ mentality that distracts from efforts to improve performance.

Figure 136: Court System Arrears and Executed Budget as a Share of Expenditures,²⁰¹³⁷¹⁴



60. **From 2010 to 2013, the court system’s cumulative arrears have nearly doubled, from 1.99 billion RSD in 2010 to 3.82 billion in 2013.** As Figure 137 shows, cumulative arrears are rising at an average rate of 24 percent per year. By the end of 2013, arrears were equivalent to the public prosecution’s entire annual budget.

Figure 137: Annual and Cumulative Arrears in the Court System, 2010-2013⁷¹⁵



⁷¹⁴ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁷¹⁵ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

ii. Factors Explaining Growing Arrears

61. **The court arrears have been accumulating in violation of the Budget System Law.** The law forbids budget beneficiaries from committing funds that exceed the available budget.⁷¹⁶ However, despite the massive scale of arrears documented in their financial reports, the courts have been allowed to continue accumulating arrears for years without facing enforcement action from the MOF. While nobody gives individual courts permission to run arrears, nobody stops them from doing it.

62. **The causes of the arrears can be found in poor planning at least as much as in the lack of control over spending.** Fiscal impact assessments have not been conducted on a series of recent reforms.⁷¹⁷ The regulatory framework for rules of procedure, the court network, business processes, staffing, information management, automation, use of externally provided services and the scope of courts' financial responsibilities has been evolving without any analysis of the costs and the level of efficiency that the courts would require to deliver services within the budget. As a result, reforms are enacted that impose additional obligations on courts and PPOs, and complying with those reforms results in increasing arrears. The issues undermining the courts' cost-effectiveness can be resolved, but they would require intensive coordination among the governance and management bodies, including the HJC, the MOJ and the SCC.

63. **The court system makes supplementary appropriation requests in order to avoid exceeding its budget, but the degree to which the requests are met depends on the budget situation.** According to the HJC, the MOF does not disallow commitments resulting in arrears. The MOF looks for opportunities to supplement the courts' budget to minimize accumulation of new arrears and periodically pays off old arrears. Such one-off payments have been in response to emergency situations, such as a threat in 2012 by lay judges to go on strike.

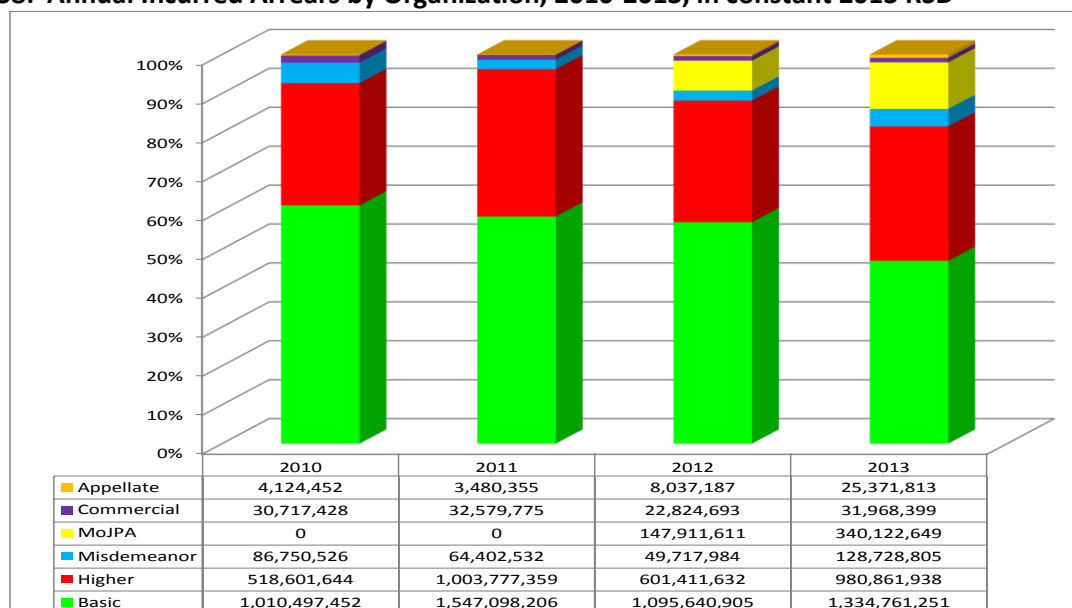
iii. Arrears by Court Type and by Creditor

64. **The courts of general jurisdiction accumulated most of the arrears.** In 2010, the Basic and Higher Courts were jointly responsible for 93 percent of the arrears incurred by the court system, but in 2013, their share fell to 81 percent. The MOJ is also running arrears that include outstanding obligations to ICT contractors as well as the courts' and the PPOs' arrears that the MOJ had undertaken to pay under agreements with the HJC and the SPC (See Figure 138).

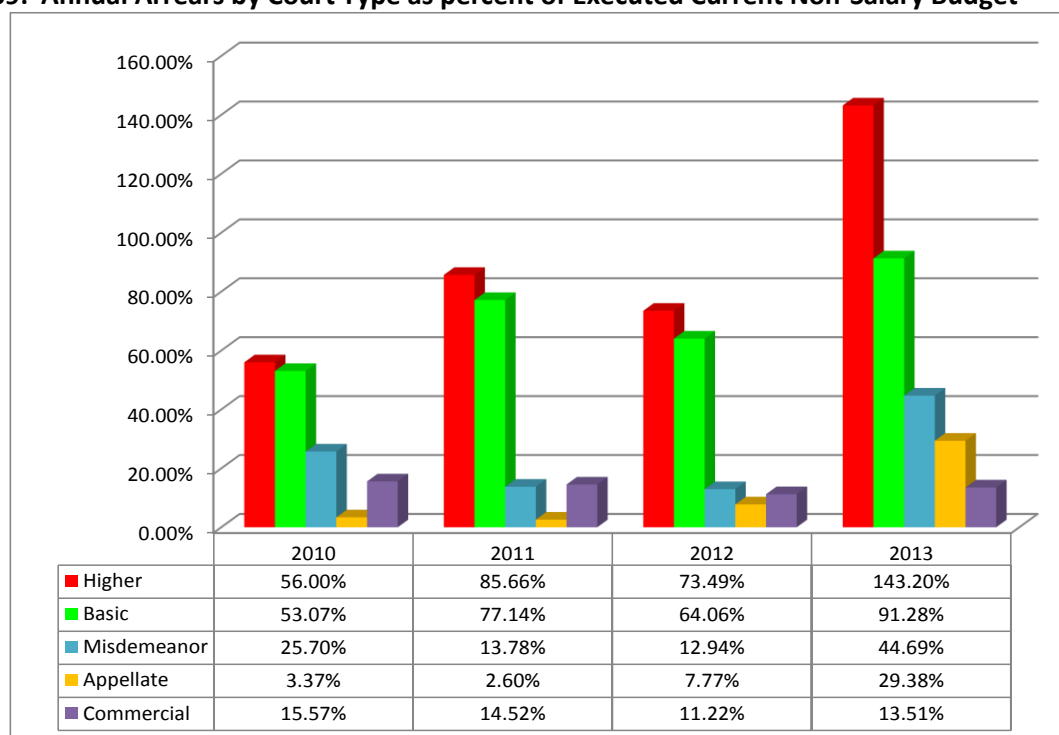
⁷¹⁶ According to Article 54 of the 2009 Budget System Law, *'Commitments created by direct, and/or indirect budget beneficiaries ... must conform to the appropriation approved for such purpose in the budget year.'*

<http://www1.worldbank.org/publicsector/pe/BudgetLaws/SerbiaBudgetSystemLawJuly162009EnglishFINAL.pdf>

⁷¹⁷ For discussion of fiscal impact analyses in the reform process, see the section on the Quality of the Law Making Process in the Quality Chapter.

Figure 138: Annual Incurred Arrears by Organization, 2010-2013, in constant 2013 RSD⁷¹⁸

65. Arrears incurred by some courts in 2013 exceeded their executed current non-salary budgets. In 2013, the Higher Courts incurred arrears equal to 143 percent of their current non-salary budget. For the Basic Courts, the ratio was 91 percent (see Figure 139).

Figure 139: Annual Arrears by Court Type as percent of Executed Current Non-Salary Budget⁷¹⁹

⁷¹⁸ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

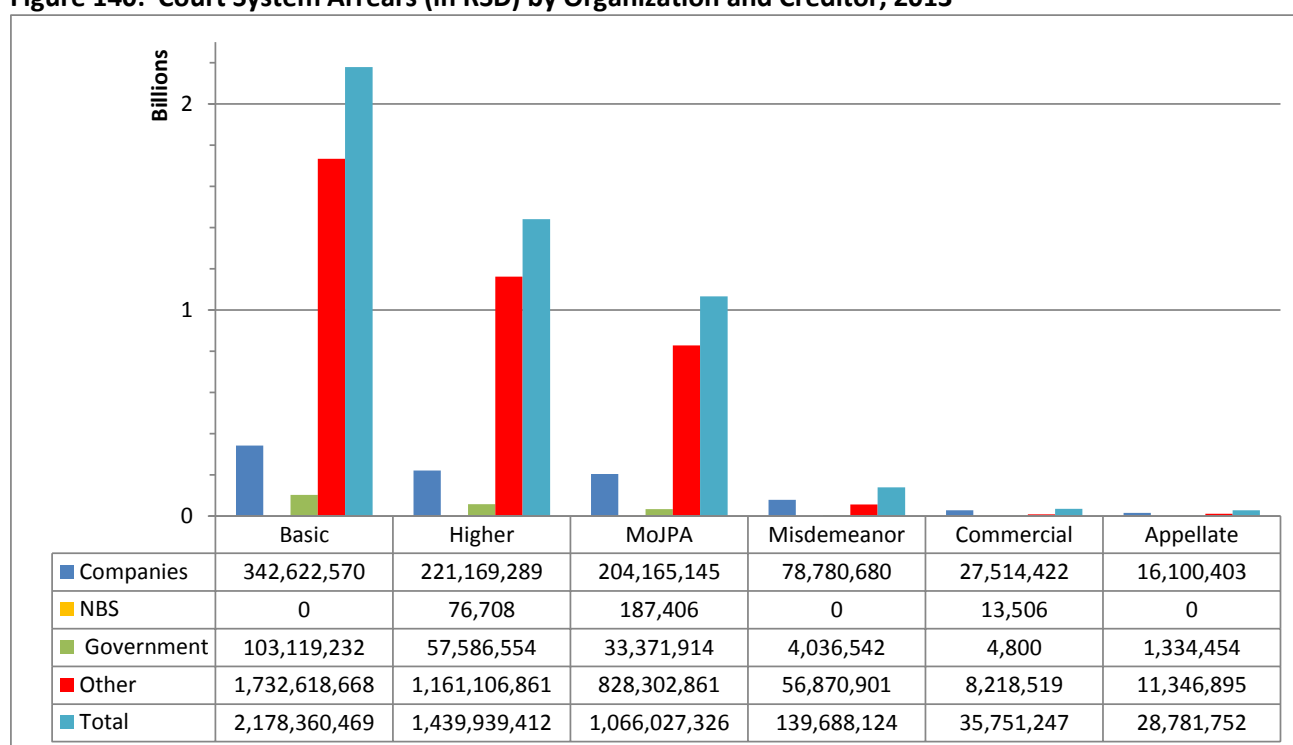
⁷¹⁹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

66. According to the Basic and the Higher Courts, the largest share of their arrears is related to the externally provided services that the courts are obligated to pay for by procedural law, mainly in criminal cases. These costs are presented in Figure 140 below in a bar labeled as 'Other.' Costs of externally provided services procured in compliance with procedural laws include the cost of ex-officio attorneys and expert witnesses, which the courts are obligated to engage in certain judicial proceedings. They also include costs for court interpreters, lay judges, and to the prisons for prisoners' transfer. For example, regulatory changes to autopsies have almost doubled the costs of conducting an autopsy, but the change has not been budgeted for, and so the costs and arrears for autopsies have increased significantly.

Box 26: Impact of the Costs of Criminal Procedure on Arrears

One Higher Court reported to the Functional Review Team that approximately 88 percent of its arrears accumulated since 2011 were related to the costs of externally provided services mandated by procedural law and only 10 percent to material costs.

Figure 140: Court System Arrears (in RSD) by Organization and Creditor, 2013⁷²⁰



67. The costs of externally provided services mandated by procedural law could be reduced significantly by changing the compensation system for court-appointed attorneys and expert witnesses. As discussed in the Access to Justice Chapter, attorneys are paid according to an Attorney Fee Schedule that is unrealistic. A 2013 World Bank study explored market-based alternatives to the current tariff-based compensation system for court-appointed attorneys.⁷²¹ According to the study, 'compared to hourly compensation, 50 percent tariff rates are still five times higher than hourly compensation.' The study also suggests providing considerations to alternative vehicles for delivering legal aid such as 'direct state provision of legal representation, reimbursement of costs of representation, support for access provided through NGOs, Law School clinics and/or pro bono provision by members of the Serbian Bar Association.' The costs of externally provided services mandated by procedural law (and arrears) could be reduced greatly by reducing the Attorney Fee Schedule, removing its floor or moving to a system of hourly compensation.

⁷²⁰ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

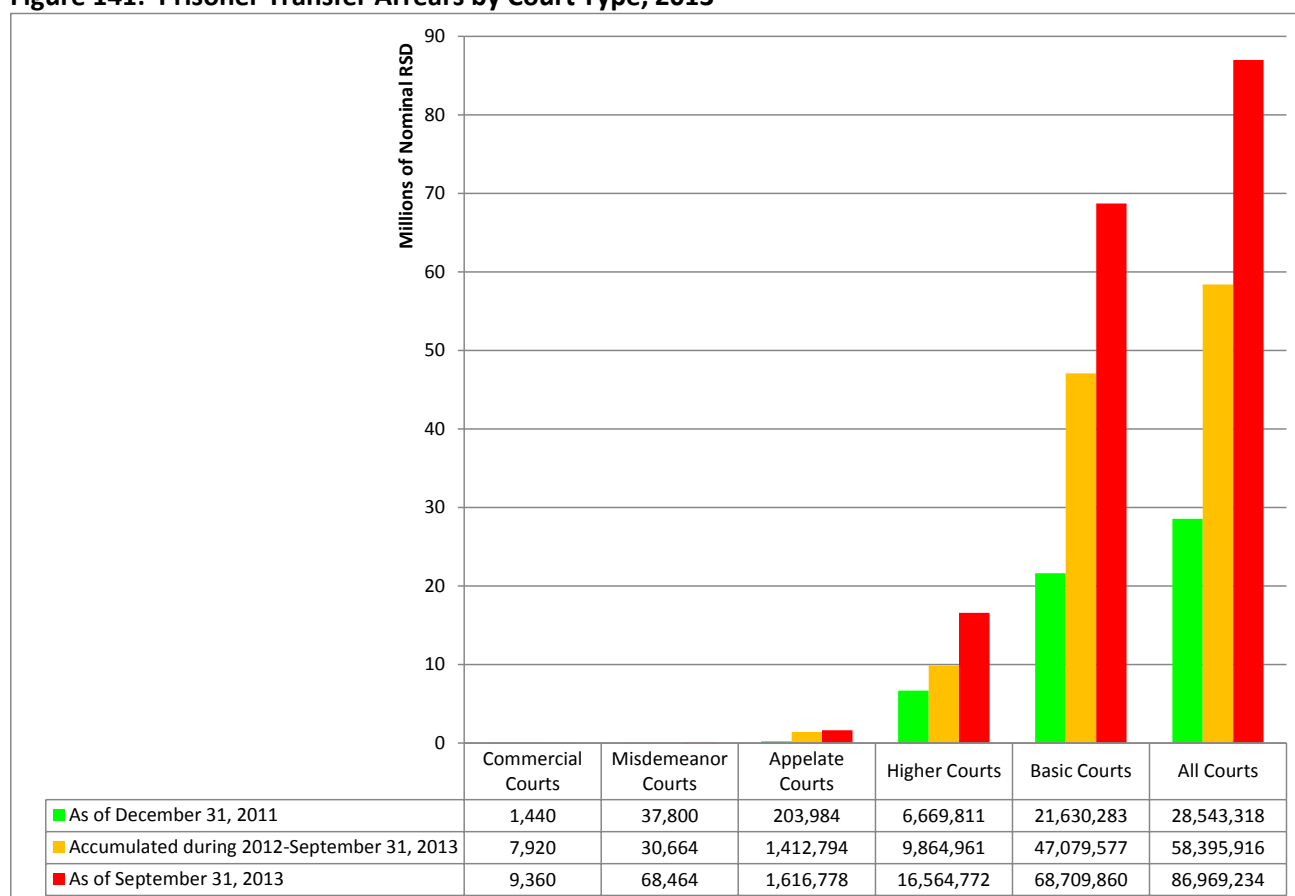
⁷²¹ See *Fiscal Impact Analysis of Legal Aid Options*, World Bank MDTF-JSS, 2013.

iv. Arrears Relating to Prisoner Transfer

68. To take one example, the courts accumulated large arrears related to prisoner transfer. This has a negative impact on the courts whose hearing schedule is disrupted and on the prison facilities as well. Due to frustration and their own funding constraints, several prisons now refuse to deliver prisoners to courts without upfront payment. Sremska Mitrovica is one large prison that now refuses to transfer prisoners without upfront payment, resulting in delays of criminal cases involving the large number of defendants from those facilities. Several other prisons are now following their lead.

69. From 2011 to 2013, the courts' arrears to the Prison Administration grew from 28.5 to 87 million RSD. The breakdown of arrears by court type is shown in Figure 141 below. The Basic Courts are the most indebted to the Prison Administration with 70 million RSD in arrears.

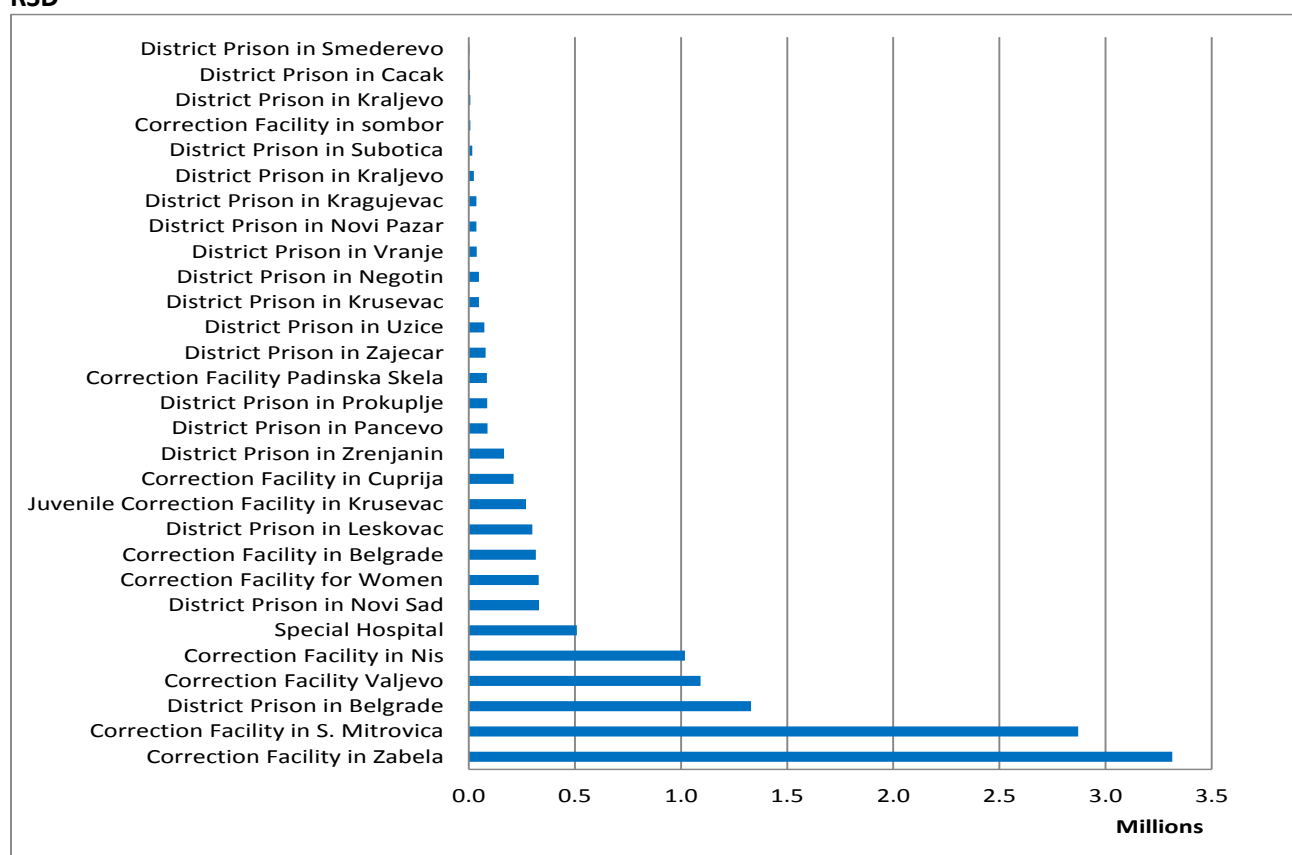
Figure 141: Prisoner Transfer Arrears by Court Type, 2013⁷²²



70. Among the Basic Courts, the First Basic Court in Belgrade has accumulated the largest arrears for prison transfers. By the end of 2013, the Basic Court in Belgrade owed 12.7 million RSD to the prisons, and its largest creditor was the Correction Facility in Zabela to which it owed 3.3 million RSD (see Figure 142 below).

⁷²² Source: Department for the Administration for Enforcement of Penal Sanctions, MOJ.

Figure 142: Prison Transfer Arrears by Creditor in First Basic Court Belgrade, end of 2013, in millions RSD⁷²³



71. **The PPOs may soon find themselves in a similar situation.** With the prosecutor-led investigations mandated by the new CPC, the PPOs will need to find a way to settle the costs associated with criminal investigation, including costs associated with witnesses, prison transfers, interviews and hearings. The Functional Review team found no evidence that such costs have been factored into the PPO's 2014 budget. Currently, the prison administration charges the costs for prisoner transfers to the courts, but there remains contestation as to who should pay for what.

72. **Better planning and coordination can help reduce the costs of prisoner transfer.** Judges and prison officials report that it is common for prisoners to be repeatedly transferred back and forth for different cases within the same court. Sometimes a prisoner is scheduled to appear for two hearings at different locations at the same time. With a better scheduling and coordination, unnecessary costs can be minimized, as demonstrated by some successful initiatives taken by courts in Belgrade.⁷²⁴

v. Debt Collection from the Courts by Creditors

73. **Lawyers and expert witnesses routinely pursue enforcement cases against the courts for failure to pay their invoices.** Some of those claims are pursued in the court where the invoice is owed, and sometimes they are pursued in the First Basic Court in Belgrade. When the creditor obtains judgments at the court in which the invoice is owed, the amount can be collected from the bank account of that court. This at least allows reconciliation of the collection with accounts payable in that court.

74. **Special problems arise when a collection judgment is issued by the First Basic Court of Belgrade.**

⁷²³ Source: Department for the Administration for Enforcement of Penal Sanctions, MOJ.

⁷²⁴ For further discussion of efficiency in prison transfers, see the Procedural Efficiency Section of the Efficiency Chapter.

This court has exclusive jurisdiction over collection from the accounts of central government agencies (i.e., the MOJ and the HJC). There are also precedents where the First Basic Court of Belgrade issues enforcement judgments against the general state budget execution account, even though stakeholders report that this is contrary to the law. When the amount is collected from an account that does not belong to the court that owes the money, the chances of reconciling the collection with accounts payable are low because there is no reliable mechanism to receive detailed information of execution orders.

75. **To further complicate the process, the First Basic Court fails to regularly inform the HJC or the relevant court regarding the collection judgments that it issues.** Sometimes, creditors trying to maximize their chances of collection will pursue the same claim against multiple judicial organizations. There are instances where lawyers have collected the same debts from the MOJ, the HJC and the court who owed the money, thus tripling their claim. The National Bank of Serbia has a highly effective Forced Collection Department that quickly executes collection. However, by law, it has an obligation to report on the executed collection only to the organization that has issued the collection order, which may not necessarily be the court that owed the money. As a result, courts which are the subject of enforcement judgments in arrears cases must go to great efforts to find out whether the payment has been executed and to whom they must reimburse.

76. **The prevalence of large arrears and corresponding enforcement judgments against courts create a massive amount of unnecessary work.** Creditors are required to pursue their claims in the court system, and the courts are required to process the cases and ironically defend them too. Staff in courts, the MOJ, the MOF and elsewhere must administer, reconcile and report on the judgments. The time of all parties involved could be better spent supporting more productive activities such as budget planning, expenditure control and reporting.

77. **Recent reforms related to the settlement of cash liabilities were intended to make it easier for private contractors to collect debts against the state through legal action.** However, no significant changes in the courts' financial behavior have been reported in connection with this law.⁷²⁵

**Box 27: Managing Expenditures Proactively:
An Example from Sombor**

A proactive approach to managing expenses can make a difference. The Sombor courts used to pay a local mechanic 8,500 RSD for testifying as an expert witness on the condition of vehicles involved in accidents. Upon taking over the criminal investigation function from the courts, the PPOs started bearing such costs. The Chief Prosecutor was puzzled by their magnitude and obtained comparative rates from the neighboring areas, and was able to renegotiate the mechanic's rate down by 60 percent. The PPO reduced the costs of procedure while the mechanic retained a high volume customer.

78. **Arrears are likely to be underreported.** Although the courts are supposed to register all their commitments, financial experts question the accuracy and completeness of the courts' commitment data. Many courts register their commitments in paper ledgers and do not update these regularly, and this leaves a significant room for errors. Courts have been also reported to delay registering their commitments.

vi. Potential for Emergence of Arrears in Public Prosecution

79. **Arrears are becoming a problem for the Prosecution service.** PPOs did not show any arrears in the 2012 and 2013 financial results. However, there are indications that the PPOs have started accumulating arrears after assuming responsibility for criminal investigations from the courts in late 2013 and through 2014.

⁷²⁵ The *Law on Deadlines for Settlement of Cash Liabilities from Commercial Transactions*, adopted on December 15, 2012, imposes a 45-day deadline for settling private sector invoices by public sector institutions. This strengthens the ability of a limited range of court contactors, mainly small vendors, to obtain judgments against the courts. This law, however, does not extend to lawyers, expert witnesses, lay judges and utility companies, which own the bulk of the courts' debt.

80. **As discussed above, there is a lack of clarity regarding the division of financial responsibilities between the PPOs and courts for the services related to the processing of criminal cases.** Such services include mandatory legal defense, expert witnesses, interpretation, prisoner transportation and detention. Although the data on PPO's expenditures on these services is not yet available, the amounts are significant in comparison with their budget. Many courts attribute their inability to operate within budget to this type of expenditures mandated by the CPC.

81. **While the issue remains unresolved, many the PPOs have not made any payments since October 2013 to the lawyers or expert witnesses that they engage in accordance to CPC.** This makes the financial situation of the public prosecution non-transparent and can result in a sudden explosion of arrears.

vii. Impact of Arrears on Service Delivery

82. **Arrears have a series of direct negative impacts on service delivery.** An increasing number of lawyers and expert witnesses refuse to work unless the courts pay them upfront, which can cause delays and adjournments in the scheduling of hearings. Other reportedly high-quality expert witnesses have been 'burnt' by the arrears process and refuse to work with certain courts at all, causing delays and reducing overall quality of those services. Stakeholders reported to the Functional Review team that delays frequently occur in pathology testing (and occasionally even autopsies) due to arrears. Prisoners' transfers often do not occur as scheduled, resulting in adjournment of hearings.

83. **Arrears undermine the courts' operational effectiveness by complicating their relations with service providers.** Courts owing providers money are in a poor position to negotiate for better quality or lower rates for services. Relationships with providers should be at arm's length and beyond reproach, but that is not always the case. This is reflected in situations where courts are overwhelmed in managing their cash accounting systems by constantly having to decide which service providers' bills to pay or not. Staff reported that exchange of favors, informal networks, and personality politics creep into what should be purely business decisions. Some stakeholders reported to the Functional Review team that the service providers exerting the greatest pressure on the courts, by complaining or via other means, are most likely to be paid.

84. **Courts in arrears operate in conditions similar to bankruptcy.** They have very little control over their resources and operate in a constant firefighting mode unable to take proactive actions. Firefighting and damage control, be it fielding calls from unhappy creditors or attempting to reconcile amounts collected by enforcement judgments, consume a large amount of staff time and energy which could be used to manage the core business of the courts. Although impact on morale is difficult to quantify, financial management staff report that arrears undermine their confidence in the ability to effectively serve the public.

f. Financial Management Staffing

85. **The professional competence of financial staff appears to be adequate.** The financial staff with whom the members of the Functional Review team held meetings displayed a high level of competence and dedication. However, their responsibilities are currently overwhelmingly focused on the challenges surrounding compliance and arrears. If the courts become more autonomous in managing their resources, financial staff would need to enhance their skills in the area of financial analysis and planning. Financial staff would need to learn how to play a more proactive role in managing the court performance and support Court Presidents and managers in making strategic decisions. In all the occasions where the Functional Review team asked the financial staff whether they monitored costs-per-case, the standard response was that they probably could do it but did not see a point in doing it.

86. **There is a severe shortage of financial staff in the courts.** As of early 2014, one Appellate, 21 Basic and eight Misdemeanor Courts did not have any financial staff at all.⁷²⁶ According to court financial officers, the financial staff's position is graded below their counterparts' in other agencies within the public sector. This may be one of the reasons for their shortage. This shortage (and the reasons for it) will need to be addressed to enable financial management to improve.

g. Financial Controls

87. **Financial controls, especially at the level of indirect budget beneficiaries, remain weak.** The most obvious manifestation of this weakness is the massive and growing arrears discussed above. While arrears demonstrate the failure to ensure compliance with the Budget System Law, they are also indicative of weak or non-existent controls over the efficiency of resource utilization. Indeed, it is difficult to identify a judicial organization or department that would be dedicated to ensuring that the courts organize their resources so as to deliver services at a minimum cost.

88. **There are concerns regarding the accounting of commitments, which the judicial system, as the rest of the public sector, carries out under the cash accounting method.** Although the courts have systems for recording commitments and submit regular commitment reports, financial managers in the courts and the HJC reported to the Functional Review team that the reported commitment data is probably not accurate and up-to-date. Many courts keep track of commitments, as well as other financial information, in paper ledgers and some courts have been reported to fail to register commitments on a timely basis.

89. **Individual courts and the PPOs operate outside of the Treasury single account.** Only direct budget beneficiaries execute their budgets through the Treasury single account (TSA). The Treasury ensures that transfers to the direct budget beneficiaries are within authorized appropriations and the limits set by the disbursement schedule, but the Treasury it is not involved in the substantive verification of any payments.

90. **The HJC has yet to establish an internal audit function.** Although courts are occasionally audited externally, only the MOJ currently has an internal audit department. Based on the division of responsibilities between the MOJ and the HJC, the MOJ does not audit the part of the court system's budget managed by the HJC. The quality of internal audit carried out by the Internal Audit Department of the MOJ is high. However, due to the small number of staff in that Department, they had the capacity to conduct an audit in only one court in 2013.

91. **There many are courts that have only one financial staff member.** This creates fiduciary risks due to the lack of separation of duties.

92. **The judicial system generates financial data that is sufficient for compliance but insufficient from the perspective of performance management.** The judicial system follows a general public sector accounting classification that is not tailored to the specifics of the courts' and the PPO's operations. For instance, financial compensation that the courts pay to the acquitted is categorized as 'other contracted services.' Accounting categories are not tailored to the judicial business processes, and the courts do not generate management accounting reports. The court system's technology is unable to link cases to expenditures incurred in their processing. As a result, essential performance indicators, such as cost per

⁷²⁶ The following courts did not have any financial staff at the beginning of 2014: Appellate Court Kragujevac, Basic Court Aleksinac, Basic Court Backa Palanka, Basic Court Becej, Basic Court Brus, Basic Court Bujanovac, Basic Court Veliko Gradiste, Basic Court Gornji Milanovac, Basic Court Dimitrovgrad, Basic Court Ivanjica, Basic Court Kikinda, Basic Court Kursumlija, Basic Court Lebane, Basic Court Majdanpek, Basic Court Mionica, Basic Court Petrovac na Mlavi, Basic Court Priboj, Basic Court Raska, Basic Court Senta, Basic Court Surdulica, Basic Court Ub, Basic Court Sid, Misdemeanor Courts Valjevo, Misdemeanor Courts Vranje, Misdemeanor Courts Vrsac, Misdemeanor Courts Zajecar, Misdemeanor Courts Zrenjanin, Misdemeanor Courts S. Mitrovica, Misdemeanor Courts Subotica, Misdemeanor Courts Trstenik.

case, are not monitored.

h. Financial Reporting

93. **The courts' financial reporting is oriented towards demonstrating budget compliance but provides little value to performance management and planning.** The judicial system is managed without a comprehensive understanding of the costs of service delivery and their relationship to outputs. Although the scope of primary financial data collected by the courts is comprehensive, much of this data is never digitized, shared or analyzed. The accounting system is ineffective in recording financial commitments, while the accounting categories are not aligned with judicial processes.

94. **Courts, PPOs, HJC, SPC and MOJ produce a range of reports that are not analyzed properly.** The reporting lines are not clearly defined and often same data is collected by a number of different institutions. In many cases data collection is not automatic and requires manual input. This puts even more pressure on the financial staff in the judiciary. The Treasury and MOF do not provide feedback on the reports submitted by judicial institutions.

95. **Financial reporting relies on a series of stand-alone computer applications, which require a large amount of staff time and manual effort to process.**⁷²⁷ These applications are not able to import or export data and often require a manual entry of the same data even at the same location. Reports are thus prone to errors and not always up to date.

96. **The electronic information of the judicial system is organized in such a way that it keeps financial and non-financial data segregated.** There is no interoperability between the accounting system and the various case management systems that would allow keeping track of the costs incurred in the processing of individual cases, even though each case is assigned a unique identifier in each case management system.

97. **The courts are required to provide a breakdown of expenditures by funding source.** Therefore, the flexibility that comes with the use of that part of the court budget funded out of court fees comes at the cost of labor-intensive reporting obligations.

98. **Fragmentation that undermines the effectiveness of managing financial information is characteristic of the entire judicial ICT infrastructure.** Similarly to other attempts to computerize the management of information, the automation of financial information has not been evolving in accordance with any coherent vision of the ICT architecture and does not adhere to a common data model⁷²⁸ or data dictionary.⁷²⁹ Fragmentation of data management and storage denies the opportunity for all authorized users to access the data they need in a format that suits the purpose of their query. As discussed in the ICT Management Chapter, the judicial information management system does not follow the international standards.⁷³⁰

⁷²⁷ There are several applications used by judicial institutions for financial reporting: BPMIS (for budget formulation), FMIS (for budget execution), FINPLAN (for reporting on disbursement plans), RINO (report on arrears), ZUP (payroll). None of these applications are electronically linked or in any way inter-operable.

⁷²⁸ A data model specifies what information is to be contained in a database, how the information will be used, and how the items in the database will be related to each other. (Source: <http://dictionary.reference.com/browse/data+model>).

⁷²⁹ A data dictionary is a collection of descriptions of the data objects or items in a data model. (Source: <http://searchsoa.techtarget.com/definition/data-dictionary>).

⁷³⁰ Such as ISO 15704 (Standard for Enterprise Architecture), ISO/IEC TR 10032:2003 (Framework for Coordination of the Development of Standards for Data Management in Information Systems), ISO/IEC 11179 (Standard for Representing an Organizations Data in a Metadata Registry), and ISO 8000 (Standard for Data quality and Master Data).

3. Human Resource Management

Chapter Summary

1. **A strategic approach to human resources (HR) management is not evident in the Serbian judiciary.** To enable the judiciary to transform in line with EU practice, the Serbian judiciary requires a renewed focus on performance, productivity and investment in human potential.
2. **Serbia has one of the highest ratios of judges-to-population and a very high ratio of staff-to-judges across Europe.** A lack of planning and constraints in resource deployment explain in part the suboptimal system performance. Key problems with human resources management are as follows:
 - f. Judges, prosecutors and staff are added to prior staffing levels in an ad hoc manner, rather than based on objective demand or caseloads;⁷³¹
 - g. Staffing complements are set without reference to an overall resource rationalization plan;
 - h. There is in effect no national judiciary or prosecution service. Appointments and hiring are localized, resulting in groups of human resources in each court or PPO. Once appointed, judges, prosecutors, and civil service staff cannot be moved without their consent from low to high demand courts, or to other entities that have absorbed functions formerly performed in the courts. Few mechanisms exist to incentivize that consent.
 - i. In addition to the large existing staff, large numbers of temporary staff and volunteers create a 'shadow workforce'. Selection is reportedly based on patronage, and their performance goes largely unmonitored. Their net contribution is likely to be marginal, and their presence often distracts more experienced staff from core functions, and turnover is high, resulting in a loss of corporate memory. In all, the shadow workforce destabilizes court operations, impedes integrated resource planning, and inhibits longer term efficiency.
 - j. There is insufficient funding to support other expenditures (such as infrastructure or ICT), which would better support people to perform at a higher standard. Unnecessary rigidities in resource allocation within the sector prevent managers from making positive trade-offs between personnel and other expenditures (such as applying savings from personnel vacancies to cover training or operating costs).
3. **Setting the appropriate number and properly allocating judges, prosecutors, and staff between courts and PPOs in line with caseload will improve the efficiency of the judiciary and provide more equitable public access.** The demand/supply balance already suggests overstaffing, and no judicial appointments should be made nor should vacancies be filled until the number of judges falls by attrition. Furthermore, a freeze should be put in place in most areas of staffing and a staff reduction plan be developed, focusing on low-skilled ancillary staff and registry staff that previously performed verification services. The 'shadow workforce' of temporary staff and volunteers should be reduced. The human resources already in the system need to be used more effectively, and investments should be made in their training. Meanwhile, the Serbian judiciary requires new mechanisms for determining the appropriate level of court staffing, taking into consideration workloads, performance, and the goals of transformation. Consolidating the responsibility for the number and deployment of judges, prosecutors, and non-judge/prosecutor staff should greatly enhance resource planning. The Councils should immediately build their capacities to carry out this critical task.

⁷³¹ Judicial appointments should generally be considered very cautiously, recognizing that judges and prosecutors are permanent investments. Once appointed, they are difficult to remove or transfer and generate high unit costs to the system in terms of salaries, allowances, accompanying staff etc.

4. **The allocation of funding between positions, personnel needs, and other inputs (e.g., technology) needs a significant shift within the overall budget envelope.** The system needs fewer low-level ancillary staff and should abolish lay judges who drain resources and do not contribute to service delivery. In its place, the system should invest in and foster specialized and analytic roles, such as judicial and prosecutorial assistants, advisors, court managers, court secretaries, planners, IT administrators, and statisticians. Investments in ICT, infrastructure and process re-engineering are needed to enable better skilled people to work to higher standards.
5. **In particular, judicial and prosecutorial assistants make an important contribution to sector performance, and they deserve special attention in HR reforms.** Currently, they do not receive any formal training, and there are few mechanisms in place for their objective evaluation or promotion. Yet they provide critical support to judges and the court administration in processing cases. Many assistants aspire to work in their role only temporarily as a ‘stepping stone’ to becoming judges or prosecutors. This aspiration is unrealistic (and perhaps always was) in a system that already has an excess supply of judges, falling caseloads and shrinking mandates. Yet their skills and corporate memory are valuable to the sector. The judicial system should create an attractive and viable career path for high-performing assistants to advance to key managerial (non-judge) positions in the courts⁷³² in a new system that values mid-level management. It should also provide training and re-skilling to enable these judicial assistants to align their aspirations with that of a modern judiciary.
6. **Progress is underway in developing a system for the evaluation and discipline of judges.** Rules for the evaluation of judges and prosecutors were adopted in 2014 after much delay. Although these rules are arguably too lenient and vague, they provide a frame for measuring performance and could be strengthened over time. Further work is also needed to link evaluation to promotion and career progression. Incentives should be built into both systems to encourage judges and prosecutors to develop their skills through continuing training and to demonstrate a track record of performance. An education program with judges and prosecutors may be useful to encourage this kind of cultural change.
7. **There is an acute need for training and capacity building across the Serbian judiciary.** The Judicial Academy has in the past been overly focused on the initial training of new judges, despite the system already having too many judges, falling caseloads and shrinking mandates. Looking forward, the Academy should focus more on continuing training and lead a large-scale capacity building initiative for judges, prosecutors, assistants and court staff alike. Training could cover all aspects relevant to the transformation to a modern European judiciary, based on a comprehensive training needs assessment.
8. **Overall, the judiciary needs clearer assignment of responsibility for human resources policy making, more sophisticated management, and better-defined systems for human resources than are currently in place.** It is incumbent on the HJC and SPC to take the lead on most of these matters.

a. Introduction

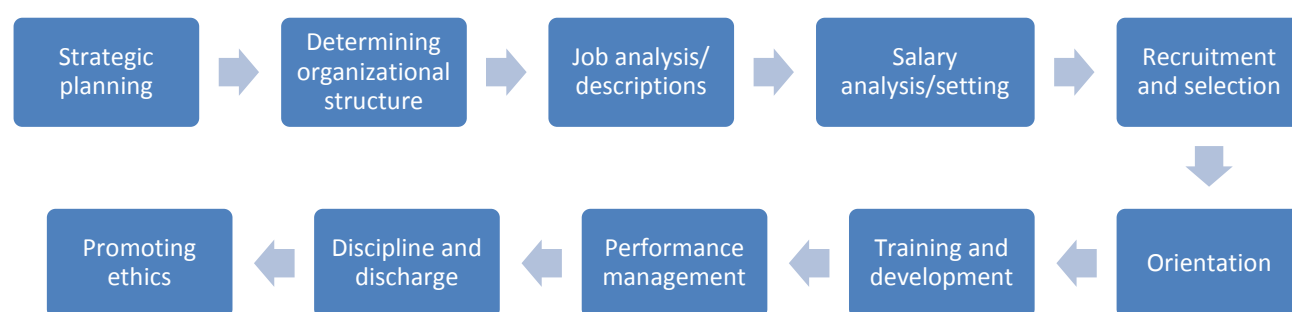
9. **Serbia’s courts and PPOs are labor-intensive public service organizations operating in a resource-constrained environment.** The judiciary employs nearly 18,000 individuals across 200 institutions including courts, PPOs, the Supreme Court, the Public Prosecutor, the MOJ, and in two groups of employees directly appointed by courts or PPOs: civil servants (from executive management to clerical staff) and public employees (for example, janitors and drivers). Effective use of these numerous and varied human resources would allow the judiciary to perform efficiently, better use its non-labor resources such as technological and capital assets, and enhance accessibility, efficiency and quality of judicial service delivery.

⁷³² This could include as senior advisers, analysts, court administration professionals, court managers, chiefs of cabinets etc.

10. **Resource constraints require that funding for human resources be based on confirmed workload considerations, that the most appropriate individual be assigned to most improve service delivery, and that processes be examined to ensure they are as efficient as possible.** Serbia's judicial sector needs a strategic approach to human resources management that links it to the judicial branch's organizational strategy, focuses it on providing services to court users in an efficient manner, and recognizes that employees are a key asset of the courts.

11. **Human resources management is composed of several interrelated functions, illustrated at Figure 143 and described in Box 28 below.**

Figure 143: Framework for Analysis of Human Resource Management⁷³³



Box 28: Strategic HR Management in Courts

In line with this framework, efficient and effective HR management in the judiciary requires:

- a. *a strategic vision and an organizational structure that reflects needs and anticipates emerging ones while eliminating unnecessary bureaucracy;*
- b. *job analyses incorporating essential duties, core competencies (knowledge, skills, and abilities), and rankings reflecting differences between classifications in position descriptions;*
- c. *salaries set to attract, retain and motivate employees, while ensuring internal equity and budgetary soundness;*
- d. *recruitment of high-quality applicants, selection using job-relevant, efficient and transparent tools;*
- e. *employee orientation and training programs to improve justice system performance;*
- f. *strong performance management, including setting individual performance expectations tied to institutional goals, objectives and appraising performance;*
- g. *fair and consistent discipline, transfer, demotion, and termination of employees with inferior performance to ensure optimal organizational service delivery; and*
- h. *promotion of ethical behavior on the part of judges, prosecutors, and staff to enhance public trust and confidence in the judicial sector.*

12. **The NJRS's goals can only be accomplished with better human resources management.** The strategy sets the context for human resources management by:

- a. **emphasizing efficiency, accountability and transparency;**
- b. **prioritizing clear productivity and performance standards, effective use of judicial and prosecutorial resources, and a strong system for education and training; and**
- c. **empowering the HCJ and SPC to improve the effectiveness and performance of the judiciary jointly with Court Presidents and MOJ.**

⁷³³ See National Center for State Courts, Core Competencies, Human Resource Management Resource Guide: <http://www.ncsc.org/topics/human-resource-management/human-resource-management/resource-guide.aspx>.

13. **The UNs and CoE standards⁷³⁴ directly address human resources issues for judges and Deputy Prosecutors, and their importance to the independence and service delivery of the judicial system.** These standards require transparent and effective appointment, promotion, evaluation, discipline and discharge of judges and prosecutors, and stress the necessity of initial and in-service training.

14. **For civil servants, European good practices focus almost entirely on performance management, including creating pay differentials that provide an incentive for high-quality performance.⁷³⁵** Consistency, fairness, and transparency are the underpinnings of these standards. Although not explicitly addressed by European standards, performance management depends on other elements of the human resources cycle above (e.g., hiring the right individuals impacts their performance).

15. **Human resources management in the judiciary is affected by what happens at the central government level.** Human resources policies are set centrally for civil servants even though individuals are employed by individual ministries rather than deployed by the state. Statewide civil service reforms are underway, which aim to strengthen human resources management, including hiring, promotion, evaluation, and performance management. If effective, those reforms could have positive spillover effects to the Serbian judiciary in the longer-term. In the meantime, the judiciary should not wait. Much can be done within the judiciary to pursue HR reforms that better enable its people to perform. Tying human resource management to system performance could yield short and medium term dividends, while the state sector reform is designed.

16. **The current highly decentralized and haphazard human resources system hinders the judiciary's ability to improve service delivery and transformation.** As in the rest of the public sector, individual courts and PPOs directly employ civil servants. However, what is missing from the judiciary is a body that drives human resource policy making. The supervisory bodies (HJC, SPC, SCC and MOJPA) should determine the key areas where human resource management can drive performance, and each should contribute their part to supervising the elevation human resource capacity.

b. Staffing Levels and Methodology

i. Numbers of Judges and Prosecutors

17. **Serbia lacks a methodology for determining the number of needed judges and prosecutors.** Before 2009, numbers were determined by additions to a baseline number established in the early 1990's without a written methodology. Since 2009, the HJC and SPC's continued this ad hoc approach, without written criteria for how many judges are needed overall or any transparent or rigorous attempt to examine whether the initial numbers reflected caseloads, organizational or procedural changes or ongoing needs of a modern judiciary.⁷³⁶ Successive amendments to the court network have resulted in further additions, as most judges were unwilling to move locations.⁷³⁷

⁷³⁴ See *UN Standards: Basic Principles on the Independence of the Judiciary* (General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985); and *Guidelines on the Role of Prosecutors* (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990). See also *Council of Europe standards: Recommendation of Committee of Ministers* (94) 12 on independence, efficiency, and role of judges (from 1994) and Recommendation (2000) 19 on the role of public prosecution in criminal justice system; Consultative Council of European Judges (CCJE – established by Council of Europe) adopted *European Charter on the Statute for Judges* (1998); Consultative Council of European Prosecutors (CCPE – established by the Council of Europe) adopted *European Guidelines on ethics and conduct for public prosecutors: 'The Budapest Guidelines'* (2005). However, they do not address human resources management related to civil servants.

⁷³⁵ See Department for International Development. 2004. *Serbian Civil Service: Assessment of Pay and Benefits System*, Department for International Development (June).

⁷³⁶ The HJC is required systematically to determine the requisite number of judges every five years.

⁷³⁷ It is estimated that only 15 out of around 3,000 judges voluntarily changed court seats.

18. **Once positions are created, there is a tendency to fill vacancies because they exist, not because there is an objective need to fill them.** For example, in addition to the return-to-work of hundreds of judges after a failed re-appointment process, a further 160 judges were appointed in March 2013. The additional 160 were requested by the judiciary and approved by the MOF, notwithstanding the falling numbers of incoming cases across all courts and the transfer of criminal investigation and other functions from courts.⁷³⁸ In other instances, vacancies remain on the books for a long time without justification, and these should be removed from the systematization.

19. **In all, Serbia has adopted a liberal approach to judicial appointments to date.** Yet appointments of judges should always be considered cautiously, recognizing that judges and prosecutors are permanent and significant investments. Once appointed, they are difficult to remove or transfer and generate high unit costs to the system in terms of salaries, allowances, accompanying staff etc.

Table 21: Number of Judges by Court Type, 2013⁷³⁹

Court Type	Judges	
	HR Plan	Filled Positions
Basic Courts	1,430	1,423
Higher Courts	377	366
Appellate Courts	237	213
Administrative Court	38	30
Commercial Courts	172	157
Appellate Commercial Court	33	30
Misdemeanor Courts	548	531
Appellate Misdemeanor Court	65	61
Supreme Court of Cassation	35	33
TOTAL	2,935	2,844

20. **Serbia has approximately twice the average of filled judge positions per capita compared with other jurisdictions in Europe.** The number of judges by court type in Serbia is shown in Table 21 above, and comparative figures for 2012 are shown in Figure 144 below.

Serbia has approximately twice the average of filled judge positions per capita compared with other jurisdictions in Europe.

21. **Among CEPEJ countries, Croatia and the two smaller countries of Luxembourg and Slovenia had more judges per capita in 2012.**⁷⁴⁰ However with Serbia's additional 160 judicial appointments in March 2013, these rankings may have changed, and Serbia may now have the third highest number of judges in among CEPEJ countries. The CEPEJ notes that states with over 30 judges per 100,000 inhabitants can be found essentially among the states coming from the Former Yugoslavia, including Croatia, Macedonia, Montenegro and Slovenia.⁷⁴¹

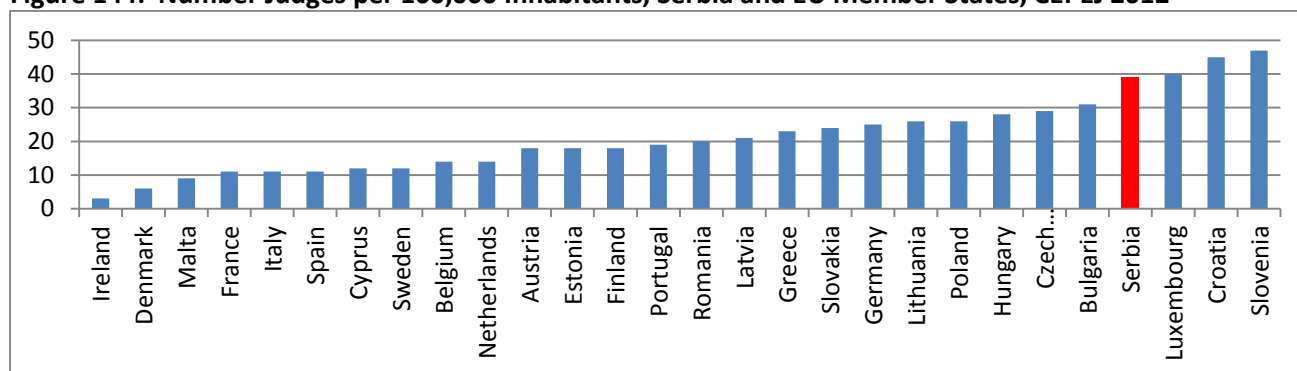
22. **Now with a stabilized network and a larger-than-necessary pool of judges, no new judicial appointments should be made.** The HJC should fulfill its obligation to systematically determine the number of needed judges. Until those methodologies are developed and formalized, there is no reasonable or transparent basis to justify adding more people to the system.

⁷³⁸ For further discussion of falling incoming cases and declining mandates, see the Efficiency Chapter.

⁷³⁹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁷⁴⁰ Very small countries, such as Slovenia, Luxembourg and Montenegro, can be expected to have higher per capita rates due to diseconomies of scale.

⁷⁴¹ See *CEPEJ Evaluation Report*, 2014 (based on 2012 data).

Figure 144: Number Judges per 100,000 Inhabitants, Serbia and EU Member States, CEPEJ 2012⁷⁴²

23. According to the 2012 CEPEJ data, Serbia has 8.4 prosecutors per 100,000 inhabitants.⁷⁴³ This ratio is relatively low for the Central and Eastern Europe region where ratios range from 14.8 to 25.7 prosecutors per 100,000 inhabitants in Poland, Hungary, Slovakia, Montenegro, Bulgaria and Lithuania. But Serbia's ratio is high compared to Western Europe. In Western Europe however, prosecutors are more likely to be supported by larger numbers of mid-level specialist staff.

24. As of December 2013, Serbia counted 54 Prosecutors and 651 Deputy Prosecutors organized across six prosecution levels (see Table 22 below). No new prosecutors were appointed in March 2013 when judges were appointed, notwithstanding that the CPC implementation and court re-networking would likely affect them more.

