

Needs Assessment of the Commercial Courts in Serbia

1. Background

The purpose of this assessment is to identify the specific needs of the Commercial Courts and identify future programming for the MDTF-JSS¹ Work Plan 2016-2018. The assessment was conducted from September to December 2015 based on consultations with representatives of Supreme Court of Cassation (SCC), Appellate Commercial Court (ACC) and Commercial Court in Belgrade, IFC and Ministry of Justice (MOJ).²

There is a traditional distinction in Serbia between Commercial Courts and courts of general jurisdiction. Commercial Courts have original jurisdiction over disputes arising from commercial activities (disputes involving business organizations, business contracts, foreign investment, foreign trade, maritime law, aeronautical law, bankruptcy, economic offenses, copyright matters, misdemeanors of commercial legal entities). Their jurisdiction extends to both legal and natural persons engaged in commercial activities, in cases where both parties are economic operators. When only one of the parties is an economic operator and the other is not, such disputes are decided by courts of civil (general) jurisdiction and not by Commercial Courts. As an exception, in bankruptcy proceedings, Commercial Courts have jurisdiction over all disputes where an economic operator is in bankruptcy in relation to other economic or non-economic operators.

The commercial jurisdiction in Serbia is organized on two levels: Commercial Courts hear first instance cases; and the Appellate Commercial Court decides on appeals against lower court decisions. According to the Law on Court Organization, there are 16 Commercial Courts with specifically defined territorial jurisdiction. The Appellate Commercial Court generally has appellate jurisdiction over lower Commercial Courts, decides on conflicts of jurisdiction and provides legal opinions. The judgments of the Appellate Commercial Court may be subject to an appeal for revision before the Supreme Court of Cassation (except for bankruptcy cases). The Belgrade Commercial Court is competent for intellectual property rights disputes for the entire Serbian territory.

¹ The MDTF-JSS is a multi-donor initiative aimed to support strengthening the performance of the Serbian justice sector in order to facilitate EU integration. For more information about the MDTF-JSS, see <http://mdtfjss.org.rs/en/about-us#.Vlx5S3arTIU>

² This assessment builds on the Serbian Judicial Functional Review 2014, which provided a comprehensive assessment of the functioning of Serbia's judicial system with options and recommendations to inform Serbia's justice reform initiatives in view of requirement of the Chapter 23 EU negotiation process. The Serbia Judicial Functional Review Report is available here: <http://www.mdtfjss.org.rs/archive//file/Serbia%20Judicial%20Functional%20Review-Full%20Report.pdf>

The main findings presented in Serbian Judicial Functional Review apply more or less equally to Commercial Courts. The demand for court services has significantly decreased during the last five years. Production and productivity are more than 100 percent. Caseloads are distributed unevenly among courts. Average case disposition per judge have declined, yet judges and court staff reported feeling overburdened with work. Congestion rates are high. The time to case disposition in commercial litigations is reasonable and in line with EU averages. The poor quality of legislation causes problems in case processing. There is markedly inconsistent application of the law across the country. Potential court users often cannot afford to go to court, and mediation has failed to live up to its promise due to a range of implementation challenges.³

Related to the internal operation of the Serbian judicial system and its contribution to service delivery, the Serbia Judicial Functional Review finds that: Commercial Courts collect the highest amount of fees that amounted to 285 percent of their executed budget in 2013; there are significant ranges of staff ratios in the Commercial Courts; the Commercial Courts have an adequate number of computers, at a ratio of one desktop or laptop per authorized position. However, courts report that the use of many older, slower computers impedes the effective use of systems and efficient service delivery; there is no remote backup of systems or data; related to the infrastructure, the Nis Commercial Court is in bad condition as well as the Belgrade Commercial Court and the Sombor Commercial Court.

2. Demand for justice services – caseloads and workloads

The number of incoming cases in Commercial Courts has decreased significantly, by more than 40 percent from 2011 to 2014.⁴ Private bailiff reforms influenced significantly the number of enforcement cases but that is not the sole cause⁵. Additional causes likely include the economic crisis and the lack of affordability of justice services reported by the business in the Multi-stakeholder Justice Survey.⁶ Amendments to the Law on Enforcement and Security that will enter into force in December 2015 will remove even more enforcement cases from the courts and transfer the overwhelming majority of enforcement cases to private bailiffs.⁷

Figure 1: Demand for justice services in commercial matters

³ <http://mdtfjss.org.rs/archive//file/Serbia%20Judicial%20Functional%20Review-Full%20Report.pdf>

⁴ Caseload data is based on the SCC Annual Reports, the Serbia Judicial Functional Review 2014 and data provided by the Commercial Courts during consultations.

⁵ Private bailiffs are introduced in 2011. Enforcement cases present more than 50 percent of Commercial Courts cases.

⁶ See:

<http://mdtfjss.org.rs/archive//file/Serbia%20Perceptions%20of%20the%20Judiciarys%20Performance%20FINAL%20EN.pdf>

⁷ According to the Law parties will have 60 days to decide if they want to transfer cases to private bailiffs or will stay with court bailiffs. If parties do not decide within the 60 days, than their enforcement case will be dismissed.

Year	All Commercial Courts No. of incoming cases	All Commercial Courts Total Cases in Work	BG Commercial Court No. of incoming cases	BG Commercial Court Total Cases in Work
2011	150.431	242.408	65.516	105.914
2012	121.082	227.972	44.571	88.271
2013	94.417	177.188	35.245	65.616
2014	82.495	159.707	31.866	61.822
Jan-June 2015	44.817	121,504	16.075	35.768

On the whole, the commercial jurisdiction is adequately staffed. There are 158 judges, 133 judicial assistants and 549 non-judicial staff in all first instance Commercial Courts and 27 judges, 32 judicial assistants and 31 non-judicial staff in the Appellate Commercial Court. The Belgrade Commercial Court, with 45 judges, 50 judicial assistants and 176 non-judicial staff, is the largest court in the Commercial Court system. Also, the Commercial Court in Belgrade is the busiest court in the country and more than 60 percent of all cases are in the Belgrade Commercial Court.

The number of bankruptcy cases has increased significantly in 2015, due to the mandatory deadline for the implementation of privatization that was introduced in the new Law on Privatization. This trend will likely remain during the next two to three years, as these cases work their way through restructuring. Privatization for the entities with socially-owned capital must be finalized no later than 31 December 2015. If a privatization entity with majority socially owned capital has not been privatized within the mandatory deadline, the Agency shall file a motion for bankruptcy of the privatization entity. As a result, there is a need to address this challenge by adapting the organization of court's work.

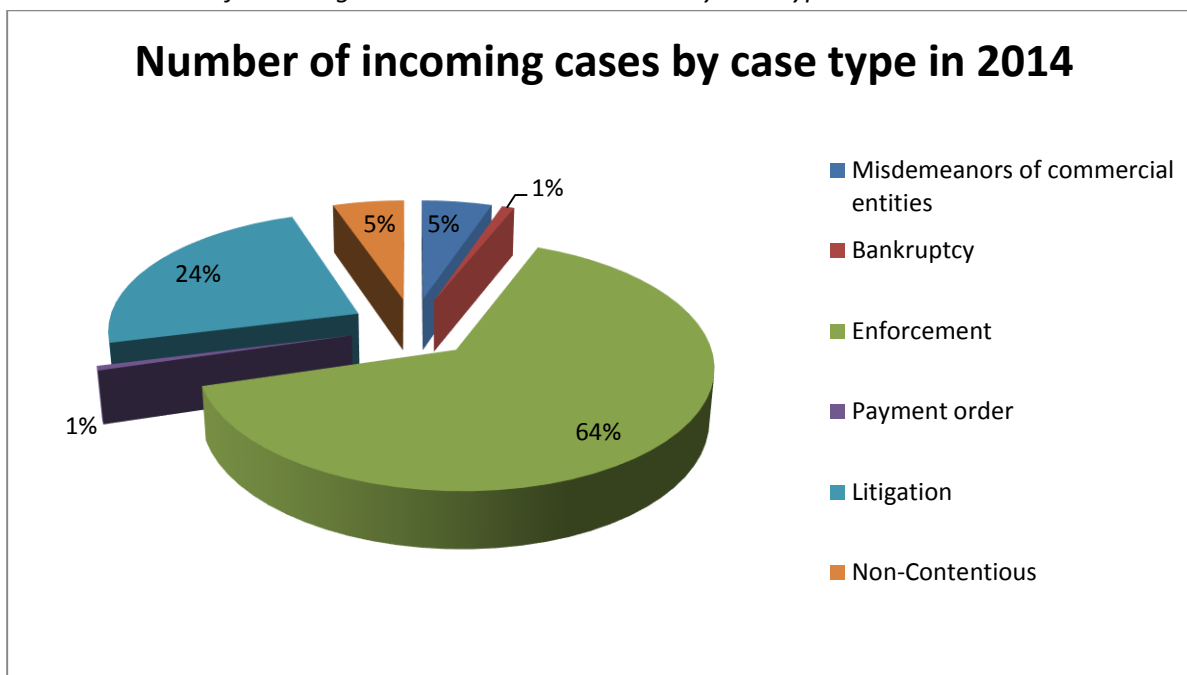
Figure 2: Number of incoming cases in Commercial Courts by case type⁸

Case type	No of incoming cases 2011	2012	2013	2014
Misdemeanors of commercial entities	4.735	4.521	3.953	4.278
Bankruptcy	11.837	12.958	654	767
Enforcement	93.988	70.902	61.065	53.043
Payment order	1.614	1.024	678	499
Litigation	31.678	23.151	22.689	19.564

⁸ Annual reports of the Supreme Court of Cassation.