Table 22: Number of Prosecutors and Deputy Prosecutors in Serbia, 2013⁷⁴⁴

	Prosecutor		Deputy Prosecutors		Totals	
Type of Prosecutors' Office	HR Plan	Number of Prosecutors	HR Plan	Number of Deputy Prosecutors	HR Plan	Total Number
RPPO	1	1	15	11	16	12
Appellate Prosecutors	4	0	72	63	76	63
Higher Prosecutors	26	21	171	155	197	176
Basic Prosecutors	34	30	428	407	462	437
Special Prosecutor for Organized Crime	1	1	25	9	26	10
Special Prosecutor for War Crimes	1	1	8	6	9	7
	67	54	719	651	786	705

⁷⁴² Data from EU Member states is from the CEPEJ EU Justice Scoreboard 2014 based on 2012 data. For Serbian data, Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>). This figure does not include lay judges.

⁷⁴³ Judicial Systems of the European Union Countries – Analysis of data by the European Commission for the Efficiency of Justice (CEPEJ) Council of Europe, June 2013, available at <http://www.canestrinilex.com/assets/Uploads/en/CEPEJ-report-2013.pdf>.

⁷⁴⁴ SPC data; Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

25. **Despite significant changes in the criminal procedure, the work planning for criminal law judges has not been systematically adjusted.** No Investigative Judges agreed to become Prosecutors.⁷⁴⁵ In most instances, former Investigative Judges have a much-reduced caseload, dealing only with ongoing investigations and pre-trial criminal matters.⁷⁴⁶ Their workloads will likely reduce further, and by 2015 their caseloads will be negligible compared with their colleagues.⁷⁴⁷ A system-wide approach to re-training and re-allocating former Investigative Judges and judicial assistants has not been designed. Instead, individual Court Presidents are determining these resources on an-ad hoc basis.

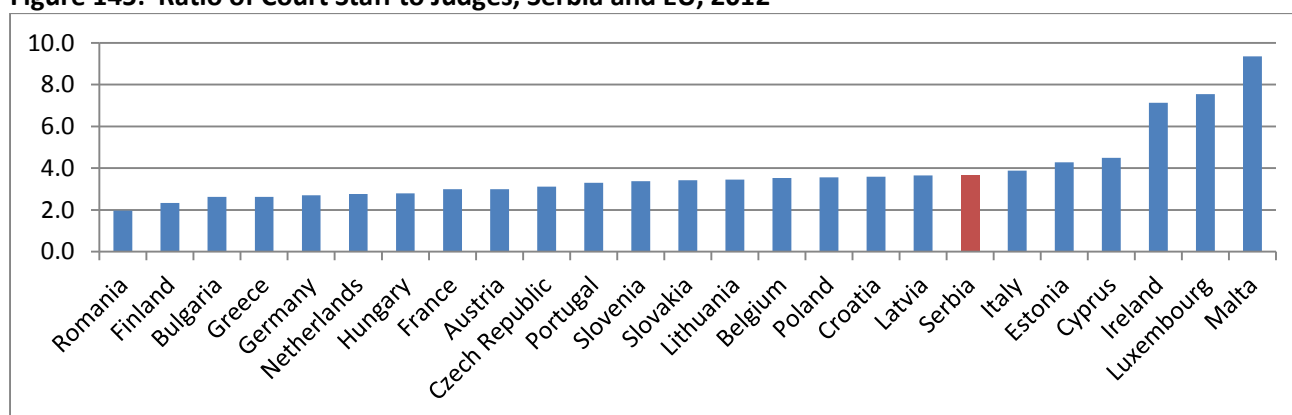
By 2015, the workloads of former Investigative Judges will be negligible compared with their colleague judges.

26. **Meanwhile, the number of prosecutors remained stable from 2010 to 2013, notwithstanding their growing responsibilities.** The SPC conducted a preliminary analysis of resources needed for successful implementation of the new CPC. However, the basis for this analysis was to transfer the already-allocated financial resources from courts to prosecutors, and did not consider the full workload, future organization, and outlook of PPOs. In May 2014, 45 additional Deputy Prosecutors were eventually appointed, but that figure was not determined based on objective need given the lack of data among PPOs about their caseloads and the absence of criteria for evaluation of the work of prosecutors. Since the new CPC has been in effect only since October 2013, there are no sufficient data to evaluate its results.

ii. Numbers of Court Staff

27. **In 2012, Serbia had an average of four non-judicial employees per judge.** This is it at the upper end of staff-to-judge ratios seen in the EU and is higher than 19 of the 25 EU Member States that submitted data on this issue to the CEPEJ for 2012 (see Figure 145).

Figure 145: Ratio of Court Staff to Judges, Serbia and EU, 2012⁷⁴⁸



⁷⁴⁵ This was foreseen and is common among judiciaries. Reasons include the relatively higher prestige, independence, and autonomy of judges, the requirement that transferred judges would be placed on three-year probation status, and lower non-salary compensation for prosecutors.

⁷⁴⁶ Some judges formerly assigned to investigations continue to conduct them because only cases that had not already entered the investigation phase as of October 1st, 2013 were transferred to prosecutors' offices.

⁷⁴⁷ Given that 90 percent of criminal investigations resolve within one year, the workload of these remaining from investigative judges will likely be limited to only pre-trial criminal hearings by 2015.

⁷⁴⁸ Data from EU Member states is from the CEPEJ EU Justice Scoreboard 2014 based on 2012 data. (Denmark, Spain, and Sweden not included, as data were unavailable. For Serbian data, Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

28. **Staffing patterns are not analyzed to match the number of judges or caseloads, and staffing is not adjusted when circumstances such as caseloads or technologies change.** While staffing norms exist in theory to set personnel allocations, they are not implemented or enforced in practice. The norms may themselves be too simplistic a way of determining staffing levels given the complexity of justice institutions and the absence of a case weighting methodology, and it may be reasonable for systematizations to vary from these prescribed norms. However, such variations in the systematizations and the subsequent personnel budget should in future be justified and documented by courts based on objective need. Ratios have thus evolved on an ad-hoc basis, as individual Court Presidents have made and were granted requests by the MOJ and MOF for new positions above of the norms.⁷⁴⁹

29. **The total budgeted judge-to-staff ratios vary widely within courts of the same level.**⁷⁵⁰ For example, the number of budgeted non-judge positions in the Basic Courts ranged between 3.4 and 5.6 employees per judge in 2013 (see Table 23 below). The range of positions per judge was more dramatic in the Misdemeanor Courts, spanning from 2.9 to 8.5 employees per judge. There are significant ranges of staff ratios in the Higher and Commercial Courts as well.⁷⁵¹

While, staffing norms exist in theory to set personnel allocations, they are not implemented or enforced in practice.

⁷⁴⁹ For example, the addition of 160 judges in March 2013 and the changes in the 2014 court network reforms did not produce corresponding changes in staffing. The ratios of staff-to-judges are now even more distorted, further demonstrating that the numbers of personnel are not determined based on needs or data analysis.

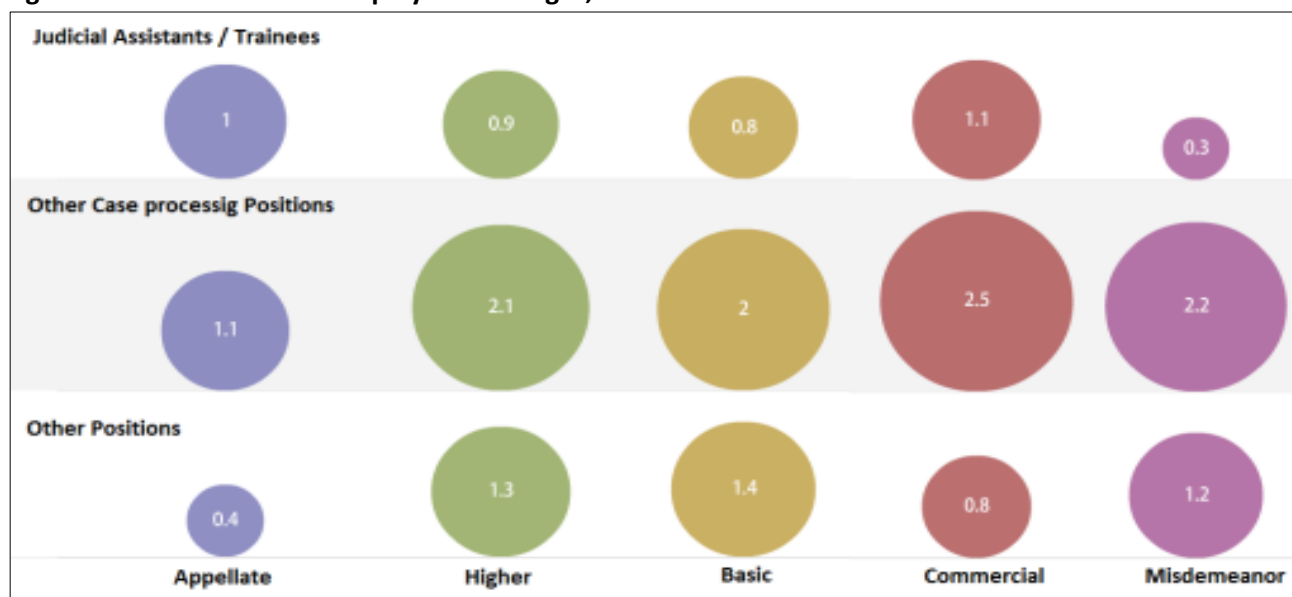
⁷⁵⁰ This is despite staffing norms (Rulebooks on Criteria for Determining the Number of Court Staff in Courts and PPOs (Official Gazette of Republic of Serbia No. 72/2009 and 79/2009) that call for similar ratios.

⁷⁵¹ Appellate Courts have the most consistent staffing complements.

Table 23: Budgeted Employees per Judge by Category of Employee and Court Type, 2013⁷⁵²

Court Type	Judges	Judicial Assistants/ Trainees			Other Case Processing Positions ⁷⁵³			Other Positions ⁷⁵⁴			Total Non-Judge Employees		
	Number	Number	Mean Ratio to Judges	Range	Number	Mean Ratio to Judges	Range	Number	Mean Ratio to Judges	Range	Total Number	Mean Ratio to Judges	Range
Basic	1,430	1,175	0.8	0.3-1.0	2,836	2.0	1.4-2.7	1,937	1.4	1.0-2.3	5,948	4.2	3.4-5.6
Higher	377	332	0.9	0.4-1.3	809	2.1	1.6-2.0	503	1.3	0.7-2.1	1,644	4.4	3.1-5.6
Appellate	237	242	1.0	1.0-1.1	262	1.1	1.0-1.3	85	0.4	0.5-0.7	589	2.5	2.2-2.8
Commercial	172	182	1.1	0.7-1.4	437	2.5	1.9-3.6	130	0.8	0.2-1.4	749	4.4	2.8-6.0
Misdemeanor	548	184	0.3	0.3-0.5	1,219	2.2	1.8-4.5	650	1.2	0.6-3.5	2,053	3.7	2.9-8.5
TOTAL	2,764	2,115	0.8	0.3-1.4	5,563	2.0	1.0-4.5	3,305	1.2	0.2-3.5	10,983	4.0	2.2-8.5

⁷⁵² Megadata Table, World Bank. (Available at: <http://www.mdjffss.org.rs/en/serbia-judicial-functional-review>).⁷⁵³ Case related staff include judicial assistants/judicial trainees; Court Managers/Secretaries; Registry Office, Other Administration, Typists; and ICT positions.⁷⁵⁴ 'Other' includes technical support, court police, enforcement staff and land book staff.

Figure 146: Mean Ratio of Employees to Judges, 2013⁷⁵⁵

30. There are significant differences in the number of judicial assistants, administrative staff, and typists budgeted per judge (see Table 24 and Figure 146 above). These positions are most closely related to case processing, and their numbers should correspond to the number of judges which in turn should be objectively determined by caseloads, none of which is occurring.

In total, around 30 percent of court staff (with a higher percentage in the Basic Courts) do not contribute to case processing.

31. Courts also have a significant number of low-level staff who do not contribute to case processing. The ratio of these ancillary staff (such as drivers, cleaners, land registry staff etc.) to core staff is shown in Table 24 below. In total, around 30 percent of court staff (with a higher percentage in the Basic Courts) do not contribute to case processing.

Table 24: Ratio of Budgeted Ancillary to Core Staff by Court Type, 2013⁷⁵⁶

Court Type	Total Non-Judge Employees	All Case Processing Related Positions	% Case Processing Positions	Ancillary Employees	% Ancillary Employees
Basic Courts	5,948	4,011	67%	1,937	33 %
Higher Courts	1,644	1,141	69%	503	31 %
Appellate Courts	589	504	86%	85	14 %
Commercial Courts	749	619	83%	130	17 %
Misdemeanor Courts	2,053	1,403	68%	650	32 %
TOTAL	10,983	7,678	70%	3,305	30 %

32. Comparisons with EU Member States suggest that Serbia could reduce its complement of non-case-processing staff. While 60 percent of staff are dedicated to case-processing tasks in Serbia, the figure is 89 percent in Croatia and 90 percent in Latvia.⁷⁵⁷

⁷⁵⁵ Megadata Table, World Bank. (Available at: <http://www.mdrtfss.org.rs/en/serbia-judicial-functional-review>).

⁷⁵⁶ Megadata Table, World Bank. (Available at: <http://www.mdrtfss.org.rs/en/serbia-judicial-functional-review>).

⁷⁵⁷ Since the definition of the term 'other' is not clearly defined by the CEPEJ, this comparison should be treated as a general depiction of the use of court support staff.

33. **The judiciary has not evaluated its staffing needs in light of the devolution of certain responsibilities to prosecutors under the new CPC.** With the introduction of the new CPC, some judicial assistants have been seconded (often informally) to PPOs. However, a more systematic assessment should be conducted to determine the number of judicial assistants. In the meantime, there should be a hiring freeze for new appointments of Assistants.

34. **Similarly, the judiciary has not evaluated its staffing needs in light of the devolution of certain responsibilities to private agents.** Since the introduction of enforcement agents in 2011, there remain 859 court-employed bailiffs. Legacies from previous devolutions remain for years. For example, courts still retain the 120 employees who were responsible for maintaining the cadaster, which transitions out of the courts from 2009. The judiciary indicates that this is because civil servants cannot be moved without their consent from the courts to other bodies – and even between individual courts.⁷⁵⁸ Meanwhile, there is a general reluctance to eliminate positions, therefore creating inertia.

35. **The imminent reforms to establish notary services should dramatically change the profile of court staff in Serbia.** Serbia may have been able to justify large numbers of non-judge staff relative to European comparator countries while Serbian courts were conducting verification services. However, the transfer of these functions to private notaries, scheduled for March 2015, will leave little justification for such large numbers of court staff. No analysis has been conducted of the staffing implications of the introduction of private notaries. However rationally, the transfer of verification services should result in large-scale redundancies among registry staff, particularly in Basic Courts.

Public sector positions can be eliminated through layoffs with provision of severance pay. The funds saved through right-sizing could then be allocated to improving the capacity of existing people in the system.

36. **A strategy for eliminating excess positions through layoffs, attrition or other means such as transfers is needed.** Public sector positions can be eliminated through layoffs with provision of severance pay. The funds saved through right sizing could then be invested in much-needed areas, such as in technical and advisory positions or improvements in ICT or case management functionality

37. **The number of employees varies significantly by region, with no clear justification.** For instance, the Higher and Basics Courts in Belgrade and Novi Sad region demonstrate much higher staffing ratios than Nis or Kragujevac (see Table 25 below).

Table 25: Ratios of Budgeted Positions to Judges in Higher Courts by Region, 2013⁷⁵⁹

Appellate Group	Judges	Judicial Assistants/ Trainees		Other Case Processing Positions		Other Non-Judge Staff		Total Non-Judge Staff	
	Number	Number	Ratio to Judges	Number	Ratio to Judges	Number	Ratio to Judges	Number	Ratio to Judges
Belgrade	148	151	1.0	337	2.3	227	1.5	688	4.6
Kragujevac	70	59	0.8	160	2.3	97	1.4	302	4.3
Nis	79	53	0.7	148	1.9	113	1.4	302	3.8
Novi Sad	80	69	0.9	164	2.1	133	1.7	352	4.4
TOTAL	377	332	0.9	809	2.1	570	1.5	1644	4.4

⁷⁵⁸ Employees are hired by a given court. They are thus not employees of the entire judiciary and do not belong to the state sector.

⁷⁵⁹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

38. **Further, staffing patterns do not generally reflect economies of scale (see figure 5 and Figure 6).** The Basic, Higher and to a lesser extent the Commercial Courts begin to experience economies of scale as they grow from small courts to medium sized courts. However, beyond a given size, the ratio of employees for judges becomes greater as the number of judges grows, particularly in the Higher Courts.⁷⁶⁰

Figure 147: Ratios of Budgeted Staff Positions to Judges by Court Size in Basic Courts, 2013⁷⁶¹

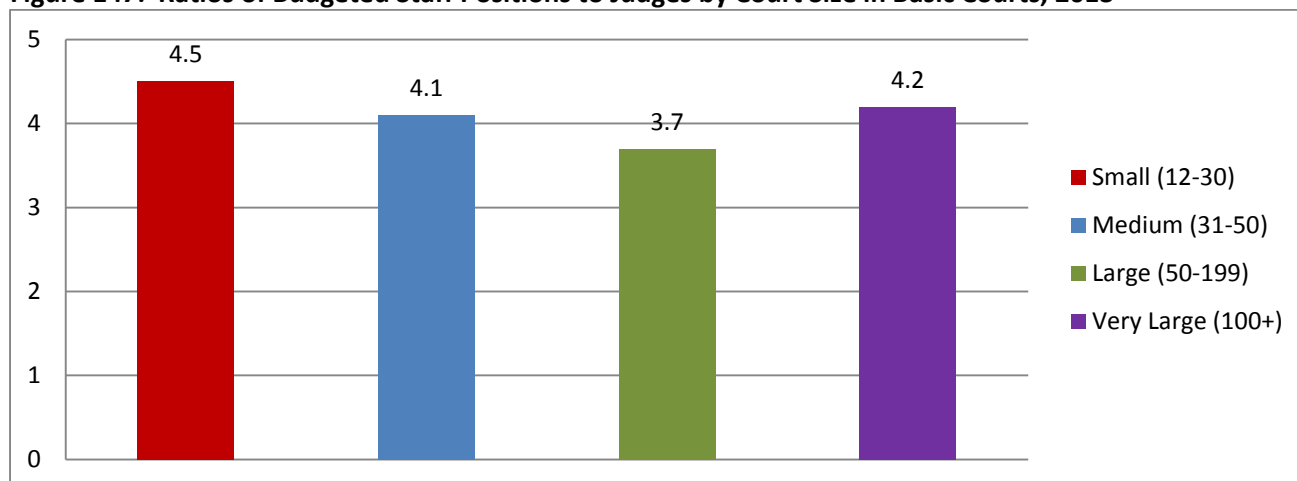
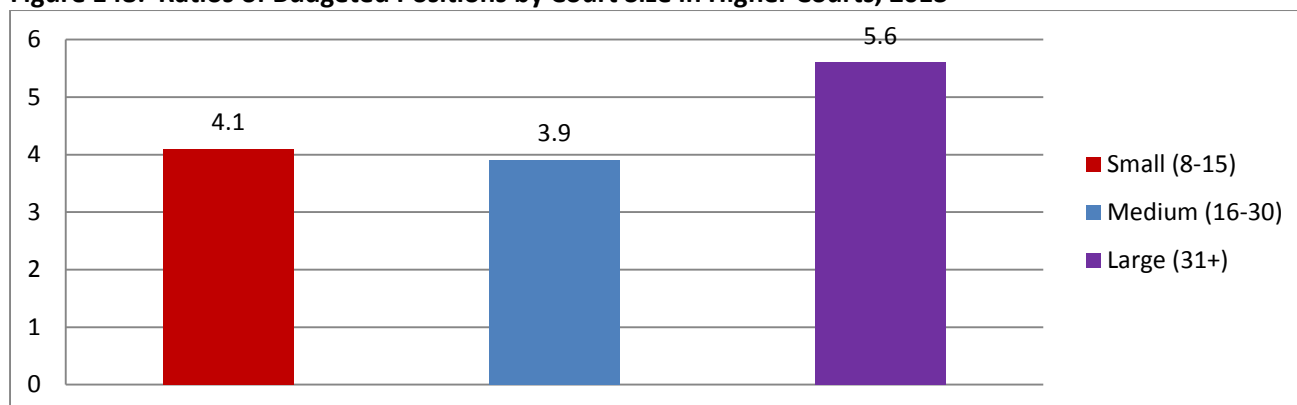


Figure 148: Ratios of Budgeted Positions by Court Size in Higher Courts, 2013⁷⁶²



39. **In PPOs, the number of prosecutor assistants and trainees is defined without taking into account caseloads or complexity of cases.** According to the Rulebook approved by the MOJ, the Basic and Higher PPOs are allowed to have one assistant for every two prosecutors, while in the Appellate PPOs, the recommendation is for one assistant for every three prosecutors.⁷⁶³ Despite the ratios in the Rulebook, the real ratios are different and PPOs have not filled vacant positions as shown in Table 26

40. Table. The RPPO and SPC have not provided any rationale on why these positions remained vacant for such a long period of time. It may be with the increasing breadth and depth of prosecutorial work that some vacancies should be filled. Without an objective basis for these ratios however, it is not possible to assess whether all vacancies should be filled or whether the ratios should be downgraded and money

⁷⁶⁰ In contrast, as Misdemeanor Courts grow in size (in terms of number of judges), they experience economies of scale, with fewer employees per judge required.

⁷⁶¹ Megadata Table, World Bank. (Available at: <http://www.mdtfss.org.rs/en/serbia-judicial-functional-review>).

⁷⁶² Megadata Table, World Bank. (Available at: <http://www.mdtfss.org.rs/en/serbia-judicial-functional-review>).

⁷⁶³ Henceforth, reference here to Assistants will encompass both assistants and trainees. The ratio between assistants and trainees is also defined by the Rulebook on Criteria for Determining the Number of Staff in the Public Prosecutor's Office, approved by MOJPA. It states that 2/3 of the total number should be assistants and 1/3 should be trainees.

allocated to other resources, such as improvements in ICT to better enable existing staff to perform their work.

Table 26: Number of Prosecution Assistants, 2013⁷⁶⁴

	Prosecutors and Deputy Prosecutors	Prosecutors Assistants / Trainees	Allowed Number per Quota Defined by Rulebook	Variation to Quota
RPPO	13	0	Not available	
Appellate Prosecutors	68	4	23	-19
Higher Prosecutors	178	69	89	-20
Basic Prosecutors	437	169	219	-50
Special Prosecutor for Organized Crime	17	0	Not available	
Special Prosecutor for War Crimes	9	1	Not available	

41. **Unlike in courts, the ratio of ancillary staff to core prosecutor staff is not high.** Table 27 below indicates that out of 1,084 employees, only 815 work directly on case processing. For example, the First Basic Prosecutors Office has the highest number of non-prosecutor employees with 129 staff, of whom 17 are ancillary staff. These low numbers of ancillary staff are mostly due to the fact that PPOs are often co-located in the same building as courts. As a result, they can often rely on the services of ancillary court staff (such as cleaners, maintenance staff, etc.) without paying for their services.

Table 27: Ratio of Budgeted Ancillary-to-Core Staff by Type of Prosecutors Office, 2013⁷⁶⁵

	Total Non-Prosecutor Employees	All Case Processing Positions	% Comprising Case Processing Related	Ancillary Employees	% Ancillary Employees
Republic Prosecutor	29	22	76%	7	24%
Appellate Prosecutors	84	54	64%	30	36%
Higher Prosecutors	293	209	71%	84	29%
Basic Prosecutors	612	486	79%	126	21%
Special Prosecutor for Organized Crime	40	30	75%	10	25%
Special Prosecutor for War Crime	26	14	54%	12	46%
TOTAL	1084	815	75%	269	25%

iii. Extent and Impact of Temporary Staffing

42. **The judiciary employs over 1,100 temporary employees, representing 10 percent of the total workforce.** In some instances, they are utilized to backfill vacant positions rather than substantively filling those positions. In other cases however, the use of temporaries results in a total workforce significantly exceeding the systematization. There is no effective position control for individual courts, court types, or court levels. However, consistent with statute, the MOJ has required that those temporary staff exceeding 10 percent of the overall workforce be removed by June 30th, 2014.⁷⁶⁶

The 'shadow workforce' is reported to be extensive, numbering thousands, but their precise numbers and roles are unknown.

⁷⁶⁴ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁷⁶⁵ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁷⁶⁶ Decree on the Approval Procedure for new Employment and Additional Hiring by Public Budget Beneficiaries based on Article 27e of the Budget System Law.

43. **In addition to temporary staff, there exists a large ‘shadow workforce’ of contractors, interns and volunteers.** The shadow workforce is reported to be extensive, numbering thousands, but the precise numbers are unknown.⁷⁶⁷ Their roles are also unknown but reportedly range from legal assistants to staff in the registry office. Their contribution is difficult to assess, but given the already-high numbers of court staff objectively and relative to the rest of Europe, their additional value-added is likely to be marginal.

44. **The use of temporaries is more extensive in courts.** While the Belgrade First Basic Court budget included only 180 judicial assistants, the real figures show that 220 were employed.⁷⁶⁸ 17 out of 72 temporary judicial assistants are substitutes for colleagues on leave or filling vacancies, and 55 were attributed to ‘increased workload’, notwithstanding that incoming cases fell. The total numbers are more or less aligned with the staffing norm,⁷⁶⁹ though they have grown incrementally rather than been planned. Since they exceed the personnel complement, these positions were funded through salary transfers made by the MOJ at the courts’ request.⁷⁷⁰

45. **Temporary employees and contractors are hired at the discretion of the Court President and are subject to irregularity in employment.** Stakeholders report that recruitment practices are neither open nor transparent, and in some cases are subject to cronyism and influence-trading. Temporary employees must also be taken off the payroll for a minimum of 30 days at the end of their limited terms,⁷⁷¹ though stakeholders report that many temporaries continue to work without pay during this period. Such arrangements create systematic vulnerability toward malfeasance, in particular a high risk of petty corruption.⁷⁷² Some temporary staff also report that this uncertainty renders them vulnerable to abuse or unreasonable work conditions by their supervisors.⁷⁷³ In all, the extensive use of temporary staff harms morale, creates an unstable work environment and most likely reduces the efficiency and quality of work in the courts.

46. **Collectively, temporary employees and contractors exceeded the 2013 courts’ staffing complement budget by around 7 percent (see Table 28).** Much of the additional labor is focused in the Basic Courts. In 2013, the Basic Courts employed 636 temporary and contract staff, more than their budgeted staffing complement, representing an additional 11 percent of its workforce. The Higher Courts also employed an additional 6 percent but the Appeals, Misdemeanor, and Commercial Courts refrained from doing so.

Table 28: Total Employment Compared to Budgeted Personnel Complement, 2013⁷⁷⁴

Court Type	Budget ed Position s	Vacancies	Permanent Staff (budgeted less vacancies)	Temporary Employees	Contract ors	Temps plus Contractors	Total Employe es	% over (under) Budgeted Positions
Basic	5,948	645	5,303	769	512	1281	6,584	11%
Higher	1,644	126	1,518	79	151	230	1,748	6%
Appellate	589	75	514	53	7	60	574	(3%)
Commercial	749	92	657	79	36	115	772	3 5
Misdemeanor	2,053	222	1831	130	75	205	2036	(1%)
Total	10,983	1160	9,823	1110	781	1891	11,714	7%

⁷⁶⁷ The BPMIS system indicates that the number of contractors was 781 in 2013, and this number comprises a mix of service contracts and other miscellaneous contractors, such as maintenance and cleaning personnel.

⁷⁶⁸ This includes 148 permanent and 72 temporary judicial assistants.

⁷⁶⁹ 0.94 judicial assistants per judge versus 0.75 assistants per judge in the systematization. The norm is 1 to 1.

⁷⁷⁰ Funds are appropriated by court type (e.g., all Basic Courts) by object of expenditure (e.g., salaries). MOJPA has authority with MOF approval to move funds both within and between court types as the same object of expenditure.

⁷⁷¹ One year for civil servants; six months for non-civil servants.

⁷⁷² For further discussion of vulnerabilities to malfeasance, see the Quality Chapter.

⁷⁷³ See also, *Report on Judicial Reform*, Anti-Corruption Council, 2014.

⁷⁷⁴ *Megadata Table*, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

47. **There is also significant variation between individual courts, with some courts hiring significantly more employees than their budgeted staffing complement (see Table 29).** For example, three courts (Novi Pazar Higher Court, Paracin Basic Court and Subotica Commercial Court) employed more than 100 percent in excess of their budget complement. This is notwithstanding that the number of incoming cases in each of these courts is falling, sometimes dramatically.⁷⁷⁵ Belgrade First Basic Court had 230 more permanent and temporary staff than budgeted in 2013. In total, 16 courts were 10 percent above the budget standard. The MOJ recently requested information from courts on their use of temporary and contractual employees with a goal of restricting their use. These efforts should commence with the 16 courts above the 10 percent budget standard.⁷⁷⁶

Table 29: Temporary Positions by Court Type, 2013⁷⁷⁷

Court	Judicial Assistants/Trainees			All Other			Total		
	No. of Temps	% of Approved	High End of Range	No. of Temps	% of Approved	High End of Range	No. of Temps	% of Approved	High End of Range
Basic	122	10 %	30	647	14 %	45 %	769	13 %	41 %
Higher	20	6 %	25	59	5 %	21 %	79	5 %	19 %
Appellate	35	15 %	43	18	5 %	9 %	53	9 %	21 %
Commercial	24	13 %	30	55	10 %	19 %	79	11 %	22 %
Misdemeanor	11	6 %	50	119	6 %	17 %	130	6 %	17 %
TOTAL	212	10 %	50	898	11 %	45 %	1100	10 %	41 %

48. **The use of temporary employees is most acute in Basic Courts and highest in the Belgrade and medium-sized Basic Courts.**⁷⁷⁸ Over 40 percent of the employees at the Belgrade First Basic Court are employed on a temporary status, and over 25 percent of all employees in the Basic Courts in the Belgrade appellate region are on temporary status (see Table 30).

Table 30: Temporary Positions by Type of Position in Basic Courts, 2013⁷⁷⁹

Appellate Group	Judicial Assistants/Trainees			Other Positions			Total		
	No. of Temps	% of Approved	High End of Range	No. of Temps	% of Approved	High End of Range	No. of Temps	% of Approved	High End of Range
Belgrade	77	17	30	452	25	45	529	24	41
Kragujevac	18	8	21	77	8	12	95	8	12
Nis	4	2	3	54	7	14	58	56	12
Novi Sad	23	8	24	64	6	11	87	6	11
TOTAL	122	10	30	647	14	45	769	13	41

49. **The extensive use of temporary employees and contractors reflects a system in crisis.** Courts are less able to build staff knowledge and expertise, or engage in integrated resource planning. Ultimately, high numbers of temporaries and contractors impact quality and court efficiency.

50. **By contrast in PPOs, the total number of temporary employees is not so high.** On December 31st, 2013, the PPOs counted 46 temporary staff, mainly in Basic PPOs. One of the challenges in establishing the exact number of temporaries is the lack of information on the number of volunteers in the PPOs. The Law on

⁷⁷⁵ In Subotica Commercial Court, incoming cases fell by 24 percent between 2011 and 2013. In Paracin Basic Court, incoming cases fell by 47 percent.

⁷⁷⁶ There is no discernable pattern in the courts' use of temporary employees or contractors. While Belgrade First Basic utilizes primarily temporary employees, others, such as Uzice Basic, use a high rate of contractors (38 contractors over a base of 86 authorized positions).

⁷⁷⁷ Megadata Table, World Bank. (Available at: <http://www.mdtfss.org.rs/en/serbia-judicial-functional-review>).

⁷⁷⁸ The following analysis excludes contractors because the BPMIS data available have not been audited. The analysis is provided as totals by court rather than employee classification.

⁷⁷⁹ Megadata Table, World Bank. (Available at: <http://www.mdtfss.org.rs/en/serbia-judicial-functional-review>).

Public Prosecution⁷⁸⁰ established the rank of volunteer without specifying the number of volunteers to be allowed. This complication hinders the analysis of the prosecutors' efficiency since volunteers do not appear as a resource in the system. Deputy Prosecutors report that they use volunteers to support case processing.

iv. Use of Lay Judges

51. **In addition to large numbers of judges, court staff, temporaries, contractors and the 'shadow workforce', there is also a sizeable cohort of lay judges.** The number of positions is currently 2,997. However, the actual number of lay judges is not known.⁷⁸¹

52. **The Constitution provides that lay judges participate in trials in a manner stipulated by law. However in practice, lay judges in Serbia do not 'participate' in trials, and there is consensus among stakeholders that their role is perfunctory.** The rationale for lay judges in Serbia is to represent the public in the decision-making process and to ensure transparency in the proceedings. Their duties are generally limited to sitting in the courtroom and listening to the proceedings, and they do not engage in deliberations with professional judges. One stakeholder described them as 'extras in the play'; another suggested that they be replaced by 'puppets.' Some reported that their role is redundant now that court hearings are open to the public. Other stakeholders describe it as a 'mere remnant' of former Yugoslav traditions.⁷⁸²

53. **Compared to elsewhere in Europe, lay judges in Serbia appear not to meet the minimum requirement and definition of a lay judge outlined in the European Charter on Lay Judges, namely to 'take part in decision-making.'**⁷⁸³ Lay judges exist in several civil law countries, and there is considerable diversity in their manner of appointment and their role in judicial work.⁷⁸⁴

54. **However described, it is clear that lay judges are not operating as intended, and for these reasons, the number and types of proceedings requiring a lay judge has been reduced over time.** As a result, professional judges routinely sit as single judges in the absence of lay judges.⁷⁸⁵ The gradual shrinking of their mandate also raises question as to why 3,000 of them are needed.

55. **Further, the appointment process for lay judges is opaque.** Appointments are made by the HJC upon nomination by the MOJ for five-year terms. Any citizen of Serbia between the age of 18 and 70 at the time of appointment, and '*who is worthy of the function*' may become a lay judge, and selection procedures are discretionary. They almost exclusively comprise unemployed persons and pensioners. Several stakeholders indicated that lay judges are often the less fortunate relatives or family friends of court staff, as a form of charity to supplement their social welfare payments. Others noted that lay judges are sometimes poorly educated or elderly and incapable of following the proceedings.

⁷⁸⁰ Article 124 of the Law on Public Prosecution stipulates that volunteers can work in the PPOs without creating an employee-employer relationship, so that volunteers can get knowledge and experience, a precondition for enrolment of the judicial exam.

⁷⁸¹ In the CEPEJ Evaluation Report 2014, Serbia was among only five jurisdictions unable to provide any quantitative data about non-professional judges for the year 2012. See CEPEJ Evaluation Report, 2014.

⁷⁸² In the SFRY, lay judges (or judge-jurors: *sudije-porotnice*) were commonplace and numbered over 50,000 in the 1980s. They were appointed by the assembly of the relevant socio-political community and sat at each tier of the judiciary. They deliberated on panels and provided a check on the autonomy of the by ensuring party influence over proceedings. Since the breakup of the SFRY, some countries in the region have abolished lay judges and others have limited their roles. The Yugoslavian model of lay judges followed the Soviet model, in which lay judges were appointed by institutions, such as farms, factories and universities, in each district. They engaged in deliberation and voted with professional judges but rarely dissented.

⁷⁸³ European Charter of Lay Judges, 11 May 2012.

⁷⁸⁴ Lay judges exist in Austria, Germany, several Nordic countries and Japan, as well as in England. In Finland, lay judges sit alongside professional judges and exercise similar rights. In England, lay judges outnumber professional judges and dispose of around 95 percent of criminal matters, to general public satisfaction. In Israel and Iran, lay judges constitute religious courts and are selected for service on the basis of their knowledge of non-secular rules.

⁷⁸⁵ Under Article 142 of Constitution, only judges may participate in trials in particular courts and in particular cases. Article 142 further states that courts shall decide matters in panels, but it allows that a single judge may decide on particular matters.

56. **Lay judges are neither trained nor managed.** No induction or ongoing training is provided, nor are there updates on law reforms. Judges, assistants, and court staff advise that lay judges are generally not interested in following the trial. They also complain that if a lay judge is interested in following along, this slows down the proceedings as the judge must then explain the proceedings. There is also no monitoring of their work or timesheets. Some court staff acknowledge that lay judges ‘float’ around the courthouse and charge for time in excess of their allocated trial.

57. **The costs associated with lay judges are not known but are estimated to be sizeable overall.** Lay judges are remunerated at a rate of around 3 EUR per hour, plus transport costs. Although a small unit cost, assuming that each position for a lay judge sits for 20 days per year, the annual cost of salaries would be around 1.5 million EUR.⁷⁸⁶ Significant arrears are also owed to lay judge, and they threatened to strike in 2012. Later that year, the MOJ paid 74,933,787 RSD (650,000 EUR) to cover the arrears owed to lay judges in 2011, and further arrears have been paid via enforcement (default) judgments in courts.

58. **In all, there is a broad consensus that lay judges in Serbia do not contribute to justice service delivery.** For these reasons, and even in the absence of a Chapter 23 standard, the most practical way forward would be to abolish the role of lay judges in Serbia and revert to single judge trials. Effort and funds could then be diverted to more constructive mechanisms which improve transparency, access to justice and fair treatment of parties, such as ensuring access to legal information in lay formats. Court monitoring by rights groups or the Ombudsman’s Office could be encouraged, which could then be analyzed and disseminated to raise awareness and drive performance improvements. Alternatively, funds could be invested in improvements in court websites, physical infrastructure, or the use of audio-visual recordings to enhance transparency.⁷⁸⁷

59. **Abolishment of lay judges may require constitutional amendment.** This amendment could be considered in the package of amendments currently being contemplated. If abolishment is not an option, effort should be undertaken to gain some value from this function that can contribute to justice service delivery. That could take the form of requiring lay judges to deliberate in proceedings, and ensuring appropriate selection, training, and management of lay judges to enable them to fulfill a function.

c. Recruitment, Evaluation and Promotion of Judges and Prosecutors

i. Recruitment and Nomination of Judges and Prosecutors

60. **The Serbian judiciary historically lacked an objective entry point for the judicial profession.** Before the development of the Judicial Academy, the criteria for judicial appointments to the Basic Court or the Basic PPOs were based solely on education and years of experience. These generic criteria created much room for discretion in appointments.⁷⁸⁸

61. **Upon the establishment of the Judicial Academy in 2009, graduation from the Academy became a mandatory precondition for initial selection to a Misdemeanor or Basic Court.** In 2013 however, the position was overturned by the Constitutional Court.⁷⁸⁹ The concept of the Academy is closely aligned with

⁷⁸⁶ The introduction of BPMIS may enable more precise estimates in future.

⁷⁸⁷ See ICT and Infrastructure Chapters respectively.

⁷⁸⁸ Stakeholders report that political factors drove the process, including via lists of names prepared by political parties. Some stakeholders report that such processes continue today. However, the Functional Review is unable to verify this.

⁷⁸⁹ The grounds for the decision were that 1) the Academy’s Program Council (which consists of 10 members (5 judges, 3 prosecutors, one judicial staff person and one person each proposed by the Prosecutors’ and Judges’ Associations)) had usurped the mandated role of the HJC and the SPC in proposing judicial and prosecutorial candidates, and 2) requiring Academy graduation as a precondition for appointment represented an unconstitutional restraint of entry into the judicial profession.

the principle of an objective basis for entry into the judicial profession as promulgated by the CoE.⁷⁹⁰ For the initial selection process to conform with the Constitutional Court decision and CoE principles, the Councils would need to select candidates for the Academy in future, and establish competitions based on objective selection criteria between those who attend the Academy and those who do not.

62. **Using the Academy as a primary entry point to the profession assumes a national career service, whereby graduates can be placed in any court that needs them – but this does not exist in Serbia.** In many European systems, graduates of a judicial training academy are allowed only one refusal of a judicial appointment to a certain location, and a second refusal results in the candidate being precluded from future judicial appointments. In contrast, Serbian judges and employees apply to individual courts, and once appointed under the Constitution, they cannot be moved to another court without their consent. Few institutional incentives exist to encourage that consent.

63. **Judicial Academy Trainees are highly selective about the courts where they wish to work, which perpetuates the temporary staffing problem.** The Law on the Judicial Academy and the contract between the Academy and candidates oblige candidates to apply for open positions. This rule recognizes the significant funds and effort spent in training Academy trainees, and the salaries they received during the training period which are 70 percent of that of an appointed judge. However, this rule is not being applied. Instead, trainees are applying to selective courts and in the meantime continuing to work as judicial assistants on a temporary basis.⁷⁹¹

64. **Further, there is no specific nomination process for appointment to a superior court.**⁷⁹² Education and years of experience remain the formal criteria, and applicants come forward when the HJC announces open positions. Nominations to superior courts could come from inside or outside the judiciary.⁷⁹³ Since there have been few appointments to Higher Courts in the previous three years, the criteria for making these appointments, and whether there is a greater likelihood of internal promotions or external transfers into the judiciary, cannot be assessed.⁷⁹⁴

65. **Looking forward, the HJC should limit promotional appointments to candidates from within the judiciary.** Given the excessive number of judges already in the system, it is necessary to fully utilize existing resources, at least for the medium term until the numbers of judges falls by attrition. It is also important to create viable career paths for existing judges and to enable junior judges to develop their skills through experience, training and successive positive evaluations to advance on the professional ladder. Internal promotions could also add value in terms of increased consistency of decision-making and uniformity in the application of the law, as well as greater continuity and collegiality within the judiciary.

ii. Criteria for the Evaluation and Promotion of Judges and Prosecutors

66. **Judges in Serbia have never undergone any professional evaluation of their performance.** The absence of this key human resource management tool has led to a systemic underperformance, excessive variations in performance, low motivation and morale, among other challenges.

⁷⁹⁰ European Charter on the Statute for Judges, Independence of the Judiciary, item 7, principles 1 and 2 b, Recommendations no R (94)12 of the Committee of Ministers of the Council of Europe, 1.1.6.

⁷⁹¹ Article 40, Law on Judicial Academy allows trainees to work for up to three years if they apply for a judicial position in a court of their choice and are not selected.

⁷⁹² This includes a Higher, Appellate, Commercial or Administrative court or the SCC.

⁷⁹³ The HJC selects superior court judges who have served in a lower court without approval by the Assembly; superior court candidates from outside the judiciary are nominated by the HJC and confirmed by the Assembly.

⁷⁹⁴ Lateral entry routes are increasingly possible in continental Europe. According to *Judicial Independence in Transition*, Seibert-Fohr, 2012, France has increased the number of judges admitted laterally to 1/4 at the second rank. The Netherlands is also encouraging lateral entry because of a new emphasis on experience.

67. **The HJC missed several opportunities to improve the quality of the judiciary due to continued delays in finalizing the evaluation rules.**⁷⁹⁵ In 2012, over 800 judges on probationary status were automatically made permanent without any evaluation, due to delays in finalizing the rules. This included around 570 misdemeanor judges who had not been originally appointed as judges within the judiciary.⁷⁹⁶ In May 2014, 141 Acting Court Presidents were appointed as permanent Court Presidents, but in the absence of any rules, the method of evaluation was ad-hoc. The HJC has also appointed judges to superior courts while the rules were in draft form with no standards in place.

68. **Delays in evaluating acting Court Presidents for permanent appointment also caused problems.** For over three years, there have been significant delays in nominating permanent Presidents for the Misdemeanor, Basic and Higher Courts.⁷⁹⁷ In some cases, there has been a yearly turnover in court leadership.⁷⁹⁸ This situation created instability and affected the interim appointee's ability to manage their Courts. The prolonged insecurity also created an inherent vulnerability among those 'acting' to undue influence and dependence on executive power. In May 2014, 141 Presidents were appointed, but in the absence of rules, the method of evaluation was ad-hoc. The finalization of rules should thus be prioritized to avert further missed opportunities.

69. **Productivity norms have existed for some time for judges, but to date they have not incentivized good behavior and evaluations have not been conducted.** Norms rely almost entirely on the number of dispositions per month, productivity norms encourage judges to 'cherry pick' simple cases or resolve cases too quickly while avoiding complex cases or backlog reduction. The only consideration of work quality was the rate of cases set aside on appeal, which may take some years to eventuate. Although productivity norms were described by several stakeholders as no longer 'official', their continued existence creates a frame to guide the behavior of individual judges. The most determinative of whether individual judges comply with productivity norms is whether their individual Court President monitors those norms.

70. **Formal rules for the evaluation of judges were adopted by the HJC in July 2014.** Their stated purpose is to promote judicial competence, to motivate judges to improve performance, and to enhance public confidence in the judiciary. The rules demonstrate a substantial improvement from the past. Judges will be evaluated based on the quality and quantity of their decisions, as outlined in Table 31 below.

Table 31: Factors in Judicial Evaluation, 2014

Factor	Proposed Measure
Quantity	Quantity of resolved cases in relation to the norm
Quality	Percent of abolished decisions Time to draft decisions

71. **There are three grades that judges may receive: extraordinarily successful, successful and not satisfied, and no marks are given.** Several stakeholders have expressed concern that these grades set a low and unclear bar for performance. The lack of nuance in grading may result in under-performing judges being graded as satisfactory. The same concern was expressed regarding the previous draft rules upon which these rules are based. Under the draft rules, a judge scoring merely 22 out of 100 would be grade as satisfactory.

⁷⁹⁵ Judges are to be evaluated annually during their probation. However, in the absence of criteria for evaluation, those who were on a probationary period were automatically appointed permanently. This included 243 judges in courts of general jurisdiction, 570 judges in Misdemeanor Courts, 9 judges in Administrative Courts and 15 judges in Commercial Courts.

⁷⁹⁶ Up to 2010, the Misdemeanor Courts were not part of the judiciary but operated as sui generis administrative bodies. Misdemeanor judges then became part of the judiciary in 2010.

⁷⁹⁷ While most superior court judges have been permanently appointed, the President of the Novi Sad Appellate Court is also in a temporary status.

⁷⁹⁸ Acting Court Presidents are appointed by the president of the next Higher Court, except for an acting president of the SCC who is appointed by the National Assembly.

Time will tell whether the evaluation system is implemented rigorously for under-performing judges. If the system tolerates under-performance as satisfactory, the significant effort of developing these rules will be undone, as the rules may then discourage exemplary performance and entrench low motivation and morale within the judiciary.

72. **Court Presidents will be evaluated based on one sole criterion: whether they have ‘not remedied malfunctioning court administration’ identified by the immediately superior court.** The criterion properly recognizes that the position of Court President has significant case flow and management responsibilities for both judicial and non-judicial activities. However, its negative formulation does not encourage Court Presidents to innovate or strive for improved performance. The criterion also relies on the superior court president identifying a malfunction, when many do not.

73. **The rules and underlying statutory provisions are imprecise about how evaluations will be used to determine promotions, identify performance defects or discipline judges, with a few exceptions.** If a judge is evaluated as having attained ‘exceptional success’ during probation, s/he is automatically made permanent. If evaluated as ‘not satisfactory’, a permanent appointment cannot be made. However, for judicial candidates who receive a ranking of ‘satisfactory’, it is unclear how the HJC will decide whether the judge should be retained.

74. **The evaluation system could be designed to more proactively encourage professional development of individual judges.** Modern judiciaries frequently require that judges undertake certain training programs to ensure consistency in knowledge across the judiciary and to build capacity in new areas, such as developments in EU law. Evaluation can also build positive incentives for judges to demonstrate performance that contribute to the judiciary, for example by participating in backlog reduction taskforces, mentoring less experienced judges, moving locations with consent, or introducing an innovation in case processing.

75. **For permanent judges, the only specific provision in the rules detailing the results of evaluation indicate that a judge rated as less than satisfactory can be mandated to attend continuing training.** The Law on Judges indicates that the HJC may dismiss a judge for ‘unconscientious or incompetent’ performance but without further guidance. For permanent judges seeking election to a Higher Court, the Law on Judges only specifies that the HJC may conduct ‘an extraordinary evaluation’ of a judge but does not discuss how regular evaluations of the judge will be applied.

76. **The evaluation procedure will depend on the existence of reliable and comparable statistical data that are currently unavailable.** For example, due to system fragmentation, the data concerning the number of decisions remanded back to a judge by an appellate court can only be obtained by each individual court running an ad-hoc report in their AVP systems, which would then need to be re-entered and analyzed by the HJC. This is extremely time-consuming, laborious exercise, and it is questionable whether it would occur with sufficient rigor and accuracy to enable judicial evaluation.⁷⁹⁹

77. **The evaluations process will present a significant administrative burden and workload for the judiciary.**⁸⁰⁰ If judges were evaluated once every three years, around 950 judges would need to be evaluated by each year. Panels of three judges would be selected from the court level immediately superior to the judge being reviewed, removing these judges from their court duties. Superior court judges have not traditionally had a strong supervisory role over individual lower court judges, and it is unclear how engaged

⁷⁹⁹ For further discussion of the need to reduce system fragmentation, see the ICT Chapter.

⁸⁰⁰ There are three HJC evaluation bodies: a permanent Commission for Evaluation of the Performance of Judges (comprised of the President of the HJC and two elected judge members of the HJC), ad hoc panels for performance evaluation of judges (judges from higher instance courts), and a commission for resolving evaluation complaints.

they will be in assuming these new duties.⁸⁰¹ The panels would need to collect and verify the data, perform all of the calculations, and prepare needed reports. Yet there are no HJC staff assigned to the judge evaluation function, and junior clerical staff would not be up to the task. Therefore it is likely that evaluations would not be administered adequately, even if the rules were approved, which would likely cause controversy and contestability in the process.

78. Rules on promotion should build in positive incentives for judges to contribute to the judiciary's performance. Several modern judiciaries use promotion criteria as a way to incentivize good behavior and signal the kinds of attributes that judges should develop if they seek career advancement. This is especially true for judiciaries that have a balanced age structure, because permanent younger judges need clear signal for career progression to maintain motivation and morale. In Serbia, promotion applications could include 'highly desirable' criteria that encourage applicants to have:

- a. served in at least one court (thus encouraging judges to move locations at least once in their career, which may also foster consistency in practice and procedure and stronger collegiality);
- b. undertaken management training (thus encouraging a modern management approach in courts), including understanding of court administration and case management techniques etc.;
- c. undertaken continuing training, particularly in European law (thus encouraging increased capacity in line with European standards); and
- d. contributed to performance improvements, such as participation in a backlog reduction teams or led an innovative project within their court.

79. By signaling desirable attributes, the system can harness the potential of large numbers of judges to contribute to the judiciary's transformation. Identifying desirable attributes can also raise morale, promote professional development, and career progression.

80. The SPC also approved new rules for evaluation of prosecutors in May 2014. Like for judges, the new prosecution rules represent a significant improvement by outlining the expectations of the prosecution service and the requirements to meet them. They also suffer from similar drawbacks, including the absence of incentives to improve performance. The implementation and monitoring of these rules will require improved capacity within the SPC to be effective.

81. For both the HJC and SPC evaluation rules, implementation and monitoring will be essential. After a reasonable period of implementation, the rules should be reviewed and amended to apply any lessons learned from the rollout.

d. Training

i. Capacity of the Judicial Academy to Meet Training Needs

82. The Judicial Academy has not yet fully realized its potential to serve as the hub for judicial learning and play an integral role in the transformation of the judiciary. The Law of Judicial Academy envisages that the Academy will provide several types of training including initial, continuing, and specialized training. To date, the Academy focused on providing initial judge and prosecutor training and internal functioning, while continuing training has been conducted sporadically. Efforts are underway to upgrade the capacity of the Judicial Academy to provide both initial and continuing in-service training.

83. The Academy's focus has been imbalanced in favor of initial training, whereas continuing training could have a greater impact on judicial performance. It is debatable whether initial training is needed in the current environment. As discussed above, Serbia already has an excessive number of judges who are

⁸⁰¹ The president of a directly superior court can oversee a lower court's administration and its president.

permanently appointed, and the existing cadre appears to have a balanced age structure, including a sizeable younger cohort.⁸⁰² Caseloads per judge and workloads per judge are lower than EU averages and are falling significantly across Serbian courts, particularly across Basic Courts where most newly judges get appointed.⁸⁰³ There exists no methodology for determining the number of judges in Serbia, but if one were to be developed it would likely recommend a number of judges far lower than the existing number. As a result, the appointment of even more judges in the medium term would be superfluous. Thus large-scale investments to develop a pipeline of future judges would represent very poor value for money, as funds would be diverted from other areas of the sector which exhibit much greater need in a tight fiscal environment, including investments in the capacity of existing judges. Investing too heavily in initial training is likely to only raise expectations among trainees of future appointments, which the sector cannot afford, and should not, meet. In light of these factors, future cohorts of initial trainees could be far smaller. The sector could also consider a freeze on initial training until the medium term when the issues above have been resolved.⁸⁰⁴

84. The Serbian judiciary should invest in a large-scale continuing training program as part of a strategic effort to lift the capacity of its existing resources. Continuing training could be delivered more intensely for all categories of permanent personnel, including judges, prosecutors, assistants, and court staff. By investing in the permanent resources the system already has, the Academy could be at the forefront of the Serbian judiciary's transformation. A shift in focus would be required for the Academy to remain a key player in the transformation, although this renewed focus would still align with its recent Judicial Academy Strategy.