Non-Contentious	6.579	8.472	5.378	4.344
Total	150.431	121.028	94.417	82.495

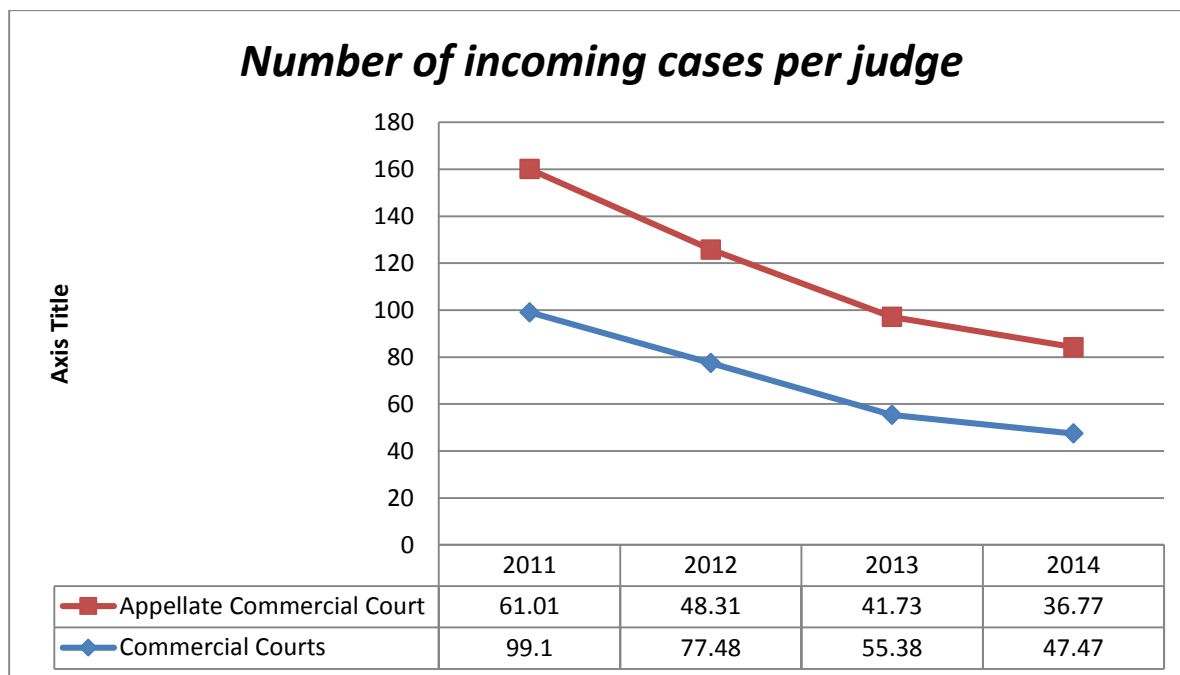
Chart 1: Number of incoming cases in Commercial Courts by case type in 2014



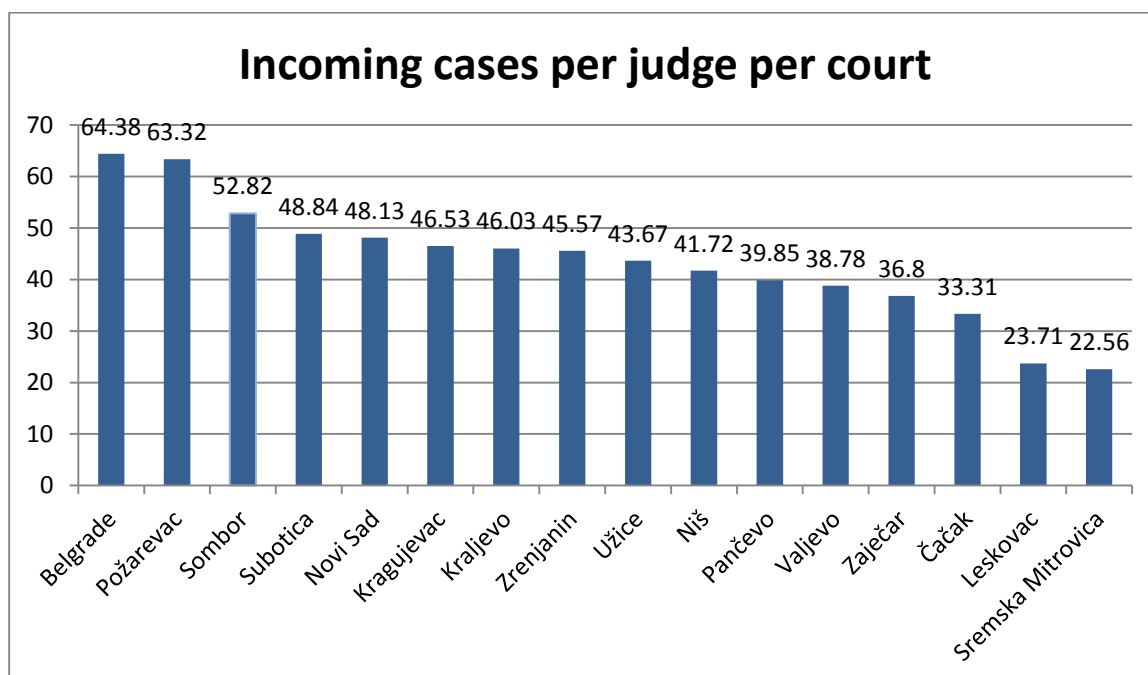
On a per judge basis, workloads have fallen. Incoming caseloads per judge fell dramatically in Commercial Courts and the Appellate Commercial Court. The decrease on average incoming caseloads per judge is caused by decline in incoming cases.

Chart 2: Number of incoming cases per judge⁹

⁹ Annual reports of the Supreme Court of Cassation.



In Commercial Courts the average caseload is 47,47 cases per judge. However, there are substantial differences in workloads among Commercial Courts in Serbia. In 2014, the busiest Commercial Courts had three times the number of incoming cases as the least active Commercial Court. Judges in some small courts are also very busy, while others are less busy. For example, the Požarevac Commercial Court has the second highest workload of 63,32 incoming cases on average per judge. The busiest Commercial Court is the Belgrade Commercial Court with 64,38 incoming cases on average per judge. The two least busy courts in 2014 were Sremska Mitrovica with 22,56 incoming case per judge, and Leskovac with 23,71 incoming cases per judge.



These findings highlight that caseloads and workloads are highly uneven, despite various reforms and reorganizations of work. There lay opportunities to improve the quality and efficiency of work through more equitable distribution of workloads.

3. Efficiency in the delivery of justice services in Commercial Courts

The performance of Commercial Courts in terms of resolving cases has been mixed. Commercial Courts reached a peak in total dispositions in 2012, but declined in 2013 and 2014, likely due to the decrease in incoming cases. Despite lower caseloads in 2014, Commercial Court judges appear not to have turned their attention to backlog reduction, as they had in 2012.

Commercial Courts average results are 47,77 dispositions per judge in 2014. This is merely half of the 92,98 dispositions per judge in 2012. 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 of the dispositions. However, despite an especially large drop in incoming cases in 2014, the higher clearance rate was not maintained for that year. Again Belgrade played a critical role. Although very few courts scored under 100 in either of the last two years, with falling workloads, higher rates and thus a reduction of backlog should have been expected. A key question for Court Presidents in Commercial Courts is why this didn't happen.

At the end of 2014, 76.686 cases were pending at the Commercial Courts, a reduction of more than 30.000 cases compared to 2011. Enforcement cases accounted for more than 75 percent of these. Once enforcement is set aside as a special issue with special remedies, there remains 18.687 pending cases in Commercial Courts, 13.577 of which are litigious cases.

Congestion in Commercial Courts has been erratic and the current congestion ratio of 0,77 is of concern.¹⁰ This is particularly puzzling in light of the substantial decrease of incoming cases, and a 20 percent increase in additional judges in 2012. With lower incoming cases and a higher number of judges, Commercial Courts could reasonably have reduced congestion and attended to their backlog.

Service of process is not a significant problem in the commercial jurisdiction, according to the Commercial Courts since businesses are not avoiding it. New legislation allows electronic service of process, however Commercial Courts are lacking IT resources for electronic service of process, so it is only a "theoretical" possibility.¹¹ Some Commercial Courts, like the Zajecar Commercial Court, have possibility of electronic filling (USAID SPP support).

Rate of court fee collection is better in the Commercial Courts than in the courts of general jurisdiction and is around 70 percent. Rate of court fee collection is important since the judicial

¹⁰ 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. 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.

¹¹ There is a need to upgrade case management system to ensure that courts receive information that delivery was "successful".

system is partly funded by court fees. The Commercial Courts collect the highest amount of fees that amounted to 285 percent of their executed budget in 2013.

Communication between Commercial Courts and other institutions is almost entirely manual, resulting in the inaccuracies and inefficiencies. Commercial Courts also face the particular problem of lack of electronic linkage to the National Bank of Serbia, resulting in delay of blocking funds.¹² This results in lost revenue to the courts and the government.