85. The overall funding for the Academy grew significantly but could be more targeted towards the delivery of training. Funds allocated by the state budget for the operation of the Judicial Academy grew more than 600 percent from 29.4 million RSD in 2010 to 175.3 million in 2013. To date, the majority of those funds supported the salaries of the 88 initial trainees who receive 70 percent of the salary of a Basic Court judge, fees to 75 mentors,⁸⁰⁵ and 35 regularly budgeted employees.⁸⁰⁶ Funding growth occurred with the introduction of initial training cadres in 2011 and continued each year as additional cadres of trainees were added.⁸⁰⁷

86. Significant shifts in donor funding impact the Academy's ability to plan and offer training over the years. Donor funding represented 15 percent of the total Academy funding⁸⁰⁸ and a significant share of the funding for continuing education. Donor funding for continuing education reached a high of 20.6 million RSD in 2012, and dropped to 11.8 million in 2013, representing a 43 percent decline in one year.

ii. Training Needs Assessment

87. As a priority, the Academy should conduct a systematic training needs assessment to elevate the capacity of the judicial system. Trainings most likely to impact court efficiency or quality in light of changing legal and organizational arrangements should be prioritized. While much of the donor-funded continuing education has been focused on critical issues facing the judiciary,⁸⁰⁹ much more needs to be covered – both in depth and breadth – to lift the capacity of existing judges. The judiciary itself should identify these needs.

⁸⁰² See Long Term Planning section below.

⁸⁰³ See Demand Chapter.

⁸⁰⁴ For further discussion on succession planning, see the Long Term Planning section below.

⁸⁰⁵ In 2013, 65 percent (113.8 m dinars from a total budget of 175.3 m dinars) of the Academy's budget was appropriated for salaries of trainees and contracts with mentors.

⁸⁰⁶ This includes 14 program coordinators and five managers, including the Director. The rest of the positions are dedicated to internal Academy support or are clerical in nature, such as accounting, IT, driver, etc.

⁸⁰⁷ Initial training lasts 30 months, and thus spans three years.

⁸⁰⁸ In 2013, Academy funding for other than initial training totaled 72.8 million RSD, 11.8 of it from donors.

⁸⁰⁹ E.g., the new CPC, the Law on Misdemeanors, ECHR compliance etc.

International support may be useful, particularly in areas such as EU law and best practice court management, but the process should not be donor driven. Should a comprehensive needs assessment be developed; the Academy would be well placed to source significant multi-year donor contributions.

88. **The Academy and the Councils need to work together to conduct this systematic needs assessment.** The HJC's Strategic Plan for 2011-13 identifies as a first-year priority the creation of a commission to assess training needs of judges and staff, and propose topics and target groups for judges and court staff. In addition, the NJRS Action Plan⁸¹⁰ identifies as a priority the improvement of the continuous training for judges and prosecutors under the umbrella of the Judicial Academy. This has not yet occurred and would assist in the training needs assessment. In a positive move, the automated tracking of continuous training needs for individual judges and staff will be included in the personnel tracking system under development by the HJC.

89. **Serbia is eligible to have an observer at the European Judicial Training Network⁸¹¹ but has not pursued this option.** Participation in the network would help the judiciary perform its own assessment.

iii. Initial Training

90. **The Councils are responsible for determining the number of initial training enrollees at the Academy based on the projected number of judicial vacancies in the year in which trainees are to graduate.** From 2010 to 2012, a total of 109 individuals entered the Academy, for an average of 36 people per year. Entrants in 2013 totaled 24. Documentation about how the number was determined was not available to the Functional Review team.⁸¹²

91. **In comparison to the previous process of selecting new judges and prosecutors, the selection of trainees at the Judicial Academy is relatively transparent and far superior. Nonetheless, the selection process continues to be criticized for being open to manipulation and influence-trading.** For example, several stakeholders note that the heavy weight (50 percent) given to the oral portion of the entrance examination introduces considerable subjectivity and discretion to members of the Examination Commission.⁸¹³ In response, the Academy points to the fact that the oral exam process is the same format used by the law faculties, and the exams are recorded and are open to the public.

92. **The training program of the Academy relies heavily on mentors located in the courts and PPOs.** Most of the training received by initial trainees is in the form of on-the-job training in the courts or PPOs. Each trainee is assigned to a variety of mentors practicing as judges and prosecutors in different areas of the law. There is some supplemental classroom training in the form of monthly seminars in topics such as communication skills, conducting proceedings, and ethical standards.

93. **Several stakeholders expressed some concerns about the rigor of the initial training program.** Some Academy mentors suggested that the quality of work done by trainees was on average lower than that done by their comparable judicial assistants. Further, all of the attendees in the initial year of the Judicial Academy passed the final examination, which raised questions as to the rigor of that examination in

⁸¹⁰ Strategic Guideline 3.1.2 – Action Plan for Implementation of the NJRS 2013-2018.

⁸¹¹ Participation in the network requires annual training assessments. The network also provides training standards and curricula, judicial training exchanges and programs and training expertise.

⁸¹² As discussed in other sections of the Functional Review Report, there are already too many judges in the Serbian judiciary, so the rationale for further intakes of initial trainees is not clear. For discussion of falling incoming cases and shrinking mandates, see the Demand Chapter. For the numbers of judges relative to EU comparator countries, see the Number of Judges section of the Human Resource Management Chapter above. For discussion of uneven workloads of existing judges, see the Governance and Management Chapter.

⁸¹³ See for example, *Report on Judicial Reform*, Anti-Corruption Council, 2014, at p11.

particular.⁸¹⁴ For the equivalent of 70 percent of a Basic Court judge's salary,⁸¹⁵ trainees should perhaps be expected to meet more onerous standards akin to that of the highest European Academies. A more rigorous process might also build confidence within the judiciary that only the highest quality of trainees graduate from the Academy.

iv. Continuing Training

94. **Judges and prosecutors are not obligated to attend continuing training except for few specific topics,⁸¹⁶ and there is little incentive for them to do so.⁸¹⁷** Courses in substantive areas of law that comprise the bulk of the courts' caseload are not regularly offered, such as basic courses in civil litigation, family, or labor law. There is also no dedicated training for managers, such as court presidents and heads of departments, whose capacity and skills are pivotal to the success of courts and PPOs. Instead, continuing education centers on a selection of topics of immediate interest such changes in the new CPC.

95. **The Academy website does not provide information on upcoming continuing trainings and there is no process for individuals to independently apply to attend courses.⁸¹⁸** Judicial assistants commented that CPC training was announced two days before the training commenced, making it difficult for them to request attendance.

96. **The continuing education courses offered through the Academy vary in assessed quality.** Despite extensive training funded by the OSCE and the US Department of Justice (DOJ) in the new CPC,⁸¹⁹ many prosecutors report they have not received any or only inadequate training about the CPC. A significant, second round of training for courts and PPOs using IPA 2012 funds was not expected to begin until at least June 2014, many months after the implementation of the new CPC in October, 2013.

97. **Most of the continuing training's content and form is developed by the donors who fund it.** The form of that initial training in the new CPC was received with mixed feedback. Recipients noted appreciation for the training but reported that it was too short, and was inconsistent since not all trainers were equally skillful. These are all aspects in which the Academy could assist donors in providing the highest quality training possible.

98. **Participants and donors report that the Academy's role in guiding the form and content of training varies, with the Academy only sometimes providing leadership.** As an example, in collaboration with the Appellate Misdemeanor Court, the JRGA project played the lead role⁸²⁰ in developing and delivering extensive training for Misdemeanor judges and staff in substantive issues, and ICT⁸²¹ and training for authorized petitioners in the Misdemeanor Courts (e.g., traffic police).

⁸¹⁴ In the form of a simulation of three trials before an Examination Board comprising two judges and a prosecutor.

⁸¹⁵ By contrast, judicial assistants in Basic Courts receive 50 percent of the salary of a Basic Court judge.

⁸¹⁶ For example, juvenile law if a judge is assigned to these cases.

⁸¹⁷ For further discussion of lack of incentives, see the section above on evaluation and promotion, and the absence of training or skills development as a criterion of either.

⁸¹⁸ Invitations for trainings are sent to the president of the court or the chief prosecutor, who decides who will attend the training (perhaps after soliciting interest from the court's staff).

⁸¹⁹ For a total of 1,848 individuals in 2012 and 2013. DOJ also provided CPC training for specialized prosecutors' offices and courts, police officers and Chief Prosecutors/First Deputies of regular PPOs. DOJ/OSCE are planning trial advocacy training for June 2014 and future training in special investigative techniques.

⁸²⁰ JRGA played the lead role in identifying lecturers, agreeing on the structure of and developing training materials, training the trainers when needed, training logistics and creation of a bench book to be used after the training.

⁸²¹ 1,150 person days in implementation of the new Law on Misdemeanors, tax and customs regulations, anti-corruption regulations, case management, outreach and communication, judicial ethics, etc. 3,000 person days in basic computer, Libre Office and the registries module.

99. **The Serbian judiciary should invest in an extensive program of continuing training.** By investing in the permanent resources the system already has, the Academy could be at the forefront of the transformation. Training could be provided in every issue relevant to a modern judiciary, in accordance with an exemplary curriculum. Participation in the training could be mandatory in basic capacities, and could be encouraged in specialized topics, evaluations and promotions. The development of a continuing training program should be the top priority of the Program Council in collaboration with relevant stakeholders.

100. **Peer-to-peer learning could also be further fostered.** Both the NJRS and IPA 2012 call for the development of a national network of peers for sitting judges. In a positive move, and though this effort has yet to begin, additional peer-to-peer training may be offered to individual judges at their court sites as an effective form of on-the-job training. Institutional linkages with European judiciaries could be intensified to provide greater peer-to-peer exchange. Routine colloquia could be convened to discuss specific issues, share experiences, and adopt best fit practices from abroad. Such efforts may further boost capacity, morale, and performance.

101. **Although not the only area of need, training needs specific to CPC implementation are acute.** Prosecutors and Deputy Prosecutors report they need more training in case processing including how to effectively manage cases, ensure efficient proceedings, and the procedural steps to be followed under deferred prosecution and plea bargaining arrangements. Deputy Prosecutors also highlight the need for practical training on investigative techniques and the use of case management systems. Joint training sessions between judges, prosecutors, and police would also be useful to clarify roles and responsibilities and promote coordination. Basic orientation training before the implementation of the CPC should now be supplemented by more advanced training that applies lessons from the first six-months of experience.

102. **Continuing education could be improved by taking greater advantage of the Academy's sizeable staff and knowledge of adult learning techniques.** The Academy's core competency should be in structuring the form of curricula (e.g., the balance of provision of legal knowledge and practical exercises) the length of training, the qualifications of trainers, the form of 'bench books' or manuals that trainees can utilize after the course is complete, and conduct and analyze training evaluations.

103. **Other judicial branch entities should also play a role in continuing education where it will add value.** For example, participation by the SCC or Constitutional Court in human rights training could center the training and alleviate the general feeling of judges that they remain unfamiliar with ECHR precepts. This is despite over 2,300 training days provided in the topic between 2011 and 2013 by the CoE, and 684 training days of specific training in ECHR and Serbia Constitutional Court cases.⁸²²

v. Training for Assistants and Court Staff

104. **Skill-based training programs for Judicial and Prosecution Assistants have not been adopted.** Article 50 of the Law on the Judicial Academy requires the Program Council to do so in cooperation with Court Presidents and Prosecutors. While assistants may participate in subject-specific training at the Academy, a rigorous, skill-based training program has not been developed to prepare them for their current duties. Representing nearly 2,000 professional employees, this resource is critical to court performance. A large injection of training for this group could help harness their potential to contribute to the transformation of the judiciary. Assistants should be issued appropriate certifications to reflect and value their important role in the judiciary.

⁸²² Funded by the TMC Asser Institute of the Hague.

105. **Similarly, training for other court staff has been extremely limited.** In 2011-2012, the Academy and

Training in management for Court Managers, in concert with that for Court Presidents, was well-developed, effectively delivered, and was supplemented by reference materials that could be used subsequent to the training.

Trainers produced resource materials to supplement the curricula, including a training manual and a trainers' guide. In October 2010, the SPP transferred these curricula to the Academy so that it can continue to offer the training.

the SPP developed and delivered a five-day orientation program for Court Managers.⁸²³ Some training on AVP was provided when the system was rolled out in 2010, but not since. Some training to misdemeanor staff was provided with the support of USAID. Beyond that, no other training of administrative court staff has taken place. Most administrative staff interviewed by the Functional Review team had undergone no training since their appointment, and like for the continuing training of judges, prosecutors and their assistants, a large injection of training for court staff could elevate the capacity, morale, and performance of the judiciary across the board.

e. Salary and Benefit Structure for Judges, Prosecutors, and Staff

106. **Salaries for judges and prosecutors in Serbia are appropriate.** In 2012, Serbian judicial salaries were

In 2012, the ratio of judges' salaries to the average salary in Serbia was similar to the average among the 29 jurisdictions evaluated for this purpose by the CEPEJ and is equal to or higher than that in 18 of the jurisdictions.

2.1 times higher than the national average salary in Serbia. This compares well with European benchmarks, where the salaries of judges are on average 2.3 times higher than the national average salary. In Serbia, the salaries of judges and prosecutors have decreased in real terms since 2010.⁸²⁴

Such decreases have been common in countries where the financial crisis has been significant, and have generally tracked the decreases in national average salaries.⁸²⁵ Like most European jurisdictions, Serbia does not apply a difference between the salaries of judges and prosecutors.⁸²⁶

107. **Non-salary compensation is a concern in some areas.** There are notable outlier courts where 'other compensation'⁸²⁷ represents as much as 18 percent of salary, representing a potential for favoritism. On average, the proportion of 'other compensation' equals only 3 percent of judges' salaries and 6 percent of total compensation. In one Appeals Court however, 'other compensation' totaled 16 percent of judges' salaries while some judges received no compensation in those categories. The large variation in compensation should be further investigated and regulated.⁸²⁸

108. **The liberal use of allowances has been a concern in the past (see Table 32).** For example, stakeholders reported to the Functional Review team that some courts were allegedly exploiting on-call allowances by allowing all sitting judges to be 'on call' and thus entitled to generous allowances. The practice became costly for the judiciary and was the subject of criticism. In a positive move, the HJC together with the SCC recently ended this practice. Some judges and prosecutors do need to be on call, but these rosters

⁸²³The course addressed court leadership, case flow, budget and fiscal, technology and human resources management and performance measurement. A parallel two-day orientation curriculum for Court Presidents resulted in a Court President manual, with recommended best practices in court management.

⁸²⁴Salaries have risen in nominal terms but were offset by higher than expected inflation. Further, in 2014 a solidarity tax was imposed which reduced salaries by 25 percent. Such salary reductions are likely to impact morale and increase vulnerabilities to corruption and undue influence. For discussion of corruption and undue influence, see the Quality Chapter.

⁸²⁵Judicial salaries have also decreased in Greece, Hungary, Iceland, Ireland and Portugal since the financial crisis. In Iceland and Hungary, judicial salaries have fallen more sharply than decreases in the national average salary. See CEPEJ Evaluation Report, 2014.

⁸²⁶While base salary is the same, slight variations may be applied to allowances, depending on the nature of the judge or prosecutor's work.

⁸²⁷Other than salary or social benefits.

⁸²⁸This process will be simplified once the proposed Central Payment Unit in Treasury is implemented.

should be tightly managed to prevent malfeasance. Vigilant monitoring by the HJC, SCC, and Court Presidents is warranted.

Table 32: Expenditures for Judge Compensation by Court Type, 2013⁸²⁹

Court Type	Average Judge Salary	Average Social Contributions	Average Other ⁸³⁰	Other Compensation as share of Salary	Range of Other Compensation
Basic Courts	1,940,178	347,272	59,643	3%	1-6%
Higher Courts	2,362,361	430,322	74,032	3%	1-18%
Appellate Courts	2,619,729	471,905	210,174	8%	3-16%
Commercial Courts	2,375,375	425,254	64,973	3%	0-12%
Misdemeanor Courts	1,610,154	288,231	48,985	3%	0-12%

109. **The average prosecutor's salary is within the range of judge's salary at the same level (see Table 33 below).** There is no difference in the salary structure, and the prosecutors' salary is influenced by the same factors. There is no clear guidance on eligibility for financial awards. Some PPOs report that they use this incentive,⁸³¹ while some do not. The lack of guidance can lead to favoritism and cronyism. The compensation scheme should therefore be clearly regulated by the SPC and RPPO, communicated to prosecutors, and monitored.

Table 33: Expenditures on Compensation of Prosecutors & Deputy Prosecutors, 2013⁸³²

Prosecutors Level	Average Prosecutor & Deputy Prosecutor Salary	Average Social Contributions	Average Other ⁸³³	Other Compensation	
				% of Salary	Range
Appellate Prosecutors	2,096,174	374,127	349,865	17 %	1-18 %
Higher Prosecutors	2,390,049	436,066	122,904	5 %	1-18 %
Basic Prosecutors	1,654,154	336,935	96,800	6 %	1-18 %

110. **For civil servants, salaries are more complex (see Table 34).** There are more than 50 different elements for civil servant remuneration, along with a vast array of laws and bylaws that regulate salaries in the courts, making salary calculations time consuming and inherently vulnerable to manipulation. However, non-salary compensation for court employees falls well within the 20 percent of salary deemed a good practice by OECD.

Table 34: Expenditures on Compensation of Non-Judge Staff, 2013⁸³⁴

Court Type	Salaries (RSD)	Social Contributions	Total Compensation	Social Contribution % of Salary
Basic Courts	3,429,310,853	614,525,148	4,043,836,001	18%
Higher Courts	1,081,061,881	193,511,622	1,274,573,503	18%
Appellate Courts	467,118,825	83,609,039	550,727,864	18%
Commercial Courts	492,934,156	88,222,437	581,156,593	18%
Misdemeanor Courts	1,130,943,544	202,428,896	1,333,372,540	18%

⁸²⁹ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁸³⁰ 'Other' includes in-kind supplements, social providing for employees, supplements for employees' expenses, and employees' rewards and other special expenditures.

⁸³¹ It is the same situation with other elements of pay, such as in kind supplements, social benefits for employees, supplement for employees expenses, etc.

⁸³² Information for RPPO, Special Prosecutor for War Crimes and Special Prosecutor for Organized Crime is not available. Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁸³³ 'Other' includes in kind supplements, social providing for employees, supplements for employees' expenses, and employees' rewards and other special expenditures.

⁸³⁴ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

111. **Performance bonuses exist but are not used extensively, and should not be for the short term.** In the absence of a Performance Framework, and with the lack of a rigorous performance evaluation system in the courts (see discussion below), there is insufficient basis to know what is exemplary performance to provide such bonuses. The Law on Pay for Civil Servants and Employees includes provisions for additional pay for superior performance or exceptional workload.⁸³⁵ These pay-for-performance provisions are not used extensively in the judiciary or the rest of state service. Once Performance Frameworks and evaluation systems exist, they may be a useful tool to drive performance by incentivizing individuals to excel.

f. Support Staff Planning and Utilization

i. Human Resource Systems for Court Staff

112. **In 2016, it is expected that the HJC will assume responsibility for internal court organization, the book of rules, and the use and number of civil servants and employees.**

113. **The HJC has not provided the necessary planning to advise the MOJ on these matters in the interim, and is not engaged in current efforts to revise the book of rules.** The MOJ formed a committee⁸³⁶ to review the book of rules, last revised in December 2009, to reflect changes in statutes such as the CPC, the Law on Misdemeanors, or the new court network. The HJC is not represented on the committee, and its participation is limited to sending information concerning the performance of judges to be included in the Rulebook. The committee to consider rule revisions is comprised of 15 representatives from the MOJ, SCC, the courts, individual judges, court administration, witness and victim program staff, and information technology consultants.

114. **The HJC needs to immediately begin planning in order to be effective in 2016.** The HJC lacks capacity and has not begun planning how it will carry out some of the tasks it will absorb. For instance, the HJC does not employ any statisticians to analyze data to provide guidelines for staff levels. The HJC's human resources staff focus only on human resources needs of the HJC and the Administrative Office itself, and mainly comprise payroll processing.⁸³⁷

115. **The responsibility for managing human resources and labor relations of non-judge staff has historically been unclear.** This extends beyond the responsibility for determining the number of needed staff to approving court employee classifications, developing selection techniques, and determining how to fill positions. The Law on Civil Servants directs that the SCC be responsible for these activities. In fact, Court Presidents test, select, assign, promote, and terminate civil servants⁸³⁸ without guidance from the SCC, MOJ or the HJC. Responsibility for performance management of civil servants is not addressed in any statute.

116. **Issues involving the civil service status of court employees are still in flux.** The NJRS Action Plan⁸³⁹ seems to suggest that the judiciary or the MOJ may seek to exclude employees from the protections of civil service altogether. This would be unlikely to meet EU requirements.

117. **Most critically, the status of judicial assistants and judicial trainees has not been formalized.** This

⁸³⁵ Employees may be promoted to a higher step within rank or given 50 percent of their base pay every three months in recognition of exceptional work results.

⁸³⁶ The committee to consider rule revisions is made up of 15 representatives from MOJPA, SCC, the courts, individual judges, court administration, witness and victim program staff and information technology consultant.

⁸³⁷ Including a) hiring AO staff, b) legal acts re HJC employment (e.g., systematizations), c) public procurement, d) integrity plan/anti-corruption for Council members and staff and e) office safety and security.

⁸³⁸ As well as public employees.

⁸³⁹ The action plan reads 'Conducting of analysis of existing regulations on accountability of civil servants [in the courts] and possible modification of those regulations in the form of excluding [them] from the general regime of accountability of civil servants.'

limits the courts in using them to their full potential to contribute to service delivery. When properly used, these positions perform duties and play a role in case management that would otherwise have to be performed by judges or Deputy Prosecutors.⁸⁴⁰ The gaps relating to these positions include:

- a. the lack of specific position descriptions, resulting in assistants performing widely different functions;
- b. as noted above, there is a lack of formal training in their capacity as judicial assistants.
- c. lack of job-specific evaluation criteria or a rigorous evaluation process for use by the assistants' supervisors. Assistants are formally evaluated using the general form for civil servants, which does not recognize their specific roles. The working criteria for their evaluation rely on self-reported statistics not verified by registry offices. Evaluations are not used to establish their career progression from junior to senior assistant, and on to advisor;

118. Uniform civil servant and labor processes for other employees have not been established to ensure transparency, fairness, and consistency:

- a. court position descriptions are generic and do not include the responsibilities, skills, and abilities needed to successfully carry out the job. In 2005, the government promulgated the Decree on Classification and Criteria for Description of Civil Servants' Job Posts, which significantly expanded the level of detail included in the systematizations.⁸⁴¹ This more structured approach to classification, ranking, and selection is required of all ministries and government entities. While recognizing the unique status of the judiciary, the decree envisions a more uniform system of classifying court employees;⁸⁴²
- b. There are no position-specific methods for recruitment or promotion. Applicants are only screened for minimum education levels, and even less so for promotional criteria than for entry levels. They rely on knowledge of and preference for candidates by Judges/Deputy Prosecutors/managers, and there is not a clear career ladder to tie performance to promotion, encourage superior performance, or help the organization retain talented staff. Few promotional applicants come from outside the system;⁸⁴³
- c. Court Presidents determine their court employees' assignments location without criteria (e.g., seniority) or a transparent process for employees to request certain assignments.

119. While employee performance evaluations are regularly completed by Court Presidents, these evaluations are generally perfunctory and do not follow standardized procedures. Performance evaluations are also not periodically reviewed at a level above the Court President. Taken seriously, performance management can help shift compliance with legislation to managing for results.

120. Performance evaluations are largely used for disciplinary reasons but could be harnessed to drive performance improvements among staff. Evaluation can be a valuable personnel management tool to help employees improve their skills or advance in their jobs by identifying training needs and development assignments. Evaluations and promotions can also build in 'desirable criteria' which create incentives for staff to develop capacities in areas of priority such as IT skills, analytic skills, and contribution to priority efforts such as backlog reduction of innovation in case processing. Signaling positive behaviors can thus boost individual motivation, team morale, and system performance.

⁸⁴⁰ For example, Judicial Assistants uniformly draft opinions but only in some courts do they preside over hearings.

⁸⁴¹ The decree requires each state entity to develop 'job descriptions that specify all tasks in the job post, the detailed description of all assignments and the percentage of time spent in performing each separate task.'

⁸⁴² See, for example, Section IV: Special Provisions for Courts and Public Prosecutors' Offices, Decree on the Classification of Civil Servants.

⁸⁴³ Reportedly due to the poor status associated with working in the courts.

ii. Flexibility to Deploy Human Resources to Enhance Service Delivery

121. **The large number of staff classifications within the courts (113 job titles) makes planning complex and impedes effective deployment of human resources.**

122. **Hiring for positions in courts is excessively rigid.** As discussed further in the Financial Resources Chapter, courts are constrained in hiring for positions other than what the classification budgeted for. Courts are also precluded from requesting a position requiring a different educational level than one for which they have already received approval, even if they make funds available within their budget. As a result, courts are prevented from trading two typists for one IT administrator, even where the IT administrator could develop improvements that would far outstrip the value of the typists.

iii. Division of Labor between Judges and Support Staff

123. **There are no processes to evaluate the judiciary's technical methodology of work, such as the effective division of labor between judges and support staff.** A heavy administrative burden impacts the Court Presidents' ability to focus on case management and overall court management. Efforts to revise the book of rules are designed to reflect changes in statutes. They do not seek to re-engineer court processes, ensure work is effectively assigned, or relieve judges of administrative tasks where possible.

124. **Effective allocation of duties to staff in court preparatory departments would ensure case preparation and court practice is consistent.** The Law on Organization of Courts provides that these departments be established in larger courts. The Court President of the Novi Sad Appellate Court noted benefits including more efficient use of the judges' time, higher quality, and more consistent decision-making which outweigh the disadvantages of the reassignment of judicial assistants from individual judges. These departments could be made even more effective by reassigning some existing administrative staff to carry out ministerial duties.

125. **Courts generally need more analytical staff to contribute to improvements in performance in exchange for the oversupply of ancillary employees.** Analysis needs are increasing in scale and complexity, and will continue to do so as Serbia moves towards the accession. Very few, if any, courts employ analytical staff outside of the few in the finance or ICT functions, often on service contracts. Given the specialized skills required for these functions, these employees will likely have to be recruited from outside the courts. This renders an effective and transparent system for selection more critical.

126. **Human resource management and labor relations are managed by the Court President.** Court secretaries and managers, where they exist, play little role in performance management of employees.

127. **There are very few human resource management staff, even in the largest institutions (see Table 35).** Staff that do exist are focused on clerical rather than planning duties. For example, there are no human resources staff in the Belgrade First Basic Court.

Table 35: Human Resources Staff by Court Type, 2013⁸⁴⁴

Court Type	Number of Courts	Number of Judges & Staff	Number of HR Staff	Average HR Staff per Court	HR as a % of Judges & Staff
Basic Courts	67	7630	18	0.3	0.2%
Higher Courts	26	2052	3	0.1	0.1%
Appellate Courts	4	825	5	0.8	0.6%
Commercial Courts	16	914	1	0.1	0.1%
Misdemeanor Courts	45	2602	4	0.1	0.2%

⁸⁴⁴ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

iv. Deployment and Use of Court Managers

128. **There is limited use of Court Managers but no discernible pattern in the types of court or locations that have elected to hire a Court Manager.** Of the 25 courts entitled to request Court Managers, only 10 (40 percent) courts have done so (see Table 36).⁸⁴⁵

Table 36: Courts with Court Managers, 2014

Court Type	Existing Court Manager Positions*	Additional Eligible Courts
Basic Court	2 (Belgrade First, Novi Sad)	11
Higher Court	2 (Belgrade, Nis)	
Appellate Court	4 (all)	
Commercial Court	1 (Nis)	1
Higher Commercial Court	0	1
Misdemeanor Court	1 (Belgrade)	
Appellate Misdemeanor Court	0	
Administrative Court	0	1
Supreme Court of Cassation	0	1

129. **All of the current Court Managers were promoted from within the courts, and most have a business background.** Finding qualified people in certain geographical areas has proven difficult even though the position is classified as a high advisor at the highest salary (excluding judges) in the judiciary. The minimum requirements for Court Managers also vary widely from three to seven years of experience, and require widely disparate educational backgrounds.

130. **Barriers to the use of the position include a lack of understanding of the position's potential benefits to court performance.** The Law on the Organization of Courts provides that the Court President shall entrust material, financial, and organizational tasks to the Court Manager. Court interviews and review of systematizations confirm that Court Managers are used for a wide variety of tasks,⁸⁴⁶ but primarily financial management, procurement, and management of facilities rather than statistical analysis, strategic planning, or general administration. Using Court Managers for these broader functions would assist the courts in becoming more efficient. In some cases, Court Presidents actively critique the purpose of the position⁸⁴⁷ partly because it is external to the usual chain of command from the Court Secretary.

g. Planning for the Future

131. **Human resources management requires making predictions and planning for future human resource needs both in numbers of people and their capacities to face new and growing challenges.**

132. **Unlike some judiciaries in Europe, the Serbian judiciary does not appear to have an 'ageing' problem.** Precise data on the age structure of the judiciary are not available and is not analyzed within the system. Analysis of the likely judge turnover was identified as a priority of the HJC in its Strategic Plan for 2011-13 but has not yet occurred, and other priorities are more pressing. What is known is that of the 2,844 existing judges, approximately 75 judges are expected to retire in 2014 representing 2.6 percent of the cadre.⁸⁴⁸ Observations corroborated by stakeholder reports suggest that the age structure is balanced.

⁸⁴⁵ All courts with more than 30 judges or which manage a facility.

⁸⁴⁶ See Annex 6: Variation in the Roles of Court Managers across Serbia.

⁸⁴⁷ This is particularly true in light of the draft public procurement law, under which tenders for over 3 million dinars are to move to central procurement, which would eliminate some of the work to be done by Court Managers.

⁸⁴⁸ The HJC indicates that it is aware only of the number of judges due to retire due to age in 2014 from examining individual personnel sheets. There are 48 projected retirements among judges in courts to which Academy graduates may be appointed

133. **Within the existing age structure, there is a cohort of judges in the younger and middle-age segments who will likely work in the judiciary for decades to come.** There is hence a need to invest in their continuing training and career progression to maximize these fixed and valuable resources.

134. **Given the high judicial staffing levels in Serbia compared to other countries, vacant positions should not be filled in the short or medium term.** The total of 298 vacancies by the end of 2014 represents approximately 10 percent of the total number of current judge positions. Keeping those positions vacant – or eliminating the positions in exchange for greater flexibility in other resources in the next budget – would further align Serbia with judge staffing levels within Europe. Attrition through the non-replacement of departing judges would gradually improve the resource mix and enable greater investments in much-needed infrastructure and ICT systems. Even in the longer term, future appointments should be considered very cautiously, recognizing that judges are permanent investments. Once appointed, they are difficult to remove or transfer and generate high unit costs to the system in terms of salaries, allowances, staff etc.

135. **Initial training also need not be prioritized.** Smaller cohorts would also relieve funds within the system and allow them to focus on investments in this existing cadre through intensive continuing training.⁸⁴⁹

136. **An automated personnel tracking system is currently under development by the HJC. The system will allow for human resource management and improved performance by individual judges.** The system will include the history of positions held by the incumbent, training received, and complaints registered against her or him which will help the HJC track career progression and improve individual judicial performance.

137. **The HR information system should be used for planning future resource needs, not solely for individual assessment purposes.** Information about performance issues or training gaps should be consolidated and evaluated for where changes can be made in the system.

138. **The various Law Faculties offer some courses to prepare law students for future work in the courts, and these curricula could be improved further.** Annex 5 summarizes the courses offered at the four Law Faculties related to careers in the judiciary, as well as courses offered in European law. As curricula develop, faculties should focus their curricula even further on courses relating to European law, ethics, and skills training such as legal drafting and legal clinics. Should the judiciary develop templates for legal submissions and a standardized approach to judgment-writing, these reforms should be accompanied by intensive training throughout the law school curricula.

139. **Assessment of future needs for non-judge employees also needs to be considered carefully by the HJC.** The MOJ is unable to provide past figures or projections regarding employee turnover. Knowing this information by classification will allow the HJC to transform the judiciary by considering and changing the needed resource mix as turnover occurs. Assistants are a particularly valuable resource, and their career progression into middle-management positions, as advisors, Court Managers and administrators, should be prioritized.

(Misdemeanor, Basic and Higher Courts) in 2014. An additional 27 judges in higher-level courts are projected to retire in 2014. At least some of those positions will be filled from the ranks of lower court judges.

⁸⁴⁹ For further discussion, see the Training section above.

h. Gender Equity in Employment in the Serbian Judiciary

140. **Gender equity in employment in the Serbian judiciary is generally appropriate.** Figures submitted to the CEPEJ by Serbia (see Table 37) show more female than male professional judges in courts at all levels.⁸⁵⁰ Among Court Presidents at first instance courts, the proportion of women is greater than men. This is reflected in the proportion of candidates for presidency of courts that are women.⁸⁵¹ However, among Court Presidents at the second instance, men far outnumber women (see Table 38).

Table 37: Gender Distribution of Professional Judges, 2013⁸⁵²

Professional Judges	Total	Males	Females	% Female
First Instance	2228	652	1576	71%
Second Instance	654	230	424	65%
Supreme Court	34	14	20	59%
Total	2916	896	2020	69%

Table 38: Gender Distribution of Court Presidents, 2013⁸⁵³

Court Presidents	Total	Males	Females	% Female
First Instance	96	34	62	65%
Second Instance	32	23	9	28%
Supreme Court	1	1	0	0%
Total	129	58	71	55%

141. **The vast majority of non-judge staff in the courts are women.**⁸⁵⁴ Of the 11,634 total non-judge staff in 2012, 10,345 (89 percent) were women according to the 2012 data submitted to the CEPEJ by Serbia.

142. **Of the total number of prosecutors, 55 percent are women.** While the proportion of women is higher in basic than higher level PPOs, women represent close to 50 percent of all prosecutors at all levels other than the Office of Organized Crime (see Table 39).

'Diversity within the judiciary will enable the public to trust and accept the judiciary as a whole... it should be open and access should be provided to all qualified persons in all sectors of society'
The Venice Commission

Table 39: Gender Distribution of Deputy Prosecutors, 2013⁸⁵⁵

Office	Total Filled	Males	Females	% Female
First Instance	569	241	328	58%
Second Instance	65	35	30	46%
Supreme Court	12	6	6	50%
Office for War Crimes	8	7	1	14%
Total	659	294	365	55%

⁸⁵⁰ Data collected for 2010 by IMG show a similar pattern. In that year, out of 2,400 judges, 1,700 (71 percent) were women. See: <http://www.politika.rs/rubrike/Hronika/Pravda-je-zenski-posao.lt.html>.

⁸⁵¹ IMG found that of 181 candidates in 2012 for the position of the presidents of the courts, 85 (47 percent) were women. See: <http://www.vss.sud.rs/doc/izbor-predsednika-sudova/Spisak-kandidata-koji-su-podneli-prijave-na-oglas-za-izbor-predsednika-sudova.pdf>.

⁸⁵² Gender-disaggregated data is not readily available within human resources records. This data is based on information submitted by Serbia to the CEPEJ in 2014 for the period of 2013. It is unclear how Serbian authorities delineated between first and second instance courts, so analysis of gender by court type is not possible.

⁸⁵³ Data is based on information submitted by Serbia to the CEPEJ in 2014 for the period of 2013.

⁸⁵⁴ Gender-disaggregated data on staff in PPOs was not provided by Serbia to the CEPEJ.

⁸⁵⁵ Data is based on information submitted by Serbia to the CEPEJ in 2014 for the period of 2013.

143. **In contrast of the eight deputies of the Prosecutor's Office for War Crimes, seven are male and one is female.** Assignment to the Office for War Crimes carries significant prestige, and the salary of deputies there is approximately three times that of a regular prosecutor. The pattern of higher status and pay by prosecutor positions filled by males can be seen in gender of heads of PPOs (see Table 40).

Table 40: Gender Distribution of Heads of PPOs, 2013⁸⁵⁶

Office	Total Filled	Males	Females	% Female
First Instance	59	39	20	33%
Second Instance	4	4	0	0%
Supreme Court	1	0	1	100%
Offices for organized crime/war crimes	2	2	0	0%
Total	66	46	21	31%

144. **According to data submitted to the CEPEJ by Serbia for 2012,⁸⁵⁷ there are no specific provisions for facilitating gender equality within the procedure for recruiting or promoting judges or prosecutors' framework.** This may reflect the fact the majority of judges and prosecutors are women.

145. **The Norwegian Ministry of Foreign Affairs, via the IMG, is working with the HJC to enhance equal opportunity in both employment in and access to the judiciary.⁸⁵⁸** IMG recommends the HJC to increase its capacity in assessing and implementing equal opportunity practices throughout the court system. In particular, IMG encourages the HJC to ensure that a transparent process for recruiting the best candidates for judicial positions and for judicial disciplines is established regardless of gender. It also recommends that the HJC promote cross-sectorial cooperation to promote equal opportunity.

⁸⁵⁶ Data is based on information submitted by Serbia to the CEPEJ in 2014 for the period of 2013.

⁸⁵⁷ Reference, Questions 110.1, 112.1, 117.1 and 119.1.

⁸⁵⁸ Improvement of Equal Opportunities within the Serbian Judicial System, April 2013. Equal opportunities in IMG's research were elaborated through five target groups: persons with disability, national minorities, female gender, refugees and IDPs. The focus was on three components that IMG covers: refurbishment of court buildings in Nis, Vranje, Pirot, Uzice and Leskovac, juvenile justice system and the work of HJC.

4. ICT Management

Chapter Summary

1. **This Chapter focuses on the management of ICT,⁸⁵⁹ centering on ICT governance, funding, and support, and the degree to which case management systems give courts the functionality required to improve efficiency, achieve greater quality, and improve access in court operations.⁸⁶⁰**
2. **The Serbian judicial system does not yet approach ICT as a tool for transformation.** Responsibility for ICT is fragmented. An overall governance group representing primary justice institutions is needed to set ICT policies, prioritize reforms, and conduct long term planning across the judicial system. Without such coordination, ICT investments decisions will be taken on an ad hoc basis and continue to be donor-driven and supplier driven.
3. **ICT is under-funded and some basic needs are not being adequately addressed.** Hardware is often old; internet connections are uneven across the territory; server capabilities are weak; and many courts lack adequate scanning facilities. ICT literacy is generally low across the judiciary, and basic computer training has not been provided for judges, prosecutors and court staff. Several courts have no ICT support staff, while others do not have enough staff, or have temporary or poorly trained ICT staff. ICT staff turnover is high, and developing in-house ICT capacity will be critical to effective operations and sustainability.
4. **The judiciary relies on a variety of unlinked ICT systems for case processing, case management, and document management.** The main system used in Basic and Higher Courts (AVP) could readily produce greater functionality than it does currently. However, there has been no training on AVP since its rollout in 2010. Ongoing development has been limited, due to poor budgeting and lack of interest in evidence-based decision-making. New case management systems are being rolled out in different courts, and the process has been deeply fragmented. In many cases, courts continue to rely on hard copies that duplicate existing case management systems, and the systems have yet to instill changed behaviors.
5. **Automated information exchange is extremely limited across the sector.** The exchange of documents between lower and higher courts, between courts and PPOs, and between courts and external institutions (such as police and prisons) is entirely manual, resulting in significant inefficiencies, errors, and delays in case processing and delays in receiving funds owed to the court or other parties. Furthermore, ICT remains largely unexplored for sharing information on court practice, accessing services, or facilitating the exchange of documents with legal professionals.



Title: *Efikasna Primena Tehnologije*, submitted by an entrant to the Justice Competition, World Bank 2014

⁸⁵⁹ The World Bank defines ICT as 'the hardware, software, networks, and media for the collection, storage, processing, transmission and presentation of information (voice, data, text, images), as well as related services.' ICT comprises ICI (Information and Communication Infrastructure) and IT (Information Technology). See ICT Glossary.

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTINFORMATIONANDCOMMUNICATIONANDTECHNOLOGIES/0,,contentMDK:21035032~menuPK:282850~pagePK:210058~piPK:210062~theSitePK:282823~isCURL:Y,00.html>

⁸⁶⁰ The Functional Review does not represent a detailed technical analysis of information management and ICT that supports it. For that, see the 2013 ICT Diagnostic Report and the Annex to the 2013 ICT Strategy Report.

6. **The judicial system is caught in a ‘vendor lock-in’, where excessive dependence on vendors has heightened costs and risks and undermined in-house capacity.** Vendors are currently responsible for critical tasks throughout the judiciary, from development through to maintenance, and vendors own and control the data. Contracts favor the vendors, in large part because they were not subject to careful negotiation.

7. **Courts, PPOs and the Councils need meaningful, accurate, and timely statistics generated by the case management system to become more effective in managing overall system performance.** In recent years, significant improvements have been made, particularly to case management systems, and the Serbian judiciary is now a relatively data-rich environment. Data quality varies but is sufficiently reliable to inform decision-making.⁸⁶¹ Yet, data collection requires substantial manual effort, which is

ICT is ‘a tool (...) to improve the administration of justice, to facilitate the user’s access to the courts and to reinforce the safeguards laid down in Article 6 of the ECHR: access to justice, impartiality, independence of the judge, fairness and reasonable duration of proceedings.’
CCJE - November 9th, 2011

time-consuming, inefficient, and prone to errors.⁸⁶² This negatively affects daily operations and inhibits the much-needed transition to evidence-based decision-making in the sector.

a. Governance of ICT Planning and Investments

8. **Information management is of critical importance to the entire judicial system.** First, information is essential to adjudicate disputes. Second, and if used properly, information management can optimize the utilization of other available resources and strengthen the judicial system’s performance. In Serbia, despite the number of initiatives aimed at improving the functionality of management information systems including in the area of court budget preparation, the information system is unable to meet the overall business needs of the judicial system at either the policy or at the operational level.

9. **The key deficiency in ICT is the significant gap between the information collected by the judicial system and the information that stakeholders can effectively access.** In addition, the information needed for judicial system functions and by the stakeholders supporting them are not systematically mapped.

10. **The fragmentation of information flows is manifested by the following:**

- a. workload and case flow information is not integrated with resource management information, e.g. when cases are registered in the case management system, they are not automatically registered in the accounting system;
- b. the courts are required to give multiple supervisory bodies (the Councils, the SCC, and the MOJ) regular reports that overlap, but never provide the whole picture on performance and are not shared among the supervising organizations; and
- c. the systems used for the preparation and execution of court budgets are not linked.

11. **Judicial institutions rely heavily on information obtained manually from one another or other public institutions (MOI, National Bank, etc.).** The level of electronic communication should be higher since most information flows through traditional paper-based channels.⁸⁶³ Also, the organizations responsible for

⁸⁶¹ For discussion of how data was used in the Functional Review, see **Annex 1, Methodology**. The Functional Review team found that the data environment in Serbia is relatively rich relative to comparable jurisdictions. Data across the system contained numerous errors but generally minor ones. However, data were deeply fragmented across the system, and thus required processing, cleaning and triangulation to validate findings. The process highlighted that stakeholders could generally rely on data from existing systems to identify broad trends to inform decision-making, particularly at the individual court level. Unfortunately however, the use by stakeholders of existing data has been limited to date.

⁸⁶² For example, the judiciary created a centralized, standalone dashboard application to examine court performance and resources use. However, the courts enter data manually instead of downloading or exporting them from the case management system.

⁸⁶³ *Diagnostic Report For the Ministry of Justice and Public Administration of the Republic of Serbia*, (ICT Diagnostic Report), 2013.

elements of the business process (e.g. PPOs, the courts, and the prisons) do not collect easily comparable data, nor do they have a direct access to each other's data.

12. **The fragmentation of data models is evident given the judicial system lacks a comprehensive and consistently used model types of data (including substance of cases, information on parties, workflow management, personnel, facilities, equipment, and finance).** A comprehensive model would ensure system-wide uniformity in the scope of data collected, the clarity of data definitions, and the linkage between data.

13. **Data management is deeply fragmented.** There is no centralized data storage, and the same data may need to be entered or manually copied multiple times. Data are usually retained and can be accessed only by those who first enter them.

14. **ICT solutions and management are also fragmented.** Courts of different types, and even different courts of the same type, rely on different ICT solutions to perform the same functions. The responsibility for substantive data control and ICT management is not clearly defined and often overlap. Further, without system-wide project appraisal criteria compliant with international standards, both donor-funded and internally funded ICT initiatives amplify the fragmentation of ICT.

i. Planning Structures

15. **In 2013, the justice system under the leadership of the MOJ evaluated its ICT systems, operations, and management structures resulting in the ICT Strategy Report and Annex.** The Strategy recognizes the strategic role of automation in the long-term success of the judiciary. The Strategy assesses how the judiciary's IT and business strategies can be aligned, prioritizes areas most in need of reform, and identifies specific action steps and funding for making ICT improvements.

16. **The judiciary is not supported by sufficiently robust governance structures to ensure that IT investments help achieve the justice system's goals.** The responsibility for ICT is widely distributed and loosely structured among different entities: visibility of ICT across the judicial sector is low, resources are inefficiently allocated, and systems are incompatible. The judiciary is grappling with the Strategy's scope and depth of recommendations to improve ICT processes. The planning for implementation of improvements called for in the Strategy cannot begin until governance structures are strengthened and roles clearly defined.

17. **There is no overall governance group representing the primary justice institutions to set ICT policies, prioritize ICT initiatives, or conduct long-term planning.**⁸⁶⁴ Committees for the standardization of software for different case management systems (AVP and SAPS⁸⁶⁵) were created in early 2010, and a similar committee for the Misdemeanor Court system (SIPRES) will be formed. However, these groups meet separately from each other, impeding information sharing across systems. In addition, the RPPO largely manages prosecutor ICT operations on its own outside of the MOJ's auspices, even though a significant new application (SAPO) is under development.⁸⁶⁶ There is no forum for considering court and prosecutor system issues in tandem, leading to an absence of system coordination between courts and prosecutors.

18. **The oversight groups that exist are technical in nature and do not drive policy.** These committees deal with specific software or operational issues, rather than undertaking strategic ICT planning or

⁸⁶⁴ Such a group should include the HJC, SPC, SCC, RPPO, MOJ, prison administration etc.

⁸⁶⁵ AVP is the case management system for the Basic, Higher and Commercial Courts, and SAPS for the SCC, Administrative Court, and Appellate Courts. One Basic and one Higher Court in Sremska Mitrovica run both systems as a pilot, though this has produced mixed results.

⁸⁶⁶ Currently piloted in the Appellate PPOs in Belgrade, Novi Sad and Nis; the Higher PPOs in Sremska Mitrovica, Belgrade, Novi Sad and Nis; and the Basic PPOs in Sremska Mitrovica, in Belgrade (first and second), Novi Sad, and Niš.

reengineering⁸⁶⁷ processes to take better advantage of technology.⁸⁶⁸ The committees' work needs to be carefully calibrated with amendments to the Court's Book of Rules and with legislative amendments. In some instances, critical decisions have been delayed.⁸⁶⁹

19. **The MOJ ICT Division is not large enough and does not include people with in-depth knowledge of court operations or programming, limiting its ability to develop systems to enhance court efficiency or quality.**⁸⁷⁰ Out of 18 ICT employees including the Assistant Minister in charge, five staff (less than one-third) work in justice automation, and the remaining employees are assigned to public administration functions. The MOJ's efforts in ICT are centered on donor contributions and contract management rather than the development of new or existing systems.

20. **Therefore, the judiciary does not generally have the capacity or strategic vision necessary to transform itself.**⁸⁷¹ With a clear vision, the system could create an implementation plan to continuously align the judiciary's ICT Strategy with business needs and monitor progress against the strategy. The staff could execute and monitor ongoing projects, manage projects and conduct business analysis, system architecture design, risk analysis, and security design. A dedicated staff with a clear vision could support and coordinate ICT operations and maintenance services.

21. **The much needed activities (creating an implementation plan, business analysis) are either not taking place or the judiciary is entirely reliant on vendors to execute projects and provide support).**⁸⁷² Vendor reliance creates significant costs and risks and undercuts the development of a much-needed in-house capacity.

22. **Courts report that the AVP working group for general jurisdiction courts is effective in identifying needs, but resources are lacking to make the needed changes.** Software changes are not strategically planned: the working group meetings approve requests for software changes as they emerge rather than considering them against the budget for system changes at the beginning of the year or quarter.⁸⁷³

23. **The MOJ recognizes a need for a more focused approach to judicial ICT resources, particularly given the size of Serbia's current and needed ICT investments.** A centralized ICT unit with motivated and skilled staff, and a market approach focused on a 'value for money' rather than a purely technological approach is needed. Without this focus, ICT operations will continue to be inefficient, and systems across the sector will remain uncoordinated.

24. **The ICT Strategy Report recommends considering a public-private partnership to develop and maintain ICT systems, but the sector does not appear ready for this.** Effective public-private Partnerships require significant government capacity and engagement in system preparation, design, implementation and monitoring. Even if such partnerships were created, a robust judiciary governance structure would be needed. The IT Division of the MOJ would need to increase in size and significantly expand its mission to ensure the correct deployment of ICT resources. There would also be an ongoing need for separate committees for ICT policy and operations, and for clear guidelines about the issues to be addressed by these

⁸⁶⁷ Reengineering of Misdemeanor Court processes took place before SIPRES was designed.

⁸⁶⁸ For further discussion of the need to revise the Book of Rules, see the Governance and Management Chapter.

⁸⁶⁹ For example, the request to change codes for implementing the new CPC on October 1st, 2013 was only received by the ICT consultant on September 28th, 2013.

⁸⁷⁰ The HJC has only one ICT position, which is focused on the HJC's internal ICT needs and on the development of the HR management system discussed in the HR Resources Chapter of this report.

⁸⁷¹ The Strategy defines a service-oriented ICT organization as one that focuses 'not only on the technical solutions, but customer satisfaction, alignment with business and money for value. [It] is an attitude of full ownership [of] ICT... the key element [is] open, customer and problem oriented, communicative and proactive.'

⁸⁷² With more or less donor involvement, depending on the project.

⁸⁷³ The working group does not generally know the number of hours remaining in vendor contracts at any given time.

committees and the manner in which these committees make decisions.

ii. ICT Funding

25. **ICT remains underfunded, preventing the development of new systems or the consolidation of existing ones.** The MOJ's ICT budget increased in nominal terms between 2010 and 2012 but actually fell in real terms.⁸⁷⁴ In 2012, 94.2 million RSD were budgeted for business software implementation, but a portion of the budget was used to cover arrears for the development and maintenance of AVP given that no funding had been allocated for this purpose since 2010. The remainder was lost mid-year in the supplementary budget process. The total five-year (2014-2018) ICT funding needs identified in the Strategy are significant, ranging from a total of 7.6 million to 15 million EUR, with expenditures peaking at 6.5 million EUR in 2015. This represents a 230 percent increase from the 2012 funding levels for the MOJ ICT.⁸⁷⁵ Should such increases of funding be sourced, the MOJ's capacity to disburse those funds will need to be strengthened.

26. **There is no long-range ICT budget planning or funding to sustain automation initiatives on an ongoing basis.** This gap is in part because the Serbian budget system does not allow for multi-year budgeting for capital investments. Nonetheless, the judiciary should analyze its long-term needs to inform its own planning, and later request amounts on an annual basis until the overall capital planning process is reformed. ICT funding is instead provided on an ad-hoc basis to meet the most critical immediate needs.

27. **The Serbian judiciary does not perform business case analyses for proposed projects⁸⁷⁶ or analyze their likely total cost of ownership (TCO).** Initial investments in ICT are estimated to be only one-third of the total system costs over the system's life cycle. Significant costs are incurred for ongoing maintenance, future hardware and software upgrades, staffing, licensing, facility improvements, training, and utilities. Performing a lifecycle TCO analysis would advance long-term financial planning and reduce the risk of projects being stillborn or underfunded.

28. **The TCO approach would require closer coordination between the MOJ, the HJC and the SPC.** Presently, responsibility for funding capital expenditures and operational expenses is divided between the MOJ for capital and the Councils for operational expenses⁸⁷⁷. In the area of infrastructure, capital and current expenses will be consolidated within the MOJPA to prevent this bifurcation. The same should be considered for ICT given that the nature of the two types of resources and the rationale for consolidation are similar. A consolidated 'home' for ICT issues would enable a more holistic approach to ICT, including business case analysis and a TCO approach.

29. **The maintenance of software, internet connections, and equipment replacement absorbs a significant share of judicial ICT resources.** The total ICT justice sector expenditures were estimated at 326.2 million RSD⁸⁷⁸ in 2012, of which only 16 million RSD were spent on infrastructure, operational development, and training.⁸⁷⁹

30. **Ongoing maintenance and support costs of ICT equipment provided by donors are not foreseen.**

⁸⁷⁴ ICT Strategy Report Annex, page 33. The 'additional' nominal funds were spent on network development and operations, business software implementation, sector-wide virus protection, scanner maintenance, ICT staff trainings, and some small-scale operational developments.