4. Quality of Justice Services delivered in Commercial Courts

The poor quality of laws causes problems for Commercial Courts, especially overlapping of laws and conflicting laws. New laws are passed without previous impact analysis and followed by limited outreach and training.

Poor quality laws also lead to unfair outcomes. 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 reported that unfair and biased laws negatively affected the fairness of the judiciary system.

According to the Serbian Judicial Functional Review, more than 80 percent of judges, prosecutors and lawyers express concerns about inconsistent or selective interpretation of laws and inconsistent jurisprudence. In order to address this challenge, the Appellate Commercial Court and its President are organizing sessions of the departments and sessions of the case law department of the Appellate Commercial Court. In order to involve the first instance Commercial Courts, the Appellate Commercial Court is organizing two periodic meetings (counseling) per year. However Commercial Courts have reported that there was a need for more meetings in order to exchange views among judges to improve the consistency of commercial jurisprudence.

In order to improve the quality of jurisprudence, the Appellate Commercial Court has established specialized chambers for intellectual property cases, bankruptcy cases, cases with international elements, banking and finance cases. The specialization should be established in the first instance Commercial Courts, especially the Belgrade Commercial Court, since it is the biggest Commercial Court in the country. Extension of jurisdiction provided in the case of bankruptcy¹³ presents a challenge for specialization in the Commercial Courts, since Commercial Courts could deal with any type of disputes related to the legal entity like labor disputes, property disputes, etc.

Appeals are an important mechanism for accountability and control and a good indicator of the quality of justice services. According to the Annual Report of the Supreme Court of Cassation, appeal

¹² Thousands of enforcement orders to block company accounts issued by Commercial Courts are submitted manually to the Bank, which then re-enters these data in its system.

¹³ All cases and disputes related to the legal entity against which the bankruptcy procedure is initiated are transferred to the competent Commercial Court.

rates in Commercial Courts are lower than average in civil cases.¹⁴ From 83.021 cases decided in 2014 appeals are lodged against 8.827 (10,6 percent) cases and reversal rate is 19,85 percent of cases. This is a good indicator regarding the certainty of decision making in Commercial Courts.

The work of the case-law department of the Appellate Commercial Court is of great importance for the harmonization of jurisprudence. Decisions of the ACC chamber cannot be published before the case law department confirms that decision is in line with the case law. In the situation that the case law department identifies that the decision is not in line with existing case law, the decision has to be returned to the chamber to reassess if it stands on the same position or amends the decision in question. If the chamber stands by its decision, the ACC calls the general session of all judges to analyze decision and decide if it should be send again to the chamber for reassessment. Even if the general session decides that decision should be reassessed the chamber could keep the original decision and change court practice, nevertheless, reasoning has to be strengthen. This mechanism of jurisprudence harmonization control presents good practice for other courts in the system.

The ACC has a case law database of sorts, but help is needed to improve it. The first version of the database was built in 1987.¹⁵ Currently, the system comprises 10.552 decisions, the oldest dating from 1987. However, the database platform has not been updated since mid-1990's and is based on an Windows 3.11 application that can no longer operate on modern computers. As a result, the system is not user friendly and only a couple of specialized ICT staff can access it. Its use is now limited to when judges come directly to the IT administrator or case-law department when they are looking for texts of "older" decisions (from 1990s or 2000s). In order to increase the value of the database it is needed to migrate decisions to a newer, modern case-law database system. Given that existing practices among judges and staff are good, there could be much benefit from this upgrade.

Commercial Court presidents, heads of case law departments of Commercial Courts and commercial judges are meeting in order to discuss relevant common legal issues, but assistance is needed to organize these regularly. The number of those meetings mostly depends on allocated financial resources to courts.

Integrity and perceptions of integrity link directly to the quality of decision-making by courts. A majority of the court users agreed that during court proceedings judges showed integrity. According to the Perceptions of the Judiciary's Performance in Serbia 69 percent of businesses with recent court experience report that their judge was impartial, and 60 percent reported that the judge engendered trust.

¹⁴ According to the available data and the Serbian Judicial Functional Review, the appeal rates in courts of general jurisdiction are very high on average, as are reversal rates on appeal. Appeals against Basic Court decisions in civil litigious cases are high, with an appeal rate of around 22,84 percent, where the appeal rate against merit decisions is estimated to be around 45 percent.