⁸⁷⁵ The ICT Diagnostic shows MOJ ICT expenditures of 326.2 million RSD in 2012, equivalent to approximately 2.82 million EUR, excluding court spending in ICT.

⁸⁷⁶ Including an assessment of the estimated benefits of proposed projects, the problem they seek to solve, major deliverables and milestones, and alternatives to the project.

⁸⁷⁷ For a further discussion of the issues caused by this bifurcation, see the Financial Management Chapter.

⁸⁷⁸ ICT Diagnostic, excluding court spending on ICT. For the 2012 CEPEJ Report, Serbia reported that the total amount spent on ICT is not available (question 6).

⁸⁷⁹ A portion of the 109 million RSD for software implementation represents new initiatives in addition to the maintenance of existing software. Unfortunately, the breakdown of the expenditures is not available.

Many donor-funded ICT projects do not support their counterparts in calculating ongoing costs, help plan these costs, or build them into budgets. Without forward planning and budgeting, the equipment is not maintained, one-off training programs are not repeated, and the full benefits of the donors' contributions are then not realized.

31. **The MOJ reports there are significant arrears for amounts owed to vendors for system development in prior years.** The MOJ was unable to provide the specific arrears for each vendor, but some case management vendors report working for extended periods without compensation.⁸⁸⁰

32. **These existing obligations leave little funding for planning new systems or for scheduled replacement of equipment.** The MOJ has not adopted a plan or a budget proposal for ICT replacement.

33. **There is no unified inventory of justice system ICT hardware or software assets to be used as a basis for planning future ICT funding needs.** The missing information includes the age and condition of hardware, and the renewal dates for software.⁸⁸¹ An inventory of court ICT equipment is included in the HJC's BPMIS system. Courts such as the Novi Sad Higher Court have independently prepared a more complete hardware inventory⁸⁸². The RPPO maintains a separate hardware inventory for the PPOs, and these sources should be brought together into a single inventory.

34. **The courts report that they have an adequate number of computers, at a ratio of almost one desktop or laptop per authorized position (see Table 41).** With a lower ratio, the Misdemeanor Courts are the exception. First instance courts also report an adequate number of scanners, but once again, with the exception of Misdemeanor Courts.

Table 41: Available Court Hardware by Court Type, 2013⁸⁸³

Court Level	Total desktops / laptops	# Authorized Judges/Staff	Desktops/ laptops per authorized position	# of Courts	Scanners	Scanners per Court
Basic Courts	5,836	7,378	0.8	34	330	9.7
Higher Courts	1,689	2,021	0.8	26	92	3.5
Appellate Courts	714	826	0.9	4	12	3.0
Commercial Courts	945	921	1.0	16	56	3.5
Misdemeanor Courts	1,450	2,601	0.6	45	44	1.0
Total	10,634	13,747	0.8	125	534	4.3

35. **However, courts report that the use of many older, slower computers impedes the effective use of systems and efficient service delivery.** For example, in the Belgrade First Basic Court, the age of workstations, printers, and scanners is reported to result in excessive downtime and maintenance costs. Donors purchased much of the judiciary's hardware when they implemented projects. Without any succession planning, the judiciary has not been replenished.⁸⁸⁴

⁸⁸⁰ Vendors reported to the Functional Review team that the company is unable to commence new work to enhance systems because it remains unpaid for its previous work. For example, MEGA indicates that the AVP maintenance payment was four months in arrears as of April, 2014.

⁸⁸¹ In addition to promoting financial planning, a unified database of software licenses would also allow the elimination of duplicative software licenses, the unification of software versions, and legal determination of user privileges to acquire software in use.

⁸⁸² Showing the number of each type of device, the source of funds, and the status of the equipment (very good, good or underperforming)

⁸⁸³ BPMIS data, 2013.

⁸⁸⁴ For example, the equipment found in the Commercial Courts was purchased by USAID nearly ten years ago and has not been replaced. The network equipment for the Novi Sad Appellate Court was funded by the European Agency for Reconstruction and dates from 2005.

iii. Outsourcing Arrangements

36. **The MOJ does not provide ICT staff support to the courts.** Operations are fragmented and reliant on vendors, donor organizations, or internal court resources. Currently, the following services are fully or partially outsourced to private vendors:

- a. application system development and implementation (MEGA, C.E., ATOS);
- b. application system support (MEGA, C.E., ATOS);
- c. provision of wide area network, WAN/LAN development and maintenance (Orion Telecom);
- d. provision of e-mail services (Orion Telecom);
- e. end-user hardware (servers, workstations, printers) maintenance (SAGA, Informatika);
- f. anti-virus software (Smart).

37. **Reliance on outside vendors to provide IT services is greater than in most countries.** The Gartner Group, the leader in assessing technology planning, states that governments spend slightly over 40 percent of IT expenditures on average on personnel and only 22 percent on outsourcing.⁸⁸⁵ A much greater share of ICT expenditures in Serbia is for outsourced services.

38. **ICT vendor agreements are not consistently well-developed, resulting in varying degrees of effectiveness.** Because of the heavy reliance on vendors, contracts' details are critically important. Some current contracts do not consistently describe the development services to be provided. They also do not ensure adequate and accessible technical support,⁸⁸⁶ detail preventative and corrective maintenance, or provide clear description and state ownership of source code⁸⁸⁷, specifics of release management, or maintenance of trouble logs.⁸⁸⁸ Some system users indicate there was little consultation with users before systems went live, or that feedback was provided but was not incorporated.⁸⁸⁹ Similarly, while some contracts specify the precise hours and form of helpdesk assistance, the Commercial Courts lack access to helpdesk services and SAPS user report only modest helpdesk assistance. In contrast, the agreement between USAID's JRGA project and MEGA for support of SIPRES provides a good model.

Box 29: Elements of Effective ICT Vendor Agreements: The Development of SIPRES

- 1) *Identify the specific development services needed with enough details to avoid ambiguity or error.*
- 2) *Detail how preventative, corrective, and upgrade maintenance will be provided, and include fixed rates for regular maintenance.*
- 3) *Detail the level of source code required and ownership of the source code.*
- 4) *Provide for effective release management so that conflicting versions of the software are not used concurrently.*
- 5) *Specify the times and methods of helpdesk services (online, call-in, in person).*
- 6) *Require vendors to create trouble tickets and report the most common helpdesk assistance and interventions.*

⁸⁸⁵ Gartner IT Key Metrics, Data 2012. North America and EMEA (Europe, Middle East and Africa) had the highest percentage of IT staff to employees (5.2 percent), corresponding to a much lower percentage of total IT spending on outsourcing and third party services (18 percent).

⁸⁸⁶ Vendor helpdesk services are no longer provided to the Basic and Higher Courts as part of the regular contract with the vendor.

⁸⁸⁷ For example, incompleteness in the source code for the Basic and Higher Courts' AVP module hampers efforts to produce additional standardized reports. Thus contract vendors, lacking standardized reports, must recreate the logic of the original program.

⁸⁸⁸ Maintenance logs are maintained for AVP but are not summarized or brought to the AVP working group on a regular basis. Courts variably register concerns with the vendor, the working group, and with the MOJ.

⁸⁸⁹ In other cases, such as the development of the Misdemeanor Court system, users uniformly commented that the design process considered how to make processes as effective as possible when developing the application.

iv. Security and Disaster Recovery

39. **There is no remote backup of systems or data.** The local system backups for AVP and SAPS are made daily, making this a good first step yet not as secure as creating a remote backup. Looking forward, system integration will require an appropriate data warehousing.

40. **Security of manual files is also a concern.** Some courts are holding files in insecure locations. In some exceptional instances, large piles of files line corridors of public access areas of courts and PPOs.

b. Effectiveness of Case Management Information Systems

i. Diversity of Systems

41. **The judiciary in Serbia uses a variety of unlinked ICT systems for case processing,⁸⁹⁰ case management,⁸⁹¹ document management, and providing management information.** As discussed in detail in the 2013 ICT Strategy Report, there are state-of-the-art case management systems in some institutions, and many of the newer case management systems have been or are being developed on the same platform.⁸⁹² However, there remains fragmentation in these systems' development with four separate ongoing implementations. Licensing and cost issues may also impede making these systems completely interoperable.

42. **In addition, there are a number of sub-systems used in a variety of justice institutions.** These sub-systems include separate registers of cases, budget and human resource applications, and archiving systems. Each of these non-standard systems needs to be maintained, their software updated, and security installed at a cost to the judiciary.⁸⁹³

43. **The MOJ is considering how the judiciary could move to a single system, built on the platform for the newer systems (SAPS, SAPO and SAPA), but the 2013 ICT Strategy Report concludes that the cost of designing and installing a single system outweigh the probable benefits.** A single system would enhance efficiency, ensure data consistency, and conform to international best practices.⁸⁹⁴ However, the estimated cost of transitioning to a single system, of the licenses associated with the newer systems, and the WAN connections is quite large.⁸⁹⁵ The judiciary also does not have the specialized staff needed to manage this transition and is likely to remain without this staff support for quite some time.

44. **Instead, the ICT Strategy Report recommends a number of intermediate steps to be taken to enhance efficiency, access, quality, and introduction of information exchange protocols.** The Strategy recommends that the judiciary consider an incremental solution of installing an Enterprise Service Bus

⁸⁹⁰ Case processing refers to the handling of individual cases. Case processing can be accomplished manually, with automation, or a combination of both.

⁸⁹¹ Case management refers to the overall effort to control how cases in the aggregate move through the court system. As with case processing, it can be accomplished manually, automated, or done through a combination of the two. However, comprehensive case management is difficult without sophisticated automation.

⁸⁹² SAPS for the SCC, Administrative, and Appellate Courts; SAPO for prosecutors; and SAPA for prisons. The Enterprise Content Management platform allows for an easier integration between the three institutions.

⁸⁹³ See ICT Strategy Report Annex, pg. 40.

⁸⁹⁴ These best practices call for moving towards a common architecture in all justice institutions, the introduction of flexible but connected components, and data synchronized daily in a single location

⁸⁹⁵ Estimated at a minimum of 500,000 EUR and in excess of 1,000 person days of effort for the transition alone. This estimate does not include additional licensing or WAN costs. The ICT Strategy Report groups recommendations in broad cost categories. The highest cost category is defined as projects costing 500,000 EUR or more. It is likely that replacing all existing case management systems with a single system will far exceed that amount.

(ESB)⁸⁹⁶ to exchange data between existing systems quickly and easily.⁸⁹⁷ Compared with creating a single software solution, the implementation of a so-called ‘middleware’ is less expensive and much quicker to implement, avoids requiring all applications to change immediately or simultaneously, and permits data exchange with systems outside of the courts (e.g., the National Bank, MOF), or any future systems. The first step of developing interoperability standards would cost between 20,000 and 100,000 EUR, and has been identified as a high priority in the Strategy.⁸⁹⁸

ii. Case Management Functionality

45. **The majority of courts use AVP whose case processing functionality is generally good** (see Box 29). Since its introduction in 2010, AVP has increased court efficiency by streamlining the workload and reducing manual record keeping. Unfortunately however, courts are not utilizing AVP’s full functionality, and therefore they are not getting the maximum benefit out of the existing system. This is due in large part to the fact that there has been no training provided on the AVP system since its rollout in 2010.

46. **AVP lacks several critical features generally present in case management systems that would enhance both court and user efficiency, and enhance case management by individual courts.** Significant examples of these missing functionalities include:

- a. user alerts of filing deadlines, identification of next steps, and notices on overdue events;
- b. producing calendars: currently, calendars are produced manually after courts send regular mail to attorneys about proposed dates, and attorneys return objections and alternative dates by regular mail. This creates a significant delay and unnecessary work for court staff;
- c. tracking the time between events and activities: while data to do so are in the system, reports tracking durations between events/activities are not among the system’s standardized reports;
- d. tracking reasons for continuances and other system delays;
- e. providing a central registry of attorneys appearing in court to allow the analysis of the distribution of cases to attorneys.

Box 30: What does AVP do?

The AVP system which operates in Basic and Higher Courts:

- allows the entry of all basic case processing information that previously would have been in a manual registry (e.g., filing dates, parties, judges assigned, history of actions, and court fees), streamlining work;
- incorporates all Basic Court functions from initial filings through to archiving;
- reflects the courts’ actual business processes (does not require extensive workarounds for daily operations);
- uses pull-down menus/validation routines whenever possible, enhancing data accuracy;
- allows individuals at the lowest appropriate level to enter data (instead of relying on judges, for example);
- can produce notices, forms, or standardized orders. However, courts do not uniformly use these functions. For example, interviewees indicate that standardized forms are not used due to significant variations in individual judge practice. Also, typists have not been trained in how to use the standardized forms. Instead, many forms are produced in Microsoft Word templates or on typewriters.

⁸⁹⁶ An ESB is a ‘middleware,’ used when there are three or more applications or services that need to be integrated while masking differences among underlying platforms, software architectures, and network protocols.

⁸⁹⁷ See <http://www.oracle.com/technetwork/articles/soa/ind-soa-esb-1967705.html> and <http://searchsoa.techtarget.com/definition/enterprise-service-bus> for further discussion.

⁸⁹⁸ These figures represent the cost of the first steps only. TCO would higher and should be costed.

47. **In general, courts' management needs are not fully met through timely reports on workload and results.** The system does not automatically provide needed management reports to President Judges on existing assignments or time to disposition of judges or bailiffs for example. The system also does not easily allow for the generation of ad-hoc reports except by well-trained IT technicians. Despite this, some courts have invested significant resources in developing customized reports.⁸⁹⁹

48. **The AVP system has not yet changed the management approach in most courts, from reducing the use of paper to using online versions of documents.** The AVP system lacks robust document management functions, particularly electronic document flow for open cases which is not in place for the general jurisdiction or the Commercial Courts. All documents are provided to those who need them in paper format, rather than electronically viewing and forwarding the documents to the next person in the queue. This may be more of an operational than an ICT issue, related to a discomfort among judges and other users to review documents online. However, even when this barrier is overcome, the functionality for automatically processing workflow would need to be built into the system.

49. **While rumors were expressed that significantly different versions of AVP are in use in various courts, interviews with IT professionals and court staff confirmed that this is generally not the case.** Any programming changes must be approved by the AVP working group, and IT professionals believe that any differences that may exist can be easily reconciled. Also, this issue can be managed on an ongoing basis as the system continues to become virtualized (see below).

50. **Users indicate a general satisfaction with the speed of AVP. However, the system's distributed architecture requires a large number of local servers⁹⁰⁰ and properly trained local staff to maintain and manage them.** Also, when courts or units are added, more servers and their associated software must be acquired and maintained.⁹⁰¹

51. **Replacing many small servers by a larger server (also known as virtualization) would result in significant improvements in efficiency and flexibility.** Fewer and larger servers would provide more flexibility in expanding or rearranging court operations, reduce the need for local IT staff for server maintenance, lower operational and maintenance costs, and reduce energy consumption by up to 90 percent.⁹⁰² This change in the number and size of servers would also support the integration of different databases through middleware as the data will be coming from fewer places. The hardware costs of this solution are not excessive, estimated at between 20,000 and 100,000 EUR and requiring between 50 to 250 working days of effort. However, until applications are centralized, consolidating servers requires linking a number of disparate applications together.⁹⁰³

52. **SAPS is a complete case and document management system providing electronic workflow throughout the system. The system resides in a modern software platform and uses a centralized architecture.** However, licensing for SAPS is significantly more expensive than for AVP⁹⁰⁴, and the cost of moving to a single platform for all courts may be prohibitive, at least in the short run.

⁸⁹⁹ For example, the Vrsac Basic Court created reports to examine the allocation and disposition of enforcement cases by enforcement agent, and to determine the days cases that are pending before individual judges in discrete time frames (30, 60, 90 days) so that the President Judge can make informed management decisions. For a further discussion on how the Vrsac Court used ICT to improve its performance and reduce backlog, see the Efficiency Chapter.

⁹⁰⁰ Most courts use a single server for running the AVP application and for report generation. This may slow the system in larger courts. Because of this experience, a second report-generation server has been added in Belgrade First Basic Court and is currently considered in other larger Basic Courts.

⁹⁰¹ For example, the recent reorganization of the courts required the purchase of 30 additional servers.

⁹⁰² ICT Strategy Report, MOJ, July 2013, p34.

⁹⁰³ Instead, the judiciary virtualizes server environments whenever a new centralized system is implemented.

⁹⁰⁴ 50 EUR per user per year.

iii. User Satisfaction with Case Management Information Systems

53. **Experienced AVP users report that the application is sufficiently user-friendly and responsive.** Delays appear to be caused by hardware (e.g., slow servers) rather than application issues and do not generally rise to the level of interrupting operations.⁹⁰⁵ Less experienced users point to the need for more training.

54. **However, the consolidated servers for the Appellate Courts and for the piloted prosecutor system (SAPO) are very slow.** Staff in Belgrade and Novi Sad Appellate Courts and in prosecutors' office report having to work overtime to make registry entries. At its worst, the system is down altogether.

55. **None of the systems has an adequate helpdesk.** A helpdesk is critical to ensure that common ICT queries can be answered and problems can be resolved promptly to ensure continuity in service delivery. Helpdesks also have an educational function as users can receive practical advice and guidance from professionals. In Croatia for example, the case management system and related software is supported by a full-time helpdesk based in the MOJ, and is staffed by a combination of IT specialists and technology-savvy judges on secondment from the courts. With hands-on experience as users, judges provide practical and relevant guidance, which are highly valued.

c. Effectiveness of Systems for Management Purposes

56. **Weaknesses in data collection and analysis through the judiciary's case management systems prevent it from assessing the effectiveness of processes and organizational structures, and from optimizing the use of resources.** Courts need to capture more than individual case information. To be effective, courts need meaningful, accurate, and timely statistics. There is no overall software 'umbrella' that provides sector-wide statistical information, which impairs evidence-based decision-making.

57. **Collating statistical data requires substantial effort and leads to inconsistent data collection by various entities (the SCC, the HJC, the RPPO, the SPC and the MOJ).** For example, statistical reports are produced via Basic and Higher Courts' AVP application but are not uploaded electronically to a central database site.⁹⁰⁶ Instead, statisticians in the SCC concatenate records received from the courts attached to e-mails to create a master report.

58. **In addition, because there is an inadequate number of mandatory data fields, inadequate field validation⁹⁰⁷ and no 'lock down' of statistics once submitted, data submitted to the SCC from AVP are inconsistent, may be incorrect,⁹⁰⁸ and can be changed by courts after submission.** Further, there is little training in proper data entry, and there are no periodic audits of the quality and consistency of the data entered. As a result, the data submitted to the SCC contain a number of missing or changed entries which can render certain reports meaningless.

Only a seasoned, computer-savvy and determined Court President, statistician, or analyst could overcome the various obstacles to locate the evidence they need to inform analysis and decision-making.

⁹⁰⁵ A second server to speed system times has been added to the Belgrade First Basic Court. Additional servers should be considered for the other larger Basic Courts, until a virtualization with a large single server is possible.

⁹⁰⁶ A Commercial Court statistics portal was established in the Commercial Appellate Court by the CCASA project.

⁹⁰⁷ Field validation ensures that data in a given field are logical for that field, for example: dates are six digits (month, day, year).

⁹⁰⁸ Data entry staff can easily skip items or enter information in the wrong format.

59. **BPMIS has been developed as a standalone application designed as a ‘dashboard’ for examining court performance and resource use in a single place.**⁹⁰⁹ However, courts enter data manually into BPMIS rather than downloading it from the case management system (the data are submitted electronically through a single platform). This creates opportunities for human error in data entry and is time-consuming.

60. **Unreliable and incomparable data impact daily operations and impedes evidence-based management and planning. The data environment will be increasingly unmanageable through the Chapter 23 process.** Data collection and verification was a particular problem during the Functional Review.⁹¹⁰ The data effort indicates that this kind of analysis is not easy in the Serbian system – and has likely not been conducted since the JPEIR 2011. As the Serbian judiciary embarks upon the Chapter 23 process, this kind of analysis will be increasingly necessary to inform decision-making, focus reforms, and satisfy various EC requests.

61. **The organization of case types and classification of case information in AVP impede a meaningful statistical data analysis.** For example, there are currently 70 separate case types and in an effort to revise the book of rules (see Management section); the MOJ is considering adding more. Further, the AVP classifies criminal cases by the most severe offense for which a defendant is accused and by only one defendant, so other charges and defendants are masked. These shortcomings impede analysis of criminal case processing.

If significant improvements to statistical reporting are not made in the short term, the system will likely be inundated with requests that it will struggle to meet, possibly delaying the Chapter 23 process.

62. **Some of the flaws in AVP reporting have been rectified in SAPS.** For instance, after generating a quarterly or annual report, a reporting period becomes ‘locked’ in SAPS so that no subsequent modifications (e.g. back-dated changes) are possible unless specifically authorized by a system administrator and supported by written documentation.⁹¹¹ However, compared to the reports produced by AVP, SAPS statistics comprise a much narrower set of available reports.

63. **The statistical package for SAPO has not been implemented and statistics for prosecutors are gathered in Microsoft Excel.** Users reported to the Functional Review team that they are required to maintain duplicate manual processes because the system does not fully meet their needs, and they are not benefitting from the potential management information the system could produce.

d. Effectiveness of Electronic Exchange of Information

i. Electronic Exchange between Departments within an Individual Court

64. **Staff are routinely required to manually re-enter basic data.** For service of process for example, a party’s address may be manually transposed and re-entered several times by different court departments. This is time-consuming and introduces human error, reducing the efficiency of administrative processes and impacting service delivery. The Basic Court in Subotica introduced an innovative and inexpensive way to improve their business process in service of process (see Box 20).

⁹⁰⁹ Resource management information not collected in AVP’s statistical report is collected in BPMIS. For example, BPMIS contains information about the age and condition of ICT, and other equipment and specific data about the use of contractual services, divided into experts, attorneys, and professional services. These additional data fields allow for a more rigorous analysis of resource needs.

⁹¹⁰ To obtain even relatively simple data for the Functional Review, clerks and statisticians worked tirelessly to enter and clean relevant data. From there, data had to be further processed by the Functional Review team, incomplete data had to be cleaned, inconsistent data verified, and conflicting data either reconciled or choices made as to which data to rely upon. This took many man-hours and is not conducted routinely by the judiciary.

⁹¹¹ For example, which case statistics were altered, why, by whom, and when.

ii. Electronic Exchanges in Individual Courts and between Courts

65. **There is no electronic linkage between the general first instance courts' AVP system and the Appellate Courts' SAPS system.** The judiciary reports it is not working to integrate these systems while deciding on the feasibility of implementing a single case management system. In the interim however, the judiciary could create document exchange protocols and consider implementing middleware to run parallel to the existing systems.

There is a much room to modernize business processes by streamlining and automating aspects of an individual court's workflow.

66. **Manual record-sharing between general first instance courts and the Appellate Courts is accompanied by some scanned court pleadings⁹¹². However, since documents of a given type are not consistently scanned, paper files are still provided to the Appellate Courts.**⁹¹³ Some courts are more successful than others – in the Basic and Higher Courts in Novi Sad, around 60-70 percent of documents are scanned. Scanning is generally a task for administrative clerks, trainees, and interns.⁹¹⁴

67. **A number of factors inhibit the optimal use of scanning technology.** Some courts indicate that scanning clogs system servers.⁹¹⁵ Optical Character Recognition (OCR), allowing the indexing of scanned documents, is seriously hampered by insufficient server capacity. Lower quality scanners also limit the number of pages that can be scanned at a time.⁹¹⁶ Serbian law requires that electronic records that are made available to the public must be made anonymous by removing names, addresses, and any other personal information, requiring significant staff resources.⁹¹⁷

There are standards about which documents should be scanned, but only an estimated 10-20 percent of the total documents are scanned.

68. **The electronic data exchange between the Basic and Higher Courts for small appellate cases is also not taking place, although both Courts use AVP.** Instead, records are provided manually when cases are appealed to the Higher Courts.

iii. Electronic Exchanges between Courts and Prosecutors

69. **The systems in place in courts and PPOs are not interoperable.** Most information is mailed or hand-delivered by prosecutors to the courts. This process causes delays in case processing and significant duplicate data entry by court staff.

70. **Exchange between Basic Courts and Basic PPOs is where the bulk of exchange needs to occur.** Early tests to create an interface between AVP and SAPO have so far proven unsuccessful. Meanwhile, exchange may be possible in the future between Appellate Courts (which use SAPS) and Appellate Prosecutors (which use SAPO) because the two systems share a common underlying architecture, but the link is yet to be generated.

⁹¹² The Misdemeanor Courts share their decisions with the Misdemeanor Appellate Courts by downloading all decisions on a flash drive, and indexing the decisions by case number and judge.

⁹¹³ Documents prioritized for scanning include all initial filings, motions, final rulings by the first instance court, filed appeals, and rulings by the Appellate Court.

⁹¹⁴ For a discussion on the outsized number of administrative staff, see the Human Resources Chapter.

⁹¹⁵ This is less of a problem for Commercial Courts, which have better server capability and so scan more documents more frequently and rely more on electronic copies in daily work. The experience of the Commercial Courts therefore suggests that improving server capability can improve document management.

⁹¹⁶ For example, an appeal record of fewer than 50 pages might be scanned, while a longer record may not be.

⁹¹⁷ This is in contrast to paper records provided to non-parties when they request them personally in court.

71. **The systems in place in PPOs are interoperable, and exchange between them may occur in the medium term.** Information is currently exchanged in writing, which causes delays. Some PPOs already operate on SAPO, but others do not. Those which do operate on SAPO do not exchange with each other. When the rollout of SAPO is complete, all PPOs will operate on the same system and exchange should be available. This should result in great efficiency in internal dealings between PPOs.

iv. Electronic Exchanges with Other Institutions

72. **The Misdemeanor Courts are well-positioned to exchange information with law enforcement and local government authorities through their registries of sanctions and unpaid fines.** The registries are housed in the MOJ Data Center to which all Misdemeanor Courts are connected and where they can upload data. The JRGA and the MCCMS software vendor implemented the module for the registries in time for the March 1st, 2014 implementation of the new Law on Misdemeanors. Data exchange protocols between the Misdemeanor Courts and the traffic police, the Business Registers' Agency and the Department of Payments within the Treasury are particularly important if the registries are to have the desired effect on the effectiveness and efficiency of misdemeanor procedures.⁹¹⁸

73. **In the future, much could be learned from the Misdemeanor Courts.** It will be important to monitor and evaluate these new reforms. For a discussion of the potential for the Misdemeanor Courts' fine registry to apply to unpaid utility bill enforcement, see the Efficiency Chapter.

74. **Communications between courts and financial institutions is almost entirely manual, resulting in significant inefficiencies and delay in receiving funds owed to the court or other parties.** Reports concerning the payment of court fees to the Treasury are provided manually to courts, whose staff must read through the manual records and re-enter relevant data into case management systems.⁹¹⁹ Similarly, when courts receive default judgments against them for non-payment of expenses, these are processed in a laborious manner, with much room for error. The Commercial Courts also face the particular problem of lack of electronic linkage to the National Bank of Serbia.⁹²⁰ Much efficiency could be gained by linking these systems in the manner being pursued by the Misdemeanor Courts.⁹²¹

75. **Electronic communication between prosecutors and law enforcement is also rare.** These groups collect and maintain data differently and there is no electronic linkage in their common data. For example, the information from the National Criminal Sanction database maintained by the MOI is only available to prosecutors upon written request, slowing the work of prosecutors. Stakeholders report that this causes delay at the investigation stage, both during initial interviews and when considering deferred prosecution.⁹²²

76. **The EU E-CODEX project seeks to develop common technical standards to improve interoperability between legal authorities within the EU and cross-border access of citizens and businesses throughout Europe.** The Serbian judiciary needs to document its technical standards and compare them with those under development by the EU so the newly-developed Serbian standards will comply with E-CODEX requirements.

⁹¹⁸ There are ongoing improvements to the functionalities enabling the tracking of payments, data exchange, and connectivity with the traffic police and the Business Register's Agency.

⁹¹⁹ As discussed regarding the full implementation of SIPRES will enable these data to be transmitted electronically to the Misdemeanor Courts from the Treasury.

⁹²⁰ Thousands of enforcement orders to block company accounts issued by the Commercial Courts are submitted manually to the Bank, which then re-enters these data in its system.

⁹²¹ For a discussion on the need to link financial and caseload data, see the Financial Management Chapter.

⁹²² Prosecutors must verify whether a defendant has previously benefited from deferred prosecution, as the CPC requires that a defendant may be offered this only twice and not for the same offence. For a further discussion on deferred prosecution, see the Quality Chapter.

v. Electronic Exchanges between Courts and Legal Professionals and Allied Professionals

77. **The flow of documents between the courts and legal professionals is almost entirely manual, resulting in significant inefficiencies.** Electronic submission of filings to the court would allow a significant reduction in data entry by court staff, a reduction in the number of services needed, enhance the access for lawyers to court documents with 24-7 availability of e-filing, and the elimination of postal costs for attorneys and printing costs for the courts.

78. **E-filing is at the pilot stage in three courts⁹²³ and endorsed by the MOJ, the SCC, and the regulatory structure to allow e-filing for all case types.** USAID created the protocol, the user's manual and workflow diagrams, created secure signature protections in excess of legal requirements, and purchased a limited amount of equipment needed by the courts for e-filing.⁹²⁴ The selected courts and a few private lawyers have agreed to file and receive documents electronically, using a special court e-mail address and electronic signature cards from the post office.

79. **Potential impediments to expanding e-filing include:**

- a. lack of comfort by courts even though hardcopy PDFs of documents will continue to be provided to courts by attorneys;
- b. limits on size of attachments sent electronically due to printing limitations in the courts;
- c. lack of ICT literacy among attorneys. However, familiarity and comfort with the system is likely to increase once the benefits are understood and internet penetration continues to rise.

80. **GIZ is considering providing software that allows large creditors to upload data to AVP in enforcement cases.** The data exchange would assign cases to judges automatically on upload.

vi. Availability of Audiovisual Recordings

81. **The audiovisual recording (A/V) feature has the potential to save significant amounts of time for judges, prosecutors, and staff allowing more hearings to be held each day and therefore reducing backlogs.** A/V systems also aid judges and prosecutors in recalling the facts of the case at the next hearing and improve transparency, efficiency, and quality of the courts while ensuring a more complete and accurate record for appeals courts to review. The new CPC allows the use of audiovisual technology.⁹²⁵ However, those benefits should be balanced against the cost and the operational changes that would need to be made for an effective use of the technology.

82. **Implementing the A/V recording feature would also facilitate mutual legal assistance across Europe by way of video-conferencing.** The CCJE further recommends that member States develop A/V capability to facilitate holding secured hearings and remote appearances of witnesses or experts.

83. **A/V equipment would be particularly useful in criminal cases.** In cases where the defendant is a flight risk, the costs and security concerns of prison transfers are already high and investment in equipment may therefore be warranted.⁹²⁶ In sensitive cases, including those involving children or vulnerable groups,

⁹²³ The Basic Courts in Subotica and Uzice, and the Commercial Court in Zajecar under a project supported by USAID. The program began testing in April, 2014. A future enhancement will allow attorneys to log in and update data directly to AVP instead of requiring court staff to open attorney e-mails with attachments and to upload each file.

⁹²⁴ Two personal computers, two printers, one reader and scanner for each court, a smart card for each participant, and a shared time stamp account.

⁹²⁵ The chambers for War Crimes and Organized Crime in the Higher Court in Belgrade are mandated to use A/V technology. The court created a specialized control room and hired a dedicated technician to operate the system. The system is also in use in several countries. CEPEJ notes that its use is increasing in European jurisdictions.

⁹²⁶ According to the MOJ, the costs of transfer of prisoners accused of organized crime or war crimes are particularly high, and include additional costs of deployment of special police units. Only the Special Chamber for War Crimes and the Special Chamber for

security concerns may also be mitigated by the use of audiovisual equipment. The judicious allocation of A/V equipment to large courts and large prisons, such as Sremska Mitrovica and Zabela, might therefore be cost-effective while helping improve quality and access.

84. **Costs for a mid-range system span from 10,000 to 20,000 EUR per courtroom, a cost likely to be reduced if several systems are purchased simultaneously.** These costs represent the initial investment in A/V recording equipment and the proprietary operating software only.⁹²⁷

e. Availability of Databases and Websites to Support Judicial Functions

85. **Each court has its own website domain, and system administrators create e-mail accounts and distribute them to judges and court employees.**

86. **The electronic access to legal research tools and international law sites is open to all judges.** All government sites are on the so-called unrestricted 'white list.' The judges' access to the internet is otherwise limited because of bandwidth costs and security reasons. However, other sites can properly be accessed with prior approval from the Department for Joint Services.

87. **The NJRS envisions a single location for Appellate and SCC decisions with rigorous standards about what is to be posted. Currently, the focus is only on SCC cases.** The SCC publishes all its decisions online and is now developing a rigorously searchable database of court practice for judges projected for completion in 2014.⁹²⁸ Cases will therefore be anonymized and will be placed on a public portal.

88. **The Appellate Courts upload some of their decisions to their websites in HTML format,⁹²⁹ facilitating the searching while a few Higher Courts publish bulletins of recent cases and trends in PDF format.⁹³⁰** Publishing appellate decisions provides opportunities for courts to improve the quality and consistency of the decision-making, and reduce the likelihood of challenges of decisions to the ECHR. However, each Appellate Court sets the standards for which cases should be included on these sites individually,⁹³¹ and the portals do not include decisions from the Higher Courts in appeals of the Basic Court cases. Only a small proportion of appellate decisions can be uploaded because of the staff resources required to anonymize decisions before placing them on a public site.

89. **With the support from USAID's JRGA project, the Administrative Courts have developed a promising web application that pools information on cases and court practice.** Through the web application, Administrative Court judges can view intact decisions via their intranet. Further, anonymized decisions (in accordance with the Law on Protection of Personal Data) are also available for public access. This web application has the potential to both improve access to justice and increase the uniformity of decision-making by Administrative Courts. Lessons could be learned here for other courts or departments.

Organized Crime of the Higher Court in Belgrade are equipped to conduct hearings via videoconferencing. However, this method is used only for taking statements from individuals under witness protection located outside Serbia.

⁹²⁷ These costs do not include an operator computer and monitor, installation, training, shipping, customs, etc. A less expensive pilot offered by a private company for general jurisdiction courts (100,000 EUR for Serbia-wide coverage) was of poor quality, provided audio only, and required judges to operate the system themselves. There also are much more sophisticated and expensive systems available, with features that courts are unlikely to need.

⁹²⁸ The database utilizes search maximization which allows visitors to search for cases not just by case header information but also within the text of the case.

⁹²⁹ These can be searched using general search tools such as Google.

⁹³⁰ The documents uploaded are not searchable.

⁹³¹ For example, the Novi Sad Appellate Court uses its eight-person court practice department to review and select cases for posting using criteria of whether a decision was particularly well formulated and/or presents new issues.

f. Quality of e-Justice to Support Access to Court Users

90. **The provision of web-based services is not a technical goal in itself but a critical tool to improve access to judicial services to citizens and legal professionals.** ⁹³²

91. **The European e-justice strategy prescribes a European Justice Portal as a one-stop shop for citizen access.** Simpler procedures (payments, small claims) would be automated and accessible from anywhere within the EU. Serbia should prepare to participate in this venture.

'Full, accurate and up-to-date information about procedures is a fundamental aspect of the guarantee of access to justice identified in Article 6 of the Convention (ECHR).'
CCJE - November 9th, 2011

92. **The EC Directorate General for Information, Society and Media offers standards for evaluating the online availability of public services on a five-point scale:**

- a. Level 1: information – provides access to general information;
- b. Level 2: one-way interaction – provides dynamic information; forms required for service requests can be downloaded;
- c. Level 3: two-way interaction – electronic forms can be initiated through the site;
- d. Level 4: transaction – full electronic case handling of the procedure (e.g., payments);
- e. Level 5: personalization – proactive, automated service delivery.

93. **In their present form, the majority of Serbia's e-justice delivery mechanisms can be categorized under Level 1, but they continue to improve.** ⁹³³ USAID currently works on improving the SCC and HJC sites to include dynamic and individualized information about the calendars of hearings and events. The sites, expected to be available to court users in 2014, will be hosted by an outside provider, but will be maintained by the HJC and the SCC staff.

94. **There are no templates for the look and feel of the sites (e.g., for graphics, standard menus).** The HJC's communications strategy calls for the HJC to recommend court website standards for the first instance courts. USAID JRGA is planning to develop a uniform website template to be disseminated to all Misdemeanor Courts and free of charge.

95. **A portal for calendars and decisions of the first instance courts** ⁹³⁴ **has been developed by the MOJ and allows parties to see the status of their cases.** A portal for the Misdemeanor Courts is under development and the SAPS working group prioritized adding appellate and administrative cases to the portal. ⁹³⁵ These portals represent a significant advance in the access to justice.

96. **The Commissioner for Data Protection recently ruled that electronic portals should be searchable only by case number.** The result is suboptimal, as the requirement prevents lawyers and enforcement agents from seeing all pending court cases at once, impeding efficiency and reducing the general public's access to case information. By working together, the key stakeholders could develop a practical solution to this problem which protects privacy while improving transparency, and which promotes both efficiency and access, consistent with European practice. For example in Croatia, the judicial solved this problem by providing the case number and the initials of each of the parties, allowing users to access information while protecting their privacy. This Croatian portal example could provide useful lessons for Serbia.

⁹³² Consultative Council of European Judges (CCJE) Opinion No.14 (2011) on Justice and information technologies (IT)

⁹³³ Appellate Courts originally copied the SCC's site and later adapted it to their own needs.

⁹³⁴ Initially created for the Commercial Courts by USAID's Commercial Court Administration Strengthening Activity Project.

⁹³⁵ These courts' portal may be separate from that for first instance courts, but users will use a single entry point.

g. ICT Staffing and Training

i. Adequacy of Staffing Arrangements

97. **Nearly 30 percent of Misdemeanor Courts and 18 percent of Basic Courts have no ICT support staff.** When software questions or minor maintenance needs arise, courts rely on non-technical staff that gained some knowledge of the systems from their day-to-day activities. With no ICT training, the ad-hoc volunteers for these tasks will remain unfamiliar with many of the system features.⁹³⁶

98. **The inadequacy of ICT staff affects service delivery.** More significant issues are queued behind all other requests to vendors, and prioritized by the working groups. In other courts, there is generally adequate local ICT court staff to handle immediate issues (e.g., fixing equipment problems, loading software) but not enough to ensure the effective use of systems or provide analytical support to the courts. This impedes the courts' ability to use technology to its fullest, understand their operations, or reengineer their processes to ensure that judges and staff engage in productive activities.

99. **According to the Gartner Group, the leader in assessing technology planning, government agencies worldwide allocate an average of 3.6 percent of their employees to the ICT function.**⁹³⁷ In comparison, the only courts in Serbia with similar ratios of ICT to overall staff are the Higher and Commercial Courts: the Appellate, Misdemeanor and the Basic Courts fall far below that level (see Table 42).

Table 42: 2014 Court Information Technology Staff (Benchmark = 3.6 percent)⁹³⁸

Court Type	# of Courts	# Authorized Judges/Staff	# of ICT Staff	Average # ICT Staff Per Court	ICT Staff as Share of Judges/Staff per Court
Basic Courts	67	7630	101	1.5	1.3%
Higher Courts	26	2052	67	2.6	3.3%
Appellate Courts	4	825	14	3.5	1.7%
Commercial Courts	16	914	34	2.1	3.7%
Misdemeanor Courts	45	2602	38	0.8	1.5%
Total	158	14023	254	1.6	1.8%

100. **Other courts lack specialized ICT-trained staff.** An additional 28 percent of the Basic Courts and 53 percent of the Misdemeanor Courts IT technicians only hold a high school diploma. Network administration, server administration, and website development may not be manageable by local staff.

101. **There is insufficient distinction in the tasks carried out by different IT positions;** instead, 'everyone does everything.' The Belgrade First Basic Court began assigning distinct ICT responsibilities (e.g., network administrator, server administrator, end user support, e-mail support, website development), but these distinctions are not reflected in the systematization of positions approved by the MOJ, and no other courts are using the First Basic Court's model. This results in extreme limitations in career growth within the courts. It may also explain the reported high turnover of ICT staff.

102. **There is no formal training or opportunity for ICT staff to discuss common issues.** ICT employees receive no application-specific training when first hired or any ongoing training. Instead, staff must rely on online forums for answers. Concerns were expressed in interviews about training ICT staff because given the

⁹³⁶ See discussion on the absence of ongoing ICT training.

⁹³⁷ Gartner IT Key Metrics, Data 2012. North America and EMEA (Europe, Middle East and Africa) had the highest percentage of IT staff to employees (5.2 percent), corresponding to a much lower percentage of total IT spending on outsourcing and third-party services (18 percent).

⁹³⁸ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

uncompetitive pay, trained ICT staff are likely to move to other employment.

103. **Further, basic computer and software skills are not included as minimum requirements in job classifications for civil servants in the courts.** Including this basic requirement would reap benefits in terms of greater proficiency among new hires in the medium term.

ii. Adequacy of ICT Training

104. **There is minimal ICT training across the sector.** Many judges, prosecutors and court staff have not received the most basic computer literacy training to familiarize themselves with computer hardware or relevant software. Stakeholders report that many judges are unable to do basic word processing, send emails or run searches in the case management systems or legal research databases.⁹³⁹ As a result, they rely heavily on judicial assistants and court staff – who similarly have received no such training but who may (or may not) have acquired such skills by virtue of younger age or previous employment. As a result, notwithstanding the availability of computers, many judges continue to dictate their orders or correspondence to typists, and then manually correcting them on several occasions, before finally proofing and signing the document. With basic training in computer literacy, the sector could significantly increase its efficiency use of technology.

105. **The ICT training for judges and staff occurs when a new system is implemented (and is usually funded by the donor that funded the system), but it is not offered to new employees or available as refresher courses.** For example, training on AVP, arguably the most commonly used and essential system, has not been conducted since its initial rollout in 2010. More frequent trainings and advanced follow-up trainings could yield efficiency dividends.

Training on AVP (arguably the most commonly used and essential system) has not been conducted since its initial rollout in 2010.

106. **In addition, training is not tailored to what is needed.** There is no training plan for ongoing, site-based training that differentiates IT specialists, super-users who can help other court employees with simpler ICT problems, and other employees. As discussed in the Human Resources Chapter, a training assessment based on survey responses of court employees needs to be conducted.

'The most common factor for the failure of newly created ICT systems does not come from a technical background, but... from the non-usage of the new systems by a ... critical mass of users, thus not allowing the system to actually become truly alive.'
ICT Strategy Report, Ministry of Justice, 2013

⁹³⁹ This is not to say that all judges must type their own judgments. In many jurisdictions, judges and prosecutors conduct shorter tasks on computers while dictating longer documents to their staff. However, in a system with an excess number of judges, including a sizeable cohort of younger judges, some basic word processing may be the most efficient use of existing human resources.

5. Infrastructure Management

Chapter Summary

1. **The overall condition of justice sector infrastructure is very poor.** The new court network brings Serbia to the EU average of number of court locations per 100,000 inhabitants. However, most facilities are between 30 to 60 years old and have received only minimal maintenance for the last 20 years or more. Electrical installations in many judicial facilities are so dire that they are unable to support much needed investments in ICT. It is clear that significant investments in infrastructure will be required to enable the system to perform in a manner that is consistent with European standards.
2. **The insufficient capacity of existing infrastructure affects service delivery.** There is a lack of courtrooms in courts and interview rooms in PPOs. Poor working conditions are identified by many stakeholders as a significant reason for reduced quality of court services. Courts commonly occupy buildings designated as cultural heritage sites, which makes maintenance and renovation difficult and expensive. In addition to maintenance challenges, some buildings were not designed to be courts and do not provide a functional space. In many cases, two or three judges share a single office space and use this 'chambers' as their courtrooms, creating concerns for privacy and security. Despite this, existing courtrooms are not used optimally. Hearings are held only in the mornings and schedules could be tighter to maximize the use of this scarce resource. The lack of space also creates obstacle to reforms that would improve service delivery, such as the establishment of preparatory departments.
3. **Management of judicial infrastructure is ineffective.** Data are only partially available and the system lacks basic information, such as the number of facilities under its control and confirmation of their ownership. Responsibilities were split between the MOJ for facilities, and the HJC and the SPC for operating costs. This is now consolidated with the MOJ. The MOJ's Investment Department, which is currently in charge, has insufficient capacity in terms of staff, skills and funding to perform its functions. At the same time, the Councils lack staff dedicated to this task and do not yet have a plan for how to build their capacity for this purpose. The disbursement rates for capital expenditures are low, and funds are routinely lost or reallocated in the supplementary budget process to meet other needs.
4. **There are no design standards or maintenance protocols for courts and PPOs.** This results an inadequate number, size, and type of courtrooms and PPOs as well as inadequate access for people with limited mobility and sub-optimal working conditions in judicial facilities.

a. Analysis of Existing Infrastructure Stock

i. Number of Judicial Facilities

5. **At the outset, it should be noted that the precise number of facilities under the control of the Serbian judiciary is unknown.** It is a common practice that several courts are located in the same building, while other courts are located across multiple buildings. The MOJ estimates that there are approximately 408 facilities, but there is no definitive list. Similarly, it is unknown who actually owns many of the building. This greatly inhibits planning. Part of the problem is that data are fragmented. Information pertaining to the capital investments in courts and PPOs is collected by the MOJ, while information on maintenance needs is collected by the HJC and the SPC. As a result, analysis is not conducted on judicial infrastructure. Planning for capital investments and infrastructure improvements is done without any systematic approach.

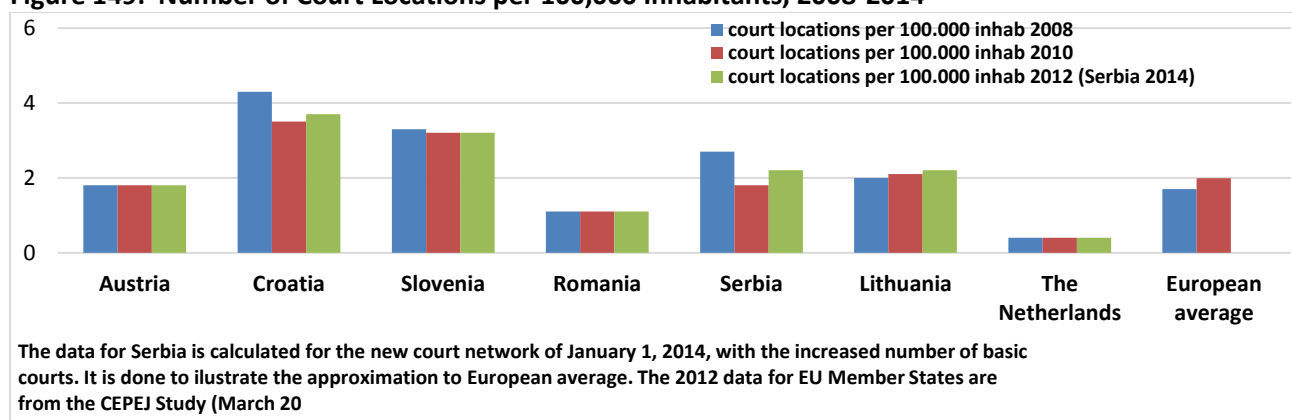
'Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently'
 Council of Europe, Recommendation No. R (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities⁹⁴⁰

6. **The Serbian judicial network has undergone a series of changes, but the facilities have remained largely the same.** The judicial network that had dated from the 1970s was transformed in 2010 with the closing of a number of courts and PPOs. To mitigate the challenges caused by the closing of Basic Courts, the HJC and the MOJ established Court Units (or satellite courthouses), many of which were the same buildings that had been courts before. Almost every Basic Court counted several court units. For example, the Basic Court in Novi Sad in its previous formation had as many as 12 Court Units. Court Units were managed by the Basic Court President, and many carried out the same functions as a Basic Court with the exception of criminal cases that could not be tried in these units, and others operated at limited business hours.

7. **The judicial network was restructured again in 2014.** The major change was the closing of court units and their re-conversion to Basic Courts, raising the latter's number from 34 to 66. Also, in response to changes initiated by the new CPC, the number of PPOs increased from 34 to 58. However, it is important to note that this change has not resulted in an increase in the number of judicial facilities. The new courts and PPOs are located in the same buildings where the court units were located; essentially re-converting Court Units back to Basic Courts.

8. **The 2014 new judicial network aligns Serbia with the EU average in the number of courts per 100,000 inhabitants.** According to the CEPEJ, Serbia had 1.9 first instance courts and 2.7 court locations per 100,000 inhabitants in 2008, well above the Eastern and Central European average of 1.7 courts per 100,000 inhabitants. The 2010 re-networking decreased the number of courts to 0.8 for first instance courts and 1.9 court locations per 100,000 inhabitants. The new judicial map of 2014 brings Serbia close to the European average with 2.2 court locations per 100,000 inhabitants as shown in Figure 149.

Figure 149: Number of Court Locations per 100,000 Inhabitants, 2008-2014⁹⁴¹



ii. Physical Condition of Judicial Facilities

9. **Assuming the figure of 408 facilities is correct, the judiciary operates in 318,058 m² of office space.** As Table 43 below indicates, the Basic Courts occupy the largest area, followed by Higher Courts and Misdemeanor Courts, as would be expected.

⁹⁴⁰ Available at: http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ_percent20Recommendations/CMRec_percent282010_percent2912E_percent20judges.pdf

⁹⁴¹ CEPEJ 2014, 2012, and 2010; based on 2012, 2010, and 2008 data.

Table 43: Judicial Facilities in Square Meters, 2013⁹⁴²

Type of the Judicial Institution	Area/m ²
All Appellate Courts	14,063
All Higher Courts	54,641
All Basic Courts	184,695
All Commercial Courts	17,505
All Misdemeanor Courts	30,049
Basic Prosecutors office	9,547
Higher Prosecutors office	5,902
All Appellate Prosecutors office	1,656
Total Area of all Judicial Institutions	318,058

10. **There are 1,701 courtrooms and 1,897 other judicial offices in the Serbian courts.** As illustrated in Table 44, it is clear that court infrastructure suffers from an insufficient number of courtrooms. In some courts, there are difficulties with the scheduling of hearings due to the scarcity of courtrooms and inefficiency in scheduling. The Higher Court in Kragujevac is the most concerning, with six judges per courtroom. Also worrisome are the Higher Courts in Pancevo, Novi Pazar, Uzice, and Saba which have five judges per courtroom. The Basic Court in Novi Pazar faces the same issues. Misdemeanor Courts face serious challenges as almost half of courts have no courtrooms and hearings take place in judges' chambers. This situation affects service delivery in terms of efficiency and quality of service. Several stakeholders reported to the Functional Review team that lack of courtrooms is a common reason for delays or rescheduling of hearings. In Kragujevac, for example, stakeholders reported at least one criminal hearing is rescheduled each day due to lack of courtroom space. Nonetheless, Courts appear to use courtrooms for hearings only in the morning. The tighter scheduling of hearings, including consideration of afternoon sessions, would enable courts to maximize their use of these scarce resources.⁹⁴³

Table 44: Judges to Courtrooms ratio by Court Type, 2013⁹⁴⁴

Court Type	Number of Other Rooms Used as Courtrooms	Number of Court Rooms	Number of Judges	Number of Judges per Court Room
Basic Courts:	1,168	1,126	1,522	1.4
Higher Courts:	80	152	371	2.6
Appellate Courts:	202	34	200	5.9
Commercial Courts:	52	120	162	1.5
Misdemeanor Courts:	395	269	376	1.4
TOTAL:	1,897	1,701	2,631	1.5

11. **Prosecutors will need more office space to work effectively under the new CPC.** Based on the information collected from the SPC,⁹⁴⁵ a large number of PPOs do not have the space to carry out interviews and investigative hearings, nor do many have sufficient security for that purpose. This poses a significant problem for the successful implementation of the prosecutor-led investigations, as prosecutors do not have basic means to fulfill their designated functions. This would likely have a flow-on effect, reducing efficiency and quality of service along the criminal justice chain.

⁹⁴² MOJ data, 2013.

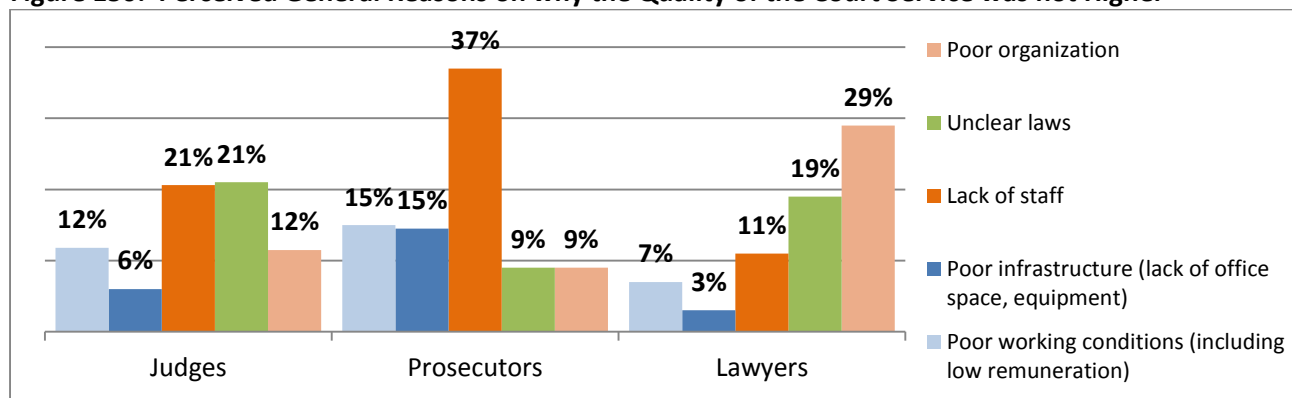
⁹⁴³ For further discussion of scheduling, see the Efficiency Chapter.

⁹⁴⁴ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁹⁴⁵ The SPC created a list of urgent repairs and the equipment needed for all prosecutors' offices. This list was created in October 2013 at the request of the RPPO but has not been updated with information from the newly-opened prosecutors' offices.

12. **The lack of courtrooms and interview rooms affects service delivery.** In the Multi-Stakeholder Justice Survey, prosecutors increasingly report that poor working conditions and poor infrastructure are two reasons for a decrease in quality of court services. In 2013, 15 percent of prosecutors cited working conditions as a reason for decreased quality, an increase from 10 percent in 2009, and 14 percent cited poor infrastructure, an increase from 8 percent in 2009. There have been similar reports from judges, although the number remained steady over the same period. This is an indication that the constraints for the prosecution are more severe (see Figure 150)

Figure 150: Perceived General Reasons on why the Quality of the Court Service was not Higher⁹⁴⁶

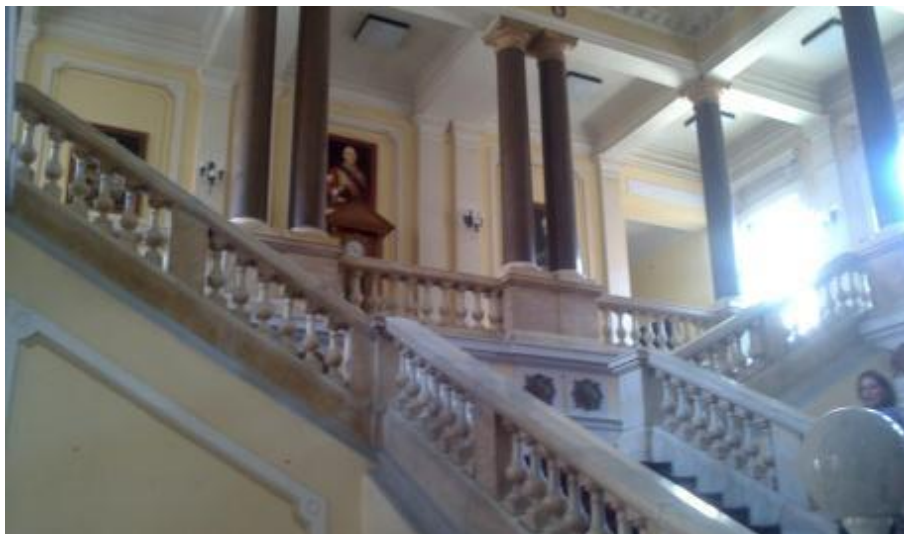


13. **In most cases, courts and PPOs are housed in facilities not suitable for judicial institutions.** Courts commonly occupy buildings that are classified as a cultural heritage, such as the Basic and Higher Courts in Zrenjanin, and the Appellate and Higher Courts in Kragujevac. This makes it more challenging to maintain these buildings, and also harder to upgrade the courts for modern ICT and other features not provided by the original designs. Moreover, several of these buildings were not designed to serve as courts and do not provide a functional space for the judicial system to operate. Due to their listing as cultural heritage sites, these buildings cannot be adjusted to fit modern needs.

⁹⁴⁶ Multi-Stakeholder Justice Survey, World Bank MDTF-JSS, 2014.

Box 31: Inadequate Workspace in a Heritage Building: an Example from the Kragujevac Basic Court.

Originally, the building was built in 1904 and served as a municipality. It is currently home to the Kragujevac Basic, Higher, and Appellate Courts. The building is categorized as a cultural heritage site and is under the state's protection. Over the years, the city of Kragujevac invested in the renovation of the building's facade and roof.

**The main challenges with the maintenance of Kragujevac Basic Court building are the following:**

- The building structure is highly rigid, leaving no flexibility to enlarge or re-arrange the layout of the interior premises.
- Windows are in dire need of renovation. However, the arched wooden windows must be renovated in the same way as the original windows. They have to be custom-made and are therefore very expensive.
- Courtrooms that are approximately 20m² are used for trials, with limited security and poor working conditions.
- Such courtrooms are shared by two Basic Court judges, and serve as both their chamber and as a courtroom. While one judge is holding a trial, the other one works in another corner of the room. Files are located in the room, with implications for security and confidentiality. Stakeholders report that this practice of judges sharing courtrooms is common across Basic, Higher and Misdemeanor courts in Serbia.

Box 32: Urgent Infrastructure Needs: an Example from Sremska Mitrovica

The Sremska Mitrovica Courthouse is home to the Higher Public PPOs, the Basic PPOs, the Misdemeanor Court, the Commercial Court, and the Higher and Basic Courts. The building has a large flat roof area with poorly installed plumbing, dampness, and poor insulation. In addition, the roof sewage installation runs through the courtrooms and a judge's chamber.

During heavy rainfalls, the poor conditions of the roof and drainage system often cause flooding in the judges' chambers and courtrooms, and they pose a serious threat to archives (both paper files and electronic files).



14. **The judicial infrastructure is generally in poor condition and urgent repairs are needed in a number of courts and PPOs.** Based on the information from the list of requested repairs for judicial facilities provided by the MOJ, Table 45 below shows that more than 40 percent of all judicial facilities are in need of total renovation of very basic elements, such as toilets and archives. Several courts, however, report to the Functional Review that requests for upgrades are futile, so they no longer submit them to the MOJ. As a result, the figures below may be under-reported.

Table 45: Requests made to MOJ for Immediate Repairs to Judicial Facilities⁹⁴⁷

	Judiciary facilities	Toilets	Archives	Windows	Electrical installations	Doors	Fire-proof installations	Roof
Total Number	408	1	2	3	4	5	6	7
In-need of complete renovation		171	170	152	148	107	108	57
Percentage		42%	42%	37.2%	36%	26.3%	26.3%	14%
In-need of partial renovation				109	145	112	83	
Percentage				26.3%	36%	26.7%	20%	

15. The poor state of electrical installations in the judicial facilities represents a major obstacle for additional investments in ICT infrastructure. This problem became evident with the introduction of AVP in 2010, when the MOJ reports that significant additional funds had to be set aside to fix issues related to electric installations in server rooms to enable the AVP rollout. Because of poor wiring, cooling equipment could not be installed and the hardware vendor was unwilling to extend the warranty for needed servers. Given that the situation is no better today than it was in 2010, the judiciary is not in a position to further invest in ICT unless these infrastructure challenges are effectively addressed. As a matter of priority, the MOJ should make a rapid assessment of the electric installations in all judicial facilities, focusing on the type of improvements needed to enable further investments in ICT infrastructure.

Box 33: Scale of Outstanding Capital Investment Needs – An Example from Kragujevac

The court building in Kragujevac, in which the Basic, Higher and the Appellate Courts are co-located, once caught fire caused by inadequate electrical wiring. Fortunately, the fire was quickly contained. Given the prohibitive cost of replacing the wiring, the court employees take turns in using air conditioning in their offices. The building is overcrowded. Some Basic Court Judges do not have offices and use courtrooms instead, even when court is in session, to prepare for hearings. As of early 2014, the MOJ was arranging the relocation of the Appellate Court to more suitable premises.

⁹⁴⁷ MOJ Investment Department.

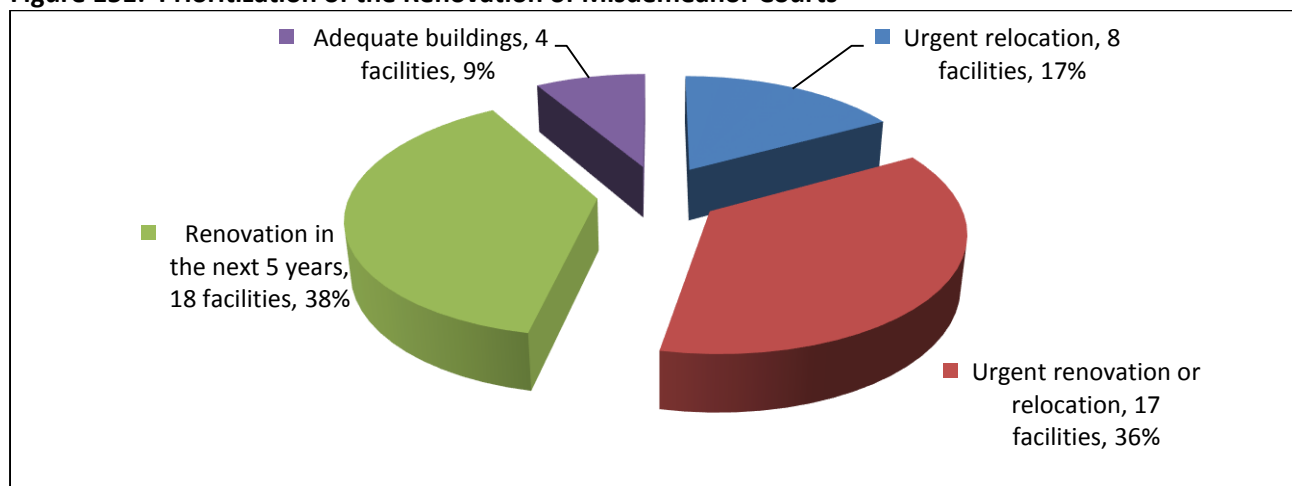
Box 34: Poor working conditions in the Leskovac Misdemeanor Court.

Due to the lack of office space in the Leskovac Misdemeanor Court, the judges' chambers are also used as courtrooms. Two judges share the same chamber, making the work conditions extremely difficult. In addition, as highlighted in the pictures below, the registry in the court is overcrowded and in need of renovation. Some investments in the IT and e-filing systems would greatly improve these working conditions, but this will not be possible until a complete overhaul of the electric installations takes place.



16. In 2013, the JRGA finalized a comprehensive court facilities inventory for the Misdemeanor Courts in Serbia.⁹⁴⁸ The inventory found that less than 5 percent of Misdemeanor Court buildings are in adequate condition. This assessment included 47 buildings where the courts are located (four locations of the Higher Misdemeanor Courts and 43 Misdemeanor Courts). Information on the buildings' physical conditions and related infrastructure, floor plans, staffing requirements, information on building ownership, photographs, and recommendations for resolving the most urgent issues were presented in the assessment. A tentative estimate of costs for the required renovations was also given for each court in order to provide the MOJ and the courts with an overall picture of the scale of investment needed. Based on the JRGA's assessment, Figure 151 below shows that the 17 Misdemeanor Courts should either to be relocated or urgently renovated.

Figure 151: Prioritization of the Renovation of Misdemeanor Courts⁹⁴⁹



⁹⁴⁸ The JRGA's assessment is available on the following link:

http://www.jrga.org/index.php?option=com_k2&view=item&id=234:comprehensive-facility-assessment-of-misdemeanor-courts-in-serbia&Itemid=78&tmpl=component&print=1&lang=en

⁹⁴⁹ JRGA Assessment and MOJ data.

iii. Age Structure and Ownership of Judicial Facilities

17. The judicial facilities were built over the last 200 years, and the age of the structures developed by the MOJ is divided into four categories: a) before 1900s, b) 1901-1950, c) 1951-1980, and d) 1980 – present. Figure 153 and Figure 152 show that the majority of the Basic and Misdemeanor Courts were built in the 1951-1980 period, and are thus 30 to 60 years old. (However, the Basic Courts and the MOJ were not able to establish a date of construction of approximately 20 percent of the facilities, and these are presumably all ageing facilities). The age structure is not so much of a concern as the dire lack of maintenance of these ageing buildings. Most, if not all, of these buildings have received very little maintenance over the last 15 years, possibly longer. As a result, the existing stock of infrastructure across the judiciary is generally in poor condition.

Figure 152: Age of Basic Courts⁹⁵⁰

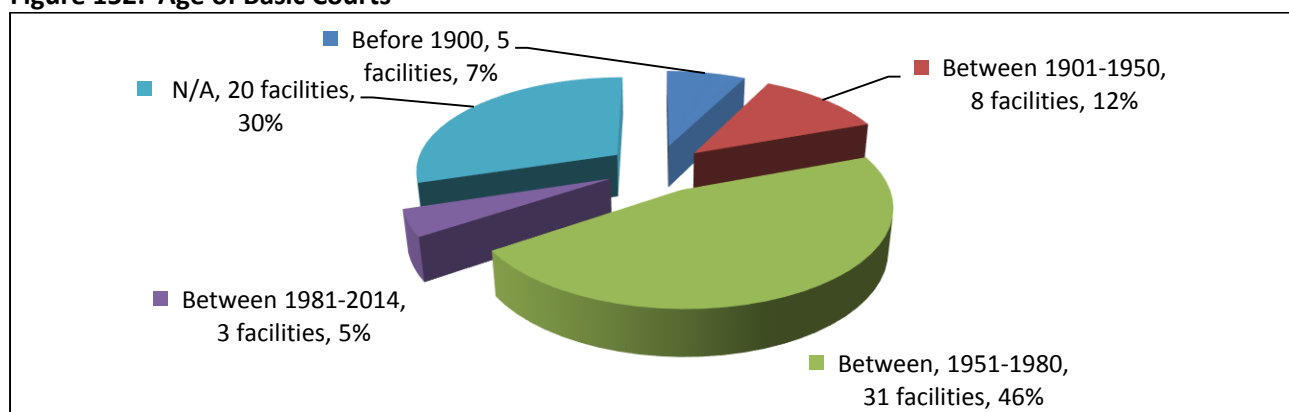
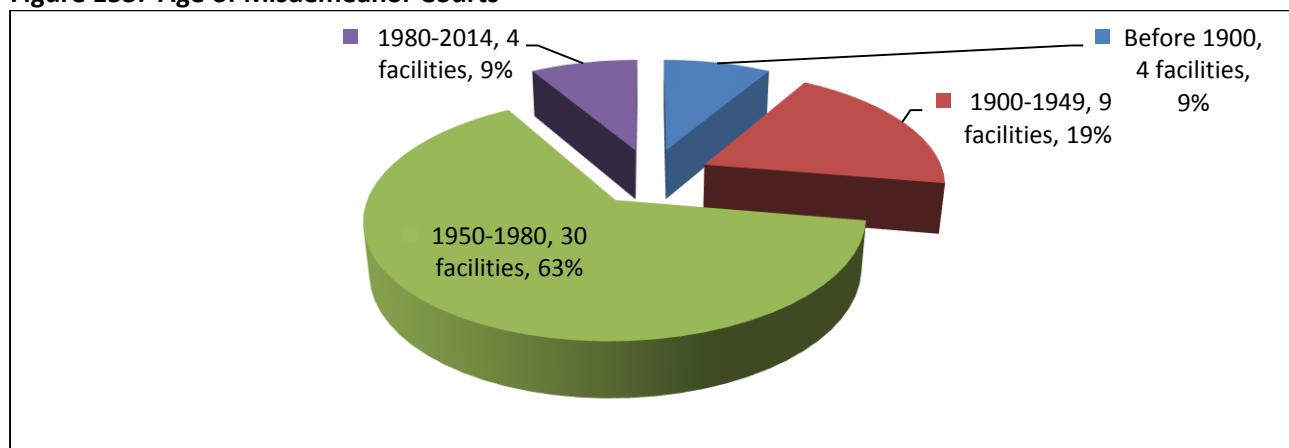


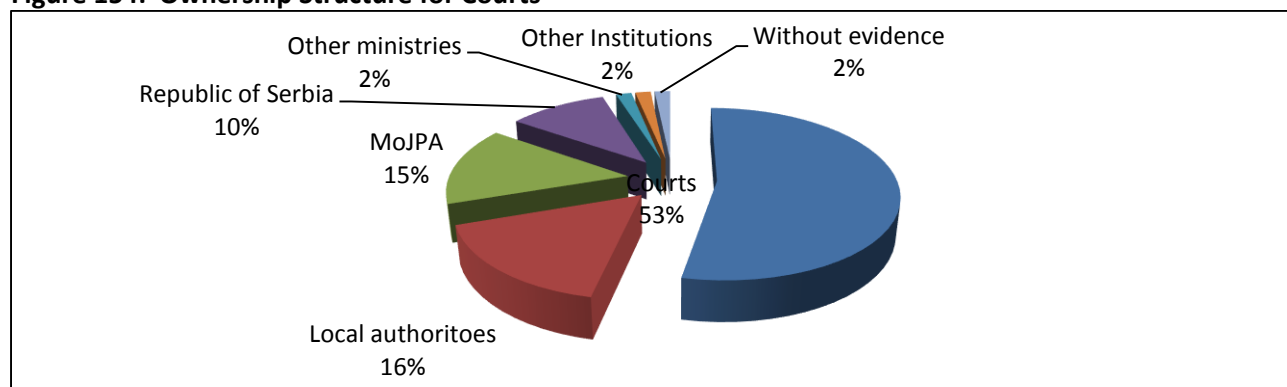
Figure 153: Age of Misdemeanor Courts⁹⁵¹



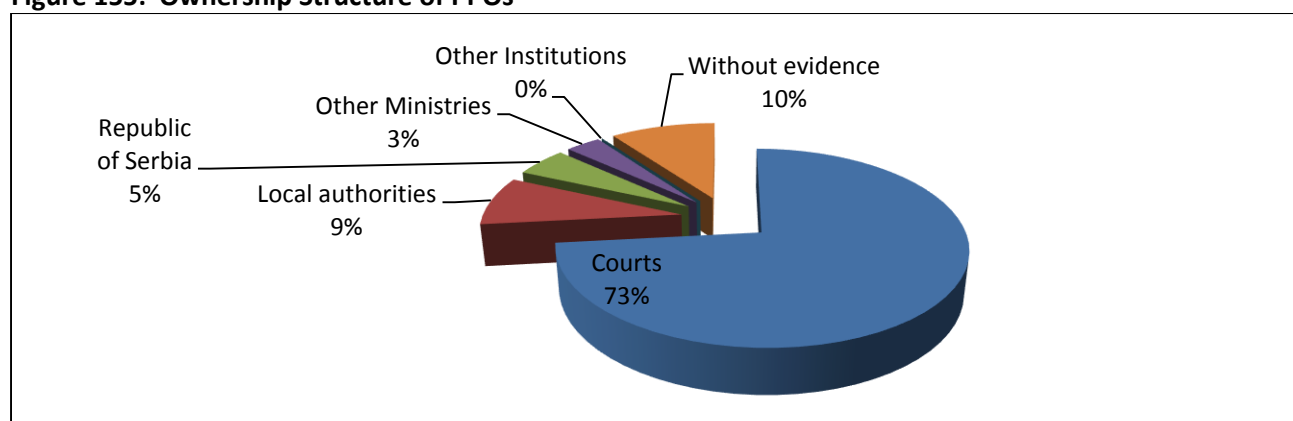
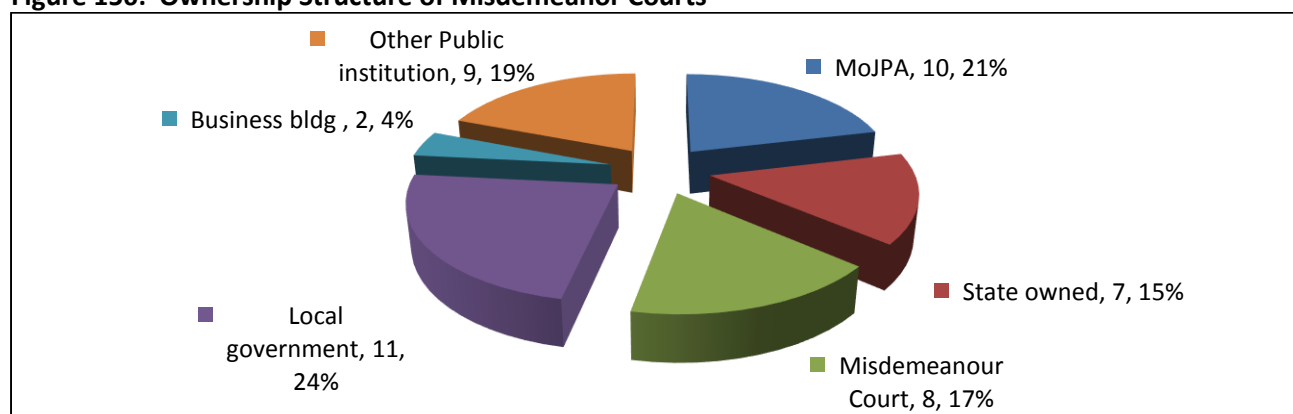
18. There is no single database that can provide information on the ownership of the facilities where judicial institutions are housed. Again, this information is fragmented between the MOJ, the HJC, and the SPC, and is only partially available. According to the MOJ, and as presented in figure 154, the ownership of court buildings is mixed and unregulated. The difference between court buildings owned by Republic of Serbia (10 percent), other Ministries (2 percent), and other Institutions (2 percent) is not clear. The MOJ, in coordination with the HJC and the SPC, should employ the methodology already developed by JRGA to create a database of ownership of all courts and PPOs. Once this is created, the MOJ should facilitate the transfer of ownership from other institutions to the MOJ, courts, and PPOs as needed.

⁹⁵⁰ Data provided by MOJ, 2013.

⁹⁵¹ Data provided by JRGA Project and MOJ, 2013.

Figure 154: Ownership Structure for Courts⁹⁵²

19. As Figure 155 and Figure 156 show, a similar issue exists with establishing the ownership of buildings which contain PPOs and Misdemeanor Courts. It is important to note that PPOs are not owned by the RPPO or the SPC, making it almost impossible for the SPC to fund any major rehabilitation of the PPOs.

Figure 155: Ownership Structure of PPOs⁹⁵³**Figure 156: Ownership Structure of Misdemeanor Courts⁹⁵⁴**

⁹⁵² Data provided by MOJ, 2013.

⁹⁵³ Data provided by MOJ, 2013.

⁹⁵⁴ JRGA Assesment and MOJ Data, 2013.

b. Management of Judicial Infrastructure

i. Judicial Infrastructure Investment Plan

20. **The MOJ is in charge of capital investment and other infrastructure expenditures related to judicial infrastructure.** The responsibilities of the HJC and the SPC in the planning and allocation of the budget for operating costs for the courts and PPOs were transferred to the MOJ as of January 1st, 2014.

21. **Until the end of 2013, the budget planning process for judicial infrastructure was divided between the MOJ, HJC, and the SPC. The MOJ was in charge of the planning for capital investments, while the HJC and SPC were responsible for the planning of the recurrent maintenance costs.** This dualism emphasized the lack of coordination between the Executive Branch and the judicial institutions in planning for infrastructure expenditures, and in the prioritization of the current and recurring maintenance costs. According to the courts, operation and maintenance costs have been neglected by the MOJ, which undermines the sustainability of the capital investments. Further, the introduction of new ICT technologies or different business practices sometimes produces increased maintenance costs, which also require close coordination in the planning of expenditures.

Box 35: Basic Court in Leskovac - How to Secure Sufficient Funds for Maintenance?

In cooperation with the MOJ and the HJC, IMG fully refurbished the Leskovac Basic Court. The total investment for the court exceeded 2 million EUR, and the rehabilitation work lasted for almost 18 months. However, the MOJ responsible for the maintenance of the court has not yet signed the maintenance protocol or set a maintenance budget for this year



22. **The MOJ's capacity for facility management of judicial infrastructure is insufficient.** As of January 2014, the Material and Financial Affairs Sector of the MOJ, headed by the Assistant Minister, is in charge of planning, procurement, implementing, monitoring the realization of the capital expenditures, and maintenance of judicial facilities. The Investment Department, responsible for the management of the judicial infrastructure only has 4 employees, and only the head of the department is a civil engineer. When compared to Croatia, which has 37 employees in the same area (see Box 35), it is clear that the Investment Department is understaffed. Reallocation or recruitment of both additional staff and additional expertise to this department. As a matter of priority, the MOJ should prepare a new organizational structure and job descriptions for new positions in the Investment Department in order to respond to its added responsibilities.

23. **The Section for Investments within the MOJ has developed a database of court facilities in a Microsoft Excel format.** The database attempts to catalogue for each facility its year of construction,

number of stories and square footage, as well as information on various elements of the court facilities such as roofs, walls, carpentry, elevators, heating, and plumbing. Information on capital investment needs are also noted. Although there are inaccuracies and gaps in the data, the Section tries to keep it updated by requesting quarterly updates from the courts. The database is a good starting point to improve management of facilities. Looking forward, greater staff capacity within the Section would enable the MOJ to ensure that comprehensive and accurate data is available.

Box 36: The Croatian model for organizational structure of the Ministry of Justice, responsible for the management and allocation of resources for judicial infrastructure.

1. Finance and Public Procurement Sector (37 employees)

1.1 Finance Services

1.1.1 Finance Planning Department

1.1.2 Treasury Department

1.1.3 Accounting Department

1.2 Procurement and Material Operations Services

1.2.1 Procurement Department

1.2.2 Material Operations Department

2. Project and Investment Sector (23 employees)

2.1 Project Services

2.1.1 EU Programs and Projects Department

2.1.2 International Programs and Projects Department

2.2 Investment Services

2.2.1 Investment Operations Department

2.2.2 Equipment Planning Department

3. IT Sector (37 employees)

3.1 IT Development Services

3.2 IT Maintenance Services

3.3 IT Logistics Services

24. **Meanwhile, the HJC and the SPC do not have any staff in charge of overseeing the management of the judicial infrastructure.** With a plan to transfer the responsibility of budget planning and execution for capital investments from the MOJ to the HJC and the SPC by June 2016, it is paramount that both Councils plan for resources to be available and prepare for this transfer as soon as possible

25. **To strengthen its planning and monitoring capacities, the MOJ is considering the establishment of four detached units of the Investment Department in each Appellate Court.** The rationale behind this proposal is to bring the MOJ closer to the real needs of the judiciary, but this will have to be part of the broader reorganization of the sector. In addition, the MOJ plans to introduce an automated system for the collection of information on the status of judiciary facilities. As a base for this system, the MOJ will use the methodology already created by JRGA for data collection for the Misdemeanor Courts.

26. **The disbursement rates for capital expenditures are low.** Funds for capital expenditures are planned for each calendar year. The lack of a possibility to prepare and approve multi-year capital investment plans poses a risk to the efficient management of judicial facilities. The data provided by the MOJ in the Table 45 below shows that the disbursements for capital expenditures are often significantly lower than the amounts planned.

Table 46: Planned and Executed Budgets for Capital Investments, 2010-2013⁹⁵⁵

Fiscal Year	Source	Planned Capital Expenditures (RSD)	Realized Capital Expenditures (RSD)	Breakdown by Source (RSD)		Disbursement Rate
				Source Budget	Source from Court Fees	
2010	MOJ	218,725,800	255,786,907	N/A	N/A	116.90%
2011	MOJ	218,725,800	256,054,798	N/A	N/A	117.10%
2012	MOJ	338,413,000	152,000,686	39,880,989	112,119,697	44.90%
2013	MOJ	189,124,000	65,857,096	29,611,313	35,245,784	34.80%

27. **Capital investment plans and operation and maintenance costs do not enjoy the same treatment as other judicial expenditures under the MOJ and are particularly vulnerable to being lost in supplementary budget processes.** Despite the MOJ's efforts to develop a multi-year investment and implementation plan, it routinely under-disburses its amounts due to limits on multi-year contracting combined with poor procurement capacity.⁹⁵⁶ Routinely, the MOF then seizes these funds or requires that they be spent to pay arrears within the sector. As a result, investment plans and maintenance requirements are routinely set back.

28. **In order to optimize the use of space in the courts' and PPOs, the MOJ should consider the establishment of a facility or building maintenance manager.** According to existing law and policy, the facility manager will have to take the primary responsibility of setting management rules and procedures for repairs and renovation. The facility or building maintenance manager should directly report to the Court President, and s/he should be responsible for the maintenance of several courts and PPOs within the same district.

ii. Design Standards and Maintenance Protocols

29. **At this stage, there are no design standards or maintenance protocols for courts and PPOs.** This creates a wide range of issues such as inadequate number, size, and type of courtrooms and PPOs, and inadequate access for the disabled. Also, the absence of maintenance standards jeopardizes the stability and working conditions in the judicial facilities. The IMG has prepared a Model Court Guideline, but this standard has not yet been approved by the MOJ and the HJC.

Box 37: Model Court Guidelines: an Example of Good Practice from Leskovac

The 'Model Court Guidelines' set standards for courts in Serbia and were developed by IMG. The Leskovac Basic Court has been reconstructed according to the standards set out by the Guidelines, and to some extent the Basic Court in Pirot has also. The Guidelines could be used as a baseline to set further guidelines for design and operation standards, if adopted by the MOJ and the HJC. This would improve consistency in future infrastructure rollouts.

30. **The MOJ should develop design standards for the refurbishment of courts and PPOs.** In order to create an instrument ensuring that all future court rehabilitations or new constructions would be of consistent standard and quality, as well as be high in sustainability levels, there is a need to establish guidelines for each section of a court by suggesting minimum rules for design and maintenance, such as:

- **A manual for architectural and construction design of courts and PPOs.** The manual should include the prototype design solutions for specific content in court buildings based on jurisdiction, function, and volume of staff, and should be developed through a functional analysis of the users' needs in the modern judicial system. The manual should include guidelines on judicial buildings in terms of

⁹⁵⁵ Megadata Table, World Bank. (Available at: <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>).

⁹⁵⁶ For further discussion of procurement capacity, supplementary budgets and arrears, see the Financial Management Chapter.

location, parking, surrounding land, facades, access for the disabled, and external and internal labeling.

- **A manual on building maintenance.** This manual should contain information relevant to the maintenance and operation of judicial facilities with guidelines and recommendations for regular maintenance of various types of installations in buildings, such as lightning conductor installations, fire installations, steam boilers, elevators, and more in accordance with the prescribed legislation in the country. In addition to the manual, copies of regulations, standards, and norms for maintenance of all types of installations should be included.
- **A maintenance strategy protocol.** The MOJ should adopt a maintenance strategy protocol for each individual building. This strategy has to set unique standards for preventive maintenance, repairs, and renovations of the court building in order to prevent deterioration of the building, ensure guidelines for healthy and safe working environment for the employees and users, and ensure an efficient use of the maintenance executive budget. The main task of the court buildings maintenance strategy is to ensure a functional working environment.

Annexes

Annex 1: Methodology

A. Purpose and Structure of the Performance Framework

1. **The purpose of the Performance Framework is to provide an agreed structure for the measurement of judicial performance in Serbia.** The Framework outlines key performance measurement areas, performance indicators, relevant data, and pertinent European standards where possible. The Framework was developed based on European experiences (Box 37 below), and tailored to Serbia's specific context and its needs under Chapter 23.⁹⁵⁷

Box 38: A Performance Framework Based on European Models

The Performance Framework draws on performance measurement areas, performance indicators, and standards currently used by advanced European judicial systems. For other Performance Frameworks in advanced judiciaries, refer to the quality management systems of the Dutch Courts (RechtspraakQ) and the Court of Appeal in Rovaniemi, Finland, as examples.

While the specific features of any Performance Framework will differ based on local context, priorities, and data availability, the basic approach is similar. The method consists in first defining relevant areas of performance to be measured. In the Netherlands, measurement areas originally comprised: (1) impartiality and integrity of judges; (2) expertise of judges; (3) personal interaction with litigants; (4) unity of law; and (5) speed and proceeding on time. Specific indicators are then assigned to these measurement areas. For example, to measure timeliness, the quality system in Rovaniemi uses as an indicator the extent to which cases are dealt with within the optimum processing times established for the organization of judicial work. The relevant standard is specified as well as the source of the data.

For further discussion, see Court Performance Measurement: International Perspectives and Approaches, World Bank 2014.

2. **Based on the Performance Framework (at Annex 2), the Review assesses the system's external and internal performance.** The *external* assessment examines the performance of the judicial system in terms of the efficiency in judicial service delivery, quality of judicial services delivered, and access to judicial services. The *internal* assessment focuses on the inner functioning of the judicial system and its ability to manage resources for service delivery. Analysis is conducted on governance arrangements, as well as on the management of particular resources, including financial resources, human resources, ICT and infrastructure. The two are related: what happens in the inner workings affects the ability of the system to deliver externally to users, and linkages are made as appropriate. Together, these measurement areas capture the relevant indicators and cover the spectrum of performance in terms of judicial service delivery.

3. **The performance indicators were drawn from indicators commonly used in Europe, as well as from international guidance.** Draft indicators were developed and shared for consultation, and adjusted to suit the data environment and the particular challenges Serbia is likely to encounter during the Chapter 23 challenges. As a result some standard indicators are used (disposition rates, clearance rates, appeal rates, availability of ADR, etc.) and some novel ones have been identified (efficiency in service of process, number of pending utility bill cases, use of Opportunity, etc.) As a result, the Performance Framework is tailored to both the Serbian and the Chapter 23 contexts.

⁹⁵⁷ The Framework underwent a series of consultations with stakeholders from across the justice system, including via workshops held in Belgrade and Nis, and was refined over time to reflect feedback.

4. **The Performance Framework matches indicators and data with relevant European standards.** Some of the standards are binding, such as the right to a fair trial within reasonable time as guaranteed under Article 6 of the ECHR. While most of the standards are not strictly binding, such as recommendations by the Consultative Council of European Judges (CCJE) at the Council of Europe, these guidelines are commonly used as references in the accession process by candidate countries and the European Commission (EC). Such documents are therefore captured by the Performance Framework for guidance. However, very few of these standards and guidelines provide definitive quantifiable measures. There are also fewer standards for internal performance, and where they do exist, they are rarely explicit.⁹⁵⁸ To complement the picture, cross-country data are used to place Serbia's performance in the context of EU Member States. The Review also highlights examples of practices, experiences and lessons from comparator states that could be applied in Serbia.

Box 39: Capturing European Standards for Chapter 23

The Performance Framework matches indicators and data with relevant European standards and references wherever possible. Many of these European standards are not easily quantifiable, and sometimes not explicit. The Performance Framework aims to provide data for all performance areas deemed relevant under Chapter 23 based on the European Commission's description of this Chapter:

"EU policies in the area of judiciary and fundamental rights aim to maintain and further develop the Union as an area of freedom, security and justice. The establishment of an independent and efficient judiciary is of paramount importance. Impartiality, integrity and a high standard of adjudication by the courts are essential for safeguarding the rule of law. This requires a firm commitment to eliminating external influences over the judiciary and to devoting adequate financial resources and training. Legal guarantees for fair trial procedures must be in place. Equally, Member States must fight corruption effectively, as it represents a threat to the stability of democratic institutions and the rule of law. A solid legal framework and reliable institutions are required to underpin a coherent policy of prevention and deterrence of corruption. Member States must ensure respect for fundamental rights and EU citizens' rights, as guaranteed by the Acquis and by the Fundamental Rights Charter."

See: http://ec.europa.eu/enlargement/policy/conditions-membership/Chapters-of-the-Acquis/index_en.htm.

B. Data Sources for the Performance Framework

5. **A range of data is needed to ensure that assessments against indicators and standards are meaningful.** The Performance Framework therefore matches each indicator with a data source, specifies where the data can be found in the Serbian system, and how frequently they are captured. The Functional Review draws on a mix of quantitative and qualitative data. To provide as objective and comprehensive a picture as possible, assessments are made only after triangulating and corroborating multiple quantitative and qualitative data sources.

6. **At the outset, the Functional Review undertook a Desk Review of recent existing work relating to justice reform in Serbia.** The Desk Review catalogues recent analytic work and is available at <http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review>

7. **The Functional Review obtained and analyzed significant amounts of quantitative data from within the Serbian system covering the period from 2010 to 2014.** In Serbia, much of the relevant and available data originates in case management systems and in human resources and finance systems.⁹⁵⁹ One

⁹⁵⁸ For example, the European Charter on the Statute of Judges posits that 'the State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly and in particular to deal with cases within a reasonable period.' However, it does not specify what an appropriate level of financial or human resources would be. These are matters for individual states to determine, although analysis of the experience of other European States is often instructive.

⁹⁵⁹ The Functional Review relies on caseload, financial and human resources data from the SCC, including for the 2013 calendar year. The HJC has created a dashboard system, BPMIS, which collects some of the same data as well as some resource management

of the challenges with data is that information is captured in a non-systematic and inconsistent manner, and is not conducive to analytical work. Also, much of the data gathering is made in an ad-hoc fashion with much duplication and occasional errors (see Box 39 below), requiring considerable data processing and triangulation. On a positive note, the data environment in the Serbian judiciary is richer than ever before. The next step will be to support the system to improve data quality and consistency and use data to inform decision-making.

Box 40: A Cautionary Note on Case Management Statistics

Serbia's system for registering case data records a large amount of information but unfortunately does not work to its anticipated capacity. Databases are still localized at the court level and the exchange of information among them is not automatic, requiring manual inputting of data transferred from one court to another. This transfer duplicates work, is time-consuming, reduces efficiency, and introduces errors. There is a centralized database managed by the SCC and another, the Budget Planning and Management Information System (BPMIS), recently introduced by the HJC. Both consolidate statistical reports sent periodically by the individual court units.

This arrangement presents several challenges to any assessment of performance. First, the Review analysis depends on the pre-determined standard statistical reports submitted to the HJC and the SCC. Therefore, it is exceedingly difficult to run advanced reports for in-depth analysis without requesting all Courts to provide relevant data, suggesting that statistical reports are either not carried out or not effectively so. Also, the existing systems do not help checking for validity of submissions or entries at the court level. As a result, the data contain numerous yet minor errors, and only an audit of courthouses could help identify the correct data, a task well beyond the scope of the Functional Review. Third, some Courts do not provide the required reports, submit them late, or send information that is visibly incomplete.

Overall, the accuracy of data generated by the system cannot be fully guaranteed but key trends have been captured. Wherever possible, the AVP data have been triangulated with BPMIS data, qualitative data from interviews, surveys, and workshops to validate findings.

8. **Data from within the system was supplemented by extensive survey data.** Most European Courts commission user surveys to gauge user perspectives on performance aspects. In Serbia however, court user surveys are not conducted within the system. To fill this gap, the World Bank carried out a series of perception-based surveys, described at Box 40 below.

information not collected in the reports submitted to the SCC. For example, BPMIS contains information the age and condition of ICT and other equipment and specific data about the use of contractual services, divided into a) experts, b) attorneys and c) professional services. These additional data fields allow for more rigorous analysis of resource needs. However, because BPMIS was only implemented in 2013, it does not allow for comparison with data from 2011-2012, also relied upon in the functional review. In addition, differences in caseload data between that submitted by the courts to the SCC and that submitted by them to the HJC suggest that there are data errors in BPMIS. In part, this is because data entry in BPMIS is manual and after statistical data is submitted to the SCC by the courts. Courts report that they made adjustments to some of their initially submitted data when providing it to the HJC for BPMIS.

Box 41: Surveys Conducted for Functional Review

Multi-Stakeholder Justice Survey 2009/2010 and 2013: The Survey measure perception on a range of issues, including perceptions of timeliness, costs, quality, and experiences of corruption. The original 2009/2010 survey was replicated and in 2013. The follow-up survey measured progress against the baseline and was also expanded to include new questions. Each survey has a representative sample of over 6,000 respondents. Respondents include general populations (divided into users and non-users), managers of private sector enterprises (divided into users and non-users), lawyers, judges, prosecutors, and administrative staff. From the two surveys, tens of thousands of data points now exist on a range of issues relevant to perceptions of justice in Serbia, and developments can be compared against the 2009 baseline.

Access to Justice Survey in 2013: In an effort to overcome the challenges commonly associated with collecting and analyzing data on access to justice, the Functional Review undertook a two-part survey. First, face-to-face interviews were conducted with a representative sample of 1,003 respondents in their households across 67 municipalities and 127 local communities in both suburban and urban settings. Respondents discussed the kinds of disputes they and their households experienced, whether they considered taking them to court, and what deters them from using court services. Second, focus group discussions were conducted to gain a deeper understanding of behaviours, attitudes, and motives from specific target populations including economically active urbanites, rural farmers, owners of micro and small private enterprises, and members of LGBT populations. The focus groups consisted of 90-minute rounds with eight participants per session.

9. **Given the importance of the ‘implementation gap’ to Chapter 23 negotiations, the Functional Review also generated a series of Process Maps.** A Process Map measure the number and type of procedural steps that court users are required to take for a particular type of case to be decided from the beginning until a first-instance merits decision – both under the law (a *de jure* map) and in practice (a *de facto* map) – and then compares the two. Researchers mapped out *de jure* and *de facto* case processing for four particular procedures: a divorce proceeding, a domestic violence case, an eviction case, and the enforcement of a utility bill. Expert assessments were made based on the key informant interviews and with legal experts and practitioners specializing in the case type in question. The process maps are published separately and are available at www.mdtfjss.org.rs.

10. **In addition, more than 150 interviews were conducted with stakeholders, along with over 40 field visits and around 15 workshops and forums.** In interviews and workshops, the Functional Review team sought views from stakeholders on performance against relevant indicators, as well as perceived reasons as to why prevailing conditions exist. The team obtained datasets and sought explanations to triangulate data. In doing so, the team heard from stakeholders about experiences, innovations and insights relating to justice service delivery in Serbia. Participants included judges, prosecutors and court staff from all court types, as well as professional organizations and CSOs.

11. **Further, two Justice Competitions were held to gain feedback and insights from the general population into the Functional Review process.** In the Suggestion Competition, entrants submitted their recommendations to improve justice service delivery. In the Photographic Competition, entrants submitted their best photographs depicting what they think justice in Serbia will look like upon EU accession. Two winners from the competitions were each awarded USD 1,000 in a ceremony presided over by the President of the Supreme Court of Cassation. Recommendations of short-listed entrants were considered through the Functional Review process and appear throughout this Report. Photographs from short-listed entrants also appear throughout this Report.

12. **Cross-country data is also used to benchmark the relative performance of the Serbian judiciary to complement explicit EU standards in the context of comparative systems in Europe.** While comparison cannot substitute for tangible standards, they can fill gaps and put the performance of the Serbian system in a European context. To carry out cross-country comparisons, the Review uses additional data sources such as the cross-country statistics on judicial systems collected by the European Commission for the Efficiency of

Justice (CEPEJ) at the Council of Europe, or the Global Competitiveness Report of the World Economic Forum (refer to Box 41 below).

Box 42: Cross-Country Data

The Review uses a number of international data sets to put the performance of Serbia's judicial system into a comparative perspective.

*The **CEPEJ** collects statistics and other data from the Ministries of Justice of the Council of Europe's 47 member States on a biennial basis, focusing largely on quantifiable aspects of the functioning of judicial systems. The 2012 CEPEJ Report covers the 2010 reporting period for EU Member States and Serbia.*

*Building largely on the CEPEJ data and methodology, the **EU Justice Scoreboard** provides comparative data on the quality, independence, and efficiency of justice systems in EU Member States only, focusing on litigious civil and commercial cases as well as administrative cases in order to assist Member States in their efforts to improve business climate. The 2014 Justice Scoreboard covers the 2012 reporting period for EU Member States. To supplement this, the Functional Review compares the Scoreboard data with Serbia's responses to the CEPEJ 2014 Questionnaire, which also relates to the 2012 reporting period.*

*The **Life in Transition Survey** carried out in 2006 and 2010 by the European Bank for Reconstruction and Development (EBRD), together with the World Bank, captures performance aspects from a court user perspective such as satisfaction with service delivery in Courts across Europe.*

*More globally, the **Rule of Law Index** developed by the World Justice Project and published annually for currently 99 countries measures 47 indicators organized around eight themes: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. The **Bertelsmann Transformation Index (BTI)** measures the general level of rule of law for 129 developing and transition countries, similar to the World Bank's **Worldwide Governance Indicators** since 1995 currently for 215 economies. Transparency International's **Global Corruption Barometer** measures the direct experiences of bribery and details views on corruption in the main institutions across 107 countries via a survey of more than 114,000 respondents. Its **Corruption Perceptions Index** also measures the perceived levels of public sector corruption in 177 countries and territories.*

*From a business perspective, the World Bank's annual **Doing Business** report measures, among other things, the time, cost (e.g., attorney fees, court fees), and number of procedural steps it takes in 189 economies worldwide to enforce a standard commercial case through the court system. The World Economic Forum's annual **Global Competitiveness Report** assesses certain aspects of the effectiveness of the judicial systems in 148 economies. These aspects include judicial independence and the legal system's efficiency of settling disputes and challenging Government regulations. The **Business Environment and Enterprise Performance Survey (BEEPS)** is carried out periodically by the EBRD and World Bank across 30 countries in Europe and Central Asia, and assesses the frequency of payments of bribes to Courts among other issues.*

Annex 2: External Performance Matrix

This part of the framework identifies three main areas to measure judicial system performance: efficiency of judicial service delivery, quality of justice services, and access to justice services. These measurement areas are divided into thematic groupings for ease of reference. The framework then identifies the relevant indicators, and links each indicator with the relevant European references. The matrix then shows the primary data collection method, the frequency of data collection and the source of the relevant information and data.

Indicator	Reference to relevant legal documents	Primary data collection method and frequency of data collection	Source of data / information
1. EFFICIENCY OF JUDICIAL SERVICE DELIVERY			
1.1 Production and productivity of courts			
1.1.1 Number of disposed cases	Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement	Official statistics (per quarter, per annum)	SCC, MOJ, courts, HJC, SPC, prosecutor offices/RPPO
1.1.2 Disposed of per judge (aggregated and disaggregated per case type, court type and court location)	"B. Quality of the justice system and its assessment, quantitative statistical data, monitoring procedures." B.9. Data collection and monitoring should be performed on a regular basis, and procedures carried out by the independent body should allow a ready adjustment of the organization of courts to changes in the caseloads C. Case load and case management"	Official statistics (per quarter, per annum)	SCC, MOJ, courts, HJC,
1.1.3 Clearance rates (aggregated and disaggregated per case type, court type and court location)	European Commission for the efficiency of justice (CEPEJ) - Compendium of "best practices" on time management of judicial procedure	Official statistics (per quarter, per annum)	SCC, MOJ, courts, HJC.
1.2 Timeliness in Case Processing			
1.2.1 Number of pending (carry-over) cases	Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement - C. Caseload and case management- Specific procedures	Official statistics (per quarter, per annum)	SCC, MOJ, courts, HJC.
1.2.2 Congestion rates (relative size of pending stock)	"C.13. The key to conducting litigation proportionately is active case management by judges, the core principles of which are stated in Recommendation No. R (84) 5. The most important point is that judges should from the outset and throughout legal proceedings	Official statistics (per quarter, per annum)	SCC, MOJ, courts, HJC.

1.2.3 Age of pending stock (ageing list aggregated and disaggregated per court type, case type and court location)	control the time table and duration of proceedings, setting firm dates and having power to refuse adjournments, even against the parties' wishes."	Official statistics (per quarter, per annum)	SCC, MOJ, courts, HJC.
1.2.4 Time to disposition by the age of resolved cases (ageing list aggregated and disaggregated per court type, case type and court location)	Council of Europe, Recommendation No. R (86) 12 of the committee of Ministers to Member States concerning measures to prevent and reduce the excessive workload in the courts "VI. Reviewing at regular intervals the competence of the various courts as to the amount and nature of the claims, in order to ensure a balanced distribution of the workload."	Official statistics (per quarter, per annum)	SCC, MOJ, courts, HJC.
1.2.5 Time to disposition using the SATURN method	European Commission for the efficiency of justice (CEPEJ) - Compendium of "best practices" on time management of judicial procedure	Official statistics (per quarter, per annum)	MOJ, courts, HJC.
1.2.6 Timeliness as measured by court users and practitioners		Survey (periodic); stakeholder interviews.	Multi-Stakeholder Justice Survey HJC, SPC, MOJ, court users.
1.3 Effective Enforcement			
1.3.1 Number of pending enforcement cases	Council of Europe, Recommendation Rec (2003) 17 of the Committee of Ministers to member states on enforcement "Enforcement procedures should: a. be clearly defined and easy for enforcement agents to administer IV. Enforcement agents 7. State-employed enforcement agents should have proper working conditions, adequate physical resources and support staff. They should also be adequately remunerated. 8. Enforcement agents should undergo initial and ongoing training according to clearly defined and well-structured aims and objectives."	Official statistics (per quarter, per annum)	SCC, MOJ, courts, HJC.
1.3.2 Effectiveness of enforcement of "lv" cases (predominantly unpaid utility bills).	Consultative Council of European Judges (CCJE) Opinion No. 13 (2010) on the role of Judges in the enforcement of judicial decision – VII. Conclusions "D. There should be no postponement of the enforcement procedure, except on grounds prescribed by law. Any deferral should be subject to the judge's assessment. The enforcement agents should not have the power to challenge or vary the terms of the judgment. F. The CCJE considers that, in a state governed by the rule of law, public entities are above all bound to respect judicial decisions, and to implement them in a rapid way "ex officio". G. Enforcement should be fair, swift, effective and proportionate. H. The parties should be able to initiate enforcement proceedings easily. Any obstacle to	Official statistics (per quarter, per annum); Survey (periodic); qualitative expert assessment.	SCC, MOJ, courts, HJC.
1.3.3 Effectiveness of enforcement of court judgments		Official statistics (per quarter, per annum); Survey (periodic); qualitative expert assessment.	Multi-Stakeholder Justice Survey SCC, HJC, courts, MOJ, court users.