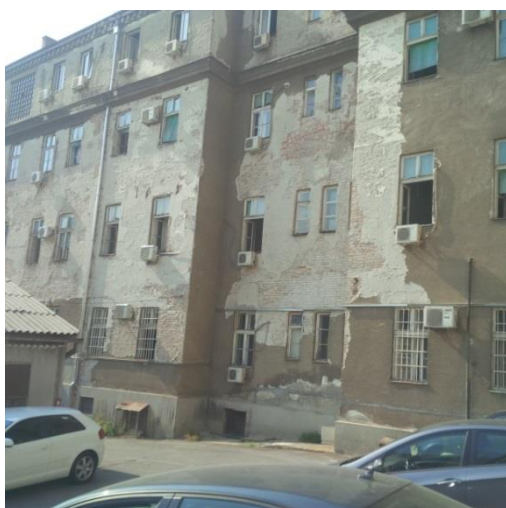
¹⁵ The old case-law database comprised selected decisions of the federal court, military court, and all lower level courts in the country. All the decisions officially published by the case-law bulletin/gazette were also stored in the searchable electronic database. Starting from year 2000, they stopped storing other courts' decisions in the database and focuses only on decisions of their own court.

Comparing to the widely stated opinions that corruption is present in the judiciary, a relatively small percentage of the business sector with experience with court cases reported that they personally resorted to informal means to influence the court.¹⁶

A considerable percentage of the members of the business sector reported that companies are **unequally treated**. More than half reported that treatment varies dependent on the ownership structure of the company, and almost half think that company size makes a difference. Almost one third reported that treatment varies dependent on the company's activity and its geographical location.

The overall condition of Commercial Courts infrastructure is poor which affects service delivery. 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.

Picture 1 Belgrade Commercial Court Building



Picture 2 Belgrade Commercial Court Archive



5. Access to Commercial Court Services

Access to justice is a drag on business climate. 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.

¹⁶ 4 percent reported to have resorted to informal means in the course of court proceedings.

According to the Serbian Judicial Functional Review, financial access to the court system is the largest barrier to access to justice for most small to medium enterprises. However, in comparison to the general population, a smaller percentage of members of the business sector think that the judicial system is inaccessible to their company due to expenses either related to lawyer or to court. 38 percent of business with recent court experience reported that costs of their court case were too big or their budget.

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.

Access to laws and information is also challenge for commercial justice system. Businesses report that frequent changes in laws and regulations create problems for their operations.¹⁷ In order to provide sufficient information to parties that are not represented by attorneys and to increase legal certainty and predictability, the Appellate Commercial Court regularly invites parties to send disputable legal issues. Upon collection of requirements Appellate Commercial Court adopts legal positions on common legal issues that are published each November in the Appellate Commercial Court Bulletin.¹⁸ Companies would welcome free access to practical guidelines, authoritative interpretations, and commentaries following new legislation as well as court decisions (case law data base).

Mediation remains under-utilized. The Multi-Stakeholder Justice Survey reported that 46 percent of business representatives that had a dispute prefer to negotiate with the other side or resolve it informally somehow. However, mediation in Serbia was never fully embraced. The Commercial Courts reported that there is a need for legislative amendments (e.g. law on civil procedure) in order to give incentive to business representatives to use alternative dispute resolutions.

6. Existing donor support to the Commercial Courts

a. The Commercial Courts in Serbia benefited from the USAID support provided through *Commercial Court Administration Strengthening Activity (CCASA)* in the period 2003-2008.¹⁹

CCASA equipped Commercial Courts in Serbia with a modern IT infrastructure, including computers, printers and scanners, and a virtual private network; and introduced a statistics gathering system called Case Data Collection Instrument (CDCI) that collects statistics from all Commercial Courts on case activities such as case filings and case duration as a key caseload management tool.

¹⁷ 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.

¹⁸ It is available only through Paragraf commercial data base.

¹⁹ Project budget was \$ 13,7 million.

In addition, the project installed a Case Management System (CMS) in all Commercial Courts and the High Commercial Court²⁰, which introduced a more efficient, on-line, paperless CMS with random case assignment that resulted in greater transparency and accessibility for the public to the courts.

A USAID-designed web portal enabled electronic information sharing between the courts and the public. For the first time, the public has full-time access to a complete listing of all case events occurring within a Commercial Court case, including hearing schedules, court case statistics - all via the internet, saving time for the parties involved, as well as court staff.

Due to this support, Commercial Courts developed a reputation as high performers and IT-savvy. However for that same reason, other donors and also the Ministry of Justice took their attention elsewhere. Without adequate sustainability mechanisms in place, lack of access to helpdesk,²¹ support to the commercial jurisdiction declined over time. As a result, equipment and ICT in Commercial Courts is old and the CMS is not in line with legislative amendments and current needs.²² Only the Appellate Commercial Court updated CMS with internal capacities using court ICT staff. Some courts indicate that scanning clogs their system's servers. This is specially problem for the Belgrade Commercial Court, which requires scanning of huge amount of documents more frequently and relies more on electronic copies in daily work, so it greater server capability is now critical. The previous experience of Commercial Courts suggests that improving server capability can improve document management.

Picture 3 and 4 Belgrade Commercial Court - Server room



b. GIZ – Legal and Judicial Reform Program

Rule of Law and Enforcement (RoLE)

²⁰ In the period of CCASA project court network and name of the courts were different (Appellate Commercial Court was established in 2010).

²¹ ICT vendor agreement with Commercial Courts did not provide access to helpdesk.

²² Around 80 percent of servers and 60 percent of scanners are more than 8 years old.

Since the autumn of 2013, GIZ has been implementing the “Rule of Law and Enforcement” project (RoLE) within its Legal and Judicial Reform Program in Serbia. The project focuses entirely on improving the system of enforcement of civil claims in Serbia. It is financed by the EU under IPA 2012 and will last until the end of 2015.

RoLE has been launched in order to assess the entire enforcement system – both old and new elements – and propose, as well as implement, solutions to make it more effective. As integral part of the GIZ Legal and Judicial Reform Program, RoLE follows the same logic of legislation, implementation, and popularization:

- During its initial phase, RoLE considered improvements to primary and secondary legislation in close cooperation with the Ministry of Justice. It produced a comprehensive assessment of the current situation and make recommendations. RoLE also was involved in drafting new provisions of the Law on Enforcement and Security;
- To ensure proper implementation, the project also strives to enhance the capacity of the main beneficiaries: the Ministry of Justice and the Chamber of Enforcement Agents, especially in view of securing monitoring and control of the enforcement system. Enforcement Agents will also undergo several cycles of training in professional and ethical standards as well as legal and business skills;
- The project also has a strong emphasis on raising public awareness of individual duties and rights, in order to increase confidence in the system.

Implementation

Second GIZ Legal and Judicial Reform program has in focus putting laws into practice. Serbia has long had problems arising from conflicting legislation and a lack of appropriate sub-legislation.

For the implementation phase of the program, the following outcomes are sought:

- introduction of reformed systemic laws, particularly in the civil and commercial areas, and the reconciliation of these laws with the European standards;
- support to establishing of an effective and efficient public notary system in Serbia;
- professionalization of insolvency administrators;
- stable institutional support for the Judicial Academy and the Ministry of Justice of the Republic of Serbia;
- enhanced capacity of the judiciary and the public administration, especially with regard to the implementation of the national reform strategies; and;
- enhanced organizational and administrative capacity of the principal institutions and other stakeholders taking part in the Negotiation process in Chapters 23 and 24 of the *acquis communautaire*.

c. IFC

Support in organization of education for judges processing bankruptcy proceedings

The Judicial Academy working group has drafted education program for Commercial Court judges. When drafting the program, the commercial law program group specially prioritized education related to bankruptcy issues.

Over 70 judges dealing with bankruptcy issues have been identified. To that number should be added advisors, who are providing more efficient judges' daily work. The IFC supports the Academy in delivering 10 one-day seminars, with approximately 20 participants per seminar, according to already developed program of regular education in this area (by the end of the year 10 will be delivered).

In addition to that, an advanced education program will be developed for bankruptcy issues, which should be realized as two-day workshop, where judges and advisors, in small groups, could discuss examples from case law and solve more concrete hypothetical cases. 5 two-day workshops (one for each appellate territory respectively and two workshops in Belgrade) will be delivered in 2016.

Further, an advanced training program focusing on economic and financial aspects of reorganization plans and bankruptcy sales will be developed and 5 two-day seminars will be delivered in 2016.

Support to joint sessions of the Appellate Commercial Court and Commercial Courts for case law harmonization

The Appellate Commercial Court has been organizing controls of Commercial Courts in order to monitor the regularity and effectiveness of the overall work of Commercial Courts. During the visits, the Appellate Commercial Court identified areas where harmonization of case law is needed. The Appellate Commercial Court in that sense would receive support for organization of at least 4 such joint sessions. The IFC will provide support by September 2017.

7. Identified needs and recommendations for the MDTF-JSS to support

Based on the needs assessment of Commercial Courts in Serbia, there is a list of needs for donor support in order to improve efficiency, quality and access to the Commercial Courts justice system. It is not expected that the MDTF would fulfill all needs, however the menu below provides a basis for Serbian authorities to prioritize requests for MDTF support. Below is a list of the recommendations and next steps:

A. Efficiency

- a. *Analyze caseloads and workloads and make recommendation for more equitable distribution of workloads across the commercial jurisdiction*

Support to the Appellate Commercial Court in establishment of the equal distribution of judges and cases among the system. Special attention should be paid to equal distribution of bankruptcy cases.