	<p>this, for instance excessive cost, should be avoided.”</p> <p>Council of Europe <u>Recommendation Rec(2003)16 of the Committee of Ministers to member states on the execution of administrative and judicial decisions in the field of administrative law</u></p>		
1.4 Procedural Efficiency and Efficacy			
1.4.1 Efficiency of service of process (percentage of successful service; relative costs of modes of service)	<p><u>Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement</u></p> <p>“A.5. The remuneration of lawyers and court officers should be fixed in such a way as not to encourage needless procedural steps</p> <p>A.6. Provision should be made, pursuant to Recommendation No. R (84) 5 (principle 2-1 in the appendix), for sanctioning abuse of court procedure”</p>	Official statistics (per quarter, per annum); Financial data; stakeholder interviews; qualitative expert assessment.	SCC, MOJ, courts, HJC, SPC
1.4.2 Efficiency in scheduling hearings (average number of months to case filing and first hearing)	<p><u>Council of Europe, Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement</u></p> <p>“2. Enforcement procedures should:</p> <p>d. provide for the most effective and appropriate means of serving documents (for example, personal service by enforcement agents, electronic means, post);</p> <p>e. provide for measures to deter or prevent procedural abuses;”</p> <p><u>Council of Europe, Committee of Ministers Recommendation No. R (84) 5 on the principles of civil procedure designed to improve the functioning of justice</u></p> <p>“Principle 1</p> <p>Normally, the proceedings should consist of not more than two hearings, the first of which might be a preliminary hearing of a preparatory nature and the second for taking evidence, hearing arguments and, if possible, giving judgment.</p> <p>Sanctions should be imposed when a party, having perhaps received notice to proceed, does not take a procedural step within the time-limits fixed by the law or the court.</p> <p>Depending on the circumstances such sanctions might include declaring the procedural step barred, awarding damages, costs, imposing a fine and striking the case off the list.</p> <p>Principle 3</p> <p>The court should, at least during the preliminary hearing but if possible throughout the proceedings, play an active role in ensuring the rapid progress of the proceedings, while respecting the rights of the parties, including the right to equal treatment. In particular, it</p>	Survey (periodic); Official statistics (per quarter, per annum)	SCC, Courts, court users.
1.4.3 Average number of hearings per case (aggregated and disaggregated by case type)		Survey (periodic); Official statistics (per quarter, per annum)	Multi-Stakeholder Justice Survey; SCC, HJC, SPC, MOJ, courts, court users.
1.4.4 Average number of cancelled hearings and adjournments and their stated reasons (average number of cancelled hearings as percentage		Survey (periodic); stakeholder interviews; qualitative expert assessment.	Multi-Stakeholder Justice Survey, SCC, HJC, SPC, MOJ, courts, court users

of total hearings	should have proprio motu powers to order the parties to provide such clarifications as are necessary; to order the parties to appear in person; to raise questions of law; to call for evidence, at least in those cases where there are interests other than those of the parties at stake; to control the taking of evidence; to exclude witnesses whose possible testimony would be irrelevant to the case; to limit the number of witnesses on a particular fact where such a number would be excessive. These powers should be exercised without going beyond the object of the proceedings.”		
1.4.5. Efficiency of prison transfers	<u>Council of Europe, Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities</u> “37. The use of electronic case management systems and information communication technologies should be promoted by both authorities and judges, and their generalized use in courts should be similarly encouraged.”	Stakeholder interviews; qualitative expert assessment.	Courts, PPOs, MOJ - Prison Administration.
1.4.6. Effectiveness in the use of case management techniques	<u>Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules – Transfer of prisoners</u>	Stakeholder interviews; qualitative expert assessment.	Courts, PPOs, court users, lawyers.
1.4.7. Efficiency in the substantive conduct of hearings (average percentage of hearings not contributing to resolution of the case; efficiency index mean percentage of hearings contributing to resolution out of total scheduled hearings.)	<u>Consultative Council of European Judges (CCJE) Opinion No. (2013) 16 on relations between judges and lawyers – Recommendations</u> “I. The CCJE recommends that states establish appropriate procedural provisions, which must define the activities of judges and lawyers and empower judges to implement effectively the principles of a fair trial and to prevent illegitimate delaying tactics of the parties. It also recommends that judges, lawyers and court users be consulted in the drafting of these provisions and that these procedural frameworks are regularly evaluated. II. The CCJE supports the international exchange of experience between judges and lawyers with a view of developing “best practices” in the area of procedural frameworks, taking into account, however, the different social and legal traditions of the countries concerned. III. The CCJE recommends that judges organize case management hearings within the framework of the relevant procedural laws, and establish, in consultation with the parties, procedural calendars, e.g. by specifying the procedural stages, setting out reasonable and appropriate timeframes and structuring the manner and timing of the presentation of written and oral submissions and evidence. IV. The CCJE recommends developing lines of communication between courts and lawyers. Judges and lawyers must be in a position to communicate at all stages in proceedings. The	Survey (periodic); Qualitative expert assessment; stakeholder interviews.	Multi-Stakeholder Justice Survey. Courts, PPOs, lawyers, court users.
1.4.8 Efficiency in joining similar cases		Stakeholder interviews, qualitative expert assessment.	SCC, MOJ, courts, HJC, SPC.
1.4.9. Efficiency in the appeal process (the extent of “recycling”)		Official statistics (per quarter, per annum); stakeholder interviews; qualitative expert assessment.	SCC, HJC, Courts, RPPO, SPC

1.4.10. Efficiency in the delivery of administrative services (time spent to conduct administrative task; number of visits required; number of windows visited)	CCJE considers that states should introduce systems facilitating computer communication between the courts and lawyers."	Survey (periodic)	Multi-Stakeholder Justice Survey, SCC, HJC, MOJ, court users, court staff.
2. QUALITY OF JUDICIAL SERVICES DELIVERED			
2.1 Quality of law and law-making			
2.1.1 Perceptions about the quality of existing laws	<u>Consultative Council of European Judges (CCJE) Opinion No. 11 (2008) on the quality of judicial decisions</u> "12. Therefore the CCJE considers it desirable that national parliaments should assess and monitor the impact of legislation in force and legislative proposals on the justice system and introduce appropriate transitional and procedural provisions to ensure that judges can give effect to them by high quality judicial decisions. The legislator should ensure that legislation is clear and simple to operate, as well as in conformity with the ECHR. In order to facilitate interpretation, preparatory works of legislation should be readily accessible and drawn up in an understandable language. Any draft legislation concerning the administration of justice and procedural law should be the subject of an opinion of the Council for the Judiciary or equivalent body before its deliberation by Parliament."	Survey (periodic)	Multi-Stakeholder Justice Survey , SCC, HJC, MOJ, RPPO, SPC
2.1.2 Effectiveness of the Law-making process		Stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, working groups, CSOs.
2.1.3 Effectiveness of the Rollout of new laws		Stakeholder interviews; qualitative expert assessment.	MOJ, working groups, courts, CSOs, JA, Parliament.
2.2 Quality of Administrative Services within the Courts			
2.2.1 Perceptions about the general quality of court services	<u>Council of Europe, Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration</u> <u>European Ombudsman, The European Code on Good Administrative Behavior</u>	Survey (periodic)	Multi-Stakeholder Justice Survey, HJC, SPC, MOJ, court users, lawyers.
2.2.2 Perceptions about the quality of administrative services at the court		Survey (periodic)	Multi-Stakeholder Justice Survey, HJC, MOJ, court users.
2.3 Quality in Case Processing			
2.3.1. Effectiveness in the use of standardized forms, templates, checklists etc.'	<u>Consultative Council of European Judges (CCJE) Opinion No. 11 (2008) on the quality of judicial decisions</u> "h) Standard models of good practices in case management should be encouraged, as well as consultation meetings between judges.	Stakeholder interviews; qualitative expert assessment.	Courts, SCC, HJC, MOJ.

2.3.2. Perception of the application and implementation of the law	j) A fair conduct of the proceedings, correct application of legal principles and evaluation of the factual background as well as enforceability are the key elements contributing toward a high quality decision. k) The decision must be intelligible and drafted in clear and simple language, with each judge being permitted however to choose his or her own style or to make use of standardized models. l) The CCJE recommends that judicial authorities compile a compendium of good practices in order to facilitate the drafting of decisions r) The judicial system as a whole has to be examined in order to evaluate the quality of judicial decisions. Attention should be given to the length, transparency and the conduct of the proceedings.” <u>Council of Europe, Recommendation No. R (81) 7 of the Committee of Ministers to Member States on measures facilitating access to justice</u>	Survey (periodic); stakeholder interviews.	Multi-Stakeholder Justice Survey, HJC, SPC, MOJ, court users, lawyers.
2.3.3 The extent of implementation gap between de jure and de facto justice services		Process Maps (ad hoc)	SCC, MOJ, HJC, SPC, RPPO, Appeal courts,
2.3.4. Perception of the quality of judicial work		Survey (periodic)	Multi-Stakeholder Justice Survey, SCC, HJC, MOJ.
2.3.5 Avoidance of double jeopardy in criminal charges		Stakeholder interviews; qualitative expert assessment.	Multi-Stakeholder Justice Survey, SCC, RPPO, HJC, SPC, MOJ
2.3.6. Effectiveness in the use of specialized case processing for certain court types		Stakeholder interviews; qualitative expert assessment.	Multi-Stakeholder Justice Survey, SCC, RPPO, HJC, SPC, MOJ
2.3.7. Effectiveness in coordination among stakeholders to promote quality	16. States should ensure that the procedures concerning family law are simple, speedy, inexpensive and respect the personal nature of the matters in issue. These matters should, as far as possible, be dealt with in private.” <u>Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time</u> “C.15. States should introduce (a) effective protective measures, (b) summary, simplified and/or abbreviated procedures and (c) procedures for early determination of preliminary issues (including jurisdictional issues) and for the speedy resolution of any appeal in respect of such preliminary issues.”	Stakeholder interviews; qualitative expert assessment.	Multi-Stakeholder Justice Survey, HJC, SPC, MOJ
2.4 Quality of court decision making			
2.4.1. Use of standardized judgment writing tools	<u>Consultative Council of European Judges (CCJE) Opinion No. 11 (2008) on the quality of judicial decisions</u> “f) The professionalism of the judge is the primary guarantee for the quality of a decision and an important part of the internal environment influencing a judicial decision. Professionalism involves a high level legal training of judges, as well as the development of a culture of independence, ethics and deontology. It requires the judge to be aware of not	Stakeholder interviews; qualitative expert assessment.	HJC, JA
2.4.2 Violations of European Convention on Human Rights (number of submitted		ECtHR official statistics (per quarter, per annum)	ECtHR, MOJ

complaints, complaint types, outcomes, trends)	only legal material but also non-legal concepts. I) The CCJE recommends that judicial authorities compile a compendium of good practices in order to facilitate the drafting of decisions”		
2.4.3 Volume and type of cases likely to violate European time standards for reasonable duration	<u>Consultative Council of European Judges (CCJE) Opinion No. 9 (2006) on the role of national judges in ensuring an effective application of international and European law</u> “(c) assuring, specifically, that national law, including national case-law, respects the case-law of the European Court of Human Rights; in particular, by granting, wherever possible, that a case be re-opened after the European Court of Human Rights has found a violation of the ECHR or its protocols in the proceeding, and the violation cannot be reasonably eliminated or compensated in any other way than through a new hearing of the matter.”	Official statistics (per quarter, per annum)	SCC, MOJ, courts, HJC, SPC, Calvez report (CEPEJ)
2.4.4. Appropriate use of the principle of opportunity and plea bargaining		Stakeholder interviews; qualitative expert assessment.	SPC, RPPO, MOJ, HJC, lawyers
2.4.5. Appropriateness in sentencing (use of sentencing guidelines; perceptions of consistency in sentencing)	<u>Council of Europe, Committee of Ministers Recommendation No. R (87) encouraging discretionary prosecution, summary procedures and the simplification of ordinary judicial procedures.</u> <u>Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time and judge’s role in trials taking into account alternative means of dispute settlement (Discretionary prosecution)</u>	Stakeholder interviews; qualitative expert assessment.	SCC, HJC, SPC, RPPO, MOJ, lawyers
2.5. Appeals and abolishment rates			
2.5.1 Appeal rates and abolishment rates (per court type, case type, and court location)	<u>Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time and judge’s role in trials taking into account alternative means of dispute settlement</u> “C.17. Countries should give consideration to the possibility of introducing into their systems controls on unmeritorious appeals, in order to ensure that the speedy disposition of meritorious appeals is not impaired.” <u>Council of Europe, Committee of Ministers Recommendation No. R (84) 5 on the principles of civil procedure designed to improve the functioning of justice</u> “Principle 7 Steps should be taken to deter the abuse of post-judgment legal remedies.”	Official statistics (per quarter, per annum)	SCC, MOJ, HJC, Appeal courts.
2.5.2 Perception of appeals (perceptions of court users and practitioners)	<u>Council of Europe, Recommendation No. R (95) 5 of the Committee of Ministers to member states concerning the introduction and improvement of the functioning of appeal system and procedures in civil and commercial cases</u>	Survey (periodic); stakeholder interviews.	Multi-Stakeholder Justice Survey, HJC, MOJ, SPC, RPPO, court users, lawyers.

2.6 Integrity in the Justice Service Delivery			
2.6.1 Perception of integrity and reasons for lack of integrity	<p>Magna Carta of Judges (Fundamental Principles)</p> <p>“Access to justice and transparency Justice shall be transparent and information shall be published on the operation of the judicial system.”</p> <p>Council of Europe, Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities</p> <p>“Chapter VIII – Ethics of judges</p> <p>72. Judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves.</p> <p>73. These principles should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes.</p> <p>74. Judges should be able to seek advice on ethics from a body within the judiciary.”</p> <p>Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time and judge’s role in trials taking into account alternative means of dispute settlement</p> <p>“A. Access to justice</p> <p>A.1. States should provide dissemination of suitable information on the functioning of the judicial system (nature of proceedings available; duration of proceedings on average and in the various courts; costs and risks involved in case of wrongful use of legal channels; alternative means of settling disputes offered to parties; landmark decisions delivered by the courts.”</p> <p>Consultative Council of European Judges (CCJE) Opinion No. 7 (2005) on “justice and society”</p> <p>“B.2. The CCJE supports all the steps aiming at strengthening the public perception of impartiality of judges and enabling justice to be carried out</p> <p>C. The relations of the courts with the media (to strengthen understanding of their respective roles; to inform the public of the nature, the scope, the limitations and the complexities of judicial work...)”</p> <p>Consultative Council of European Judges (CCJE) Opinion No. 13 (2010) on the role of Judges in the enforcement of judicial decisions</p>	<p>Survey (periodic); stakeholder interviews.</p> <p>Survey (periodic)</p> <p>Surveys (periodic);</p> <p>Surveys (periodic);</p> <p>Survey (periodic); Stakeholder interviews; qualitative expert assessment.</p> <p>Survey (periodic)</p>	<p>Multi-Stakeholder Justice Survey, HJC, MOJ, SPC, RPPO, court users, lawyers.</p> <p>Multi-Stakeholder Justice Survey, HJC, MOJ, SPC, RPPO, court users, lawyers.</p> <p>IPSOs, UNODC, Ombudsman, Anti-Corruption Agency, GRECO, TI Index</p> <p>Multi-Stakeholder Justice Survey BEEPS Survey; Anti-Corruption Agency Survey</p> <p>Multi-Stakeholder Justice Survey, HJC, SPC, MOJ, court users, lawyers.</p> <p>Multi-Stakeholder Justice Survey, HJC, SPC, MOJ, court users, lawyers.</p>
2.6.2. Perceptions of trust and confidence in the judiciary			
2.6.3. Perception of corruption in the judiciary			
2.6.4. Extent of reported corruption and use of informal means to influence the process and outcomes			
2.6.5. Perceptions of judicial independence			
2.6.6. Perceptions of impartiality and fairness			

	<p>“A. The effective enforcement of a binding judicial decision is a fundamental element of the rule of law. It is essential to ensure the trust of the public in the authority of the judiciary. Judicial independence and the right to a fair trial is in vain if the decision is not enforced. Council of Europe, Recommendation CM/Rec 1994/12 of the Committee of Ministers on the <u>independence, efficiency and role of judges</u></p> <p>“d. In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.”</p>		
3. ACCESS TO JUDICIAL SERVICES			
3.1 Affordability of Justice Services (Financial Access to Justice)			
3.1.1 Affordability of court-related costs	<p>Council of Europe, Recommendation No. R. (81) 7 of the Committee of Ministers to Member States on measures facilitating access to justice - D. Cost of justice</p> <p>“11. No sum of money should be required of a party on behalf of the state as a condition of commencing proceedings which would be unreasonable having regard to the matters in issue.</p> <p>12. In so far as the court fees constitute a manifest impediment to justice they should be, if possible, reduced or abolished. The system of court fees should be examined in view of its simplification.</p> <p>13. Particular attention should be given to the question of lawyers' and experts' fees in so far as they constitute an obstacle to access to justice. Some form of control of the amount of these fees should be ensured.</p> <p>14. Except in special circumstances a winning party should in principle obtain from the losing party recovery of his costs including lawyers' fees, reasonably incurred in the proceedings.”</p> <p><u>Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement</u></p>	Official statistics (per quarter, per annum); Surveys (periodic)	SCC, MOJ, Ministry of Finance, Statistical Office, Access to Justice Survey, Multi-Stakeholder Justice Survey.
3.1.2 Timing of court fees and related expenses		Qualitative expert assessment; Surveys (periodic)	SCC, HJC, court users.
3.1.3 Accessibility and use of court fee waivers		Access to Justice Survey; Stakeholder interviews; qualitative expert assessment.	Court users, SCC, MOJ, HJC, lawyers, CSOs

3.1.5 Affordability of attorney costs	<p>“The public should in particular be made aware of the nature of proceedings which may be brought, their possible duration, their cost and the risks involved in case of wrongful use of legal channels. Information should also be provided concerning alternative means of settling disputes which may be offered to parties.</p> <p>A.4. Technology should be developed whereby litigants may, via computer facilities... obtain full information, even before proceedings are instituted, as to the nature and the amount of the costs they will have to bear, and indication of the foreseeable duration of the proceedings up to the judgment.”</p> <p><u>Consultative Council of European Judges (CCJE) Opinion No.13 (2010) on the role of Judges in the enforcement of judicial decisions</u></p> <p>“H. The parties should be able to initiate enforcement proceedings easily. Any obstacle to this, for instance excessive cost, should be avoided.”</p>	<p>Surveys (periodic); stakeholder interviews.</p>	Multi-Stakeholder Survey, SCC, MOJ, HJC, lawyers, CSOs
3.1.6 Use of ex-officio attorneys	<p><u>Council of Europe, Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement</u></p> <p>“3. Enforcement fees should be reasonable, prescribed by law and made known in advance to the parties.</p> <p>4. The attempts to carry out the enforcement process should be proportionate to the claim, the anticipated proceeds to be recovered, as well as the interests of the defendant.</p> <p>5. The necessary costs of enforcement should be generally borne by the defendant, notwithstanding the possibility that costs may be borne by other parties if they abuse the process.”</p> <p><u>Council of Europe, Recommendation Rec No. R (93) 1 on effective access to the law and to justice for the very poor</u></p>	<p>Stakeholder interviews; qualitative expert assessment.</p>	SCC, MOJ, HJC, lawyers, CSOs
3.1.7 Accessibility for unrepresented litigants	<p><u>Council of Europe, Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement</u></p> <p>“3. Enforcement fees should be reasonable, prescribed by law and made known in advance to the parties.</p> <p>4. The attempts to carry out the enforcement process should be proportionate to the claim, the anticipated proceeds to be recovered, as well as the interests of the defendant.</p> <p>5. The necessary costs of enforcement should be generally borne by the defendant, notwithstanding the possibility that costs may be borne by other parties if they abuse the process.”</p>	<p>Official statistics (per quarter, per annum); Stakeholder interviews; qualitative expert assessment; Access to Justice Survey.</p>	MOJ, RPPO, Courts, HJC, SPC.
3.1.8 Effectiveness of legal aid programs for indigent court users	<p><u>Council of Europe, Recommendation Rec No. R (93) 1 on effective access to the law and to justice for the very poor</u></p>	<p>Stakeholder interviews; Qualitative expert assessment.</p>	SCC, SPC, MOJ, HJC, lawyers, CSOs
3.3 Access to Alternative Dispute Resolution			
3.3.1 Number of court referrals to a mediator	<p><u>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (part on mediation)</u></p> <p><u>Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time (part on mediation)</u></p>	<p>Annual Court Statistics, statistics mediation authority</p>	MOJ, Mediation Authority
3.3.2 Number of incoming cases for a mediator (per type of dispute)	<p><u>Council of Europe, Recommendation CM/Rec.1994/12 of the Committee of Ministers on the independence, efficiency and role of judges (part on mediation)</u></p>	<p>Annual Statistics</p>	Courts, MOJ, Mediation Authority

3.3.3 Number of cases resolved in mediation	<p><u>Consultative Council of European Judges (CCJE) Opinion No. (2013) 16 on relations between judges and lawyers (part on mediation)</u></p> <p><u>European Code of conduct for mediators</u></p> <p><u>Council of Europe, Recommendation CM/Rec 86/12 of the Committee of Ministers concerning measures to prevent and reduce the excessive workload in the courts (part on mediation)</u></p> <p><u>Council of Europe, Recommendation Rec (2002)10 on mediation in civil matters</u></p> <p><u>Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time</u></p> <p>“D.2. Legal aid should be available for ADR as it is for standard court proceedings; both legal aid resources as well as any other public expenditures to support ADR should make use of a special budget, so that the corresponding expenses are not charged to the operating budget of the courts.”</p> <p><u>Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters</u></p>	Annual Court statistics, statistics mediation authority	Mediation Authority, MOJ
3.3.4 Cost of mediation to users		Annual Statistics	Mediation Authority, MOJ
3.3.5 Average number of mediation sessions from start until mediation agreement		Annual/For Functional Review Statistics, assessment	Mediation Authority Courts, MOJ.
3.3.6 Average duration (days/months) of mediation procedures		Annual Statistics	Mediation Authority Courts, MOJ.
3.3.7 Success rates of the mediations (no. of mediation agreements compared with unsuccessful mediations)		Annual Statistics	Mediation Authority Courts, MOJ.
3.3.8 Effectiveness of enforcement of mediated decisions		Annual Statistics	Mediation Authority Courts, MOJ.
3.3.9 Perceptions about mediation		Assessment for Functional Review MSP Survey & Access to Justice Survey (periodic)	Mediation Authority Courts, MOJ. Multi-Stakeholder Justice Survey

3.4 Access to Information			
3.4.1. Perceptions of the users about the access to relevant information	Consultative Council of European Judges (CCJE) Opinion No. 7 (2005) on “justice and society” “D.4. The CCJE recommends that at least all Supreme Court and other important court decisions be accessible through Internet sites at no expense, as well as in print upon reimbursement of the cost of reproduction only; however appropriate measures should be taken in disseminating court decisions, to protect privacy of interested persons, especially parties and witnesses.”	MSP Survey & Access to Justice Survey (periodic)	Multi-Stakeholder Justice Survey, HJC, SPC, MOJ.
3.4.2. Access to court and case information	Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial with a reasonable time - A. Access to Justice “1.1. Public access to justice presupposes delivery of suitable information on the functioning of the judicial system.”	Annual (periodic) reports, court website	MOJ, SCC, HJC
3.4.3 Access to Court Decisions	Council of Europe, Recommendation Rec No. R (81) 7 on measures facilitating access to justice “A. Information to the public 1. Appropriate measures should be taken to inform the public of the location and competence of the courts and the way in which proceedings are commenced or defended before those courts. 2. General information should be available from the court or a competent body or service on the following items: - procedural requirements provided that this information does not involve giving legal advice concerning the substance of the case; - the way in which, and the time within which, a decision can be challenged, the rules of procedure and any required documents to this effect; - Methods by which a decision might be enforced, and if possible, the costs involved.”	Regular reports	MOJ, SCC, HJC, Ombudsman
3.4.4. Availability of information on allied professional services.		Qualitative expert assessment, stakeholder interviews.	Websites; Bar; translation services; bailiffs; notaries; mediators.

3.5 Geographical & Physical Access to Justice Services			
3.5.1 Perceptions of users about the geographical access to courts and level of comfort of the court buildings)	Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities 28. “Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently.”	Surveys (periodic)	Multi-Stakeholder Justice Survey, Access to Justice Survey, MOJ, CSOs. HJC.
3.5.2 Perceptions of the judges and staff about the court facilities and level of comfort (to be compared with surveys of users).		Surveys (periodic); Stakeholder interviews.	Multi-Stakeholder Justice Survey, MOJ, Courts, HJC.
3.6 Equality of Access for Vulnerable Groups			
3.6.3 Perceptions among certain vulnerable groups about accessibility of judicial services	Council of Europe, Recommendation Rec No. R (99) 4 on principles concerning the legal protection of incapable adults - Part II – Governing principles, Principle 2 – Flexibility in legal response “1. The measures of protection and other legal arrangements available for the protection of the personal and economic interests of incapable adults should be sufficient, in scope or flexibility, to enable a suitable legal response to be made to different degrees of incapacity and various situations. 2. Appropriate measures of protection or other legal arrangements should be available in cases of emergency. 3. The law should provide for simple and inexpensive measures of protection or other legal arrangements. 4. The range of measures of protection should include, in appropriate cases, those which do not restrict the legal capacity of the person concerned. 5. The range of measures of protection should include those which are limited to one specific act without requiring the appointment of a representative or a representative with continuing powers.	MSP Survey & Access to Justice Survey (periodic)	MOJ, CSOs, HJC

	<p>6. Consideration should be given to the inclusion of measures under which the appointed person acts jointly with the adult concerned, and of measures involving the appointment of more than one representative.</p> <p>7. Consideration should be given to the need to provide for, and regulate, legal arrangements, which a person who is still capable can take to provide for any subsequent incapacity.</p> <p>8. Consideration should be given to the need to provide expressly that certain decisions, particularly those of a minor or routine nature relating to health or personal welfare, may be taken for an incapable adult by those deriving their powers from the law rather than from a judicial or administrative measure.”</p>		
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Annex 3: Internal Performance Matrix

This Internal Performance part of the Framework organizes identifies indicators, EU standards and data sources for the different types of resources that are available to the judicial system (financial resources, human resources, infrastructure, ICT). This enables assessment of how each is utilized and managed for justice service delivery.

Indicator	Reference to relevant legal documents	Primary data collection method and frequency of data collection	Source of data/information
1. GOVERNANCE & MANAGEMENT			
1.1 Structures and, Powers of Governance and Management Bodies			
1.1.1. Effectiveness in the distribution of functions	Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement	Qualitative expert assessment, EU Progress Reports	EU Council, HJC, SPC, MOJ.
1.1.2. Perceptions about quality of leadership and management of the judiciary	"B.10. In order to reconcile the realization of this need with the guarantees of independence of the judiciary, the independent body mentioned in paragraphs 37 and 45 of the CCJE's Opinion No. 1 (2001) should be competent for the choice and the collection of "quality" data, the design of the data collection procedure, the evaluation of results, its dissemination as feed-back, as well as the monitoring and follow-up procedures.	Periodical Survey	Multi-Stakeholder Justice Survey, HJC, SPC, MOJ, CSOs.
1.1.3. Appropriateness of the composition and powers of the Councils	Consultative Council of European Judges (CCJE) Opinion No. 10 (2007) on the Council for the Judiciary at the service of society	Stakeholder interviews; qualitative expert assessment.	HJC, SPC, MOJ, Courts.
1.1.4. Managerial capacities of the Councils	b) the Council for the Judiciary is to protect the independence of both the judicial system and individual judges and to guarantee at the same time the efficiency and quality of justice as defined in Article 6 of the ECHR in order to reinforce public confidence in the justice system;	Stakeholder interviews; qualitative expert assessment.	HJC, SPC, MOJ, Courts.
1.1.5. Structure and capacities of the MOJ	c) The Council for the Judiciary should be protected from the risk of seeing its autonomy restricted in favor of the legislature or the executive through a mention in a constitutional text or equivalent.	Stakeholder interviews; qualitative expert assessment.	HJC, SPC, MOJ, Courts.
1.1.6. Managerial capacities in the Courts	See also parts: (B. On the composition of the Council for the Judiciary; C. On the functioning of the Council for the Judiciary; D. On the powers of the Council for the Judiciary)."	Stakeholder interviews; qualitative expert assessment.	HJC, Courts.
	Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities		

	<p>“27. Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.</p> <p>28. Councils for the judiciary should demonstrate the highest degree of transparency towards judges and society by developing pre-established procedures and reasoned decisions.</p> <p>32. The authorities responsible for the organization and functioning of the judicial system are obliged to provide judges with conditions enabling them to fulfill their mission and should achieve efficiency while protecting and respecting judges’ independence and impartiality.”</p> <p><u>Consultative Council of European Judges (CCJE) Opinion No.10 (2007) of the Consultative Council of European Judges (CCJE) on the Council for the Judiciary at the service of society - Chapter IV – Councils for the judiciary</u></p> <p>“26. Councils for the judiciary are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system.</p> <p>27. Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.</p> <p>28. Councils for the judiciary should demonstrate the highest degree of transparency towards judges and society by developing pre-established procedures and reasoned decisions.</p> <p>29. In exercising their functions, councils for the judiciary should not interfere with the independence of individual judges.”</p>		
1.2 Effectiveness in Operational Management			
1.2.1. Effectiveness of internal organization within courts	<p><u>Council of Europe, Recommendation CM/Rec 86/12 of the Committee of Ministers concerning measures to prevent and reduce the excessive workload in the courts</u></p> <p>“VI. Reviewing at regular intervals the competence of the various courts as to the amount and nature of the claims, in order to ensure a balanced distribution of the workload.”</p>	Stakeholder interviews; qualitative expert assessment.	MOJ, courts, HJC, RPPO, SPC.
1.2.2. Effectiveness in Managing Caseloads, Workloads and Backlogs	<p><u>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities - Chapter V</u></p> <p>“30. The efficiency of judges and of judicial systems is a necessary condition for the protection of every person’s rights, compliance with the requirements of Article 6 of the Convention, legal certainty and public confidence in the rule of law.</p> <p>31. Efficiency is the delivery of quality decisions within a reasonable time following fair</p>	Stakeholder interviews; qualitative expert assessment.	SCC, MOJ, courts, HJC.
1.2.3 Efficiency of Work Processes and Process Re-Engineering		Stakeholder interviews; qualitative expert assessment.	SCC, MOJ, courts, HJC, RPPO, SPC.

1.2.4. Existences/Effectiveness of Strategies to involve judges, prosecutors, judges assistants, and staff in innovations	consideration of the issues. Individual judges are obliged to ensure the efficient management of cases for which they are responsible, including the enforcement of decisions the execution of which falls within their jurisdiction. 36. To prevent and reduce excessive workload in the courts, measures consistent with judicial independence should be taken to assign non-judicial tasks to other suitably qualified persons.” <u>European Commission for the efficiency of justice (CEPEJ) - Compendium of “best practices” on time management of judicial procedure</u>	Stakeholder interviews; qualitative expert assessment.	MOJ, courts, HJC, RPPO, SPC.
1.3 Effectiveness in Resource Management			
1.3.1. Effectiveness of system for monitoring service delivery and encouraging improvements	<u>Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time”</u> B. quality of the justice system and its assessment, quantitative statistical data, monitoring procedures B.9. Data collection and monitoring should be performed on a regular basis, and procedures carried out by the independent body should allow a ready adjustment of the organization of courts to changes in the caseloads.”	Stakeholder interviews; qualitative expert assessment.	MOJ, courts, HJC, RPPO, SPC.
1.3.2. Effectiveness of management structure and processes to ensure overall resource management for service delivery		Stakeholder interviews; qualitative expert assessment.	MOJ, courts, HJC, RPPO, SPC.
1.3.3. Ability to program resources jointly and adjust the resource mix		Stakeholder interviews; qualitative expert assessment.	MOJ, courts, HJC, RPPO, SPC, MOF
1.4 Effectiveness in Strategic Management			
1.4.1. Effectiveness of development, dissemination and analysis of progress against a strategic plan for the judicial system as a whole	<u>European Charter on Statute of Judges</u> “1.6. The State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly and in particular to deal with cases within a reasonable period.” <u>Council of Europe, Recommendation CM/Rec 86/12 of the Committee of Ministers concerning measures to prevent and reduce the excessive workload in the courts</u> “VI. Reviewing at regular intervals the competence of the various courts as to the amount and nature of the claims, in order to ensure a balanced distribution of the workload.”	Stakeholder interviews; qualitative expert assessment.	Commission for Implementation of the Strategy, MOJ, courts, HJC, SCC, RPPO, SPC
1.4.2. Implementation of plans and measurement of progress		Stakeholder interviews; qualitative expert assessment.	Commission for Implementation of the Strategy MOJ, courts, HJC, PPOs, SPC

1.4.3. Effectiveness in Communicating System Performance	<p><u>Magna Carta of Judges</u></p> <p>“Fundamental principles Access to justice and transparency</p> <p>14. Justice shall be transparent and information shall be published on the operation of the judicial system.”</p> <p><u>Consultative Council of European Judges (CCJE) Opinion No.2 (2001) on the funding and management of courts with reference to the efficiency of the judiciary and to the article 6 of the European convention on human rights.</u></p> <p>“The CCJE in particular further draws attention to the need to allocate sufficient resources to courts to enable them to function in accordance with the standards laid down in Article 6 of the European Convention on Human Rights.”</p>	Stakeholder interviews; qualitative expert assessment.	Commission for Implementation of the Strategy MOJ, HJC, SPC.
1.5 Effectiveness of Mechanisms to Govern Integrity and Conflicts of Interest			
1.5.1. Random case assignment	<p><u>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities</u></p> <p>“9. A case should not be withdrawn from a particular judge without valid reasons. A decision to withdraw a case from a judge should be taken on the basis of objective, pre-established criteria and following a transparent procedure by an authority within the judiciary.</p> <p>10. Only judges themselves should decide on their own competence in individual cases as defined by law.</p> <p>24. The allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case.”</p> <p><u>European Council Decision of 25 September 2008 on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption (2008/801/EC)</u></p> <p>“5. Each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.”</p>	Stakeholder interviews; qualitative expert assessment.	MOJ, courts, HJC
1.5.2. Rules on gift giving		Stakeholder interviews; qualitative expert assessment.	MOJ, courts, HJC, SPC, Anticorruption Agency
1.5.3 Development and effective monitoring of National Integrity Plan and up-to-date action plan for improving the integrity and ethical conduct of judges and prosecutors		Assessment	HJC, SPC, MOJ, Anticorruption Agency.
1.5.4 Effectiveness of rules specific to the judiciary and the prosecution aimed at controlling conflicts of interest and controlling assets.		Legal analysis, Stakeholder interviews; qualitative expert assessment., survey	MOJ, courts, HJC, RPPO, SPC, Anticorruption agency, Multi-Stakeholder Justice Survey.

1.5.5. Effectiveness of systems to manage recusals (exemptions and exclusions)	European Charter on the Statute for judges “5.3. Each individual must have the possibility of submitting without specific formality a complaint relating to the miscarriage of justice in a given case to an independent body. This body has the power, if a careful and close examination makes a dereliction on the part of a judge indisputably appear, such as envisaged at paragraph 5.1 hereof, to refer the matter to the disciplinary authority, or at the very least to recommend such referral to an authority normally competent in accordance with the statute, to make such a reference.”	Stakeholder interviews; qualitative expert assessment.	SCC, MOJ, courts, HJC.
1.6 Effectiveness of complaints and disciplinary process			
1.6.1. Availability of information on avenues for grievance redress / complaints	<p><u>Council of Europe, Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities - Liability and disciplinary proceedings</u></p> <p><u>Consultative Council of European Judges (CCJE) Opinion No. 3 on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behavior and impartiality (Conclusions on the standards of conduct and Conclusions on liability)</u></p> <p><u>Council of Europe, Recommendation CM/Rec 1994/12e of the Committee of Ministers on the independence, efficiency and role of judges (Principle VI - Failure to carry out responsibilities and disciplinary offences)</u></p> <p><u>European Charter on the statute for judges – (5. Liability)</u></p> <p><u>Magna Carta of Judges (Ethics and responsibility)</u></p> <p><u>Bangalore Principles of Judicial Conduct</u></p> <p><u>European guidelines on ethics and conduct for public prosecutors (Budapest guidelines)</u></p> <p><u>Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. - Disciplinary proceedings</u></p>	Official statistics (per quarter, per annum); qualitative expert assessment, stakeholder interviews.	Public information, websites, Ombudsman charts'
1.6.2. Number of officially logged complaints against judges and staff		Official statistics (per quarter, per annum); qualitative expert assessment, stakeholder interviews.	MOJ, courts, HJC, SCC, RPPO, SPC, Anticorruption Agency, Ombudsman's Office
1.6.3. Effectiveness and transparency of disciplinary measures and sanctions		Legal analysis, assessment of the number of initiated proceedings, filed disciplinary charges, pronounced disciplinary sanctions and enforced disciplinary sanctions, interviews	courts, HJC, RPPO, SPC, Anticorruption Agency

2. FINANCIAL RESOURCE MANAGEMENT			
2.1 Effectiveness in Balancing Judicial Financing and Mandates			
2.1.1. Level of budgetary funding and appropriateness of funding mandates.	<p><u>European Charter on Statute of Judges</u></p> <p>"1.6. The State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly and in particular to deal with cases within a reasonable period."</p>	Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, courts, PPOs, MOF
2.1.2. Predictability of budget execution.	<p><u>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities</u></p> <p>"33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently."</p> <p><u>Council of Europe, Recommendation CM/Rec(2001)2 of the Committee of Ministers to member states concerning the design and re-design of court systems and legal information systems in a cost-effective manner</u></p> <p><u>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities</u></p> <p>"35. A sufficient number of judges and appropriately qualified support staff should be allocated to the courts."</p> <p><u>Council of Europe, Recommendation CM/Rec(2001)2 of the Committee of Ministers to member states concerning the design and re-design of court systems and legal information systems in a cost-effective manner</u></p>	Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, courts, PPOs.
2.2 Arrears			
2.2.1. Extent of accumulation of arrears.	<p><u>European Charter on Statute of Judges</u></p> <p>"1.6. The State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly and in particular to deal with cases within a reasonable period."</p> <p><u>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities</u></p> <p>"33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6</p>	Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, courts, PPOs.

	of the Convention and to enable judges to work efficiently.”		
	Council of Europe, Recommendation CM/Rec(2001)2 of the Committee of Ministers to member states concerning the <u>design and re-design of court systems and legal information systems in a cost-effective manner</u>		
2.3 Linking resource Allocation to Outputs			
2.3.1. Effectiveness in linking resource allocation to outputs	Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: <u>independence, efficiency and responsibilities</u> “33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently.”	Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, courts, PPOs.
2.4 The Court Budget Structure			
2.4.1. Effectiveness of resource allocation to respond flexibly to changing circumstances and stimulate performance improvement.	Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: <u>independence, efficiency and responsibilities</u> “33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently.”	Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, courts, PPOs.
2.4.2. Effectiveness of monitoring cost-effectiveness and resource productivity		Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, courts, PPOs.
2.5 Allocation of resources in relation to Geography and Income			
2.5.1. Appropriate allocation of resources in relation to geography and income	Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: <u>independence, efficiency and responsibilities</u> “33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently.”	Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	HJC, SPC, MOJ, MOF, Statistical Office

2.6 Operational Effectiveness of Finances			
2.6.1. Capacity of procurement functions.	Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities "33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently."	Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, courts, PPOs.
2.6.2. Capacity of accounting systems.	Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities "35. A sufficient number of judges and appropriately qualified support staff should be allocated to the courts."	Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, courts, PPOs.
2.6.3. Capacity of internal audit function.	Consultative Council of European Judges (CCJE) Opinion No. 3 on the funding and management of the with reference to the efficiency of the judiciary and to Article 6 of the European Convention on Human Rights "13. If judges are given responsibility for the administration of the courts, they should receive appropriate training and have the necessary support in order to carry out the task. In any event, it is important that judges are responsible for all administrative decisions, which directly affect performance of the courts' functions."	Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, courts, PPOs.
2.6.4. Effective allocation of financial management functions.		Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, courts, PPOs.
2.6.5. Level of staffing support		Official statistics; financial and HR records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, SPC, courts, PPOs.
2.7 Management of Court Fees			
2.7.1 Effectiveness of court fee collection.	Council of Europe, Recommendation No. R (81) 7 of the Committee of Ministers to Member States on measures facilitating access to justice - D. Cost of justice "11. No sum of money should be required of a party on behalf of the state as a condition of commencing proceedings which would be unreasonable having regard to the matters in issue. 12. In so far as the court fees constitute a manifest impediment to justice they should be, if possible, reduced or abolished. The system of court fees should be examined in view of its simplification. 13. Particular attention should be given to the question of lawyers' and experts' fees in so	Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, courts.
2.7.2. Effectiveness of management and use of court fees.		Official statistics; financial records; stakeholder interviews; qualitative expert assessment.	MOJ, HJC, courts.

	<p>far as they constitute an obstacle to access to justice. Some form of control of the amount of these fees should be ensured.</p> <p>14. Except in special circumstances a winning party should in principle obtain from the losing party recovery of his costs including lawyers' fees, reasonably incurred in the proceedings."</p> <p><u>Council of Europe, Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement</u></p> <p>"3. Enforcement fees should be reasonable, prescribed by law and made known in advance to the parties.</p> <p>4. The attempts to carry out the enforcement process should be proportionate to the claim, the anticipated proceeds to be recovered, as well as the interests of the defendant.</p> <p>5. The necessary costs of enforcement should be generally borne by the defendant, notwithstanding the possibility that costs may be borne by other parties if they abuse the process."</p>	assessment.	
3. HUMAN RESOURCES MANAGEMENT			
3.1 Staffing Levels and Methodology			
3.1.1. Numbers and ratios of judges, prosecutors, assistants and court staff (aggregated and disaggregated by court type)	<p><u>Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to the member states on the independence, efficiency and role of judges</u></p> <p>"Principle III - Proper working conditions</p> <p>1. Proper conditions should be provided to enable judges to work efficiently and, in particular, by:</p> <p>a. recruiting a sufficient number of judges and providing for appropriate training such as practical training in the courts and, where possible, with other authorities and bodies, before appointment and during their career. Such training should be free of charge to the judge and should in particular concern recent legislation and case-law. Where appropriate,</p>	e.g. annual budget, actual per given quarter in three comparison fiscal years ⁹⁶⁰	MOJ, SCC, HJC, SPC, RPPO

⁹⁶⁰ Systematizations/Personnel Budget (annual allocation), Payroll records (actual head count)

3.1.2. Number of temporary and contract staff	<p>the training should include study visits to European and foreign authorities as well as courts;”</p> <p><u>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities</u></p> <p>“36. To prevent and reduce excessive workload in the courts, measures consistent with judicial independence should be taken to assign non-judicial tasks to other suitably qualified persons.</p> <p>35. A sufficient number of judges and appropriately qualified support staff should be allocated to the courts.”</p> <p><u>Magna Carta of Judges – fundamental principles</u></p> <p>“Guarantees of independence</p> <p>7. Following consultation with the judiciary, the State shall ensure the human, material and financial resources necessary to the proper operation of the justice system. In order to avoid undue influence, judges shall receive appropriate remuneration and be provided with an adequate pension scheme, to be established by law.”</p>	<p>e.g. annual budget, actual per given quarter in three comparison fiscal years⁹⁶¹</p> <p>Official statistics; financial records; stakeholder interviews; qualitative expert assessment.</p>	MOJ, HJC, SPC
3.1.3. Number of lay judges			MOJ, HJC, SCC, courts.
3.2 Recruitment, Evaluation and Promotion of Judges and Prosecutors			
3.2.1. Transparency of recruitment and nomination of judges and prosecutors	<p><u>European Charter on Statute of Judges</u></p> <p>“4.1. When it is not based on seniority, a system of promotion is based exclusively on the qualities and merits observed in the performance of duties entrusted to the judge, by means of objective appraisals performed by one or several judges and discussed with the judge concerned. Decisions as to promotion are then pronounced by the authority referred to at paragraph 1.3 hereof or on its proposal, or with its agreement. Judges who are not proposed with a view to promotion must be entitled to lodge a complaint before this authority.”</p> <p><u>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities – Chapter VI – Status of the judge</u></p> <p>“44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions</p>	<p>Legal analysis, including assessment, including existence and proper staffing of function in the HJC and SPC</p>	MOJ, courts, HJC, RPPO, SPC.
3.2.2. Objectiveness of criteria for evaluation and promotion of Judges and prosecutors	<p>“44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions</p>	<p>Legal analysis, including assessment, including existence and proper staffing of function in the</p>	MOJ, courts, HJC, RPPO, SPC.

⁹⁶¹ Systematizations/Personnel Budget (annual allocation) ,Payroll records (actual head count)

<p>3.2.3. Effectiveness of the system to evaluate performance of judges/prosecutors assistants and staff and use of performance evaluations in HR management</p>	<p>should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.</p> <p>55. Systems making judges' core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges."</p> <p><u>Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc.</u></p> <p>"Qualifications, selection and training</p> <ol style="list-style-type: none"> 1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications. Status and conditions of service 4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability. 6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations. 7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures." 	<p>HJC and SPC</p> <p>Stakeholder interviews; qualitative expert assessment.</p>	<p>Courts, MOJ, High Court Council, SPC, RPPO.</p>
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3.3. Training			
3.3.1. Capacity of the Judicial Academy to meet training needs	<p><u>Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to the member states on the independence, efficiency and role of judges - Principle III- Proper working conditions</u></p> <p>“a. recruiting a sufficient number of judges and providing for appropriate training such as practical training in the courts and, where possible, with other authorities and bodies, before appointment and during their career. Such training should be free of charge to the judge and should in particular concern recent legislation and case-law. Where appropriate, the training should include study visits to European and foreign authorities as well as courts.”</p> <p><u>Consultative Council of European Judges (CCJE) Opinion No.10 (2007) on the Council for the Judiciary at the service of society – (Training of Judges)</u></p> <p><u>Magna Carta of Judges - fundamental principles</u></p> <p>“8. Initial and in-service training is a right and a duty for judges. It shall be organized under the supervision of the judiciary. Training is an important element to safeguard the independence of judges as well as the quality and efficiency of the judicial system.”</p> <p><u>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities - Training</u></p> <p>“56. Judges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. This should include economic, social and cultural issues related to the exercise of judicial functions. The intensity and duration of such training should be determined in the light of previous professional experience.</p> <p>57. An independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programs meet the requirements of openness, competence and impartiality inherent in judicial office.”</p>	Stakeholder interviews; qualitative expert assessment.	Judicial Academy, courts, HJC, RPPO, SPC.
3.3.2. Effectiveness of a training needs assessment		Stakeholder interviews; qualitative expert assessment.	Judicial Academy, courts, HJC, RPPO, SPC.

3.3.3. Effectiveness of initial training	<p>Council of Europe, Recommendation CM/Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system – (Training)</p> <p><u>European Charter on Statute of Judges</u></p> <p>“2.3. The statute ensures by means of appropriate training at the expense of the State, the preparation of the chosen candidates for the effective exercise of judicial duties. The authority referred to at paragraph 1.3 hereof, ensures the appropriateness of training programs and of the organization which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties.</p> <p>4.4. The statute guarantees to judges the maintenance and broadening of their knowledge, technical as well as social and cultural, needed to perform their duties, through regular access to training which the State pays for, and ensures its organization whilst respecting the conditions set out at paragraph 2.3 hereof.”</p> <p><u>Consultative Council of European Judges (CCJE) Opinion No. 4 (2003) on training for judges</u></p> <p>“42. CCJE recommends:</p> <p>i. that training programs and methods should be subject to frequent assessments by the organs responsible for judicial training;</p>	Stakeholder interviews; qualitative expert assessment.	Judicial Academy, courts, HJC, RPPO, SPC.
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3.3.4. Effectiveness of continuing training	<p>ii. that, in principle, participation in judges' training initiatives should not be subject to qualitative assessment; their participation in itself, objectively considered, may however be taken into account for professional evaluation of judges;</p> <p>iii. that quality of performance of trainees should nonetheless be evaluated, if such evaluation is made necessary by the fact that, in some systems, initial training is a phase of the recruitment process."</p>	Stakeholder interviews; qualitative expert assessment.	Judicial Academy, courts, HJC, RPPO, SPC.
3.3.5. Effectiveness of training for assistants and court staff		Stakeholder interviews; qualitative expert assessment.	Judicial Academy, courts, HJC, RPPO, SPC.

3.4 Salary and Benefit Structures for Judges, Prosecutors, and Staff		
3.4.1. Appropriateness of salary structure for judges, prosecutors, judges assistants and staff (grades, court levels)	<p>Magna Carta of Judges - fundamental principles</p> <p>“Guarantees of independence</p> <p>7. Following consultation with the judiciary, the State shall ensure the human, material and financial resources necessary to the proper operation of the justice system. In order to avoid undue influence, judges shall receive appropriate remuneration and be provided with an adequate pension scheme, to be established by law.”</p> <p><u>European Charter on Statute of Judges</u></p> <p>“6. Remuneration and social welfare</p> <p>6.1. Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behavior within their jurisdiction, thereby impairing their independence and impartiality.</p> <p>6.2. Remuneration may vary depending on length of service, the nature of the duties which judges are assigned to discharge in a professional capacity, and the importance of the tasks which are imposed on them, assessed under transparent conditions.</p> <p>6.3. The statute provides a guarantee for judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death.</p> <p>6.4. In particular the statute ensures that judges, who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.”</p>	MOJ, courts, HJC, RPPO, SPC, MOF.
3.4.2. Appropriateness of benefit structure for judges, prosecutors, judges’ assistants, and staff (e.g. health care, housing, special pension, etc.)	<p>Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to the member states on the independence, efficiency and role of judges - Principle III- Proper working conditions</p> <p>“b. ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities;</p> <p>c. providing a clear career structure in order to recruit and retain able judges.”</p>	MOJ, courts, HJC, RPPO, SPC, MOF.
3.4.3. Effectiveness of job security for judges and prosecutors (lifetime and/or term appointment, probation period)	<p>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities - Chapter VI - Status of the judge</p> <p>“55. Systems making judges’ core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges.”</p>	MOJ, courts, HJC, RPPO, SPC.

	<p>Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc.</p> <p>“Qualifications, selection and training</p> <p>6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.</p> <p>7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.”</p> <p><u>European Commission for Democracy through Law (Venice Commission), Report on European Standards as regards the independence of the judicial system (2010): Part II – The Prosecution Service</u></p> <p>“21. Remuneration of prosecutors in line with the importance of the tasks performed is essential for an efficient and just criminal justice system.”</p>		
3.5. Support Staff Planning and Utilization			
3.5.1. Effectiveness of human resources systems for non-judge staff	<p><u>Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to the member states on the independence, efficiency and role of judges</u></p> <p>“c. All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.”</p> <p><u>Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time and judge’s role in trials taking into account alternative means of dispute settlement</u></p> <p>“C.6. The judges should have one or more personal assistants having good qualifications in the legal field to which they can delegate certain activities</p>	Stakeholder interviews; qualitative expert assessment.	MOJ, courts, HJC, RPPO, SPC.
3.5.2. Flexibility to deploy human resources to enhance service delivery		Qualitative expert assessment	MOJ, courts, HJC, RPPO, SPC
3.5.3. Effectiveness in division of labor between the judges and support staff		Qualitative expert assessment	MOJ, courts, HJC.
3.5.4. Effectiveness of deployment and use of court managers		Stakeholder interviews; qualitative expert assessment.	MOJ, courts, HJC, RPPO, SPC.

3.5.5. Effectiveness of HJC in non-judge HR policy-making and management	(d) Judges' assistance 65. The CCJE noted in its Opinion No. 2 (2001) that in numerous countries the judges have insufficient means at their disposal. However, the CCJE points out the need that a genuine reduction of inappropriate tasks performed by judges can only take place by providing judges with assistants, with substantial qualifications in the legal field ("clerks" or "referendars"), to whom the judge may delegate, under the same judge's supervision and responsibility, the performance of specific activities such as research of legislation and case-law, drafting of easy or standardized documents, and liaising with lawyers and/or the public."	Stakeholder interviews; qualitative expert assessment.	MOJ, courts, HJC.
3.5.6. Effectiveness of staffing needs assessment mechanisms		Stakeholder interviews; qualitative expert assessment.	MOJ, courts, HJC, RPPO, SPC.
3.6. Planning for the future			
3.6.1. Age distribution among judges, prosecutors, judges assistants, and staff	Consultative Council of European Judges (CCJE) Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the immovability of judges – Conclusions "(3) Seniority should not be the governing principle determining promotion. Adequate professional experience is however relevant, and pre-conditions related to years of experience may assist to support independence."	Statistics, HR records	MOJ, courts, HJC, RPPO, SPC.
3.7. Gender Equity in Employment in the Serbian Judiciary			
3.7.1. Gender distribution among judges, prosecutors, judges assistants, and staff at different levels	Consolidated version of the Treaty on the Functioning of the European Union "Article 157 4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers." <u>European Commission Report - Positive Action Measures to Ensure Full Equality in Practice between Men and Women, including on Company Boards</u>	Statistics, HR records	MOJ, courts, HJC, RPPO, SPC.

4. ICT MANAGEMENT			
4.1. Governance of ICT Planning and Investments			
4.1.1. Effectives of governance structures of ICT in judiciary	<u>Council of Europe, Recommendation Rec(2001) 2. of the Committee of Minister to member states concerning the design and redesign of court systems and legal information systems in a cost-effective manner –Appendix</u>	Qualitative expert assessment	MOJ, HJC, SPC, courts, PPOs.
	<u>Council of Europe, Recommendation Rec(2001)3 of the Committee of Ministers to member states on the delivery of court and other legal services to the citizen through the use of new technologies - Appendix</u>		
	<u>Council of Europe, Recommendation Rec(2003)15 of the Committee of Ministers to member states on archiving of electronic documents in the legal sector</u> 3. Organizational measures 4. Security measures 5. Conservation measures 6. Document formats 7. Electronic signatures		
	<u>Consultative Council of European Judges (CCJE) Opinion No. 14 (2011) on “Justice and information technologies (IT)”</u> IT plays a central role in the provision of information to judges, lawyers and other stakeholders in the justice system as well as to the public and the media.		
4.2. Effectiveness of Case Management and Information Systems			
4.2.1. Effectiveness of case management information systems in the courts and across the civil and criminal chain	<u>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities</u> 28. “The use of electronic case management systems and information communication technologies should be promoted by both authorities and judges, and their generalized use in courts should be similarly encouraged.”	MOJ, HJC, SPC, courts, PPOs	MOJ, HJC, SPC, courts, PPOs.
4.2.2. Effectiveness of video conferencing in the courts	<u>Council of Europe, Recommendation Rec(2003)15 of the Committee of Ministers to member states on archiving of electronic documents in the legal sector</u> 3. Organizational measures 4. Security measures 5. Conservation measures 6. Document formats	Qualitative expert assessment	MOJ, courts.