- ✓ Analyze existing caseloads based on managerial reports in the CMS. Provide recommendations to equalize workloads, e.g. transfer files from busier courts to neighboring less busy courts, when appropriate and preferably during the early phases of case processing. (SCC, ACC – short term)

b. Conduct a functionality assessment of the CMS system in Commercial Courts

CMS for Commercial Courts was developed in 2005. Since then, legislation has been amended significantly as well as operation and organization of courts work so there is an urgent need for improvement of the system which would further contribute to efficiency and quality of Commercial Courts.

- ✓ Develop a cost estimate for identified improvements in CMS that do not require a complete overhaul of the system. (MOJ – medium term);
- ✓ Assess functionality of CMS to include electronic document flows. (MOJ – medium term)

c. Upgrade the CMS in Commercial Courts and link with the Appellate Commercial Court²³

- ✓ Based on the assessment, the CMS system would be upgraded, aligned with the new legislation and would include new options. (MOJ – medium term)
- ✓ The upgrade would also include a training program on case management functionality for judges, judges' assistants and court staff. Provide specific training on data entry for court staff (MOJ – medium term);
- ✓ Upgrade of the system will require purchase of the limited amount of the equipment – data storage and big scanners for the busiest courts;
- ✓ Upgrade of the CMS should enable establishment of links between Commercial courts and the National Bank, Commercial Registry, Cadaster, Privatization Agency, etc.; Development of data exchange protocols and ensure interoperability of ICT systems; (ICT Governance Group – medium term)

d. Support the roll-out of the e-filing and e-archiving mechanisms

Presidents and court managers of Commercial Courts would have tool for improvement of the efficiency within the court.

- ✓ Evaluate the e-filing pilot from the Zajecar Commercial Court (ACC, MoJ – short term)
- ✓ Make changes as needed, and expand to other Courts (ACC, MoJ – medium term)

²³ The Appellate Commercial Court already upgraded CMS with the internal resources so their system differs from CMS in Commercial Courts.

- ✓ 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)

e. Support the use of court managers and provide training on court management

- ✓ Establish standard job description - duties and qualifications for a Court Manager in certain locations and seek to convert a position under the Systematization Act to a court manager. (ACC, HJC – medium term)
- ✓ Organize court management training for court managers and court presidents (JA – medium term)

B. Quality

a. Develop a case law data base (scanning of court decisions and development of the data base as the one of the Administrative court)

The case law data base will present easily-searchable internal electronic register of court's decisions and legal opinions that will enable Commercial Court judges to draw upon model cases, sentences and legal opinions when making their rulings, as well as to streamline and unify their practices.

- ✓ The Appellate Commercial Court should dedicate one judge and judicial assistant who will assist in selection of cases. The MDTF-JSS will provide assistance in redaction of the case law in line with the Law on personal data protection. The redacted decisions and cases will be made available to the general public and the judicial community through the Appellate Commercial Court's website (ACC - short term).
- ✓ Training for the use of the database will be provided for the staff of the Appellate Commercial Court (ACC – medium term).
- ✓ The plan for full sustainability for the Case Law Data Base will be agreed with the Appellate Commercial Court. The court leadership should appoint one full-time employee to maintain and feed the data base with new cases (ACC – medium term).

b. Support training and capacity building for Commercial Court judges and staff

- ✓ Trainings are based on interactive approach and with guest lecturers and limited number of study visits, including peer exchange with colleagues from region). (JA – short term)
- ✓ Adopt a skills-based training program for court staff to enhance performance in their current roles. (JA, HJC – medium term);
- ✓ Organize CMS training for court staff (JA, HJC – medium term).

c. Upgrade operation of the registry in the Belgrade Commercial Court

Having in mind that the Commercial Court in Belgrade is the busiest court in the country, with high number of users coming to the Court building there is a need to upgrade operation

of the registry office and increase efficiency of administrative services. Also registry office is in the poor condition because of problems with humidity, moisture and mold in the walls.

- ✓ Assess the current operations of the Belgrade registry office and make recommendations based on best European practice. (SCC, HJC, Appellate Commercial Court – short term)
- d. *Support the organization of periodic meetings for Commercial Court presidents, commercial judges and heads of case law departments of Commercial Courts*
 - ✓ Convene more regular counseling (ACC, SCC – short term)
- e. *Support the organization of periodic meetings for Commercial Court IT staff and heads of registry office*
 - ✓ Convene more regular meetings (ACC, SCC – short term)

C. Access

- a. *Support the implementation of alternative dispute resolution mechanisms*
 - ✓ Create incentives for court users and practitioners to opt for mediation, and monitor the results. (MOJ, SCC – short to medium 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, SCC, ACC – short term)
 - ✓ Establish a formal Court-annexed mediation program in all Commercial Courts and standards for determining which cases are appropriate for mediation. 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)