	7. Electronic signatures Consultative Council of European Judges (CCJE) Opinion No. 14 (2011) on “Justice and information technologies (IT)” “IT plays a central role in the provision of information to judges, lawyers and other stakeholders in the justice system as well as to the public and the media.”		
4.3. Effectiveness of System for Management Purposes			
4.3.1. Effectiveness of electronic exchange of information between the first instance courts, superior courts and other relevant justice authorities	<p><u>Council of Europe, Recommendation No. R (95) 5 of the Committee of Ministers to member states concerning the introduction and improvement of the functioning of appeal system and procedures in civil and commercial cases -Chapter III - Other measures to improve the functioning of appeal systems and procedures</u></p> <p>“j. providing adequate technical facilities to the second court, such as telefaxes or computers, and providing similar facilities to the first court to allow preparation of transcripts of hearings and decisions;”</p> <p><u>Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to the member states on the independence, efficiency and role of judges - Principle III - Proper working conditions</u></p> <p>“d. providing adequate support staff and equipment, in particular office automation and data processing facilities, to ensure that judges can act efficiently and without undue delay.”</p>	Qualitative expert assessment	MOJ, HJC, SPC, courts, prosecution
4.4. Effectiveness of Electronic Exchange of Information			
4.4.1. Quality of e-justice for access for court users, including court websites, possibilities for electronic exchange, online monitoring of court cases, electronic payment of fees and fines	<p><u>Council of Europe, Recommendation Rec(2001)3 of the Committee of Ministers to member states on the delivery of court and other legal services to the citizen through the use of new technologies - Appendix</u></p> <p><u>Consultative Council of European Judges (CCJE) Opinion No. 16 (2013) on the relations between judges and lawyers</u></p> <p>“The CCJE recommends developing lines of communication between courts and lawyers. Judges and lawyers must be in a position to communicate at all stages in proceedings. The CCJE considers that states should introduce systems facilitating computer communication between the courts and lawyers.”</p>	Qualitative expert assessment, Survey (periodic)	MOJ, courts, HJC, SPC, PPOs
4.4.2 User satisfaction with the case management information system (user friendliness, possibilities to generate court		Qualitative expert assessment; Survey (periodic)	Multi-Stakeholder Justice Survey, MOJ, HJC, SPC

performance info)			
5. INFRASTRUCTURE MANAGEMENT			
5.1 Management of Judicial Infrastructure for Service Delivery			
5.1.1. Effectiveness of geographic distribution of judicial infrastructure across Serbia	<u>Council of Europe, Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts</u> “VI. Reviewing at regular intervals the competence of the various courts as to the amount and nature of the claims, in order to ensure a balanced distribution of the workload.”	Legal analysis, assessment	MOJ, HJC, SPC
5.1.2. Physical conditions of the judicial infrastructure	<u>Consultative Council of European Judges (CCJE) Opinion No. 6 (2004) on fair trial within a reasonable time and judge’s role in trials taking into account alternative means of dispute settlement</u> “B.6. It is also crucial to underline, in the data collection procedures, the interaction between the quality of justice and the presence of adequate infra-structures and support personnel.”	Desk review, stakeholder interviews	MOJ, HJC, SPC, courts, PPOs
5.1.3. Effectiveness of design standards for refurbishment of judicial buildings and new court houses		Desk review, stakeholder interviews	MOJ, HJC, SPC, courts, PPOs.
5.1.4. Effectiveness of geographic distribution of the workload (incoming cases) between the courts	<u>Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to the member states on the independence, efficiency and role of judges</u> “2. All necessary measures should be taken to ensure the safety of judges, such as ensuring the presence of security guards on court premises or providing police protection for judges who may become or are victims of serious threats.”	Court statistics	MOJ, HJC, SPC.
5.1.5. Level of Court house security and effectiveness of security policies	<u>Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities- Resources</u> “33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently.”	Desk review, stakeholder interviews	MOJ, HJC, SPC, courts, PPOs.
5.2 Facility Management of Judicial Infrastructure			
5.2.1. Effectiveness of court infrastructure investment plan	No relevant legal documents identified.	Qualitative expert assessment	MOJ, HJC, SPC
5.2.2. Effectiveness and existence of design standards and maintenance protocols.		Qualitative expert assessment	MOJ, HJC, SPC

Annex 4: Access to Information on Websites

Institution	Who developed the website? Is it updated in-house or by donors?	Frequency of updates	Type of information found on the website	Tools for contact and feedback	Relevant public information not provided ⁹⁶²
MOJ	New webpage design developed by the USAID JRG Project; in-house updates,	Daily	<ul style="list-style-type: none"> - Registries (expert witnesses, bailiffs, evidentiary of debtors, etc...) - Draft laws (prepared by working groups) and comments on drafts - Complaints - FAQ 	Telephone number and e-mail	N/A
HJC	In-house	Frequent	<ul style="list-style-type: none"> - Bylaws - Agenda of the sessions and conclusions - Availability of annual reports - Announcements 	Telephone number and e-mail	N/A
SPC	In-house	Infrequent	<ul style="list-style-type: none"> - Reports are not available - Minutes from the sessions of the SPC (last minutes dated from 2011) - Bylaws - News about imposed disciplinary sanction against prosecutors found on the homepage 	Telephone number and e-mail addresses are found in the informatory	An updated Informatory is available
SCC	In-house	Frequent	<ul style="list-style-type: none"> - Case law (ECtHR case law, bulletin of court practice), legal conclusions and opinions, SCC case law - Annual statistical report - Bylaws of the SCC 	Telephone number of judges chief of departments is available in informatory. Access may be difficult for an average court user	An updated informatory is available
RPPO	In-house	Infrequent	<ul style="list-style-type: none"> - Form for request for access to information of public importance - Statistics from 2007, only charts for several criminal offences and not the full annual report. - Bulletin of RPPO dated from 2008 	Phone number of registry office	An updated informatory is available

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According to Article 39 of the Law on Free Access to Information of Public Importance Government, bodies should publish at least once a year an informatory containing key facts about its operations. Law defines information that the informatory should contain and oblige government bodies to grant free access to the informatory.

				- Anticorruption Strategy dated from 2005		
Judicial Academy	In-house updates, the EU project developed the new webpage in 2010	Infrequent (last update on continuous training dates from 2011; news dates from Nov 2013)		<ul style="list-style-type: none"> - Initial training (curricula of initial training, materials for training of mentors, information on entrance exam and rank list of candidates, program of entrance exam, etc.) - Continues training (list of trainings available per area in 2011) - Materials/documents/laws from 2011 	Telephone and e-mail	An updated informatory is available
Constitutional Court	In-house updates	Daily		<ul style="list-style-type: none"> - Annual reports - FAQ - Instruction on how to request information - All information and reports on controls procedure 	Telephone and e-mail	An updated informatory is available
ACA	In-house updates	Daily		<ul style="list-style-type: none"> - Forms and templates (for political parties and officials, but also for whistleblowers requesting protection) - FAQ for citizen complaints - Opinions - Reports 	Telephone and e-mail	An updated informatory is available
Commissioner	In-house updates	Daily		<ul style="list-style-type: none"> - Guide on information that can be requested from Commissioner - Monthly statistics on Commissioner's work - Forms for requests according to the Law on free access to information of public importance - Practice (decisions and opinions) - Annual reports 	Telephone and e-mail	An updated informatory is available
Ombudsman	In-house updates	Daily		N/A	N/A	N/A
I Basic Court in Belgrade ⁹⁶³	In-house updates developed by the IMG-implemented project	Frequent		<ul style="list-style-type: none"> - Forms (proposal to initiate inheritance proceedings, proposal to initiate contentious proceedings, proposal for enforcement, request for revocation of the court bequests, application for a certificate that is initiated divorce dispute, application for a certificate of non-termination of parental rights and/or issuing the copy, filing of complaints, petitions; request for access to public information, request for review of documents, appeal to the Commissioner for information of public importance, appeal to the Commissioner for information of public importance for 	Telephone and online form	An updated informatory is available

⁹⁶³ Random sample of Basic and Higher courts across Serbia.

			administrative silence) - Electronic bulletin - Online ordering of certificates and scheduling of inspection of documents			
Basic Court in Sombor		Frequent	- Forms (confirmation that there is no procedure against an individual, complaint forms, request for access to information of public interest) - Fees (criminal, civil, enforcement, contentious, etc...) - Electronic bulletin	Telephone and personal e-mail addresses	An Informatory is available	
Basic Court in Negotin		Frequent	- Forms (confirmation that there is no procedure against an individual, request for inspection of documents, request for issuing copies or transcript, request to archive for delivering of documents, confirmation that there is no divorce hearing) - Fees (criminal, civil, enforcement, contentious, etc...) - An electronic bulletin	Telephone and e-mail	Updated Informatory is available	
Higher Court in Prokuplje		Frequent	-Forms (complaint forms; request for access to information of public interest; request for audio/video recording or photographs) - Fees	Telephone and office e-mail	Informatory from 2011 is available	

Annex 5: Access to Allied Professional Services

Lawyers	Enforcement Agents	Public Notaries	Expert witnesses	Interpreters	Mediators
Is there a registry for these services?					
Bar Associations keep attorneys and legal trainees membership records.	The MOJ maintains a register of Enforcement Agents, Enforcement Agent deputies and Enforcement Agent partnerships, while Association of Enforcement Agents maintains a subsidiary register.	According to the Law on Public Notaries ⁹⁶⁴ , Chamber of Notaries keeps a register of notaries, notarial assistants and notarial trainees MOJ keeps evidence of persons who have passed notarial exam.	MOJ keeps separate registries of expert witnesses for natural and legal persons.	There is no electronic version of register ⁹⁶⁵ of permanent court interpreters on MOJs web site at the moment.	According to the Law on Mediation in dispute resolution ⁹⁶⁶ a registry of mediators is to be maintained by MOJ.
Is it publicly available? Easily accessible? Online? How do you find it?					
Bar Associations have their own websites with publicly available information, which can be easily accessed ⁹⁶⁷ . Alternatively, citizens can look into yellow pages and search either for Bar Association or individual lawyer contact details.	Information from the registry is public and can easily be accessed on following websites: http://www.komoraizvrslja.rs/pocetna and http://www.mpravde.gov.rs/court-executives.php Alternatively, citizens can look in the Yellow Pages and search either for Association of Bailiffs of individual Bailiff contact	Currently there is no publicly available information on notarial registries due to fact that introduction of notarial services into Serbian legal system has been postponed until September 1, 2014.	Registry is publicly available and can be easily accessed on the MOJs website. ⁹⁶⁸ Some courts such as Basic court in Pozarevac have published lists of registered expert witnesses on their websites. ⁹⁶⁹ Courts keep records on registered expert witness on their territory.	Information on interpreters is accessible on Association of Interpreters websites, individual websites or in the case of Vojvodina on the website of Provincial Secretariat for Education, Administration and National Communities Alternatively, citizens can look into the yellow pages and search for interpreter	Registry is going to be publicly accessible on MOJ website.

⁹⁶⁴ Official Gazette of the Republic of Serbia number 31/2011, 85/2012, 19/2013.

⁹⁶⁵ According to Article 19 of Ordinance on Permanent Court Interpreters (Official Gazette of Republic of Serbia number 35/2010) MOJPA keeps records on interpreters in electronic form.

⁹⁶⁶ Official Gazette of the Republic of Serbia number 55/2014.

⁹⁶⁷ For example: Bar Association of Serbia - <http://www.advokatska-komora.co.rs/>; Bar Association of Belgrade - <http://www.advokatska-komora.co.rs/>; Bar Association of Vojvodina - <http://www.akv.org.rs/>; Bar Association of Nis - <http://www.advokatskakomoranis.rs/>

⁹⁶⁸ <http://www.mpravde.gov.rs/court-experts.php>

⁹⁶⁹ http://www.osnovnisudpozarevac.com/index.php?option=com_content&view=article&id=32:sudskivestaci&catid=7:vodi-kroz-sudski-postupak&Itemid=34

	details.		contact details.	
What info is included in the registry? Is the info adequate to make a decision about who to choose?				
Name, phone number, email, address.	Name, address, phone number, email.	Currently unknown, however it is to be expected that the registry will besides personal information contain publicly accessible information on penalties for minor injuries (written warning), and on penalties for a disciplinary offense (written reprimand).	Name, date of birth, degree level in respected field, mailing address, general expertise, special area of expertise, cell and land phone.	In case of Provincial Secretariat for Education, Administration and National Communities: Name, address, phone number, profession.
When deciding on whom to hire as their attorney, citizens mostly rely on recommendations from their friends.	Information provided in the registry is insufficient to make decision. Citizens have an option either to contact bailiff directly or rely on recommendations from friends.		Published information is adequate to make preliminary choice on expert witnesses.	Information provided is a decent basis for a pre-selection of potential interpreters.
How do you know what this service is going to cost? Are the fee schedules available? If so where?				
Lawyer fees are regulated in the Tariff on rewards and reimbursements for attorneys' work. Document is adopted by the Serbian Bar Association, published in Official Gazette and contains a very complex point based system of fee calculation. Some lawyers and Bar Associations create and publish tables on rewards and reimbursements ⁹⁷⁰ with already calculated fees.	MOJ adopts a Tariff on rewards and reimbursements for enforcement agents. Document contains a complex point based fee structure. It can be accessed and downloaded on Association of Enforcement Agents website ⁹⁷¹ . Simplified tables on rewards currently cannot be found on the internet.	Public Notary is entitled to remuneration for their work and reimbursement of expenses incurred in connection with work done in accordance with the Notarial Tariff. MOJ determines Notarial Tariff after obtaining an opinion from Chamber of Notaries.	The Ordinance on remuneration of expenses in court proceeding contains conditions, amount and method of remuneration of expenses. Detailed and understandable fee schedule, which is in accordance with the above mentioned Ordinance, can be found on the website of Association of Vojvodina's expert witnesses. ⁹⁷²	The Ordinance on remuneration of expenses in court proceeding contains conditions, amount and method of remuneration of expenses. The Ordinance on permanent court interpreters regulates amount of remuneration for their work. Some websites include costs of services. (http://www.tumaci.rs/ind ex.swf)
				Amount of remuneration for mediators work and reimbursement of mediator's costs is determined by the Tariff on rewards and reimbursements in mediation, which is going to be adopted by the Minister of Justice. Parties can also agree otherwise.

⁹⁷⁰

Good examples can be found on the following websites: http://www.advokatskakomoranis.rs/index.php?option=com_wrapper&view=wrapper&Itemid=54

⁹⁷¹ <http://www.komorazivrsitelja.rs/propisi/podzakonska-akta>⁹⁷² <http://www.forensicexp-vojvodina.org.rs/docs/UVcenovnik.pdf>

Total cost of services is freely negotiated between attorney and client and may vary on case to case basis.					
Is the registry/information organized by region /location? How many per region?					
The Registries (membership records) are organized in line with the territorial organization of Bar Associations:	The number of Enforcement Agents is determined by Minister of Justice. General rule is that one Enforcement Agent comes on every 25.000 inhabitants. Registries follow territorial organization of the courts.	The number of public notaries is determined by Minister of Justice after obtaining opinion from Chamber of Notaries. Similar to enforcement agents, there should be one notary per 25,000 inhabitants, and each municipality, city and city municipality must have at least one notary.	The Registries are organized according to territorial organization of the courts and area of expertise. Presidents of the courts of first instance determine the need for experts in particular areas and have to notify the Ministry. Court expert witness is appointed based on his place residence in connection with the court territory.	The presidents of Higher courts determine the need for interpreters for certain languages and have to notify the Ministry. Permanent court interpreter is appointed for the court in whose territory has residence. The Provincial Secretariat for Education, Administration and National Communities is organized in accordance with the territorial organization of Autonomous Province of Vojvodina.	The MOJ shall adopt ordinance in order to regulate content and method of maintaining a registry of mediators in more detail.
i. Serbia					
ii. Vojvodina					
iii. Belgrade					
iv. Čačak					
v. Zaječar					
vi. Šabac					
vii. Požarevac					
viii. Niš					
ix. Kosovo and Metohija					
If you have a complaint about your service, where do you go?					
Complaints can be filed with the Bar Associations. Disciplinary proceedings are initiated and carried by	Supervision is divided between the MOJ and Association of Bailiffs. Disciplinary commission ⁹⁷³	Complaints can be filed with the Chamber of Notaries. Law defines persons who can submit	Article 18 ⁹⁷⁴ of the Law on court experts stipulates that the court or the authority conducting the	During court proceedings parties can complain directly to the judge, who will take appropriate	The mediator will be liable for the damages caused to the parties by acting contrary to the Code of

⁹⁷³ Disciplinary sanctions include: 1) warning; 2) public reprimand; 3) a fine of 50,000 to 500,000 dinars; 4) suspension of operations for a period from three months up to one year; 5) a permanent ban on performing enforcement activities.

⁹⁷⁴ Official Gazette of Republic of Serbia number 44/2010.

the disciplinary bodies of each of the Bar Associations. For violations of duties and violation of the reputation of the legal profession, an attorney-at-law may be imposed with the following disciplinary measures: 1) warning; 2) fine; 3) removal from the list of attorneys-at-law.	is formed by the Ministry and includes five members (two from Association of Bailiffs, one judge with experience in enforcement matters nominated by High Judicial Council and two civil servants from the Ministry). All committee members are elected for a 4 year term.	initiative to commence the disciplinary proceedings. It is important to notice that only Disciplinary Council has the capacity to file a formal proposal, when it finds that there are grounds for believing that the notary public committed minor violation of public notary duties or disciplinary offense.	procedure shall inform the Ministry about their objections and imposed fines on expert witness. The citizens can address to competent authorities with an explained proposal for dismissal of expert witness on grounds of incompetent, irregular or unconscionable expertise.	procedural steps in order to eliminate irregularities. The President of the Higher Court supervises the work of interpreters and notifies the Ministry on interpreter's unconscionable conduct. Interpreter can be dismissed if he performs his services in irregular or unconscionable manner.	Ethics (unlawful conduct, intentionally causing damage or acting with gross negligence) in accordance with the general rules of liability for damages. Mediators license shall be revoked in the procedure conducted by the three members Commission (one judge, one mediator and one civil servant from the MOJ) in cases of violation of mediators duties. Proposal to revoke mediator's license may be filed by Court, other authority or MOJ.
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Annex 6: Complaints Relating to Justice Service Delivery

	HJC / SPC	SCC / RPPO	Court President or Chief Prosecutor (in Basic, Higher and Appellate Courts)	MOJ	Ombudsman's Office	ACA
How would individuals know that this institution receives complaints about the judiciary? Is information publicly available? Is there any awareness campaign?	By reading laws	By reading laws	By reading laws	By reading laws	Communication strategy & awareness campaigns (USAID JRGA).	Law, awareness campaign (USAID JRGA)
How many complaints regarding judiciary do you receive in a year?	<p>1642 complaints received by the HJC in 2013.</p> <p>No statistics available for previous years on the structure of the complaints and number of founded complaints.</p>	<p>2010: 1644 complaints received (90 against the SCC, 1554 against other, lower-level courts)</p> <p>2011: 1111 complaints received (77 against the SCC + 1034 against other courts)</p> <p>2012: 954 complaints received (53 against the SCC + 901 other courts)</p> <p>2013: 780 complaints received (39 against the SCC, 741 against other, lower-level courts).</p>	<p>No known figures. However, appellate courts notified the HJC Complaints Process Working Group that they had received 11.534 complaints on the work of Basic Courts and Higher Courts within their jurisdiction.</p>	<p>2012: A total of 335 founded complaints (no information on number of complaints received).</p>	<p>2011: 440 total (213 against Basic Courts, 64 against Higher Courts, 52 against the Prosecutors Office, 39 against the Commercial Courts, 37 against the Appellate courts, 18 against the Administrative Courts, 17 against the Supreme Court of Cassation)</p> <p>2012: 585 total (333 against the Basic Courts, 76 against the Higher Courts, 64 against the Commercial Courts, 60 against Prosecutors' Office, 52 against other judicial authorities)</p> <p>2013: 633 total (351 against the Basic Courts, 77 against the</p>	<p>2010-2012: A total of 208 citizens' complaints received related to judiciary.</p>

							Higher Courts, 58 against the Appellate courts, 43 against the Commercial courts, 43 against the Prosecutors' Office, 28 against the Misdemeanor courts, 33 against all other judicial authorities)	
How many complaints are made against Judges? Court staff? Others (bailiffs, lawyers etc.)?	Not available	Not available	Not available.	Not available	Not available	Not available	Not available	Not available
Is the number of complaints increasing or decreasing? Any other interesting trends?	The only data available is for 2013.	The number of complaints filed to the SCC is decreasing each year.	The number of complaints is increasing, but no hard data is available.	There is no data for 2010, 2011 or 2013.	The number of complaints is increasing yearly. The Basic Courts are constantly subject of the most complaints.	Yes, templates are available on the Ombudsman's website in Serbian language and 10 languages of minorities living in Serbia.		
Is there a format for making a complaint?	No	No	Yes, can found on the website	Yes, can be found on the website and available in paper form at the reception desk.	Yes, can be found on the website	The right to trial within a reasonable time, postponement of hearings; the right to fair trial, non-enforcement of final and enforceable court decisions; the protection of the rights of persons deprived of liberty, inappropriately long duration of detention, conditions in the detention facilities including torture	Yes, can be found on the website	N/A
What types of complaints are most common?	According to HJC Secretary General, most of the complaints relate to the violation of the right to trial within a reasonable time	The violation of the right to trial within a reasonable time	Not available	The large majority of cases are related to the violation of the right to trial within a reasonable time, but there are no precise statistics				

What is the institution's competence to act on the complaint?	Disciplinary proceeding against Judge that may lead to removal of Judge in drastic cases.		Higher Courts can oversee the work of lower courts in their hierarchy.	They mostly ask the Court President to declare on the allegations of the complaint. However, for founded complaints against the Judge and involving elements of corruption etc... The case can be forwarded to the Public Prosecutor for investigation.	Providing recommendations, opinions and suggesting proposals of the measures for rectifying the errors in work.	Filing motions against the Judge in case that elements of corruption were identified.
How does this institution engage with other institutions who also receive complaints?	No known engagement	No known engagement	No known engagement	No known engagement	Ombudsman has prepared a template letter to advice citizens of the competence of other institutions.	No known engagement
What action has been taken in response to complaints? Any sanctions imposed? Any changes implemented to improve practice?	A total of 62 disciplinary reports filed against Judges, but their outcome is unknown. There is no policy or system in place for tracking the fulfillment of rectifying measures.			There were 61 were elements of alleged corruption have been identified. These cases were forwarded to the Public Prosecutor's Office.	Preventive visits to the institutions accommodating persons deprived of liberty, inspection of facilities and uncontrolled conversation with detained persons and prisoners.	Not available.

Annex 7: Law Faculty Curricula Relevant to Justice Service Delivery

Specific Courses for Preparation to Become a Judge or Prosecutor	Practical Legal Skills Development	Legal Writing Courses	Legal Clinics	Observation/Work in Court or Prosecutor's Office	Legal Ethics Courses	EU Law ⁹⁷⁵ Courses
UNIVERSITY OF BELGRADE						
Students can choose the judicial-administrative track in their third year. This track provides specialized courses (criminalistics, investigation techniques, and administrative procedures, criminal liability of legal entities, misdemeanor law, and legal medicine/forensics).	Students must choose one legal skills course per semester during their fourth year (options include nomotechnics and writing of legal acts, legal clinics, case studies, and trial simulation.). Methodology for positive legal courses includes 'exercises' where students can gain practical knowledge.	There are four optional legal skills courses which students can select during the two semesters of the fourth year. Students can graduate without completing a legal writing course. Teaching focuses on practical matters, with some theory.	This is one of four optional legal skills courses that students can select in their fourth year. Students can graduate without completing a legal clinic practicum. The legal clinic includes several segments, including criminal and civil. Students meet with citizens who need legal aid, attorneys who tutor them. Professors manage segments of the clinics.	In their final semester, students must have practice in either the judiciary/administration or in a company.	Two hours per week of legal ethics courses are available and optional in the third year. The teaching methodology is mixed between lectures and discussions.	Introduction into European Integration in the first year is a mandatory course. Master studies: Master in EU Integration, held in English language, master course in European Integration Law.
UNIVERSITY OF NIŠ						
There is no specific track.	Students must have one skills course in their last semester. Methodology for positive legal courses includes 'exercises' where students can gain practical knowledge.	N/A	A legal clinic is an optional course during the last year. From 2002 to 2005, the legal clinic training courses focused on simulation techniques and interactive learning. The Experimental Legal Office has been created to provide pro-bono legal assistance to clients under supervision of their clinic professors	In the second and third year, students must have practice in the judiciary or administration, or in a company.	N/A	"Foundations of EU Law" during the fourth year is a mandatory course. Master studies: EU Copyright Law, EU Economic Law, Institutions of the EU, Economics of European Integration, and European labor law.

⁹⁷⁵ Each undergraduate course has referrals to relevant EU Regulations and/or Directives in addition to the Serbian law.

				and legal practitioners. The Legal Office equipment fully complies with the ABA 'Model Standards in Clinical Legal Education: live-client clinics'. The legal clinic developed a close cooperation with the Niš Bar Association, acting as a partner in the pro-bono legal assistance projects.			
UNIVERSITY OF KRAGUEVAC							
There is no specific track.	Rhetoric as optional course at the fourth year. Methodology for positive legal courses includes 'exercises' where students can gain practical knowledge.	Organizational procedure law course (optional course) and civil procedure course have „exercises' on drafting court decisions and acts.	N/A	Methodology of organizational procedure law course (optional course) and civil procedure course provides possibility for practice in the court/prosecution office.	N/A	Master studies: EU Law is mandatory course. Foundations of civil procedural law of the EU and Private International Law of the EU are optional courses.	
UNIVERSITY OF NOVI SAD							
There is no specific track.	Methodology for positive legal courses includes 'exercises' where students can gain practical knowledge.	N/A	A legal clinic exists at the Faculty. However, participation in the clinic is extra-curricular (i.e. students participate voluntarily in their spare time, not as part of any course).	N/A	Two hours per week of legal ethics courses are available and optional during the fourth semester.	Introduction to EU law is a mandatory course at the fourth year. Master studies: EU Private International Law and Economics of the EU.	

Annex 8: Variation in the Roles of Court Managers across Serbia

Job Description	Belgrade Appellate	Kragujevac Appellate	Nis Appellate	Novi Sad Appellate	Belgrade Higher	Nis Higher	Belgrade First Basic	Novi Sad Basic	Belgrade Misdemeanor
Draft, monitor, execute budget	√	√	√		√	√	√	√	√
Financial and staff plan	√	√	√	√	√	√			√
Supervise procurement	√	√	√	√	√	√	√	√	√
Recommend strategic plans	√			√			√	√	√
Internal communication	√		√	√			√	√	
Staff meetings	√								
Technical services	√			√	√				
Organize meetings	√				√		√	√	
Protocol of Court President	√				√				
Cooperate with other entities	√	√		√			√	√	√
Activities in donation sphere	√					√	√	√	
Building management	√	√	√	√		√	√	√	√
Health and safety		√					√	√	√
Analyze statistical data	√	√		√			√	√	√
Monitors need for staff seminars		√					√	√	
Organize training for judges & staff	√	√		√			√	√	
Supervise internal org units		√	√	√		√	√	√	√
Evaluation of employees				√	√		√	√	
Monitors need for PR seminars				√					
Requirements									None listed
Social sciences degree	√								
Law or Economics degree		√	√						
Law, Economics or Management degree				√					
Economics or Org Science degree					√				
University degree						√			
University degree in arts							√	√	
Graduate studies							√	√	
Bar exam		√							
Public Administration exam	√		√						
State professional exam					√	√	√	√	
Years of experience	3	7	5	5	3	7	7	7	
Computer literacy	√	√	√	√		√	√	√	
Second language		√	√	√		√	√	√	

Annex 9: Recommendations

External Performance: Efficiency, Quality, and Accessibility of Justice Services

a. Efficiency in Justice Service Delivery

Recommendation 1: Strengthen performance management in courts by recognizing and rewarding higher-performing courts and implementing performance improvement plans for under-performing courts. Intensify dialogue between courts to exchange good practices and experiences through a more intensive program of meetings, workshops and colloquia.⁹⁷⁶ Lifting under-performers to the current average would considerably improve efficiency and consistency of practice, and bring Serbia's performance closer in line with European jurisdictions. These recommendations can be implemented at relatively low cost, using the Performance Framework indicators (at Annex 2) as an initial reference.

- ✓ Establish a department in the SCC to analyze court performance issues, using the Functional Review and the Performance Framework as a foundation. (SCC – short term)
- ✓ Select a targeted number of indicators that drive court performance and monitor these across all courts (SCC – short term and ongoing)
- ✓ Acknowledge performance improvements and innovations by showcasing their work at regular symposia and through non-financial rewards of recognition (e.g. Court Staff/President of the Year, Best Performing Court of the Year, Most Improved Court of the Year; Innovator of the Year etc.) (HJC with MOJ – short term)
- ✓ Disseminate individual and institutional good practices and innovations through workshops and colloquia among Court Presidents and heads of departments within courts. (SCC with HJC – medium term)
- ✓ Carry out targeted interventions aimed at assisting those courts facing severe performance challenges to rise to the current averages (SCC – medium term)

Recommendation 2: Prioritize the implementation of the SCC Backlog Reduction Strategy, targeting in particular the utility bill enforcement backlog through analysis and a coordinated package of incentives.⁹⁷⁷ **Develop Ageing Lists as a key tool for managing timeliness and backlog reduction, and monitor the progress of each court.** This builds on the work already underway by the Backlog Reduction Working Group. Results here would help bring Serbia's efficiency in line with other European jurisdictions. Moderate funds may be needed for staff overtime to address the backlogs. The initial recommendations can be implemented at relatively low cost, although technical assistance may be required for some items.

- ✓ Accelerate the backlog reduction program and adopt the measures proposed in the Best Practice Guide to prevent the recurrence of backlogs. (HJC, SCC – short term and ongoing)
- ✓ Monitor prosecutorial investigations to prevent the accumulation of an investigative backlog. (SPC and RPPO – short term and ongoing)
- ✓ Analyze why the Infostan approach to withdraw inactive utility bill cases was so effective, replicate lessons learned with other utility companies. (SCC liaising with MOF, MOE, Utilities – short term)
- ✓ Establish taskforces in those courts most affected by utility bill backlogs. Re-allocate sufficient staff, particularly judicial assistants, from other departments to these taskforces, and provide them sufficient ICT equipment and software. Court Presidents should provide the necessary leadership

⁹⁷⁶ This recommendation aligns with NJRS Strategic Measure 5.1.2.3: Undertaking of regular periodical efficiency analyses of the judicial network using improved methodology; Strategic Measure 5.1.2.4: Adjusting of the judicial network to the needs, pursuant to the results received from periodical analyses; Strategic Measure 5.1.2.5: Undertaking of correctional measures on the level of individual Courts and PPOs with the goal of improving efficiency of the network of Courts and PPOs as a whole.

⁹⁷⁷ This recommendation aligns with NJRS Strategic Guideline 5.3.6: Design and implementation of unified backlog-clearance program while respecting equalization of the number of cases per judge, establishing a system of on-going horizontal transfer and relocation of judges and public prosecutors, in accordance with the constitution and with adequate stimulation, and efficient monitoring of the of the program implementation.

and managerial support to enable them to succeed. Develop a comprehensive Ageing List of enforcement cases, and create ambitious yet realistic targets. Closely monitor the results of taskforces and report regularly to the relevant Working Group. Recognize good performers through evaluation, promotion and non-financial recognition and awards. (SCC – short term and ongoing)

- ✓ Create incentives to overcome the stigma that enforcement work is unattractive, such as giving ‘bonus points’ for the resolution of enforcement cases in productivity norms or considering backlog reduction efforts in evaluation and promotion processes. (HJC, SCC – short term)
- ✓ Analyze the non-enforcement backlog with a comprehensive Ageing List. Require that Courts report routinely on resolution of old cases. (SCC – short term)

Recommendation 3: Monitor the implementation of recent reforms introducing private enforcement agents, including workloads, costs, quality and efficiency of service delivery, and integrity.

- ✓ Analyze data on the use of enforcement agents to assess their effectiveness and impact on court performance. (MOJ, SCC – short term, ongoing)
- ✓ Create an internal panel of the Chamber of Bailiffs to process complaints against enforcement agents as a first tier. Incorporate remedial training as a potential sanction for agents. Disseminate information regarding avenues for complaint against enforcement agents. (MOJ, Chamber, JA – medium term)
- ✓ Conduct a survey of the cost of enforcement services (including deposits, reimbursable expenses, and fees) in other European countries, and analyze comparative models and affordability. Consider reducing the enforcement deposit and better regulating reimbursable expenses for enforcement agents. (MOJ – short term)
- ✓ Introduce caps on the number of outstanding cases per enforcement agent and avoid assigning additional cases if performance standards are not met. (MOJ, Chamber – medium term)
- ✓ Amend the location from where enforcement agents are appointed from the creditor’s territory to either the creditor’s territory or the territory where the debtor is registered to ease logistical constraints on enforcement. (MOJ – short term)

Recommendation 4: Establish preparatory departments in all medium and large sized courts. Monitor their results and exchange experiences.⁹⁷⁸ Judges, court staff, and practicing attorneys acknowledged these departments would be useful, particularly for ensuring that cases are ready for hearing, but the lack of staff or commitment to the process hindered the implementation. Departments can be established in the short term, while evaluating the results will require more time. The cost is moderate with the potential for substantially improved efficiency.

- ✓ Establish preparatory departments in those medium and larger courts that lack them. Collect baseline data on time to disposition and procedural efficiency, and monitor results. (SCC, MOJ – short term)
- ✓ Disseminate information about results to all courts and recognize good performance. (SCC, MOJ – medium term)

Recommendation 5: Develop and monitor performance statistics in PPOs.⁹⁷⁹ Monitoring the workload, via electronic means wherever possible, should be done in the short term for low cost, while making changes to correct problems will follow, with costs depending on what correction actions are taken.

- ✓ Design more detailed and disaggregated performance statistics for PPOs (RPPO – short term)

⁹⁷⁸ This recommendation aligns with NJRS Strategic Guideline 5.3.6: Design and implementation of unified backlog-clearance program while respecting equalization of the number of cases per judge, establishing a system of on-going horizontal transfer and relocation of judges and public prosecutors, in accordance with the constitution and with adequate stimulation, and efficient monitoring of the of the program implementation.

⁹⁷⁹ This recommendation aligns with NJRS Strategic Measure 4.2.1.2: Introduction of a centralized data collection and processing system in all PPOs.

- ✓ Monitor performance statistics in PPOs to prevent backlog from accumulating, and recognize good performers. (SPC, RPPO – medium term)

Recommendation 6: Collect and analyze data on procedural efficiency to inform future reforms.⁹⁸⁰ Provide practical training to support the rollout of recent procedural amendments. Adjust productivity norms to encourage judges to join related cases. The CCJE calls for judges to control the timetable and duration of proceedings, from the outset and throughout the legal proceedings. These recommendations can be accomplished in the short term at relatively low cost.

- ✓ Require staff to enter data into existing fields in case management software (AVP and SAPS). Provide training to staff on consistent data entry. Generate regular analytic reports and monitor results. (SCC, Courts, ICT providers – short term. See also ICT Management section)
- ✓ Create new fields in AVP and SAPS, focusing on data needs relating to timeliness, procedural efficiency, and prevention of procedural abuse. (MOJ – short term)
- ✓ Provide training to lower and higher court judges and judicial assistants on issues affecting procedural efficiency, including training to judges on their recently-enhanced powers to manage cases. (HJC, SCC, JA – medium term)
- ✓ Where variations in procedural efficiency exist between Courts, analyze and convene colloquia between courts to share experiences. (SCC – medium term)
- ✓ Analyze the extent of appeals, and procedural abuses; identify causes and develop possible sanctions.⁹⁸¹ (SCC – medium term)

Recommendation 7: Tighten scheduling practices for court hearings, including by conducting hearings throughout the day and fully utilizing case management software functionality. Collect and monitor data on scheduling patterns, such as reasons for adjournments, to inform future reforms.⁹⁸² Most of these changes could be made in the short term for little cost.

- ✓ To maximize the use of limited courtroom facilities, schedule hearings throughout the day, except in extraordinary circumstances. (SCC/Courts – short term)
- ✓ Collect and analyze data on cancelled and adjourned hearings and the reasons for them. (SCC/Courts – short term)
- ✓ Require that judges close each hearing by setting the next hearing date within a standardized timeframe, with only limited exceptions. (SCC/Courts – short term)
- ✓ Require that all courts use existing case management software to electronically schedule court hearings. Provide training as necessary. (SCC, JA, MOJ – medium term)

Recommendation 8: Reduce the requirements for service of process and reconsider arrangements for the delivery of service, applying lessons from some Basic and Misdemeanor Courts.⁹⁸³ Most of these steps can be taken in the short term at low cost.

- ✓ Monitor the implementation of recent procedural amendments which attempt to close loopholes on service of process. Collect and monitor data on service of process, including attempts and costs, and identify sources for variations in results. (MOJ, SCC, Courts – short term)

⁹⁸⁰ This recommendation aligns with NJRS Strategic Goal 5.2: Establishing of e-justice; Strategic Guideline 5.3.2: Amendments to the normative framework in a manner that would contribute to the reduction of the duration of court proceedings; Strategic Measure 5.3.3.4: Mandatory education of administrative – technical staff and regulation of the issue of competence in the field of their education; Strategic Measure 4.2.1.3: Conducting trainings for employees in courts and PPOs for working with the centralized data collection and processing system.

⁹⁸¹ This aligns with CCJE Opinion No. 6 (2004), which indicates provision should be made for sanctioning abuse of court procedure.

⁹⁸² This recommendation aligns with NJRS Strategic Guideline 5.3.4: Infrastructural investments in courts and prosecution facilities targeted at tackling the lack of courtrooms and prosecutorial cabinets, thereby increasing the number of trial days per judge, reducing the time between the two hearings and significantly expediting the investigative proceedings.

⁹⁸³ This recommendation aligns with NJRS Strategic Guideline 5.3.2: Amendments to the normative framework in a manner that would contribute to the reduction of the duration of court proceedings.

- ✓ Re-negotiate the MOJ's outdated MOU with the Postal Service and pay only for successful service (modelling the experience from Uzice Basic Court). Increase training and awareness among postal officers of their requirements and the sanctions for abuse. Create a plan to monitor results and to report on changes. (MOJ – short term)
- ✓ Work with Courts to build flexibility into their budgets so that they can innovate, for example by contracting with private couriers (like Sloboda which delivered an inexpensive and successful solution in the Novi Sad Misdemeanor Court), or delivery men, as occurs in the Vrsac Basic Court. (HJC, MOJ – medium term)
- ✓ Provide training to judges on new rules and encourage them to take a proactive approach to managing service of process. (SCC, JA – medium term)
- ✓ Amend procedural laws to create a presumption of continual service after the first service of process, with the onus on the party to notify the Court of any change of address, along with sanctions for non-compliance. (MOJ, HJC – medium term)

b. Quality of Services Delivered

Recommendation 9: Improve the organizational methods of Working Groups that develop draft policy and legislation relating to the judiciary. Require that working groups identify policy objectives and options, analyze fiscal and operational impacts of policy options, and prepare detailed implementation plans for the rollout of reforms.⁹⁸⁴

- ✓ Ensure standard terms of reference for working groups, with accompanying checklists for Chairs of working groups. Ensure that working groups articulate precise policy objectives and criteria. (MOJ – short term)
- ✓ Require that working groups analyze the causes for previous policy failures using system data, surveys and assessments of gaps between the 'law on the books' and the 'law in practice'. Require that all working groups conduct fiscal analyses and operational analyses of proposed reforms and policy options. Base recommendations on evidence. Ensure that draft legislation recommended by each working group includes an estimated breakdown of the costs of implementation. (MOJ – short term)
- ✓ Ensure that each working group includes a specialist in legal drafting to ensure consistency and completeness of draft legislation. Conduct training on legislative drafting and interpretation. (MOJ, JA – medium term)
- ✓ Prepare implementation plans for the dissemination and rollout of new legislation and policy, and engage the Judicial Academy to deliver comprehensive training on new legislation for judges, prosecutors and court staff. (MOJ, JA – short term)
- ✓ Disseminate information about reforms through the media and on the websites of courts and the MOJ to inform citizens and court users. (MOJ, SCC – short term)

Recommendation 10: Implement basic quality-enhancing measures. Standardize formats for routine procedures in Courts, including through the development of templates and checklists.⁹⁸⁵ The CCJE recommends that simplified and standardized formats for documents be adopted to initiate and proceed with court actions.⁹⁸⁶ Initial forms can be created in the short term at relatively low cost. Training can be incorporated into existing programs.

- ✓ Develop and require courts to use standardized templates and forms for routine procedures and processes, applying lessons from the Vrsac Basic Court. (SCC – medium term)

⁹⁸⁴ This recommendation aligns with NJRS Strategic Guideline 1.3.3: Analysis of the results of implementation of the 'judicial laws' and amending them pursuant to the results of the analysis; Strategic Guideline 1.3.4: Analysis of the results of implementation of substantial and procedural laws (Criminal Procedure Code, Civil Procedure Code, Law on Enforcement and Security, etc.).

⁹⁸⁵ This recommendation aligns with NJRS Strategic Guideline 2.7.4: Improve the judgment drafting methodology and achieve uniformity in this area (through initial and continuous training at the Judicial Academy).

⁹⁸⁶ See CCJE Opinion No. 6 (2004) on fair trial within a reasonable time.

- ✓ Provide training on their use to judges, prosecutors, and court staff to enhance consistency in case processing (SCC, JA – medium term)
- Disseminate to court users and legal professionals (SCC – medium term)

Recommendation 11: Develop pilots in Misdemeanor, Basic and Higher Courts for specialized case processing departments, including a specialized small claims department in Basic Courts with streamlined procedures.⁹⁸⁷ These recommendations can be implemented in the medium term for relatively low cost.

- ✓ Assess the feasibility of establishing small claims departments inside Basic Courts. If successful, start with a number of pilot Courts, and monitor results. Support departments with incentives, such as awards and recognition or consideration in evaluation or promotion, to attract high-quality judges and staff. Develop streamlined procedures and lay guides that could be followed by self-represented litigants. (MOJ, HJC, SCC – short term and ongoing)
- ✓ Create a working group to identify what kinds of cases could benefit from specialized case processing, including for example tax and customs cases in Misdemeanor Courts and gender-based violence and fraud in Basic and Higher Courts. Analyze lessons learned from the Commercial Courts. (MOJ, HJC – medium term)
- ✓ Develop pilot programs in Courts to test the efficacy of specialized proceedings. Monitor results. (MOJ, HJC – medium term)

Recommendation 12: Implement and augment existing SCC plans to promote uniformity and clarity of court decisions.⁹⁸⁸ This would enhance quality and perceived fairness in line with CCJE and the Magna Carta of Judges' recommendations for improved quality, accessibility, and clarity of decision-making. Consolidating cases are for the short term while other items are for the medium term. All recommendations require relatively minimal cost.

- ✓ Provide guidance and training to judges at both first-instance and appellate levels on how to join related cases. (SCC, JA – short term)
- ✓ Develop a more standardized approach to judgment writing and train judges on how to apply this approach. (SCC, JA – medium term)
- ✓ Establish a series of colloquia between Court Presidents to discuss emerging issues in law and practice (SCC – short term)
- ✓ Establish forums of institutional court users at the local level of each Basic Court (police, prosecution, social welfare, lawyers etc.). Meet periodically to ensure effective coordination of cases (applying lessons from the Zrenjanin Basic Court). (SCC – short term)
- ✓ Collect sentencing data by Court and offense; compare across case types and court locations. Provide training to reduce variations in sentencing practices. (SCC – medium term)
- ✓ Compile sentencing tables as a reference guide for prosecutors when developing submissions. Update and elaborate data periodically. (RPPO – medium term)
- Develop bench books on substantive areas of law topics (HJC, JA – long term)

Recommendation 13: Improve statistical reporting of appeals (including data relating to decisions confirmed, amended or remanded back to the lower court). Combine analysis of the results with a package of training and incentives for courts and judges to promote quality in decision-making.⁹⁸⁹ The COE recommends that steps should be taken to deter the abuse of post-judgment legal remedies. Improved

⁹⁸⁷ This recommendation aligns with NJRS Strategic Guideline 2.4.1: Changes in the normative framework related to the special character of the right to natural judge in cases of specialization and the possibility of derogation from the automatic case assignment when program for solving case backlog is applied.

⁹⁸⁸ This recommendation aligns with NJRS Strategic objective 2.7: Uniformity of case law.

⁹⁸⁹ This recommendation aligns with NJRS Strategic Guideline 2.7.1: Improvement of the normative framework in order to regulate the harmonization of court decisions and more precisely define the role of the Supreme Court of Cassation in this area, as well as to fully ensure harmonization with the decisions of the European Court of Human Rights and practice of other relevant international institutions.

enforcement will discourage appeals by reducing incentives for attorneys and/or parties to delay final judgment.⁹⁹⁰ Recommendations can be implemented in the medium term at relatively low cost.

- ✓ Align statistical data on appeals from Basic Court decisions to enable tracking of small and large appellations and analyze variations. Link the Courts' case management systems to allow cases to be tracked through all appeals, related cases and closure. (SCC, MOJ – medium term)
- ✓ Consider the appeal record of individual judges and prosecutors in the evaluation and promotion process. (HJC, SPC – medium term)
- ✓ Adjust the productivity norms of appellate judges to reward those who replace a lower court decision with their own judgment rather than remand it back to the lower court for retrial. Provide training to appellate judges on the implementation of recent procedural reforms requiring judges to amend decisions at the second appeal. (SCC, JA – medium term)
- ✓ Prepare and deliver training on issues that drive up appeals, including issues of concern under the ECHR⁹⁹¹ (SCC, JA – short term)
- ✓ Agree to friendly settlements between the state and parties in mass resolution of cases before the European Court of Human Rights. (MOJ – medium term)

Recommendation 14: Develop a high-profile campaign to enhance quality and combat corruption in administrative services in Courts, including the development and monitoring of integrity plans.⁹⁹² Creating integrity plans, standards, and a task force can occur in the short term, with other recommendations in the medium term, all at relatively low cost. Monitoring, training, and public awareness should be an on-going process.⁹⁹³

- ✓ Prepare and deliver training for judges, assistants and court staff on the purpose and content of court integrity plans. Develop integrity plans for all courts and PPOs. Disseminate existing rules on gift giving and provide relevant training. (ACA with HJC, Courts, PPOs – short term)
- ✓ Create a task force to consider performance and integrity improvements in Misdemeanor Courts for which public trust and confidence has been reduced significantly since 2009 and which impact large numbers of litigants. (SCC – short term)
- ✓ Continue to conduct periodic surveys focusing on court user experiences of corruption. Strengthen the survey methodology and expand the survey to provide more detailed and robust findings to inform future anti-corruption reforms within the judiciary. (Courts, ACA – medium term)
- ✓ Target interventions to deal with the most commonly reported forms of corruption, such as petty bribery of court staff. (HJC, SCC, MOJ – medium term)
- ✓ Develop public relations information on the websites and in brochures at the courts regarding the law and policy on gift giving. (HJC, SPC – short term)

Recommendation 15: Enhance the capacity of the system to implement and oversee alternatives to prosecution in all locations to ensure equal treatment of defendants across Serbia.⁹⁹⁴ Recommendations can be accomplished by the medium term. Adding staff and enhancing SAPO will require moderate costs, while the other efforts are relatively inexpensive.

⁹⁹⁰ Committee of Ministers Recommendation No. R (84) 5, Principle 7.

⁹⁹¹ This recommendation aligns with NJRS Strategic Guideline 2.7.3: Monitoring case law of the European court of human rights and other relevant international institutions, ensuring that their decisions are analyzed, organized and publicly available; Strategic Guideline 3.2.3: Further improvement of the initial training program at the judicial academy; Strategic Guideline 4.1.3: Amendments to the normative framework in terms of civil liability of the judicial office holders.

⁹⁹² This recommendation aligns with NJRS Strategic Guideline 2.1.1: Monitoring of the implementation of integrity plans in judiciary which are fully adapted to the judicial system and their improvement.

⁹⁹³ See also Governance and Management recommendations.

⁹⁹⁴ This recommendation aligns with NJRS Strategic Guideline 5.3.1: Wider implementation of the simplified procedural forms and institutes such as plea bargaining, implementation of the principle of opportunity in criminal prosecution and directing parties towards alternative dispute resolution methods (such as mediation) whenever allowed by legislative framework.

- ✓ Consider how recently-enacted Misdemeanor Orders could be used to impose alternative sanctions other than fines. Provide training for Misdemeanor Court judges on the use of alternative sanctions. (Misdemeanor Courts – short term)
- ✓ Expand the number of Offices of the Commissioner to all 26 Higher Court regions to oversee the implementation of deferred prosecutions. Add support staff in Commissioner's offices to enable monitoring of fulfillment of the terms of deferred prosecution cases, particularly in rehabilitative sanctions, such as treatment and community service. (Office of the Commissioner; RPPO – short to medium term)
- ✓ Streamline the plea bargaining process by providing more autonomy to Deputy Prosecutors to offer plea bargains for cases meeting criteria set by the RPPO. (RPPO – medium term)
- ✓ Design and deliver a training program for Deputy Prosecutors on the processing of plea bargaining and deferred prosecution cases. (RPPO, JA – medium term)
- ✓ Expand the use of alternative sanctions, particularly in misdemeanor cases. (Misdemeanor Courts, Office of the Commissioner – medium term)
- ✓ Collect data from PPOs on deferred prosecution and plea bargains, and any concerns or bottlenecks. Issue additional instructions on deferred prosecution and encourage more proactive rehabilitative efforts. (RPPO – medium term)
- ✓ Add data collection concerning deferred prosecution and plea bargains to the prosecutors' automated system (SAPO): include number of deferrals and pleas offered, the criminal offense, location, and reasons for any rejections by courts of offered plea bargains. (RPPO – medium term)

c. Access to Justice Services

Recommendation 16: Simplify the court fee structure to enable users to estimate likely costs. Remove the cap on court fees. Standardize the court fee waiver process, and collect and analyze data on court fee waivers.⁹⁹⁵ Implementation of this recommendation will align with EU standards and good international practice.⁹⁹⁶ The initial steps can be made in the short term for little to moderate costs.

- ✓ Simplify the court fee structure to enhance understanding of likely court costs. Remove the cap of 80,000 RSD on court fees and remove court fees for criminal cases initiated by a private party. (MOJ – medium term)
- ✓ Provide lay formats of information online and in paper brochures about the foreseeable costs and duration of proceedings to enable potential court users to better estimate the costs of their case. (MOJ – medium term)
- ✓ Adopt and disseminate standards for granting fee waivers, and create a standardized fee waiver application form and decision form for use by all courts. (MOJ, SCC – short term)
- ✓ Require staff to enter data on fee waiver requests and decisions in existing fields in AVP. Over time, monitor data fee waivers to encourage compliance with standards. (MOJ, courts – short term)

Recommendation 17: Remove the Attorney Fee Schedule to enable competition in the market for legal services. Develop a more cost-effective Attorney Fee Schedule to apply only for legal services to the state (e.g., legal aid services and ex-officio attorney appointments). Consider moving away from a pay-per-hearing model.⁹⁹⁷ The CCJE advises that remuneration of attorneys should not be fixed in a way that encourages needless procedural steps.⁹⁹⁸ The European Court of Justice has held that mandatory minimum

⁹⁹⁵ This recommendation aligns with NJRS Strategic Guideline: 2.5.2 Defining the criteria for determining the poverty threshold (in order to abolish or reduce court fees and reduce pecuniary fines in criminal and misdemeanor cases).

⁹⁹⁶ See *Measures for the Effective Implementation of The Bangalore Principles of Judicial Conduct*, adopted by the Judicial Integrity Group, undated.

⁹⁹⁷ This recommendation aligns with NJRS Strategic Guideline 2.5.1; Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

⁹⁹⁸ This aligns with CCJE Opinion No. 6 (2004) on fair trial within a reasonable time.

fees violate the EC Treaty. In 42 countries monitored by CEPEJ, lawyers' remuneration is freely negotiated.⁹⁹⁹ Some steps will entail low to moderate costs but they would likely be more than offset by savings in moving from per-hearing payment to per-case payment for court-appointed attorney.

- ✓ Remove the Attorney Fee Schedule and allow attorneys to negotiate their fees freely with clients. Develop a lower Attorney Fee Schedule for legal services provided to the state (see below), which could also act as a default schedule for the awarding of costs. (MOJ – medium term)
- ✓ Periodically update Bar Association lists to inform the process of selecting ex-officio attorneys, and provide lists to all relevant stakeholders. Clarify the appointment process and re-instate/establish Bar Association hotlines for attorney referrals. Provide parties with information on how to make a complaint about an ex-officio attorney. (MOJ, Bar Associations – short term)
- ✓ Require court staff to enter data on ex-officio attorney appointments into existing AVP fields. Monitor the use of ex-officio attorney appointments by case type, outcome, appeal rate and time to disposition. Compare with data where attorneys were not appointed ex-officio. Over time, use data to inform future reforms of ex-officio appointments. (MOJ, Bar Association – short to medium term)
- ✓ Provide parties with information on how to make a complaint about an ex-officio attorney. Strengthen quality control mechanisms for ex-officio attorneys. (Courts, Bar Associations – long term)
- ✓ Consider whether the mandatory appointment of ex-officio attorneys in certain cases (known as mandatory defense) should be broadened. (MOJ – long term)

Recommendation 18: Prioritize the passage of an adequately funded, cost-effective Free Legal Aid law that expands the pool of service providers and limits State costs.¹⁰⁰⁰ International standards establish the right to counsel to protect fundamental rights, and the ECHR calls for state-supported defense for indigent parties when the interest of justice demands it. The law should be passed as a priority, and rollout can occur in the medium term. Potential significant costs can be contained by following these recommendations:

- ✓ Prioritize passage of the draft Free Legal Aid Law. Ensure that the operational and fiscal implications of the draft law are adequately addressed. Cost and provide funding for primary legal aid services and ensure its coverage across the territory. Secure funding to implement any expanded mandates provided in the law. (MOJ, MOF – short term)
- ✓ Develop an Attorney Fee Schedule for the reimbursement of providers of primary and secondary legal aid. Consider a payment mechanism whereby clients receive vouchers for legal aid services and can choose their own provider. (MOJ – short term)
- ✓ Task a Working Group within the MOJ to plan and oversee the rollout of the new law. Draft regulations. Provide training to service providers. Establish the proposed quality control mechanism and relevant protocols. (MOJ – medium term)
- ✓ Provide easy-to-read information about court processes in pamphlets and on the web, including guidance on assessing court and attorney fees, and how to make a complaint against attorneys. (MOJ – medium term)
- ✓ Disseminate information to the public about the availability of legal aid services. (MOJ – medium term)
- ✓ Collect and analyze data on the use of legal aid by the public, including the most common case types, the workloads of service providers and the levels of satisfaction of users. (MOJ – medium term)

⁹⁹⁹ See *CEPEJ Evaluation Report, 2014* (based on 2012 data). Only Cyprus, Germany, Slovenia and UK-Northern Ireland prevent free negotiation of rates.

¹⁰⁰⁰ This recommendation aligns with NJRS Strategic Guideline 2.5.1: Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

Recommendation 19: Improve services for self-represented litigants, including simple forms and checklists for court users, and lay brochures and guides of basic laws and procedures.¹⁰⁰¹ Improved information can enable litigants to proceed smoothly through the system without an attorney, thus improving access to justice, as well as efficiency in the delivery of services.

- ✓ Create fields in AVP to collect data the number of self-represented litigants, their case types, outcomes and times to disposition. Require that staff enter data. Over time, use the data to design more targeted interventions to support self-represented litigants. (MOJ – short term)
- ✓ Building on lessons from Vrsac Basic Court, develop checklists of routine processes for court users and disseminate widely. (Courts – short term)
- ✓ Develop lay information packs for case types that are (or could be) most commonly pursued without an attorney, including guides, flow charts and infographics (MOJ – medium term)
- ✓ Develop/improve registries of allied professionals, such as enforcement agents, mediators and private notaries, to include expertise, geographic area, clear fee descriptions, complaint procedures, and disciplinary actions initiated or fines levied against an individual. Include in the bailiff registry a calculator for assessing likely bailiff fees (similar to the court fee calculator). (MOJ, Chamber of Bailiffs – short term)

Recommendation 20: Operationalize the new Mediation Law, create incentives for court users and practitioners to opt for mediation, and monitor the results. Conduct intensive training among professionals on mediation and disseminate information to potential court users.¹⁰⁰² The CCJE recognizes the critical role of judges and lawyers for consensual settlements.¹⁰⁰³ EU Member States are required to ensure training and quality of mediators and mediation confidentiality. While some steps can be taken soon, this is a large undertaking requiring considerable time, money, and political will to accomplish. In order to encourage mediation, the remuneration structure for attorneys will need to be changed from one based on fees paid for hearings to one based on legal services and case resolution.

- ✓ Develop quality standards for mediators and a certified mediator registry. (MOJ – short term)
- ✓ Raise public awareness of mediation through websites, brochures, and public service announcements. Introduce a Mediation Self-Help Test, applying lessons from the Netherlands, so that parties can determine whether mediation would benefit them. (MOJ – short term)
- ✓ Establish a formal Court-annexed mediation program in all Basic and Higher Courts and standards for determining which cases are appropriate for mediation.¹⁰⁰⁴ Strengthen mediation confidentiality requirements, requiring that judges serving as mediators cannot serve as trial judge in the same case and providing trial judges only with confirmation that mediation was unsuccessful rather than the reasons no settlement was reached. (MOJ, HJC – medium term)
- ✓ Provide incentives to potential users of mediation, including:
 - Lawyers: provide subsidized, tiered training to familiarize attorneys with mediation and those lawyers who decide to become mediators. Require mediators who received subsidized training to provide a specified number of free mediations. Introduce a system of co-mediation and mentoring to enhance mediator skills. (MOJ, Bar Associations – medium term)
 - Judges: develop training and printed materials for Court Presidents and judges about the advantages and mechanics of mediation. Count dispositions achieved through mediation as part of the individual judges' workload. (HJC, JA – medium term)

¹⁰⁰¹ This recommendation aligns with NJRS Strategic Guideline 2.5.1: Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

¹⁰⁰² This recommendation aligns with NJRS Strategic Guideline 2.5.3: establishment of an efficient and sustainable system of dispute resolution through mediation, by improving the normative framework and conducting the procedure of standardization and accreditation of initial and specialized training program for mediators, as well as by promoting the alternative methods of dispute resolution. Establishment of the register of licensed mediators in accordance with predefined criteria.

¹⁰⁰³ CCJE Opinions No. 6 (2004) and 16 (2013). See also, De Pala, Giuseppe and Mary B. Trevor, eds., *EU Mediation Law and Practice*, Oxford University Press, 2012.

¹⁰⁰⁴ For example, civil matters, divorce and/or custody cases, and victim-offender mediation in juvenile cases.

- Public: introduce legal aid for mediation¹⁰⁰⁵ and provide a temporary financial stimulus via free mediation hours. Set fees for mediation at less than court litigation fees, reflecting likely lower court costs than through standard litigation. Reduce the mediation fee in small claims cases to bring it more in line with court fees for these cases. (MOJ – medium term)
- ✓ Create an effective mediation case referral and management system, including: a) criteria for selecting cases; b) procedures for selecting a mediator; c) statistical monitoring and reporting; and d) coordinating activities between the court, litigants and mediators. (HJC – medium term)

Recommendation 21: Make important cases, consolidated legislation, and information about open and disposed cases freely accessible online.¹⁰⁰⁶ Implementing this recommendation will advance several CCJE goals.¹⁰⁰⁷ Most of these efforts can be accomplished in the medium term for low to moderate costs.

- ✓ Provide public information about court processes via court websites and brochures and using radio and television public access channels. Start with information about misdemeanor case process for which citizens indicate that the least information is available and the highest demand for information exists. (MOJ, HJC – short term)
- ✓ Publish consolidated legislation online free of charge. For the most commonly-used legislation, provide annotated commentaries. (National Assembly, Official Gazette – medium term)
- ✓ Ensure that parties in pending cases can access the basic registry and scheduling information about their case on the web portal, applying lessons learned from Croatia. (HJC, MOJ – medium term)
- ✓ As discussed further in the ICT resource section, develop common standards on which appellate decisions should be uploaded to searchable public websites. (MOJ, SCC – medium term)

Recommendation 22: Develop lay formats of legal information specifically aimed at reaching vulnerable groups.¹⁰⁰⁸ CEPEJ reports 17 European states provide special information to ethnic minorities in line with CCJE recommendations¹⁰⁰⁹ supporting steps to strengthen the public perception of impartiality of judges¹⁰¹⁰ Further, providing information to designated groups can be made in the short to medium term for low cost.

- ✓ Develop lay formats of legal information specifically tailored for vulnerable groups, including less educated court users, Roma and internally displaced persons. (HJC – short term)
- ✓ Develop court materials including websites in languages other than Serbian consistent with European standards for providing information in other languages. (MOJ – medium term)
- ✓ Organize training programs in non-discrimination and equal treatment for judges and court staff. (HJC, JA – medium term)
- ✓ Consider the feasibility of establishing a victim of crime service, applying lessons from EU Member States. (MOJ – medium term)
- ✓ Conduct a public campaign to raise awareness on the role of, and right to, a court appointed interpreter. (MOJ – long term)

¹⁰⁰⁵ Fourteen European states offer legal aid for cases in mediation. CEPEJ Final Evaluation Report, undated, Table 8.2.

¹⁰⁰⁶ This recommendation aligns with NJRS Strategic Guideline 2.9.2: improving the transparency of work of the judiciary by establishing public relations offices, info-desks and comprehensive websites.

¹⁰⁰⁷ CCJE, Opinion 14 (2011), 'Justice and Information Technologies (ICT)'; Opinion 6 (2004) on *Fair Trial Within a Reasonable Time*. See also the Magna Carta of Judges (Fundamental Principles) on Access to Justice.

¹⁰⁰⁸ This recommendation aligns with NJRS Strategic Guideline 2.5.6: Improvement of the normative framework on the basis of results of assessment related to the access to justice of vulnerable and marginalized groups.

¹⁰⁰⁹ Opinion 7 (2005) on Justice and Society.

¹⁰¹⁰ CEPEJ Final Evaluation Report, undated, page 86.

Internal Performance: Governance and Management of Resources for Service Delivery

a. Governance and Management

Recommendation 23: Clearly define the governance structure, organization and goals of the Councils and enhance their management capacities to carry out their current responsibilities and prepare for the transition of additional functions.¹⁰¹¹ Because of the short time remaining before the scheduled transfer of these functions on 1 January 2016, many of the recommendations will require prompt implementation. Costs for these items are relatively low, with ongoing costs if a General Manager is hired.

- ✓ Complete the Councils' definitions of their working arrangements and internal rules; create subcommittees or other means of allocating members' responsibilities. (HJC, SPC – short term)
- ✓ Amend the Constitution and relevant legislation in line with Venice Commission and CCJE recommendations to enshrine Council and court independence, including regarding appointments and promotions within the judicial system.¹⁰¹² In doing so, consider also amending rules on retiring the Council en masse every five years, replacing them with rotational elections that assist the retention of corporate memory and momentum. (MOJ, HJC, SPC, Assembly – medium term)
- ✓ Consider adding a General Manager to each Council to provide managerial oversight, based on a job description that requires prior management experience. (HJC, SPC – medium term)

Recommendation 24: Create an ongoing strategic and operational planning function in the judiciary to collect and analyze data and plan process improvements.¹⁰¹³ The CCJE specifies that the goal of data collection should be to evaluate justice in its wider context,¹⁰¹⁴ and the design of data collection procedures, evaluation of results, their dissemination as feedback, monitoring, and follow-up procedures should reside in an independent institution within the judiciary.¹⁰¹⁵ Most of these recommendations should be completed in the short term to prepare for transfer of responsibilities from the MOJ. The data gathering and reporting, strategic and operational planning functions will develop over the medium term. The creation of capacity to fulfill these functions will require ongoing and potentially expensive staff costs.

- ✓ Accelerate the Strategy Implementation Commission's definition of its work plan. (Commission, MOJ – short term)
- ✓ Adapt the Functional Review's Performance Framework into a streamlined dashboard-style framework to monitor system performance, with a small number (maximum of 10) of key performance indicators most likely to drive performance enhancements. (Commission, MOJ – medium term)
- ✓ Consider revising the NJRS Action Plan to increase the focus on the effective rollout and implementation of a smaller number of reforms most likely to improve system performance from the perspective of court users. Identify measurable targets. Monitor and document results, especially in the efficiency area. (MOJ, HJC, SPC, Commission – short term)

¹⁰¹¹ This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences; Strategic Guideline 1.3.1: Strengthening of professional capacity of the HJC and SPC for the analysis of the results of the reform (hiring of experts of suitable profiles in administrative offices, development of data collection system, training of the members of the HJC and SPC in the field of analytics, statistics and strategic planning).

¹⁰¹² See for example CCJE Opinion 10 (2007), which states that '*[p]rospective members of the Council for the Judiciary, whether judges or non judges, should not be active politicians, members of parliament, the executive or the administration. This means that neither the Head of the State, if he/she is the head of the government, nor any minister can be a member of the Council for the Judiciary. Each state should enact specific legal rules in this area.*'

¹⁰¹³ This recommendation aligns with NJRS Strategic Goal 1.3: Strengthening of analytical capacities for strategic planning in the HJC and SPC.

¹⁰¹⁴ I.e., including the interactions of the judiciary with judges and lawyers, justice and police etc.

¹⁰¹⁵ See CCJE Opinion No. 6 (2004).

- ✓ Require all institutions to provide brief and frequent updates on progress against targets. Communicate to stakeholders the baseline results, initiatives and changes in outcomes. (SCC, HJC, SPC – short term)

Recommendation 25: Bolster the sector’s capacity to systematically analyze workloads and determine the efficient resource mix to achieve policy objectives.¹⁰¹⁶ Adopt a simple case weighting methodology.¹⁰¹⁷

Adding judges and staff to address performance issues is ineffective without a more rigorous evaluation of system needs. These activities should begin in the short term and would be ongoing.

- ✓ Analyze existing caseloads based on managerial reports in the case management systems. Transfer files from busier courts to neighboring less busy courts, when appropriate and preferably during the early phases of case processing. (SCC – medium term)
- ✓ Collect and analyze data about when and why random case assignments are overruled. Supplement data from random case assignments with analytic reports from case management systems to equalize the distribution of caseloads by case type and age. (HJC, SCC – short term)
- ✓ Finalize a simplified case weighting methodology, applying lessons from the USAID SPP pilot. (HJC, SCC – medium term)
- ✓ Refine the weighting of cases over time to continually improve the allocation of resources to meet needs (HJC – long term)
- ✓ Create a planning, analytic, and statistics unit within each Council, with skilled staff who are capable of collecting and analyzing data about court performance. Task this unit to undertake planning and policy analysis functions focusing on the key performance areas. Work with budget and other management employees to consider and evaluate relative costs/benefits of proposals, analyze trends, develop ‘what-if’ scenarios and assess optimum resource mix. Provide advice to management on reform proposals. (HJC, SPC – medium term)

Recommendation 26: Supplement statistics from the automated systems with periodic user surveys.¹⁰¹⁸

This is a best practice noted by the EC, CEPEJ and the International Framework for Court Excellence and an important source of information for the judicial system. This measure is not inherently costly although some technical assistance may be needed to develop remedies and programs.

- ✓ Develop a court user survey, building on lessons from the Multi-Stakeholder Justice Survey. Finance the surveys through the HJC and SPC budgets. (HJC, SPC – medium term)
- ✓ Conduct periodic open and/or focus group discussions with users at the local level. Develop exit questionnaires for court users. Consider results in the formulation of policies. (HJC – medium term)

Recommendation 27: Re-engineer and streamline administrative processes in the courts and PPOs.¹⁰¹⁹

Re-engineering can result in more efficient and effective remedies for users, and reduced burden on judges

¹⁰¹⁶ This recommendation aligns with NJRS Strategic Goal 1.3 Strengthening of analytical capacities for strategic planning in the HJC and SPC; Strategic Measure 1.3.1.2: Strengthening of the capacities of the HJC and SPC in the field of strategic planning and analytics.

¹⁰¹⁷ This recommendation aligns with NJRS Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes); Strategic Guideline 5.1.1: Establishment of an efficient system of allocation of judges based on the principle of equalization of the number of cases per judge, as well as on additional criteria taken into consideration in the process of establishing the new court network; respect of the principle that a judge can be transferred only in the court of the same rank which is overtaking competences from the abolished court; introduction of the system of permanent transfer and reallocation of judges (on voluntary basis in accordance with the constitution and with adequate stimulation) with particular regard to the reintegration of judges who returned office after decision of the Constitutional Court of Serbia in 2012; termination of an office of public prosecutor only if the public prosecutor’s office was abolished.

¹⁰¹⁸ This recommendation aligns with NJRS Strategic Measure 2.1.3.2: Regular surveys are conducted in order to identify unethical conduct of judges/public prosecutors in cooperation with other institutions.

¹⁰¹⁹ This recommendation aligns with NJRS Strategic Guideline 5.3.3: Relieving the burden on judges in terms of administrative and technical task, which take a significant portion of their time, by reassigning them to the administrative and technical staff and judicial assistants by ensuring uniformity of administrative and technical procedures through the adoption of the relevant rules of procedure enhancing judiciary integrity.

and staff without sacrificing quality. Some tasks should be undertaken in the short term, but the overall effort will be ongoing. Once the analytical unit is established, ongoing costs will be minimal.

- ✓ Expand significantly the current initiative to revise the Court Book of Rules. Identify opportunities to re-engineer and streamline processes, not only to align with recent legislative reforms but more broadly to improve efficiency and quality of processes. (MOJ – medium term)
- ✓ Establish a working group (comprising business process experts, judges and staff) to consider areas where re-engineering of processes would provide the greatest benefit. (HJC, Courts – short term)
- ✓ Facilitate colloquia for Court Presidents to discuss attempts to innovate processes, to share challenges and lessons and replications. (HJC, SPC in collaboration with MOJ, Court Presidents for local meetings – short term)

Recommendation 28: Reduce opportunities for conflicts of interest to arise. Fully implement the plan of the Complaints Handling Working Group and strengthen dissemination.¹⁰²⁰ Offering avenues for court users to complain can be made quickly, with analysis in the medium term. There will be moderate costs for creating the web presence.

- ✓ Require that all Court Presidents use the existing random case assignment software in allocating cases. Require Court Presidents to report on instances when the random assignment is overruled, including the rationale for reach decision. Monitor reports. (SCC – short term)
- ✓ Create fields in AVP to collect data on the exclusions and exemptions of relevant persons (i.e. judges, prosecutors, lay judges, expert witnesses etc.) from cases. Require that court staff enter data on exclusions and exemptions and that Court Presidents monitor trends. (HJC/SCC – medium term)
- ✓ Conduct a large-scale public information campaign to enhance public education on the scope and methods of both complaint and disciplinary procedures. (HJC – short term)
- ✓ Link the outcome of complaints processes to evaluation, discipline and promotion systems for judges and prosecutors. (HJC, SPC – medium term)
- ✓ Provide training for Court Presidents on their key role in complaints handling. Enforce disciplinary proceedings against Court Presidents who do not address complaints lodged or implement findings made (HJC – medium term)

Recommendation 29: Disseminate information about system performance to target audiences. Improving public awareness would enhance public trust and confidence, combat persistent negative reports about the judiciary and demonstrate improvements in service delivery in line with Chapter 23.¹⁰²¹ Costs are relatively low.

- ✓ Improve analytic content of SCC Annual Reports and include summaries in lay formats. Accompany Annual Reports with downloadable spreadsheets of system data for the benefit of analysts and researchers. Maintain email distribution lists for more frequent updates of progress. (SCC, HJC – medium term)
- ✓ Provide more detailed and disaggregated data in the annual reports of the prosecution service. (RPPO – medium term)
- ✓ Develop a communication strategy to explain the role and work of the judiciary and the implementation of the NJRS, to address the perception gap between the general public and court users. (MOJ – short term)
- ✓ Provide summary updates of recent reforms and their implications for court users and inform target audiences of proposed reforms using lay formats. (MOJ, Councils, SCC – medium term)

¹⁰²⁰ This recommendation aligns with NJRS Strategic Guideline 4.2.2: Establishment of a uniform system for the collection, processing and analysis of complaints and petitions relating to the work of judicial office holders.

¹⁰²¹ This recommendation aligns with NJRS Strategic Guideline 2.9.1: Promoting the results of the courts and PPOs, regular reporting on the work of the judiciary, readiness to respond to media requests, as well as promotion of the activities of the MOJ through the strategy for communication with the media/public; Strategic Guideline 2.9.2; Improving the transparency of work of the judiciary by establishing public relations offices, info-desks and comprehensive websites.

b. Financial Management

Recommendation 30: Improve the quality of financial data that decision-makers require for performance analysis and planning.¹⁰²² Implementation of this recommendation would give Court Presidents, judges and managers the information that would allow their greater and more meaningful engagement in court administration, as per good European practice.¹⁰²³

- ✓ Ensure interoperability of different financial management systems and establish a centralized data storage management system where financial data needs to be entered only once and is then exported to authorized users. (HJC, SPC, SCC, RPPO, MOJ – medium term)
- ✓ Ensure that information management systems align financial and non-financial data around the core business processes (e.g., once a new case is registered in case management software, it should be reflected in accounting systems). (HJC, MOJ – medium term)
- ✓ Do no further harm to information fragmentation by requiring that any future automation initiative does not exacerbate the existing fragmentation between various systems. (MOJ -short term)
- ✓ Utilize the analytical potential of financial data that are already collected, e.g. by developing a standard methodology for calculating cost-per-case and encouraging courts to improve cost-effectiveness. (HJC, SPC, SCC, RPPO, MOJ – short term)

Recommendation 31: Strengthen court fee collection. Consider establishing a body within the sector that is responsible for the collection of all court fees.¹⁰²⁴ Implementation of this recommendation would contribute to better collection of court fees and would enable courts with more resources to respond to newly emerging needs.

- ✓ Assess the full budgetary impacts of the transfer of verification services from courts to private notaries. (HJC to lead, MOJ - short term)
- ✓ Consider amendments to Law on Court Taxes and related legislation to enable courts to charge interest and late fees and to refuse hearings to delinquent debtors in certain circumstances. Assess the fiscal impacts. (HJC, SCC – short term)
- ✓ Assess the feasibility of centralizing responsibility for all court fee collection in a specialized organization. (HJC to lead, with MOJ and MOF – medium term)

Recommendation 32:

16. **Strengthen the accounting of financial commitments and expenditures of the courts and PPOs.**¹⁰²⁵ Enhanced procedures should ensure that delays in registering new commitments are minimized; and that commitment data is accurate, complete and easily reconcilable with the budgets and shared with decision-makers.

- ✓ Within the public sector accounting framework, strengthen procedures for the accounting and reporting of financial commitments by the courts and PPOs (MOJ with HJC, SPC – short term)
- ✓ Generate regular reports that present commitment data against budgets (MOJ with HJC, SPC – short term)
- ✓ Establish a workgroup which will collect and analyze detailed information on arrears within the system. (MOJ with representatives from budget and accounting departments from HJC and SPC – short term)

¹⁰²² This recommendation aligns with the Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes).

¹⁰²³ This is provided for in: *European Charter on Statute of Judges*, Article 1.6; *Magna Carta of Judges (Fundamental Principles) – Access to justice and transparency*, Article 22; *Recommendation Number CM/Rec(2010)12, Council of Ministers on judges: independence, efficiency and responsibilities*, Articles 40-41.

¹⁰²⁴ This recommendation aligns with NJRS Strategic Guideline 2.5.2: Defining the criteria for determining the poverty threshold (in order to abolish or reduce court fees and reduce pecuniary fines in criminal and misdemeanour cases).

¹⁰²⁵ This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences related with the budget.

- ✓ Based on the analysis of arrears work with MOF on settling existing arrears. (MOJ with HJC, SPC, MOF – medium term)
- ✓ Identify options for ensuring that courts and PPOs are informed when their arrears are about to be collected from the accounts of central government agencies. (HJC, SPC, MOJ and MOF – short term)

Recommendation 33: Allow the courts and PPOs greater flexibility to reallocate funds within their individual budgets to optimize the use of resources and reduce arrears.¹⁰²⁶ If implemented, this recommendation would increase the effectiveness of appropriated resources and reduce the number of instances when the courts have to return unspent funds because the funds' economic classification breakdown did not match their needs.¹⁰²⁷

- ✓ Develop transparent rules and procedures enabling the courts and PPOs to reallocate funds with the approval of the Councils or MOJ respectively, consistently with the Budget Law. (HJC, SPC with MOJ – short term)
- ✓ Prioritize the timely processing of budget reallocation requests, and establish timeliness standards for these processes. (HJC, SPC – short term)
- ✓ Automate the submission of ad hoc reallocation requests by courts and PPOs to their respective Councils to minimize the administrative burden on Councils and enable the Councils to process requests. (HJC, SPC, Courts – medium term)

Recommendation 34: Clarify the division of financial responsibilities in key areas of the budget.¹⁰²⁸ Articulate definitions of capital and current expenditures, and clarify which institution is responsible for each.¹⁰²⁹ Clarify the division of financial responsibilities for the costs of legal procedure between the courts and PPOs. Improve coordination with service providers (i.e. prison facilities, attorneys, expert witnesses, and enforcement agents). Clarity and coordination would improve the effectiveness of resource allocation by the HJC, SPC and MOJ. It would also improve operational efficiency and minimize unnecessary disruptions, reduce arrears and prevent duplication and equivocation among courts and PPOs.¹⁰³⁰

- ✓ Within the existing regulatory framework, develop transparent criteria for defining and distinguishing between capital and current expenditures. The justice sector does not need to wait for a government-wide solution on the distinction between current and capital expenditures, but should one later be articulated, the justice sector could adapt it and be no worse-off. (MOJ, MOF – short term)
- ✓ Incorporate these definitions into regulations to guide the cycle of budget planning and execution within the judiciary in order to prevent duplications in requests and delays in budget execution. (HJC, SPC, MOJ with approval from MOF – short term)
- ✓ Establish a working group to clarify the division of financial responsibilities for the costs of procedure between the courts and PPOs for mandatory expenditures relating to criminal investigation by either adjusting the regulatory framework or by issuing a binding interpretation. (HJC, SCC, SPC, RRPO and MOJ and participation MOF/Treasury and, possibly, of the Judicial Committee of the Parliament – short term)

¹⁰²⁶ This recommendation aligns with NJRS Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes.

¹⁰²⁷ This aligns with *European Charter on Statute of Judges*, Article 1.6.

¹⁰²⁸ This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences related with the budget.

¹⁰²⁹ This recommendation aligns with NJRS Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes.

¹⁰³⁰ This aligns with *European Charter on Statute of Judges*, Article 1.6.

c. Human Resource Management

Recommendation 35: Impose a hiring freeze for judges and do not fill judicial vacancies until a rigorous and transparent methodology is developed to determine the needed number of judges. If adjustments are required, transfer judges with their consent or promote judges within the system to prevent any increase in the total number of judges. Work within the budget process to re-allocate funds earmarked for the salaries of judicial vacancies to more productive areas, such as mid-level specialist staff, ICT and infrastructure.¹⁰³¹ The HJC should implement this freeze immediately and maintain it for the medium term until the HJC develops a rigorous methodology to determine the number of needed judges and articulates that methodology. The number of judges needed is likely to be well below the current number of sitting judges, so a process of attrition will be required.

- ✓ Impose a freeze on filling judicial vacancies. If vacancies arise in higher ranks, fill them through promotion of judges from lower ranks. Do not fill the vacancies at lower ranks, given falling demand. (HJC, SCC – short term and ongoing)
- ✓ Gradually reduce the wage bill over time by attrition – i.e. not replacing retiring or departing judges. (HJC – short term and ongoing)
- ✓ If needs arise, transfer existing judicial assistants from less-busy courts to busier courts of the same court level within the same appellate region. (HJC, SCC – medium term)¹⁰³²
- ✓ Work within the budget process to re-allocate funding for unfilled judicial positions to other priority expenditures, such as investments in managerial capacity, training, ICT upgrades and infrastructure improvements. (HJC, SCC, MOJ with approval of MOF – medium term)
- ✓ Request the consent of existing judges to be appointed as substitute judges in courts of the same court level within the same appellate region. Transfer judges temporarily with their consent, where needs arise. (HJC – medium term)
- ✓ Create incentives for judges to consent to transfers and be appointed as substitutes, including financial incentives and consideration in future promotion processes. (HJC, SCC – medium term)
- ✓ Establish a rigorous and transparent methodology at the central level to determine the number of judges needed, taking into account, inter alia, population, geography, demand for court services, demand by case type, domestic legal requirements, recent reforms to court mandates, and the experience of comparator EU Member States. (HJC, SCC – medium term)

Recommendation 36: Determine staffing objectively and in line with European experience, and adjust staffing when circumstances change.¹⁰³³ Reduce temporary employees and ‘shadow’ staff. Costs would be moderate in the short term, but reforms would produce significant savings.

- ✓ Analyze non-judge staffing needs in the courts based on caseload and economies of scale. Examine outliers to identify immediate staff reductions through layoffs or longer term through attrition. (HJC, SPC, MOJ – short term)
- ✓ Develop a staff reduction program in the courts and PPOs, focusing on rationalizing staff in accordance with the changing mandates of courts (i.e. targeting redundancies of land registry staff, verification staff etc.) and reducing or outsourcing ancillary staff whose roles do not contribute to

¹⁰³¹ This recommendation aligns with NJRS Strategic Guideline 5.1.1: Establishment of an efficient system of allocation of judges based on the principle of equalization of the number of cases per judge, as well as on additional criteria taken into consideration in the process of establishing the new court network; respect of the principle that a judge can be transferred only in the court of the same rank which is overtaking competences from the abolished court; introduction of the system of permanent transfer and reallocation of judges (on voluntary basis in accordance with the constitution and with adequate stimulation) with particular regard to the reintegration of judges who returned to office after the decision of the Constitutional Court of Serbia in 2012; termination of an office of public prosecutor only if the public prosecutor’s office was abolished.

¹⁰³² See also Recommendation 1 to improve performance management in courts, including through the transfer of files.

¹⁰³³ This recommendation aligns with NJRS Strategic Guideline 1.3.2: Analysis of the Results of work of Courts and PPOs and undertaking of the measures pursuant to the results of the analysis for better deployment of human resources in judiciary (determining the required number of deputies, judges and equitable caseload and allocation of cases).

- case processing (cleaners, drivers, typists, registry staff, maintenance staff, carpenters etc.). (HJC, SPC, MOJ – short term)
- ✓ Offer incentives to staff to move from the courts to the Executive Branch or PPOs as a preferred alternative to layoffs. (HJC, SPC, MOJ – short term)
- ✓ Strictly limit reasons for hiring temporary or contract employees. Standardize reporting on numbers, roles, and costs of the shadow workforce. (MOJ – short term)
- ✓ Freeze all volunteer appointments and phase out the volunteer program in courts and PPOs. (SCC – short term)
- ✓ Create formulas for determining funds and number of case processing staff per judge and administrative staff based on units of work (e.g., standard number of ICT people per device supported). Establish transparent justifications for deviations from the staffing levels set in the standards. Address staffing levels of administration and public employees in the medium term. (MOJ – short to medium term, with HJC advising prior to 2016.)
- ✓ Create a more sophisticated staffing needs/norms model considering the impact of statutory, administrative, or technological changes on staff needs and include other civil servants and public employees. (HJC – long term)

Recommendation 37: Establish systems to select, evaluate, and promote the most qualified judges to enhance quality, increase efficiency and public trust in the judiciary.¹⁰³⁴ Use the evaluation and promotion system to recognize good performance and incentivize innovation. Develop and apply remedial actions, including mandatory re-training, for low-performing judges. Implementation of recently-adopted evaluation rules should be the focus in the short term.

- ✓ Clarify performance evaluation procedures, including how evaluation ratings will be used to make decisions about probation, promotion and discipline. This will entail changes to both statutes and evaluation rules. (HJC, National Assembly – medium term)
- ✓ Establish criteria and rules for filling vacant Court President positions so that temporary appointments, if necessary, are for only a short duration. (HJC – medium term)
- ✓ Implement the recently-adopted rules on the criteria, standards and procedure for promotion and performance appraisal of judges. (HJC – short term)
- ✓ Consider tightening the rules in the following manner (HJC – medium term):
 - Establish more rigorous standards for the achievement of a satisfactory rating;
 - Reduce the periods of evaluation for probationary judges to ease the administrative burden on evaluation panels;
 - Include evaluation criteria that create incentives to improve system performance, including participation in training, mentoring of less-experienced judges and participation in task forces and working groups;
 - Give preference in promotions to judges who have served in multiple courts or voluntarily worked on backlog reduction in their own or other courts.
- ✓ Provide evaluation panels with sufficient support staff to compile information against evaluation criteria, to facilitate panels in the conduct of performance reviews. (HJC – short term)
- ✓ Conduct an education campaign for judges about the skill enhancement and promotional purposes of evaluations. (HJC – medium term)

¹⁰³⁴ This recommendation aligns with NJRS Strategic Guideline 1.5.1: Encouragement, strengthening and maintaining the quality of human resources in judiciary, especially through improvement of the system of professional evaluation and management of human resources.

Recommendation 38: Conduct a comprehensive training needs analysis for existing judges, prosecutors and court staff. Re-balance the focus of the Judicial Academy towards continuing training, and design and implement a significant continuing training program for all judges, prosecutors and staff.¹⁰³⁵ Enhanced continuous training for judges and assistants should commence in the short term. The significant injection of training will require a moderate investment.

- ✓ Reduce the initial training intakes until a transparent and rigorous methodology has been developed to determine the number of needed judges and legal issues raised in the recent Constitutional Court decision have been resolved. (HJC, SPC, JA – short term)
- ✓ Rebalance the Judicial Academy budget by reducing funding for initial training activities and increasing funding for continuing training activities. Shift the focus of staff towards the preparing continuing training activities. (JA, MOJ – short term)
- ✓ Conduct a comprehensive training needs assessment for existing judges, prosecutors, and staff. (JA, HJC, SPC, MOJ – short to medium term)
- ✓ Focus the Academy as a training center developing rigorous, consistent, and effective training materials and methods, using lessons from the European Judicial Training Network (EJTN) as a guide. (JA, HJC, SPC, MOJ – short term)
- ✓ Adopt a skills-based training program for court staff to enhance performance in their current roles. (JA, HJC – medium term)
- ✓ Create a training plan and provide government-sponsored training to other employees (e.g., Court Managers, registry staff). (JA – medium term)
- ✓ Raise the standards of the initial training curriculum and evaluation. (JA, HJC, SPC – medium term)

Recommendation 39: Develop effective, efficient, and transparent disciplinary measures to ensure quality of justice and effective access to justice.¹⁰³⁶ Each of these recommendations is relatively inexpensive; reducing the number of complaints could result in the Disciplinary Prosecutor and Commission becoming more cost-effective.

- ✓ Ensure adequate staffing of disciplinary departments in the HJC and SPC, and consider increasing their salaries commensurate with their responsibilities. Reduce delays in the application of disciplinary procedures. Provide training on disciplinary procedures to judges, prosecutors and court staff. (JA, HJC, SPC – medium term)
- ✓ Issue opinions with practical examples of permissible/impermissible conduct, including online FAQs about ethics. (HJC – short term)
- ✓ Analyze the outcomes of complaints processes at a systemic level, and use data to inform future reforms. (HJC – long term)

Recommendation 40: Consolidate HR policy development in the HJC and promote a professional, properly-managed staff within Courts.¹⁰³⁷ This should conform with the CCJE adjudication standards and promote efficiency¹⁰³⁸ in accordance with the Bangalore principles.¹⁰³⁹ While some steps could begin immediately, most tasks are medium term. Centralized staffing and performance pay are long term efforts. These tasks are generally low cost, but some require the addition of a moderate number of staff to the HJC.

¹⁰³⁵ This recommendation aligns with NJRS Strategic Guideline 3.1.2: Further improvement of continuous training at the Judicial Academy.

¹⁰³⁶ This recommendation aligns with NJRS Strategic Guideline 4.1.2: Normative Strengthening of Disciplinary accountability of judges, public prosecutors and deputy prosecutors, particularly emphasizing the obligation to adhere to the code of ethics.

¹⁰³⁷ This recommendation aligns with NJRS Strategic Guideline 5.3.3: Relieving the burden on judges in terms of administrative tasks which take a significant portion of their time, by reassigning them to the administrative and technical staff and judicial assistants by ensuring uniformity of administrative and technical procedures through the adoption of the relevant rules of procedure.

¹⁰³⁸ See CCJE Opinion No. 2.

¹⁰³⁹ 'The responsibility for court administration, including the appointment, supervision and disciplinary control of court personnel should vest in the judiciary or in a body subject to its direction and control.' Implementation of Bangalore Principles of Judicial Conduct, 2010.

- ✓ Invest in mid-level analytical staff in the courts with an additional benefit of creating an attractive career path in court administration for judicial assistants and court staff. Consider a regional approach for analytical tasks for smaller courts. (HJC – medium term)
- ✓ Create a detailed position description, specific evaluation process and career path for judicial assistants (from junior to senior assistant and on to advisor). Develop specific evaluation criteria and a rigorous evaluation process for judicial assistants that recognize their contributions to system performance. (SCC in consultation with HJC – short term)
- ✓ Build capacity within the Councils to take responsibility for the use and number of civil servants and employees. Adjust the systematization by reducing the number of court classifications to allow flexible deployment. (HJC, MOJ – short term)
- ✓ Codify that the HJC and SPC (with dedicated HR units) will be responsible for non-fiscal aspects of court employee policy development. (National Assembly, HJC, SPC, MOJ – short term)
- ✓ Establish uniform civil servant and labor processes for non-judge employees (uniform judicial-sector job descriptions, position-specific recruitment and selection methods, performance evaluations with standardized rankings); identify training needs and candidates for succession. (HJC – medium term)
- ✓ Identify the source of reluctance in certain courts to utilize Court Managers; raise awareness of the how Court Managers are successfully utilized in some courts. Establish standard duties and qualifications for Court Managers. (HJC – medium term)
- ✓ Introduce periodic reviews of performance evaluations by a centralized authority to ensure procedures are followed. (HJC – long term)

d. ICT Management

Recommendation 41: Develop more robust ICT governance structures to ensure future investments target justice sector goals and meet business needs.¹⁰⁴⁰ Activities should commence in the short term and require few costs:

- ✓ Establish a strategic cross-institutional ICT Governance Group to include senior managers of relevant institutions. (MOJ, HCC, SCC, SPC, RPPO – short term)
- ✓ Establish an Operational Data Working Group that sits as a second tier in the ICT governance structure to enable front-line managers and staff to provide input to information management reforms. (ICT Governance Group – short term)
- ✓ Establish a technical working group of ICT staff across the sector to discuss detailed aspects of rollout.

Recommendation 42: To enhance ICT funding: conduct a cross-judiciary technology architecture assessment; establish a long-range budget plan to sustain automation initiatives; and conduct cost-benefit and total cost of ownership (TCO) analyses for all proposed projects.¹⁰⁴¹ Costs would be moderate and additional staffing may be required. Activities could begin immediately, but build in the medium term:

- ✓ Conduct a Technology Architecture Assessment to assess the current technology environment across all judicial sector institutions, and develop a blueprint of future Target State Technology architecture including a transition strategy, roadmap, and solution architecture. (MOJ ICT division and Architecture Consultancy – short term, endorsed by ICT Governance Group)
- ✓ Establish a defined methodology for conducting business case analyses for proposed projects and analyzing their likely total cost of operations. (ICT Governance Group – short term)
- ✓ Create a complete inventory of ICT hardware and software assets, and ICT HR capacities in the judiciary beginning with information in BPMIS. (MOJ – medium term)

¹⁰⁴⁰ This recommendation aligns with NJRS Strategic Guideline 5.2.3: Ensuring sustainable development OF ICT system through financial management and user support services during entire life cycle.

¹⁰⁴¹ This recommendation aligns with NJRS Strategic Guideline 5.2.14: Improving the fundraising capacities for ICT and efficient fund management.

- ✓ Based on the inventory, develop a sector-wide long-range ICT budget plan. (ICT Governance Group in cooperation with MOF – medium term)
- ✓ Review future donor-funded proposals to determine TCO and assess whether the life-cycle costs can be supported with available funding. (MOJ – medium term)

Recommendation 43: Invest in some ICT management capability, particularly in contract negotiation and oversight.¹⁰⁴² Effective contract management would increase value for money and reduce excessive, costly reliance on ICT vendors (vendor lock-in). Beginning immediately, contract arrangements for ICT vendor support should be more explicit and benefit the State more. Analysis of services to be brought in-house should begin in the medium term. These activities are likely to result in cost savings, particularly in light of moderate upfront investment in contract analysis and negotiation.

- ✓ Negotiate the terms of future ICT contracts to ensure that the judiciary, and not vendors, own the data and control ICT operations. As they come due, re-negotiate service-level agreements to specify key details.¹⁰⁴³ (ICT Governance Group, Directorate for E-Government, Ministry of State Administration and Local Self-Government – medium term)
- ✓ Evaluate which ICT services should be brought in-house by preparing feasibility and cost studies comparing vendor and government-provided services. (ICT Governance Group – medium term)
- ✓ Create a disaster recovery site for data collected by courts and prosecutors. (MOJ – medium term)

Recommendation 44: Develop a cadre of well-trained local ICT staff with defined responsibilities.¹⁰⁴⁴ Even with more robust central ICT support services, individual courts require local ICT staff for front-line support which, if not rectified can reduce employee effectiveness and inhibit service delivery. Most of the recommendations in this section can be expected to require mid-range upfront investments (of between 100,000 and 500,000 EUR) and could begin in the medium term after critical ICT operations are stabilized.

- ✓ Develop a staffing plan to add more specialized ICT staff in critical areas¹⁰⁴⁵ with appropriate education and experience and knowledge of court operations.¹⁰⁴⁶ (ICT Governance Group – short term)
- ✓ Establish ICT career streams in critical areas to ensure that the interests of the judicial sector are well managed in partnership with the private sector and other implementation partners. (MOJ – medium term)
- ✓ Create ICT staffing norms within courts and PPOs relative to total number of staff in each location. Hire sufficient and appropriately experienced staff at each court, or regionally to cover a number of smaller Courts. (MOJ, HJC, SPC – medium term)
- ✓ Conduct a needs assessment of ICT staff training needs. Based on the needs assessment, develop a training program for ICT staff. (ICT Governance Group – medium term)

Recommendation 45: Enhance existing case management systems by ensuring all available functions are used and that sufficient training is provided. Add several critical features and fields that are generally

¹⁰⁴² This recommendation aligns with NJRS Strategic Guideline 5.2.7: Achieving sound balance between external and internal services with emphasis on efficiency.

¹⁰⁴³ Details should include: level and ownership of source code; how corrective preventative and upgrade maintenance will be provided, and fixed rates for regular maintenance; details of the development services to be provided; effective version release management so there are no conflicting versions; specifics of how help desk services will be provided (online, on the phone, in person) and the times of services for each mode of delivery; a requirement that vendors create trouble tickets and report on most common help desk assistance and interventions; and specific sanctions if contract terms are not met.

¹⁰⁴⁴ This recommendation aligns with NJRS Strategic Guideline 5.2.13: Motivating well-performing ICT staff.

¹⁰⁴⁵ Critical areas include project management, enterprise architecture, system integration, application management, infrastructure and operations management, information security, business process analysis, information management, ICT procurement, technical writing, and so forth.

¹⁰⁴⁶ There is also a clear need for trained statisticians, data management professionals, and reporting analysts within the judiciary sector. See discussion in Governance and Management Chapter.

present in case management systems. Improve server performance.¹⁰⁴⁷ Upgrading AVP software and servers, while more costly, should begin now.

- ✓ Provide training on case management functionality for judges and court staff. Provide specific training on data entry for court staff, applying lessons from the Commercial Courts. (MOJ – short term)
- ✓ Conduct periodic audits of case management system entries to ensure accuracy and consistency. (MOJ – medium term)
- ✓ Develop a cost estimate for identified improvements in AVP that do not require a complete overhaul of the system. (MOJ – short term)
- ✓ Extend functionality of AVP to include electronic document flows. (MOJ – medium term)
- ✓ Investigate causes of slow server communication speed, and upgrade servers and WAN connections where needed to improve the speed of transactions. Replace distributed AVP architecture (where each court has its own server) with larger server ‘farms’, as recommended by the ICT Strategy Report. (MOJ – medium term)

Recommendation 46: Implement standard (or at least consistent) information management practices across the judiciary to improve the quality of record-keeping and enable sector-wide data analysis.¹⁰⁴⁸

Resolve problems with the statistical reporting in the judiciary’s automated systems so that data from courts are consistently submitted, accurate and, to the extent possible, generated by the system and not by manual calculations. Low-cost but high-return activities should commence in the short term. Introduction of a statistical umbrella is estimated at three to six months of person effort and should be implemented in the short to medium term.

- ✓ Determine which data fields in AVP should be mandatory and introduce those and greater field validation to AVP to enhance the quality of system data. (ICT Governance Group, MOJ – short term)
- ✓ Evaluate how the dashboard function of BPMIS can be aligned into existing case management systems. (ICT Governance Group, HJC – medium term)
- ✓ Define detailed technical requirements, architecture, and implementation plans for an Information Integration, Data Warehouse and Business Intelligence Solution to support decision-making, management reporting, and access to case file information and history regardless of format and system of record. (ICT Governance Group, MOJ – medium term)¹⁰⁴⁹
- ✓ Develop and formalize data management mechanisms consistent with ISO/IEC TR 10032:2003 framework to include (ICT Governance Group – medium term and ongoing):
 - A sector-wide Corporate Data Model and Data Dictionary to document and maintain business and technical definitions across time and facilitate discussions with the judges, court staff as well as HR/FM staff.¹⁰⁵⁰
 - Data management processes, including data management roles and responsibility, data ownership and stewardship.
 - A data quality management process that includes ongoing maintenance and review of the data across subject areas (see ISO 8000 Standard for Data quality and Master Data).
 - Data quality audits on a regular basis, including audits of business processes that may contribute to data quality problems.

Recommendation 47: Link the judiciary’s ICT systems and share documents electronically wherever possible.¹⁰⁵¹ Establishing standards should begin in the short term and continue into the medium term.

¹⁰⁴⁷ This recommendation aligns with NJRS Strategic Guideline 5.2.6: Improving efficiency of ICT operations through performance measurement.

¹⁰⁴⁸ This recommendation aligns with NJRS Strategic Guideline 5.2.4: Achieving uniformity of ICT services, tools and methods across the entire judicial sector.

¹⁰⁴⁹ This task should follow the overall Technology Architecture assessment

¹⁰⁵⁰ This also will be the basis for a Metadata registry that will enable a metadata-driven exchange of data internally and externally (see ISO/IEC 11179 standard for representing an organizations data in a metadata registry).The exchange is based on exact semantic definitions of data elements independent of their representation in particular systems.

These activities will require a moderate investment. The first and most critical of these activities is estimated at 20,000 to 100,000 EUR. Development of data exchange protocols is likely to be in the 100,000 Euro range.¹⁰⁵² While electronic data flows between the courts would be quite costly, improving scanning to allow document sharing is a low-cost alternative.

- ✓ Ensure interoperability by developing and implementing standards required of vendors/ developers. For example, every ICT system needs to be able to export data from particular fields (e.g., parties' names, relevant dates, assigned judge) using XML structures. (ICT Governance Group – short term)
- ✓ Review standards for scanning documents to increase the number and types of documents scanned. Address existing barriers to scanning by increasing the quantity and quality of scanners and strengthening server capability. (ICT Governance Group, MOJ – medium term)
- ✓ Develop data exchange protocols to improve interoperability between existing systems. Install middleware to allow integration of data among existing systems. (MOJ – medium term)
- ✓ Install and use middleware to share data between the courts and prosecutors. (ICT Governance Group, MOJ – long term)
- ✓ Expand data exchange protocols and common technical standards to allow interoperability between the judiciary and external institutions, the law enforcement, the National Criminal Sanction database, and financial institutions. (MOJ – long term)

Recommendation 48: Capitalize on e-justice by moving beyond providing information about the system to providing specific case information and allowing two-way interaction (e.g., paying fees, completing forms).¹⁰⁵³ Doing so will also allow Serbia to take advantage of the European Justice Portal as a one-stop shop for citizen access. The cost of implementing the short-and medium term recommendations is estimated in the ICT Strategy Report at less than 20,000 EUR:

- ✓ Evaluate the e-filing pilot,¹⁰⁵⁴ make changes as needed, and expand to other Courts.¹⁰⁵⁵ Upon expansion, shift resources in courts from data entry to tasks which support the modest costs of implementing e-filing. (ICT Governance Group – medium term)
- ✓ Create common look-and-feel standards for all court websites. Improve existing websites or create new websites for all first instance courts to move from basic functionality to providing dynamic, case-specific information and allowing two-way interaction, including forms to be downloaded for completion. (HJC, SCC – medium term)
- ✓ Develop common standards about appellate decisions to be uploaded to the public websites. (SCC – medium term)
- ✓ Prepare to participate in the EU's e-justice strategy prescribing a European Justice Portal as a one-stop shop for citizen access. (ICT Governance Group – long term)

Recommendation 49: Require new and continuing employees to demonstrate computer literacy and provide staff with relevant ICT training.¹⁰⁵⁶ Computer literacy requirements should be introduced in the short term with training in case management systems implemented in the medium term. Costs of this item are unknown but are likely to be moderate.

¹⁰⁵¹ This recommendation aligns with NJRS Strategic Guideline 5.2.11: Introducing diversified communication channels by using modern ICT tools.

¹⁰⁵² This contrasts to migrating to a single system, which is estimated at a minimum of 500,000 EUR and in excess of 1,000 person days of effort not including associated licenses and communication connections. The judiciary also does not have the specialized staff needed to manage this transition and is unlikely to for the medium to longer term.

¹⁰⁵³ This recommendation aligns with NJRS Strategic Guideline 5.2.13: Increasing the level of information available across judicial sector.

¹⁰⁵⁴ Implementation at the pilot courts required only that two personal computers, two printers, one reader and scanner for each court, a smart card for each participant, and a shared time stamp account.

¹⁰⁵⁵ This recommendation aligns with NJRS Strategic Guideline 5.2.15: Improving of the functionality and coverage of the judicial sector by ICT systems.

¹⁰⁵⁶ This recommendation aligns with NJRS Strategic Guideline 5.2.9: Improving ICT competencies of end users, ICT staff and management.

- ✓ Require that all future job classifications in the sector require a minimum level computer software and word processing skills. (MOJ, HJC, SPC, Courts – short term)
- ✓ Provide ICT literacy course to judges, prosecutors and court staff. Offer ICT refresher courses on-site in courts. (MOJ, HJC, SCC – short term)
- ✓ Develop a training program focusing on case management system training. Distinguish between ICT specialists, super-users, and other employees to tailor ICT needs to different staff, including on the benefits of information management (case data capture and quality) and how statistical reporting can assist their work. (HJC, SPC, Judicial Academy – medium term)

e. Infrastructure Management

Recommendation 50: Conduct an inventory of all buildings in the judiciary, clarify ownership of each building and assess its current condition.¹⁰⁵⁷ This activity can commence in the short term and continue in the medium term for moderate costs.

- ✓ Confirm that the MOJ (and not the HJC) is responsible for maintaining the inventory and secure funding through the state budget to prepare the inventory. (MOJ, HJC, MOF – short term)
- ✓ Conduct the inventory, applying lessons from the USAID-funded JRGA project for the Misdemeanor Courts. Include basic information, such as ownership of buildings, and an assessment of conditions. (MOJ with HJC, SPC – medium term)

Recommendation 51: Based on the inventory, create an adequately-funded infrastructure plan that enables multi-year implementation. Closely monitor the implementation of the plan to ensure that budgets are fully executed in accordance with the plan.¹⁰⁵⁸ These items can be accomplished in the medium and long term. Overall costs for full implementation will be significant, but donors may be willing to provide support, particularly if the judiciary makes progress in the implementation of other recommendations outlined in this Review.

- ✓ Increase the capacity of the Investment Department by re-allocating staff within the MOJ (or from other ministries) and provide relevant training. (MOJ – short term)
- ✓ Develop, regularly update and continuously implement a long term investment strategy for renovation of facilities. (MOJ, HJC, SPC, with international assistance – medium to long term)

Recommendation 52: Ensure the maximum use of scarce courtrooms and investigative chambers.¹⁰⁵⁹ Maximizing use of courtrooms can be done quickly, without funds.

- ✓ Expand the daily court schedule to ensure that hearings take place throughout the day using facilities to their maximum capacity. (Court Presidents with Court Managers – short term)

Recommendation 53: Develop guidelines with minimum rules for design and maintenance standards for Courts and PPOs.¹⁰⁶⁰ An expert team or working group should develop terms of reference for developing design and maintenance guidelines. IMG developed a 'Model Court Guideline' that can be used as a baseline for design and operation standards. Standards for the number, size and configuration of courtrooms and

¹⁰⁵⁷ This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences related with the budget; Strategic Guideline 1.2.3.

¹⁰⁵⁸ This recommendation aligns with NJRS Strategic Guideline 5.1.6: Development of infrastructural investment planning procedures based on the level of priority to enable the Ministry's assessment of a clearly defined and prioritized list submitted by the HJC and the SPC.

¹⁰⁵⁹ This recommendation aligns with NJRS Strategic Guideline 5.3.4: Infrastructural investments in courts and prosecution facilities targeted at tackling the lack of courtrooms and prosecutorial cabinets, thereby increasing the number of trial days per judge, reducing the time between the two hearings and significantly expediting the investigative proceedings.

¹⁰⁶⁰ This recommendation aligns with NJRS Strategic Guideline 5.1.6: Development of infrastructural investment planning procedures based on the level of priority to enable the Ministry's assessment of a clearly defined and prioritized list submitted by the HJC and the SPC.

chambers are needed to determine each facility's requirements.¹⁰⁶¹ The standards should reflect full use of existing space. Tasks commence in the medium term and involve moderate costs.

- ✓ Conduct a functional analysis of the current needs of users. (MOJ in coordination with HJC, SPC – medium term)
- ✓ Develop the design and maintenance guidelines. (MOJ through external consultants – medium term)
- ✓ Form an infrastructure team with appropriate background and experience representing the primary institutions to set standards for number of needed courtrooms and chambers, as well as appropriate size and configuration standards taking into account the profile of the Court/PPO and the physical limitations of each facility. (MOJ, HJC, SPC – medium term)
- ✓ Secure state and international funding support. (MOJ – long term)

Recommendation 54: Improve access to courthouses and PPOs to persons with physical disabilities.¹⁰⁶²

Improved information can be provided and initial assessments conducted in the short term at low cost.

- ✓ Provide physical layout information on court websites, including information about restrictions to accessibility. (HJC, SCC – short term)
- ✓ Conduct a campaign to raise awareness among judges and staff about access limitations for those with physical disabilities, applying lessons from the current campaign in Leskovac Basic Court. (HJC – short term)
- ✓ Assess structural impediments for persons with physical disabilities and evaluate the effectiveness of signs and markers. (MOJ – medium term)
- ✓ Improve court and prosecutor facilities to accommodate the needs of persons with physical disabilities. (MOJ – long term)

¹⁰⁶¹ Recommendation Number CM/Rec(2010)12, Council of Ministers on judges: independence, efficiency and responsibilities.

¹⁰⁶² This recommendation aligns with NJRS Strategic Guideline 5.1.6: Development of infrastructural investment planning procedures based on the level of priority to enable the Ministry's assessment of a clearly defined and prioritized list submitted by the HJC and the SPC.

Annex 10: References

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